

1967 No. 471

## CARIBBEAN AND NORTH ATLANTIC TERRITORIES

### The Virgin Islands (Constitution) Order 1967

Made - - - - - 23rd March 1967  
Laid before Parliament 29th March 1967  
Coming into Operation As provided in section 1(2) and (3)

At the Court at Windsor Castle, the 23rd day of March 1967

Present,

The Queen's Most Excellent Majesty in Council

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

#### PART I

##### INTRODUCTORY

1.—(1) This Order may be cited as the Virgin Islands (Constitution) Order 1967.

(2) This Part, Part IV and sections 57(2) and 58 of this Order shall come into operation on 30th March 1967; and as from that date sections 3 to 34 and sections 36 and 42 of the Virgin Islands Constitution and Elections Ordinance 1954(b) and the First Schedule thereto are hereby revoked.

(3) The provisions of this Order other than those mentioned in the last foregoing subsection shall come into operation on such day after the polling in the first general election after 30th March 1967 as the Administrator, by proclamation published in the Gazette, shall appoint; and as from that day the Virgin Islands Letters Patent 1959(c), the Virgin Islands Letters Patent 1960(d) and the Virgin Islands Royal Instructions 1959(e) are hereby revoked.

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

“the appointed day” means the day appointed under section 1(3) of this Order;

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

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

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

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

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

(a) 1962 c. 19. (b) No. 7 of 1954. (c) S.I. 1959 II, p. 3450.  
(d) S.I. 1960 III, p. 4157. (e) S.I. 1959 I, p. 3458. (f) S.I. 1967/223 (1967 I, p. 364).

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

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

“public office” means, subject to the provisions of subsections (7) and (8) of this section, any office of emolument in the public service or any office of emolument under any local government council or authority in the Virgin Islands;

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

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

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

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

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

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

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

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

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

(4) Where by this Order any person is directed, or power is conferred on any person or authority to appoint a person, to perform the functions of an office if the holder thereof is unable to perform those functions, the validity of any performance of those functions by

the person so directed or of any appointment made in exercise of that power shall not be called in question in any court on the ground that the holder of the office is not unable to perform the functions of the office.

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

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

- (a) that he is in receipt of a pension or other like allowance in respect of public service ; or
- (b) that he is in receipt of any remuneration or allowances in respect of his tenure of the office of Minister or Speaker, Deputy Speaker or member of the Legislative Council.

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

(8) References in section 17 and Part V of this Order to public offices shall not be construed as including references to—

- (a) the office of a member of any board, committee or other similar body (whether incorporated or not) established by any law in force in the Virgin Islands ; or
- (b) any office of emolument under any local government council or authority in the Virgin Islands.

(9) Where this Order vests in any person power to make appointments to any office, a person may be appointed to that office, notwithstanding that some other person may be holding that office, when that other person is on leave of absence pending relinquishment of that office ; and where two or more persons are holding the same office by reason of an appointment made in pursuance of this subsection, then, for the purposes of any function conferred upon the holder of that office, the person last appointed to the office shall be deemed to be the sole holder of the office.

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

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

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

(a) 1889 c. 63.

## PART II

### THE ADMINISTRATOR

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

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

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

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

(4) There shall be charged on the revenues of the Virgin Islands and paid thereout to the Administrator such salary as may from time to time be prescribed by any law in force in the Virgin Islands:

Provided that the salary of the Administrator shall not be reduced during his continuance in office.

4.—(1) During any period when the office of Administrator is vacant Acting Administrator or the holder thereof is absent from the Virgin Islands or is for any other reason unable to perform the functions of his office those functions shall, during Her Majesty's pleasure, be assumed and performed by—

- (a) such person as Her Majesty may designate in that behalf by instructions given under Her Sign Manual and Signet or through a Secretary of State, or
- (b) if there is no person in the Virgin Islands so designated and able to perform those functions, the Attorney-General.

(2) Before assuming the functions of the office of Administrator, any such person as aforesaid shall make the oaths or affirmations directed by the last foregoing section to be made by the Administrator.

(3) Any such person as aforesaid shall not continue to perform the functions of the office of Administrator after the holder thereof or some other person having a prior right to perform the functions of that office has notified him that he is about to assume or resume those functions.

(4) The holder of the office of Administrator or any person designated under subsection (1) of this section shall not, for the purposes of this section, be regarded as absent from the Virgin Islands or as unable to perform the functions of the office of Administrator—

- (a) by reason that he is in passage from one part of the Virgin Islands to another ;
- (b) at any time when there is a subsisting appointment of a deputy under the next following section ; or

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

Deputy to  
Administra-  
tor.

5.—(1) Whenever the Administrator—

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

he may, acting in his discretion, by instrument under the public seal, appoint any person in the Virgin Islands to be his deputy during such absence or illness and in that capacity to perform on his behalf such of the functions of the office of Administrator as may be specified in that instrument.

(2) The power and authority of the Administrator shall not be abridged, altered or in any way affected by the appointment of a deputy under this section, and a deputy shall conform to and observe all instructions that the Administrator may from time to time address to him;

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

(3) A person appointed as a deputy under this section shall hold that appointment for such period as may be specified in the instrument by which he is appointed, and his appointment may be revoked at any time by Her Majesty by instructions given through a Secretary of State or by the Administrator, acting in his discretion.

Exercise of  
Administra-  
tor's  
functions.

6.—(1) Subject to the next following subsection, the Administrator shall consult with the Executive Council regarding the exercise of any of his functions other than—

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

(b) any function conferred upon him by any other law in terms which authorise him to exercise that function without consulting with the Executive Council.

(2) The Administrator shall not be obliged to consult with the Executive Council in any case—

(a) in which the matter is one for which he is responsible under section 17 of this Order and is of such a nature that, in his judgment, Her Majesty's service would sustain material prejudice by reason of his consulting the Council thereon; or

(b) in which the question for decision is, in his judgment, too unimportant to require their advice; or

(c) in which, in his judgment, the urgency of the matter requires him to act before the Council can be consulted;

but in any such case of urgency he shall, as soon as practicable, communicate to the Council the measures he has adopted and the reasons therefor.

(3) When the Administrator has, in pursuance of this section, consulted with the Executive Council—

(a) in the case of a matter for which he is responsible under section 17 of this Order, he may act otherwise than in accordance with the advice given to him by the Council if he considers it right so to do; and

(b) in the case of any other matter he shall act in accordance with the advice given to him by the Council:

Provided that in the case of any such other matter he may act otherwise than in accordance with such advice if he considers it necessary or expedient to do so for the purposes of any of the matters for which he is responsible under section 17 of this Order, but if he so acts he shall, as soon as practicable, report his action and the reasons therefor to a Secretary of State.

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

(5) Nothing in the foregoing provisions of this section shall apply to the matters for which provision is made by section 9 or section 43 of this Order.

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

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

8. Subject to the provision of this Order and of any law for the time being in force in the Virgin Islands, the Administrator, in Her Majesty's name and on Her Majesty's behalf, may—

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

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

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

(a) grant to any person concerned in or convicted of any offence against any law in force in the Virgin Islands a pardon, either free or subject to lawful conditions;

(b) grant to any person concerned in or convicted of any offence against any law in force in the Virgin Islands a pardon, either free or subject to lawful conditions;

- (b) grant to any person a respite, either indefinite or for a specified period, from the execution of any sentence passed on that person for such an offence;
- (c) substitute a less severe form of punishment for that imposed by any sentence for such an offence; or
- (d) remit the whole or any part of any sentence passed for such an offence or any penalty or forfeiture otherwise due to Her Majesty on account of such an offence.
- (2) In the exercise of his powers under this section the Administrator shall consult with the Executive Council, but he shall decide whether to exercise any of those powers in any case in his own deliberate judgment, whether the members of the Council concur in his decision or otherwise.

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

The public seal. 10. The Administrator shall keep and use the public seal for sealing all things whatsoever that shall pass the said seal.

### PART III THE EXECUTIVE

Executive authority of the Virgin Islands. 11.—(1) The executive authority of the Virgin Islands shall be vested in Her Majesty.

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

Executive Council. 12. There shall be an Executive Council in and for the Virgin Islands which shall consist of the Chief Minister, two other Ministers, and two ex officio members, namely, the Attorney-General and the Financial Secretary.

Appointment of Ministers. 13.—(1) The Administrator, acting in his discretion, shall appoint as the Chief Minister the elected member of the Legislative Council who, in his judgment, is best able to command the support of a majority of the elected members of the Legislative Council.

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

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

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

14.—(1) If a motion that the Legislative Council should declare a lack of confidence in the Government of the Virgin Islands receives in the office of the Legislative Council the affirmative votes of a majority of all the elected members thereof the Administrator shall, by instrument under the public seal, revoke the appointment of the Chief Minister:

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

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

(3) Any Minister shall vacate his office if—

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

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

(c) he is required under the provisions of section 29(4) of this Order to cease to perform his functions as a member of the Legislative Council;

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

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

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

(a) the Chief Minister vacates his office; or

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

15.—(1) If the Chief Minister is unable, by reason of his illness or absence from the Virgin Islands, to perform the functions of his office, the Administrator may, by instrument under the public seal, authorise any other Minister to perform the functions conferred on the Chief Minister by this Order (other than the functions conferred upon him by events subsection (3) of this section).

(2) The Administrator may, by instrument under the public seal, revoke any authority given under this section.

(3) The powers conferred upon the Administrator by this section shall be exercised by him acting in his discretion if, in his judgment, it is impracticable to obtain the Chief Minister's advice owing to his illness or absence, and in any other case shall be exercised in accordance with the advice of the Chief Minister.

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

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

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

**Administrator's special responsibilities.**  
17. The Administrator shall be responsible for the conduct (subject to the provisions of this Order and of any other law) of any business of the Government of the Virgin Islands, including the administration of any department of government, with respect to the following matters:—

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

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

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

**Summoning of persons to the Council.**  
19. The Administrator may summon any public officer to a meeting of the Executive Council whenever, in his opinion, the business before the Council renders the presence of that officer desirable.

**Summoning of the Council.**  
20. The Executive Council shall not be summoned except by the authority of the Administrator, acting in his discretion:

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

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

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

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

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

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

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

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

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

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

(3) The powers conferred upon the Attorney-General by paragraphs (b) and (c) of subsection (1) of this section shall be vested in him to the exclusion of any other person or authority:

Provided that where any other person or authority has instituted criminal proceedings, nothing in this subsection shall prevent the withdrawal of those proceedings by or at the instance of that person or authority at any stage before the person against whom the proceedings have been instituted has been charged before the court.

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

(5) In the exercise of the powers conferred upon him by this section, section 48(2) and section 49 of this Order the Attorney-General shall not be subject to the direction or control of any other person or authority.

(6) There shall be charged on the revenues of the Virgin Islands and paid thereout to the Attorney-General such salary as may from time to time be prescribed by any law in force in the Virgin Islands:

Provided that the salary of the Attorney-General shall not be reduced during his continuance in office.

PART IV  
THE LEGISLATURE

Composition

**Constitution of Legislature.** 23. There shall be a Legislature for the Virgin Islands which shall consist of Her Majesty and a Legislative Council.

**Legislative Council.** 24. Subject to section 32 of this Order, the Legislative Council shall consist of a Speaker elected as provided in section 31 of this Order, two ex officio members, namely the Attorney-General and the Financial Secretary, one nominated member and seven elected members.

**Nominated member.** 25.—(1) Subject to section 28 of this Order, the nominated member of the Legislative Council shall be a British subject of the age of twenty-one years or upwards and shall be appointed by the Administrator, after consultation with the Chief Minister, by instrument under the public seal.

(2) The Administrator shall forthwith report to Her Majesty through a Secretary of State every appointment made under this section.

**Elected members.** 26.—(1) The elected members of the Legislative Council shall be persons qualified for election in accordance with the provisions of this Order and, subject to the provisions of this Order, shall be elected in the manner provided by or under any law for the time being in force in the Virgin Islands.

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

**Qualifications for elected membership.** 27. Subject to the next following section, a person shall be qualified to be elected as a member of the Legislative Council, if, and shall not be qualified to be so elected unless, he—

- (a) is a British subject of the age of twenty-one years or upwards, and
- (b) has resided in the Virgin Islands for a period of twelve months immediately before the date of his nomination for election or is domiciled and resident in the Virgin Islands at that date.

**Disqualifications for nominated and elected membership.** 28.—(1) No person shall be qualified to be nominated or elected as a member of the Legislative Council who—

- (a) is, by virtue of his own act, under any acknowledgement of allegiance, obedience or adherence to a foreign power or state;
- (b) holds, or is acting in, any public office;
- (c) is a minister of religion;
- (d) has been adjudged or otherwise declared bankrupt under any law in force in any part of the Commonwealth and has not been discharged;
- (e) is a person certified to be insane or otherwise adjudged to be of unsound mind under any law in force in the Virgin Islands;

(f) is under sentence of death imposed on him by a court in any part of the Commonwealth, or is serving a sentence of imprisonment (by whatever name called) for a term exceeding twelve months imposed on him by such a court or substituted by competent authority for some other sentence imposed on him by such a court, or is under such a sentence of imprisonment the execution of which has been suspended;

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

(h) (i) in the case of the nominated member, is a party to, or a partner in a firm or a director or manager of a company which is a party to, any contract with the Government of the Virgin Islands for or on account of the public service, and has not disclosed to the Administrator the nature of such contract and his interest, or the interest of such firm or company, therein; or

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

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

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

(b) no account shall be taken of a sentence of imprisonment imposed as an alternative to or in default of the payment of a fine.

29.—(1) Subject to the provisions of this Order, the nominated member of the Legislative Council shall hold his seat therein during Her Majesty's pleasure.

(2) Every nominated or elected member of the Legislative Council shall vacate his seat therein at the next dissolution of the Council after his appointment or election.

(3) A nominated or elected member of the Legislative Council shall also vacate his seat therein—

- (a) if he resigns it by writing under his hand addressed to the Speaker;
- (b) if he is absent from the sittings of the Council for such period and in such circumstances as may be prescribed in the Standing Orders of the Council;
- (c) if he ceases to be a British subject;

(d) subject to the next following subsection, if any circumstances arise that, if he were not a member of the Council, would cause him to be disqualified for appointment or election as such by virtue of any provision of subsection (1) of the last foregoing section other than paragraph (h); or

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

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

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

Provided that the Administrator, acting in his discretion (in the case of the nominated member), or the Speaker (in the case of an elected member), may, at the request of the member, from time to time extend that period for further periods of thirty days to enable the member to pursue an appeal against the decision, so, however, that extensions of time exceeding in the aggregate one hundred and fifty days shall not be given without the approval, signified by resolution, of the Legislative Council.

(b) If, on the determination of any appeal, such circumstances continue to exist and no further appeal is open to the member or if, by reason of the expiration of any period for entering an appeal or notice thereof or the refusal of leave to appeal or for any other reason, it ceases to be open to the member to appeal, he shall forthwith vacate his seat.

(c) If at any time before the member vacates his seat such circumstances as aforesaid cease to exist, his seat shall not become vacant on the expiration of the period referred to in paragraph (a) of this subsection and he may resume the performance of his functions as a member.

#### Qualifications of voters.

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

(a) has resided in the Virgin Islands for twelve months immediately preceding the qualifying date; or

(b) is domiciled and resident in the Virgin Islands at that date; or

(c) is at that date domiciled in the Virgin Islands but is resident in the United States Virgin Islands, having ceased during the two years immediately preceding that date to be resident in the Virgin Islands.

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

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

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

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

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

(4) For the purposes of subsection (2)(c) of this section—

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

(b) no account shall be taken of a sentence of imprisonment imposed as an alternative to or in default of the payment of a fine.

31.—(1) When the Legislative Council first meets after any general election and before it proceeds to the despatch of any other business, it shall elect a person to be the Speaker of the Council, and, if the office of Speaker falls vacant for any reason other than a dissolution of the Council, the Council shall, as soon as practicable elect another person to that office.

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

(a) he is not a British subject;

(b) he is a person disqualified for election as an elected member of the Council by virtue of any provision of section 28(1) of this Order other than paragraph (b).

(3) When the Legislative Council first meets after any general election and before it proceeds to the despatch of any other business except the election of the Speaker, it shall elect a member of the Legislative Council who is not a member of the Executive Council to be Deputy Speaker of the Legislative Council; and if the office of Deputy Speaker falls vacant for any reason other than a dissolution of the Council, the Council shall, as soon as convenient, elect another such member to that office.

Speaker and Deputy Speaker.

- (4) A person shall vacate the office of Speaker or Deputy Speaker—
- (a) on a dissolution of the Legislative Council;
- (b) if he announces the resignation of his office to the Legislative Council or if by writing under his hand addressed to the Council and received by the Clerk of the Council he resigns that office;
- (c) in the case of the Speaker—
- (i) if he ceases to be a British subject;
  - (ii) if any circumstances arise that would cause him to be disqualified for election as an elected member of the Council by virtue of any provision of section 28(1) of this Order other than paragraph (h);
  - (iii) on the expiration of a period of thirty days from the date of his election if he was at that date a party to, or a partner in a firm or a director or manager of a company which is a party to, any contract with the Government of the Virgin Islands for or on account of the public service and if, before the expiration of that period, he has not disclosed to the Council the nature of such contract and his interest, or the interest of such firm or company, therein and the Council has not exempted him from vacating his office under this subparagraph; or
  - (iv) if any circumstances arise that, if he were an elected member of the Council, would cause him to vacate his seat under paragraph (e) of section 29(3) of this Order;
- (d) in the case of the Deputy Speaker if he ceases to be a member of the Council for any reason other than a dissolution of the Council or if, by virtue of section 29(4) of this Order, he is required to cease to perform his functions as a member or if he is appointed to be a member of the Executive Council.

Temporary nominated member.

32.—(1) If the nominated member of the Legislative Council is unable, by reason of his illness or absence from the Virgin Islands or for any other cause, to perform his functions as a member of the Council, the Administrator, after consultation with the Chief Minister, may, by instrument under the public seal, appoint a person who is qualified for appointment as the nominated member to be temporarily a member of the Council.

(2) The Administrator shall forthwith report to Her Majesty through a Secretary of State every appointment made under this section.

(3) A person appointed under this section to be temporarily a member of the Legislative Council shall vacate his seat if the Administrator, acting in his discretion, revokes his appointment or when he is informed by the Administrator, acting as aforesaid, that the nominated member is again able to perform his functions as a member of the Council, or when the seat of that member becomes vacant.

(4) Subject to the provisions of this section, the provisions of this Order shall apply in relation to a person appointed to be temporarily a member of the Legislative Council as they apply in relation to the nominated member of the Council.

### Powers and Procedure

33. Subject to the provisions of this Order, the Legislature shall have power to make laws for the peace, order and good government of the Virgin Islands.
34. Subject to the provisions of this Order, the Legislative Council Standing Orders may make, amend and revoke Standing Orders for the regulation and orderly conduct of its own proceedings and the despatch of business, and the passing, intuing and numbering of Bills and the presentation of the same to the Administrator for assent.
35. No member of the Legislative Council shall be permitted to take part in the proceedings of the Council (other than proceedings necessary for the purposes of this section) until he has made and subscribed before the Council an oath or affirmation of allegiance in the form set out in the Schedule to this Order:
- Oath of allegiance.
- Provided that the election of a Speaker and Deputy Speaker of the Legislative Council may take place before the members thereof have made such oath or affirmation.
- 36.—(1) The Speaker or, in his absence, the Deputy Speaker or, if they are both absent, a member of the Legislative Council (not being a member of the Executive Council) elected by the Legislative Council for that sitting shall preside at each sitting of the Legislative Council.
- (2) References in this section to circumstances in which the Speaker or Deputy Speaker is absent include references to circumstances in which the office of Speaker or Deputy Speaker is vacant.
- 37.—(1) Subject to the provisions of this section, all questions proposed for decision in the Legislative Council shall be determined by a majority of the votes of the members present and voting.
- (2) Notwithstanding the provisions of subsection (1) of this section, only the elected members of the Council shall be entitled to vote on a motion that the Legislative Council should declare a lack of confidence in the Government of the Virgin Islands.
- (3) The person presiding shall not vote unless on any question the votes are equally divided in which case he shall have and exercise a casting vote:
- Provided that where the motion before the Council is one to which subsection (2) of this section applies the person presiding shall not have a casting vote unless he is an elected member.
38. The Legislative Council shall not be disqualified for the transaction of business by reason of any vacancy in the membership thereof (including any vacancy not filled when the Council is first constituted or is reconstituted at any time), and any proceedings therein shall be valid notwithstanding that some person who was not entitled so to do sat or voted in the Council or otherwise took part in the proceedings.
- 39.—(1) If at any sitting of the Legislative Council any member who is present draws the attention of the person presiding at the sitting to the absence of a quorum and, after such interval as may be prescribed in the Standing Orders of the Council, the person presiding at the sitting ascertains that a quorum of the Council is still not present, the Council shall be adjourned.
- (2) A quorum of the Council shall consist of five members besides the person presiding at the sitting.

Introduction of Bills, etc. 40.—(1) Subject to the provisions of this Order and of the Standing Orders of the Legislative Council, any member may introduce any Bill or propose any motion for debate in, or may present any petition to, the Council, and the same shall be debated and disposed of according to the Standing Orders of the Council.

(2) Except on the recommendation of the Administrator signified by a member of the Executive Council, the Legislative Council shall not—

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

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

Assent to Bills. 41.—(1) A Bill passed by the Legislative Council shall become a law when—

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

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

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

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

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

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

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

Disallowance of laws. 42.—(1) Any law assented to by the Administrator may be disallowed by Her Majesty through a Secretary of State.

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

(3) On the annulment of any law under this section, any enactment repealed or amended by or in pursuance of that law shall have effect as from the date of the annulment as if that law had not been made; but save as provided by the foregoing provisions of this subsection section 38(2) of the Interpretation Act 1889 shall apply to that annulment as it applies to the repeal of an Act of Parliament.

43.—(1) Subject to the provisions of subsection (2) of this section, Administrator considers that it is necessary or expedient for the purposes of any of the matters for which he is responsible under section 17 of this Order that any Bill introduced, or any motion proposed, in the Legislative Council should have effect, then, if the Legislative Council fails to pass such a Bill or motion within such time and in such form as the Administrator may think reasonable and expedient, the Administrator may, at any time that he thinks fit, and notwithstanding any provisions of this Order or of any Standing Orders of the Legislative Council, declare that such Bill or motion shall have effect as if it had been passed or carried by the Legislative Council, either in the form in which it was so introduced or proposed or with such amendments as the Administrator shall think fit which have been proposed in the Legislative Council or in any committee thereof; and thereupon the said Bill or motion shall have effect as if it had been so passed or carried, and, in the case of any such Bill, the provisions of this Order relating to assent to Bills and disallowance of laws shall have effect accordingly.

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

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

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

(i) the Administrator may submit the said question to a Secretary of State and may make the declaration if, upon the question being so submitted to him, a Secretary of State authorises the Administrator to make the declaration; or

(ii) the Administrator may make the declaration without submitting the said question to a Secretary of State if, in the Administrator's opinion, urgent necessity requires that the declaration be made without obtaining the authority of a Secretary of State; in which case he shall, at the time of making the declaration, certify in writing that urgent necessity requires that the declaration be made without obtaining such authority.

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

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

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

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

**Privileges, etc. of Council.** 44. The Legislature may by law determine and regulate the privileges, immunities and powers of the Legislative Council and the members thereof, but no such privileges, immunities or powers shall exceed those of the Commons' House of Parliament of the United Kingdom or of the members thereof.

#### Miscellaneous

**Sessions of Council.** 45.—(1) Subject to the provisions of this section, the sessions of the Legislative Council shall be held at such times and places as the Administrator may appoint by proclamation published in the Gazette.

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

**Prorogation and dissolution.** 46.—(1) The Administrator, acting in accordance with the advice of the Chief Minister, may at any time, by proclamation published in the Gazette, prorogue the Legislative Council.

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

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

**General elections.** 47. A general election shall be held at such time within two months after the commencement of this Part of this Order and after every dissolution of the Council as the Administrator shall appoint by proclamation published in the Gazette.

**Determination of questions as to membership.** 48.—(1) The High Court shall have jurisdiction to hear and determine any question whether—

- (a) any person has been validly elected as a member of the Legislative Council;
- (b) any elected member of the Council has vacated his seat therein or is required by virtue of section 29(4) of this Order to cease to perform his functions as a member; or
- (c) any person has been validly elected as Speaker of the Council or, having been so elected, has vacated the office of Speaker.

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

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

(c) any question under paragraph (c) of that subsection may be made by any member of the Legislative Council;

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

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

(a) the circumstances and manner in which and the imposition of conditions upon which any application may be made to the High Court for the determination of any question under this section;

and

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

(4) An appeal shall lie as of right to the Court of Appeal from any final decision of the High Court determining such a question as is referred to in subsection (1) of this section.

(5) No appeal shall lie from any decision of the Court of Appeal in exercise of the jurisdiction conferred by the last foregoing subsection and no appeal shall lie from any decision of the High Court in proceedings under this section other than a final decision determining such a question as is referred to in subsection (1) of this section.

(6) Any question whether—

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

(b) the nominated member of the Council has vacated his seat therein or is required by virtue of section 29(4) of this Order to cease to perform his functions as a member,

shall be referred to the Administrator in accordance with any directions given in that behalf by the Administrator, acting in his discretion, and shall be determined by him acting as aforesaid.

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

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

#### PART V

##### THE PUBLIC SERVICE

##### Public Service—General

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

Penalty for unauthorised person sitting or voting.

Public Service Commission.

class of public officer, to such extent and subject to such conditions as may be prescribed in the regulations, any of the powers vested in him by the last foregoing subsection.

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

- (a) any office to which section 53 of this Order applies; or
- (b) any office in the Police Force below the rank of Assistant Superintendent to the extent that the Chief of Police or some other officer of the Police Force is empowered by any law for the time being in force in the Virgin Islands to exercise the powers mentioned in that subsection.

#### *Judicial and Legal Service*

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

- (a) the Chief Justice, who shall be Chairman;
- (b) another judge of the Court of Appeal or the High Court nominated by the Chief Justice after consultation with the Administrator; and
- (c) the Chairman of the Public Service Commission.

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

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

#### *Pensions*

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

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

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

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

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

(3) For the purposes of this section, in so far as the law applicable to an award depends on the option of the person to or in respect of

be appointed by the Administrator in his discretion and one shall be appointed by the Administrator after consultation with the Civil Service Association.

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

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

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

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

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

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

(d) if the Administrator, acting in his discretion, directs that he shall be removed from office for inability to discharge the functions thereof (whether arising from infirmity of body or mind or any other cause) or for misbehaviour.

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

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

(6) There shall be charged on the revenues of the Virgin Islands and paid thereout to the members of the Public Service Commission such emoluments as may be prescribed by any law for the time being in force in the Virgin Islands:

Provided that the emoluments of a member of the Commission shall not be reduced during his continuance in office.

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

(2) The Administrator, acting after consultation with the Public Service Commission, may, by regulations published in the Gazette, delegate to any member of the Commission or any public officer or

Power to appoint, etc., to public offices.

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

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

60. There is reserved to Her Majesty full power to make laws for Powers reserved to Her Majesty.

*W. G. Agnew.*

Sections 3, 18 and 35.

THE SCHEDULE

FORMS OF OATHS AND AFFIRMATIONS

1. *Oath of Allegiance*

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

2. *Affirmation of Allegiance*

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

3. *Oath for due execution of office*

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

4. *Affirmation for due execution of office*

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

EXPLANATORY NOTE

*(This Note is not part of the Order.)*

This Order makes new provision for the government of the Virgin Islands. In particular it provides for an Administrator appointed by Her Majesty, an Executive Council and a Legislative Council and contains certain provisions relating to the Public Service.

whom it is granted or to be granted, the law for which he opts shall be taken to be more favourable to him than any other law for which he might have opted.

Pensions, etc., charged on revenues of the Virgin Islands.  
55. Awards granted under any law for the time being in force in the Virgin Islands shall be charged on and paid out of the revenues of the Virgin Islands.

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

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

PART VI

TRANSITIONAL AND MISCELLANEOUS

Existing laws. 57.—(1) The existing laws shall, as from the appointed day, be construed with such adaptations and modifications as may be necessary to bring them into conformity with the provisions of this Order.

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

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

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

Standing Orders.  
58. The Standing Rules and Orders of the Legislative Council as in force immediately before Part IV of this Order comes into operation shall, with such adaptations and modifications as may be necessary to bring them into conformity with this Order, be the first Standing Orders of the Legislative Council established by this Order as if they had been made in pursuance of section 34 of this Order.

Existing offices and officers.  
59.—(1) Any office constituted for the Virgin Islands by the Administrator under article 21 of the Virgin Islands Letters Patent 1959 and subsisting immediately before the appointed day shall, as from the appointed day, be deemed to be an office constituted by the Administrator under section 8 of this Order.

1970 No. 1942

**CARIBBEAN AND NORTH ATLANTIC  
TERRITORIES**
**The Virgin Islands (Constitution) (Amendment) Order 1970**

*Made - - - - - 17th December 1970*  
*Laid before Parliament 23rd December 1970*  
*Coming into Operation As provided in section 1(3)*

At the Court at Buckingham Palace, the 17th day of December 1970

Present,

The Queen's Most Excellent Majesty in Council

Her Majesty, by virtue and in exercise of the powers vested in Her by sections 5 and 7 of the West Indies Act 1962(a) and of all other powers enabling Her in that behalf, is pleased, by and with the advice of Her Privy Council, to order, and it is hereby ordered, as follows:—

1.—(1) This Order may be cited as the Virgin Islands (Constitution) (Amendment) Order 1970.

(2) This Order shall be construed as one with the Virgin Islands Constitution Orders 1967 and 1969(b) and those Orders and this Order may be cited together as the Virgin Islands Constitution Orders 1967 to 1970.

(3) This Order shall be published in the Gazette and shall come into operation on the day on which it is so published.

2. Section 27 of the Virgin Islands (Constitution) Order 1967 is amended by the deletion of paragraph (b) and the substitution of the following:—

“(b) has ordinarily resided in the Virgin Islands for a period of five out of the seven years immediately preceding the date of his nomination for election or is domiciled and resident in the Virgin Islands at that date.”

3. Section 30 of the Virgin Islands (Constitution) Order 1967 is amended by the deletion of paragraph (a) of subsection (1) and the substitution of the following:—

“(a) has ordinarily resided in the Virgin Islands for three years immediately preceding the qualifying date ; or ”

4. Nothing in this Order shall affect elections to the Legislative Council in being at the time of the making of this Order.

*W. G. Agnew.*

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(a) 1962 c. 19. (b) S.I. 1967/471, 1969/1065 (1967 I, p. 1418; 1969 II, p. 3122).

## EXPLANATORY NOTE

*(This Note is not part of the Order.)*

This Order amends the provisions of the Virgin Islands (Constitution) Order 1967 relating to the qualifications for elected membership of the Legislative Council and the qualifications of voters.

SI 1970/1942  
ISBN 0-11-001942-3



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 S T A T U T O R Y   I N S T R U M E N T S
 

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1976 No. 2145

**CARIBBEAN AND NORTH ATLANTIC  
TERRITORIES**
**The Virgin Islands (Constitution) Order 1976**

*Made* - - - - 15th December 1976

*Laid before Parliament* 23rd December 1976

*Coming into Operation* On a day to be  
appointed under  
section 1(2).

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

Present,

The Queen's Most Excellent Majesty in Council

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

PART I

INTRODUCTORY

1.—(1) This Order may be cited as the Virgin Islands (Constitution) Order 1976. Citation,  
commence-  
ment and  
revocation.

(2) This Order shall come into operation on such date as the Governor, acting in his discretion, may appoint by proclamation published in the Gazette.

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

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

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

(b) pending such dissolution, the Speaker, Deputy Speaker and members of the existing Council (other than the Financial Secretary) may continue to hold their respective offices notwithstanding that they would not be qualified to do so under this Order ; but persons elected to fill their offices in the existing Council, should any of these fall vacant, shall be persons duly qualified

(a) 1962 c. 19.

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

under this Order, elected for electoral districts constituted, and by voters qualified, in accordance with Part IV of the Orders hereby revoked; and

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

Interpretation.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) S.I. 1967/223 (1967 I, p. 364). (b) 1914 c. 17. (c) 1948 c. 56.

- (d) is a person to whom a certificate has been granted under the provisions of section 15 of the Immigration and Passport Ordinance, 1969 (in this section referred to as "the Ordinance", and references to the Ordinance or to any section thereof include references to any enactment amending or replacing the same) and has not been revoked under section 16 of the Ordinance ; or
- (e) is a British subject above the age of eighteen years who immediately before attaining that age was the child of a person to whom a certificate had been granted under section 15 of the Ordinance and not revoked under section 16 of the Ordinance :

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

- (i) subsequent to attaining the age of twenty-one years is ordinarily resident outside the Virgin Islands for a period of not less than five years ; or
- (ii) being a female, marries a person who is not deemed to belong to the Virgin Islands under the provisions of this subsection ; or
- (iii) is declared to be no longer a person deemed to belong to the Virgin Islands by an order made by the Governor in accordance with the provisions of the Ordinance ; or
- (f) is the wife of a person to whom any of the foregoing paragraphs apply and is not living apart from such person under a decree of a competent court or a deed of separation ; or
- (g) is the child of any person to whom any of the foregoing paragraphs of this subsection apply ; or
- (h) is a British subject and the widow of a person who immediately before his death was, or would but for his death have been, deemed to belong to the Virgin Islands under any of the foregoing paragraphs of this subsection and who was at the time of his death lawfully married to her and not living apart from her under a decree of a competent court or a deed of separation :

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

- (i) subsequent to the death of her husband she is ordinarily resident outside the Virgin Islands for a period of five years or longer ; or
- (ii) she marries a person who is not deemed to belong to the Virgin Islands under the provisions of this subsection.

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

- (a) any reference to power to make appointments to any office shall be construed as including a reference to power to make appointments on promotion and transfer to that office and to power to appoint a person to perform the functions of that office during any period when it is vacant or the holder thereof is unable (whether by reason of absence or infirmity of body or mind or any other cause) to perform those functions ;
- (b) any reference to power to remove a public officer from office shall be construed as including a reference to any power conferred by any law to require or permit that officer to retire from the public service ;

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

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

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

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

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

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

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

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

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

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

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

(10) Where this Order vests in any person power to make appointments to any office, a person may be appointed to that office, notwithstanding that some other person may be holding that office, when that other person is on leave of absence pending relinquishment of that office ; and where two or more persons are holding the same office by reason of an appointment made in pursuance of this subsection, then, for the purposes of any function conferred upon the holder of that office, the person last appointed to the office shall be deemed to be the sole holder of the office.

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

to amend or revoke any such proclamation, order, regulations or directions.

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

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

## PART II

### THE GOVERNOR

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

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

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

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

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

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

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(a) 1889 c. 63.

Acting  
Governor.

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

(a) the Deputy Governor ; or

(b) if the office of Deputy Governor is vacant or the Deputy Governor is absent from the Virgin Islands, or is for any other reason unable to perform the functions of the office of Governor such person as Her Majesty may designate in that behalf by instructions given through a Secretary of State (in this section referred to as “the person designated”), shall, during Her Majesty’s pleasure, act in the office of Governor and shall perform the functions of that office accordingly.

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

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

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

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

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

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

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

Deputy to  
Governor.

6.—(1) Whenever the Governor—

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

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

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

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

(2) The power and authority of the Governor shall not be abridged altered or in any way affected by the appointment of a deputy under

this section, and a deputy shall conform to and observe all instructions that the Governor may from time to time address to him:

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

(3) A person appointed as a deputy under this section shall hold that appointment for such period as may be specified in the instrument by which he is appointed, and his appointment may be revoked at any time by Her Majesty by instructions given through a Secretary of State or by the Governor, acting in his discretion.

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

Exercise of  
the  
Governor's  
functions.

- (a) when acting under instructions given to him by Her Majesty through a Secretary of State; or
- (b) when exercising any function conferred upon him by this Order or any such other law which is expressed to be exercisable by him in his discretion, or in accordance with the advice of, or after consultation with, any person or authority other than the Executive Council; or
- (c) in any case which, in his opinion, involves a matter for which he is responsible under section 19 of this Order:

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

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

- (a) Her Majesty's service would sustain material prejudice; or
- (b) the matter is too unimportant to require consultation; or
- (c) the urgency of the matter requires him to act before he can consult the Executive Council;

but in any case falling within paragraph (c) of this subsection he shall, as soon as practicable, communicate to the Executive Council the measures which he has adopted and the reasons therefor.

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

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

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

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

Powers to dispose of land.

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

Powers to constitute offices and make appointments, etc.

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

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

Powers of pardon, etc.

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

- (a) grant to any person concerned in or convicted of any offence against any law in force in the Virgin Islands a pardon, either free or subject to lawful conditions ;
- (b) grant to any person a respite, either indefinite or for a specified period, from the execution of any sentence passed on that person for such an offence ;
- (c) substitute a less severe form of punishment for that imposed by any sentence for such an offence ; or
- (d) remit the whole or any part of any sentence passed for such an offence or any penalty or forfeiture otherwise due to Her Majesty on account of such an offence.

(2) In the exercise of his powers under this section the Governor shall consult with the Committee established under section 11 of this Order, but he shall decide whether to exercise any of those powers in any case in his own deliberate judgment, whether the members of the Committee concur in his decision or otherwise.

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

Provided that if it is impracticable to obtain such a report, the Governor may act without such a report, but in that case shall, i

practicable, cause to be taken into consideration a report furnished by the registrar of the court after consulting counsel for the prosecution and defence in the case.

11.—(1) There shall be for the Virgin Islands an Advisory Committee on the Prerogative of Mercy (in this section and section 10 referred to as the Committee), which shall consist of the Attorney-General, the Chief Medical Officer and four members appointed by the Governor after consultation with the Chief Minister. Establishment and procedure of Mercy Advisory Committee.

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

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

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

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

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

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

### PART III

#### THE EXECUTIVE

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

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

14. There shall be an Executive Council in and for the Virgin Islands which shall consist of the Chief Minister, two other Ministers and the Attorney-General. Executive Council.

Appoint-  
ment of  
Ministers.

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

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

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

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

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

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

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

Tenure of  
office of  
Ministers.

**16.**—(1) If a motion that the Legislative Council should declare a lack of confidence in the Government of the Virgin Islands receives in the Legislative Council the affirmative votes of a majority of all the elected members thereof, the Governor shall, by instrument under the public seal, revoke the appointment of the Chief Minister :

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

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

(3) Any Minister shall vacate his office if—

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

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

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

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

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

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

(a) the Chief Minister vacates his office ; or

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

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

Performance of functions of Chief Minister in certain events.

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

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

Assignment of responsibilities to Ministers.

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

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

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

Governor's special responsibilities.

(a) external affairs ;

(b) defence, including armed forces ;

(c) internal security, including the Police Force ;

(d) the terms and conditions of service of persons holding or acting in public offices ;

(e) the administration of the courts :

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

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

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

**Summoning of the Council.**       **22.** The Executive Council shall not be summoned except by the authority of the Governor, acting in his discretion :  
 Provided that the Governor shall summon the Council if the Chief Minister so requests.

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

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

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

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

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

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

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

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

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

(3) The powers conferred upon the Attorney-General by paragraphs (b) and (c) of subsection (1) of this section shall be vested in him to the exclusion of any other person or authority:

Provided that where any other person or authority has instituted criminal proceedings, nothing in this subsection shall prevent the withdrawal of those proceedings by or at the instance of that person or authority at any stage before the person against whom the proceedings have been instituted has been charged before the court.

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

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

#### PART IV

#### THE LEGISLATURE

##### *Composition*

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

26. The Legislative Council shall consist of a Speaker elected as provided in section 32 of this Order, one *ex officio* member, namely the Attorney-General, and nine elected members. Legislative Council.

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

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

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

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

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

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

Disqualifi-  
cations for  
elected  
member-  
ship.

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

- (a) is, by virtue of his own act, under any acknowledgement of allegiance, obedience or adherence to a foreign power or state ; or
- (b) holds, or is acting in, any public office ; or
- (c) is a minister of religion ; or
- (d) has been adjudged or otherwise declared bankrupt under any law in force in any part of the Commonwealth and has not been discharged ; or
- (e) is a person certified to be insane or otherwise adjudged to be of unsound mind under any law in force in the Virgin Islands ; or
- (f) is under sentence of death imposed on him by a court, or is serving a sentence of imprisonment (by whatever name called) for a term exceeding twelve months imposed on him by a court or substituted by competent authority for some other sentence imposed on him by a court, or is under such a sentence of imprisonment the execution of which has been suspended ; or
- (g) is disqualified for membership of the Council by or under any law in force in the Virgin Islands by reason of his having been convicted or reported guilty of any offence relating to elections ; or
- (h) is a party to, or a partner in a firm or a director or manager of a company which is a party to, any contract with the Government of the Virgin Islands for or on account of the public service, and has not, within fourteen days before his nomination as a candidate for election, published in the Gazette or in a newspaper circulating in the Virgin Islands a notice setting out the nature of such contract and his interest, or the interest of such firm or company, therein.

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

- (a) two or more sentences of imprisonment that are required to be served consecutively shall be regarded as separate sentences if none of those sentences exceeds twelve months, but if any one of such sentences exceeds that term they shall be regarded as one sentence ; and
- (b) no account shall be taken of a sentence of imprisonment imposed as an alternative to or in default of the payment of a fine.

Tenure of  
seats of  
members of  
Legislative  
Council.

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

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

- (a) if he resigns it by writing under his hand addressed to the Speaker ; or
- (b) if he is absent from the sittings of the Council for such period and in such circumstances as may be prescribed in the Standing Orders of the Council ; or
- (c) if he ceases to be qualified for election ; or
- (d) subject to the next following subsection, if any circumstances arise that, if he were not a member of the Council, would cause him to be disqualified for election as such by virtue of any provision of

subsection (1) of the last foregoing section other than paragraph (h); or

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

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

- (3) (a) If circumstances such as are referred to in paragraph (d) of the last foregoing subsection arise because a member is declared bankrupt, adjudged to be of unsound mind, under sentence of death or imprisonment or convicted or reported guilty of an offence relating to elections and if it is open to the member to appeal against the decision (either with the leave of a court or other authority or without such leave) he shall forthwith cease to perform his functions as a member but, subject to the next following paragraph, he shall not vacate his seat in the Council until the expiration of a period of thirty days thereafter:

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

- (b) If, on the determination of any appeal, such circumstances continue to exist and no further appeal is open to the member or if, by reason of the expiration of any period for entering an appeal or notice thereof or the refusal of leave to appeal or for any other reason, it ceases to be open to the member to appeal, he shall forthwith vacate his seat.

- (c) If at any time before the member vacates his seat such circumstances as aforesaid cease to exist, his seat shall not become vacant on the expiration of the period referred to in paragraph (a) of this subsection and he may resume the performance of his functions as a member.

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

31.—(1) Subject to the provisions of subsection (2) of this section, a person shall be qualified to be registered as a voter for the purposes of elections if, and shall not be so qualified unless, he is a British

Qualifications of voters

subject and is deemed to belong to the Virgin Islands and on the qualifying date has attained the age of eighteen years and he either—

- (a) is domiciled and resident in the Virgin Islands on the qualifying date ; or
- (b) on that date is domiciled in the Virgin Islands and resident in the United States Virgin Islands :

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

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

- (a) is a person certified to be insane or otherwise adjudged to be of unsound mind under any law in force in the Virgin Islands ; or
- (b) is disqualified by or under any such law from being registered as a voter for the purposes of elections by reason of his having been convicted of an offence relating to elections ; or
- (c) is under sentence of death imposed on him by a court or is serving a sentence of imprisonment (by whatever name called) for a term exceeding twelve months imposed on him by a court or substituted by competent authority for some other sentence imposed on him by a court.

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

(4) For the purposes of subsection (2)(c) of this section—

- (a) two or more sentences of imprisonment that are required to be served consecutively shall be regarded as separate sentences if none of those sentences exceeds twelve months, but if any one of those sentences exceeds that term they shall be regarded as one sentence ; and
- (b) no account shall be taken of a sentence of imprisonment imposed as an alternative to or in default of the payment of a fine.

Speaker and  
Deputy  
Speaker.

**32.**—(1) When the Legislative Council first meets after any general election and before it proceeds to the despatch of any other business, it shall elect a person to be the Speaker of the Council, and, if the office of Speaker falls vacant for any reason other than a dissolution of the Council, the Council shall, as soon as practicable elect another person to that office.

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

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

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

(3) When the Legislative Council first meets after any general election and before it proceeds to the despatch of any other business except the election of the Speaker, it shall elect a member of the Legislative Council who is not a member of the Executive Council to be Deputy Speaker of the Legislative Council ; and if the office of Deputy Speaker falls vacant for any reason other than a dissolution of the Council, the Council shall, as soon as convenient, elect another such member to that office.

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

(a) on dissolution of the Legislative Council ; or

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

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

(d) in the case of the Speaker —

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

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

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

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

(e) in the case of the Deputy Speaker if he ceases to be a member of the Council for any reason other than a dissolution of the Council or if, by virtue of section 30(3) of this Order, he is required to cease to perform his functions as a member or if he is appointed to be a member of the Executive Council.

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

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

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

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

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

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

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

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

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

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

#### *Powers and Procedure*

Power to  
make laws.

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

Standing  
Orders.

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

Oath of  
allegiance.

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

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

Presiding  
in the  
Council.

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

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

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

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

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

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

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

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

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

(2) If at any sitting of the Legislative Council any member who is present draws the attention of the person presiding at the sitting to the absence of a quorum and, after such interval as may be prescribed in the Standing Orders of the Council, the person presiding at the sitting ascertains that a quorum of the Council is still not present, the Council shall be adjourned.

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

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

- (a) proceed upon any Bill (including any amendment to a Bill) which, in the opinion of the person presiding in the Council, makes provision for imposing or increasing any tax, for imposing or increasing any charge on the revenues or other funds of the Virgin Islands or for altering any such charge otherwise than by reducing it or for compounding or remitting any debt due to the Virgin Islands; or
- (b) proceed upon any motion (including any amendment to a motion) the effect of which, in the opinion of the person presiding in the Council, is that provision would be made for any of the purposes aforesaid.

Assent to  
Bills.

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

- (a) the Governor has assented thereto in Her Majesty's name and on Her Majesty's behalf and has signed the same in token of such assent, or
- (b) Her Majesty has given Her assent thereto through a Secretary of State and the Governor has signified such assent by proclamation published in the Gazette.

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

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

- (a) to be inconsistent with any obligation of Her Majesty or of Her Majesty's Government in the United Kingdom towards any other state or power or any international organisation ; or
- (b) to be likely to prejudice the Royal prerogative ; or
- (c) to be in any way repugnant to or inconsistent with the provisions of this Order.

Disallowance  
of laws.

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

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

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

Governor's  
reserved  
power.

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

(a) 1889 c. 63.

provisions of this Order relating to assent to Bills and disallowance of laws shall have effect accordingly.

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

- (a) the question whether the declaration should be made shall first be submitted in writing by the Governor to the Executive Council and if, upon the question being so submitted to it, the Executive Council advises him that the declaration should be made, the Governor may make the declaration ;
- (b) if, when the question whether the declaration should be made is submitted to it as aforesaid, the Executive Council does not, within such time as the Governor thinks reasonable and expedient, advise him that the declaration should be made, then—
  - (i) the Governor may submit the said question to a Secretary of State and may make the declaration if, upon the question being so submitted to him, a Secretary of State authorises the Governor to make the declaration ; or
  - (ii) the Governor may make the declaration without submitting the said question to a Secretary of State if, in the Governor's opinion, urgent necessity requires that the declaration be made without obtaining the authority of a Secretary of State ; in which case he shall, at the time of making the declaration, certify in writing that urgent necessity requires that the declaration be made without obtaining such authority.

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

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

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

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

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

Privileges,  
etc. of  
Council

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

*Miscellaneous*

Sessions of  
Council.

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

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

Prorogation  
and  
dissolution.

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

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

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

General  
elections.

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

Determina-  
tion of  
questions  
as to  
member-  
ship.

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

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

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

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

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

(b) any question under paragraph (b) of that subsection may be made by any person entitled to vote at an election in the electoral district for which the member concerned was returned or by any elected member of the Legislative Council or by the Attorney-General ; and if such an application is made by a person other than the Attorney-General, the Attorney-General may intervene and may then appear or be represented in the proceedings.

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

(a) the circumstances and manner in which and the imposition of conditions upon which any application may be made to the High Court for the determination of any question under this section ; and

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

(4) An appeal shall lie as of right to the Court of Appeal from any final decision of the High Court determining such a question as is referred to in subsection (1) of this section.

(5) No appeal shall lie from any decision of the Court of Appeal in exercise of the jurisdiction conferred by the last foregoing subsection and no appeal shall lie from any decision of the High Court in proceedings under this section other than a final decision determining such a question as is referred to in subsection (1) of this section.

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

Penalty for unauthorised person sitting or voting.

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

## PART V

### THE PUBLIC SERVICE

#### *Public Service—General*

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

Public Service Commission.

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

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

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

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

- (b) if he resigns his office by writing under his hand addressed to the Governor ; or
- (c) if he becomes a member of, or a candidate for election to, the Legislative Council or is appointed to or to act in any public office ; or
- (d) if the Governor, acting in his discretion, directs that he shall be removed from office for inability to discharge the functions thereof (whether arising from infirmity of body or mind or any other cause) or for misbehaviour.

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

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

Power to appoint, etc., to public offices.

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

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

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

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

- (a) any office to which section 55 of this Order applies ; or
- (b) any office in the Police Force below the rank of Assistant Superintendent to the extent that the Chief of Police or some other officer of the Police Force is empowered by any law for the time being in force in the Virgin Islands to exercise the powers mentioned in that subsection.

Regulations regarding Public Service Commission.

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

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

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

*Judicial and Legal Service*

54. There shall be for the Virgin Islands a Judicial and Legal Service Commission which shall consist of:—
- Judicial and  
Legal  
Service Com-  
mission.
- (a) the Chief Justice, who shall be Chairman ;
- (b) another judge of the Court of Appeal or the High Court nominated by the Chief Justice after consultation with the Governor ;  
and
- (c) the Chairman of the Public Service Commission.

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

Power to  
appoint,  
etc., to legal  
offices.

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

*Pensions*

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

Applicability  
of pensions  
law.

- (2) For the purposes of this section the relevant day is—
- (a) in relation to an award granted before the appointed day, the day on which the award was granted ;
- (b) in relation to an award granted or to be granted on or after the appointed day to or in respect of a person who was a public officer before that day, the day immediately before that day ;
- (c) in relation to an award granted or to be granted to or in respect of a person who first becomes a public officer on or after the appointed day, the day on which he becomes a public officer.

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

- (4) In this section “the appointed day” means 18th April 1967.

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

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

Grant and withholding of pensions, etc.

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

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

PART VI

FINANCE

Consolidated Fund.

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

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

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

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

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

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

- (a) the expenditure has been authorised for the financial year during which the withdrawal is to take place—
  - (i) by an Appropriation Ordinance ; or
  - (ii) by a supplementary estimate approved by resolution of the Legislative Council ; or
- (b) the expenditure has been authorised in accordance with the provisions of section 62 of this Order ; or

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

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

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

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

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

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

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

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

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

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

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

Authorisation of expenditure in advance of appropriation.

**62.** If the Appropriation Ordinance in respect of any financial year has not come into operation by the beginning of that financial year, the Legislative Council by resolution may empower the Minister to authorise the withdrawal of moneys from the Consolidated Fund for the purpose of meeting expenditure necessary to carry on the services of the Government until the expiration of four months from the beginning of that financial year or the coming into operation of the Appropriation Ordinance, whichever is the earlier.

Contingencies fund.

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

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

Public Debt.

**64.—(1)** All debt charges for which the Virgin Islands are liable shall be a charge on the Consolidated Fund.

(2) For the purposes of this section, debt charges include interest, sinking fund charges, the repayment or amortisation of debt and all expenditure in connection with the raising of loans on the security of the revenues of the Virgin Islands or the Consolidated Fund and the service and redemption of debt thereby created.

Remuneration of certain officers.

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

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

(3) The remuneration prescribed in pursuance of this section in respect of the holder of any such office and his other terms of service (other than allowances that are not taken into account in computing, under any law in that behalf, any pension payable in respect of his service in that office) shall not without his consent be altered to his disadvantage after his appointment.

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

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

The Auditor.

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

(2) The accounts of the Legislative Council and all government departments and offices (including the Public Service Commission) shall

be audited and reported on annually by the Auditor, and for that purpose the Auditor or any person authorised by him in that behalf shall have access to all books, records, returns and other documents relating to such accounts.

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

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

## PART VII

### TRANSITIONAL AND MISCELLANEOUS

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

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

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

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

**68.** The Standing Rules and Orders of the Legislative Council as in force immediately before this Order comes into operation shall, with such adaptations and modifications as may be necessary to bring them into conformity with this Order, be the Standing Orders of the Legislative Council continued in existence by section 1 of this Order and of the Legislative Council established by Part IV of this Order as if they had been made in pursuance of section 35 of this Order. Standing Orders.

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

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

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

Transitional provisions relating to bill awaiting assent.

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

Powers reserved to Her Majesty.

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

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

## THE SCHEDULE

Sections 3, 5,  
20 and 36.

## FORMS OF OATHS AND AFFIRMATIONS

1. *Oath of Allegiance*

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

2. *Affirmation of Allegiance*

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

3. *Oath for due execution of office*

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

4. *Affirmation for due execution of office*

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

## EXPLANATORY NOTE

*(This Note is not part of the Order.)*

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

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STATUTORY INSTRUMENTS

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2000 No. 1343

**CARIBBEAN AND NORTH ATLANTIC TERRITORIES**

**The Virgin Islands (Constitution) (Amendment)  
Order 2000**

*Made - - - - - 17th May 2000*

*Laid before Parliament 25th May 2000*

*Coming into force on a day or days to be appointed under  
section 1(4)*

At the Court at Buckingham Palace, the 17th day of May 2000

Present,

The Queen's Most Excellent Majesty in Council

Her Majesty, by virtue and in exercise of the powers vested in Her by sections 5 and 7 of the West Indies Act 1962(a) and of all other powers enabling Her in that behalf, is pleased, by and with the advice of Her Privy Council, to order, and it is hereby ordered, as follows:

**Citation, construction and commencement**

1.—(1) This Order may be cited as the Virgin Islands (Constitution) (Amendment) Order 2000 and shall be construed as one with the Virgin Islands (Constitution) Order 1976(b).

(2) The Virgin Islands (Constitution) Order 1976 and this Order may be cited together as the Virgin Islands Constitution Orders 1976 to 2000.

(3) In this Order, "the Constitution" means the Constitution set out in the Virgin Islands (Constitution) Order 1976.

(4) The provisions of this Order shall come into force on such day or days as the Governor, acting in his discretion, may appoint by proclamation published in the *Gazette*, and the Governor may appoint different days for the coming into force of different provisions of this Order.

**Amendment of section 2 of Constitution**

2.—(1) Section 2 of the Constitution shall be amended by replacing subsection (2) by the following:—

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

(a) is born in the Virgin Islands and at the time of the birth his father or mother is—

---

(a) 1962 c. 19.

(b) S.I. 1976/2145 amended by S.I. 1979/1603, 1982/151, 1991/2871 and 1994/1638.

- (i) a British Dependent Territories citizen by virtue of birth, registration or naturalisation in the Virgin Islands or by virtue of descent from a father or mother who was born in the Virgin Islands; or
- (ii) settled in the Virgin Islands; and for this purpose "settled" means ordinarily resident in the Virgin Islands without being subject under the law in force in the Virgin Islands to any restriction on the period for which he may remain; or
- (b) is born in the Virgin Islands of a father or mother who is deemed to belong to the Virgin Islands by birth or descent or who, if deceased, would, if alive, be deemed so to belong to the Virgin Islands; or
- (c) is a child adopted in the Virgin Islands by a person who is deemed to belong to the Virgin Islands by birth or descent; or
- (d) is born outside the Virgin Islands of a father or mother who is a British Dependent Territories citizen by virtue of birth in the Virgin Islands; or
- (e) is a British Dependent Territories citizen by virtue of naturalisation or registration in the Virgin Islands; or
- (f) is a person to whom a certificate has been granted under section 16 of the Immigration and Passport Act 1977 of the Virgin Islands (in this subsection referred to as "the Act", and references to the Act or to any section thereof include references to any enactment amending, replacing or re-enacting the same) and has not been revoked under section 17 of the Act; or
- (g) is a spouse of a person deemed to belong to the Virgin Islands and has been granted a certificate under section 16 of the Act."

(2) For the purposes of the Constitution as amended by this Order, a person shall also be deemed to belong to the Virgin Islands if, immediately before the date on which this section comes into force, that person was deemed to belong to the Virgin Islands by virtue of section 2(2) of the Virgin Islands (Constitution) Order 1976:

Provided that a person who was deemed to belong to the Virgin Islands by virtue of section 2(2)(e) of that Order and who subsequent to attaining the age of twenty-one years is ordinarily resident outside the Virgin Islands for a period of not less than five years shall cease to be deemed to belong to the Virgin Islands.

#### **Addition of new section 5A to Constitution**

3. The following new section shall be inserted in the Constitution after section 5:—

"Functions of  
Deputy  
Governor.

**5A.—(1)** Subject to the provisions of subsection (2) of this section, the Deputy Governor shall—

- (a) assist the Governor in the exercise of his functions relating to matters for which he is responsible under section 19 of this Order;

- (b) assist the Governor in the exercise of such of his other functions, being functions in the exercise of which the Governor is not obliged to act in accordance with the advice of some other person or authority, as the Governor, acting in his discretion, may direct; and
- (c) perform such other functions, not of a ministerial nature, as (subject to the provisions of this Order and of any other law) may be assigned to the Deputy Governor, at the request of the Chief Minister, by the Governor acting in his discretion.

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

(3) The powers and authority of the Governor shall not be affected by any authority of the Deputy Governor under subsection (2) of this section and, subject to the provisions of this Order and of any other law by which any function which the Deputy Governor is authorised to exercise is conferred, the Deputy Governor shall comply with such instructions relating to the exercise of that function as the Governor, acting in his discretion, may from time to time address to him:

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

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

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

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

#### **Replacement of section 14 of Constitution**

4. Section 14 of the Constitution shall be replaced by the following:—

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

#### **Amendment of section 15 of Constitution**

5. Section 15(2) of the Constitution shall be amended by substituting the word “four” for the word “three”.

#### **Amendment of section 23 of Constitution**

6. Section 23(3) of the Constitution shall be amended by substituting the words “three Ministers” for the words “two members”.

#### **Replacement of section 29 of Constitution**

7. Section 29 of the Constitution shall be replaced by the following:—

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

- (a) is, by virtue of his own act, under any acknowledgment of allegiance, obedience or adherence to a foreign power or state; or
  - (b) holds, or is acting in, any public office; or
  - (c) has been adjudged or otherwise declared bankrupt under any law in force in any country and has not been discharged; or
  - (d) is a person certified to be insane or otherwise adjudged to be of unsound mind under any law in force in any country; or
  - (e) at the date of election, is under sentence of death imposed on him by a court of law in any country, or is serving or has at any time within the period of five years immediately preceding that date been serving any part of a sentence of imprisonment (by whatever name called) of at least twelve months imposed on him by such a court or substituted by competent authority for some other sentence imposed on him by such a court; or is under such a sentence of imprisonment the execution of which has been suspended; or
  - (f) is disqualified for membership of the Council by or under any law in force in the Virgin Islands relating to offences connected with elections; or
  - (g) is a party to, or a partner in a firm or a director or manager of a company which is a party to, any contract with the Government of the Virgin Islands for or on account of the public service, and has not, within fourteen days before his nomination as a candidate for election, published in the *Gazette* or in a newspaper circulating in the Virgin Islands a notice setting out the nature of such contract and his interest, or the interest of such firm or company, therein.
- (2) For the purposes of paragraph (e) of the foregoing subsection—
- (a) two or more sentences of imprisonment that are required to be served consecutively shall be regarded as separate sentences if none of those sentences exceeds twelve months, but if any one of such sentences exceeds that term they shall be regarded as one sentence; and
  - (b) no account shall be taken of a sentence of imprisonment imposed as an alternative to or in default of the payment of a fine."

#### Amendment of section 32 of Constitution

8. Section 32 of the Constitution shall be amended:—

(a) by replacing subsection (2) by the following:—

"(2) The Speaker shall be elected from among the elected members of the Council or persons qualified to be elected members of the Council, other than Ministers, and no person shall be elected as Speaker if he is a person disqualified for election as a member of the Council by virtue of any provision of section 29(1) of this Order other than paragraph (g).";

(b) in subsection (4)(d)(ii), by substituting the words "paragraph (g)" for the words "paragraph (h)"; and

(c) in subsection (4)(d), by inserting immediately after subparagraph (iv) the word "or" and the following new subparagraph:—

"(v) if he is appointed to be a member of the Executive Council;".

**Amendment of section 42 of Constitution**

9. Section 42(2) of the Constitution shall be amended by deleting the words "or refuses to assent".

**Amendment of section 46 of Constitution**

10. Section 46 of the Constitution shall be amended by adding the following new subsection:—

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

**Amendment of section 51 of Constitution**

11. Section 51 of the Constitution shall be amended by replacing subsections (1) and (2) by the following:—

"(1) There shall be in and for the Virgin Islands a Public Service Commission which shall consist of five members, of whom two shall be appointed by the Governor acting in his discretion, one shall be appointed by the Governor acting in accordance with the advice of the Chief Minister, one shall be appointed by the Governor acting in accordance with the advice of the Leader of the Opposition and one shall be appointed by the Governor acting after consultation with the Civil Service Association.

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

**Amendment of section 52 of Constitution**

12. Section 52 of the Constitution shall be amended by replacing subsection (2) by the following:—

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

**Replacement of section 53 of Constitution**

13. Section 53 of the Constitution shall be replaced by the following:—

"Regulations  
regarding  
Public Service  
Commission.

53. The Governor, acting after consultation with the Public Service Commission, may, by regulations published in the *Gazette*, make provision for—

- (a) the organisation of the work of the Commission and the manner in which it performs its functions;
- (b) consultation by the Commission with persons or authorities other than members of the Commission;
- (c) the protection and privileges of members of the Commission in respect of the performance of their functions and the privilege of communications to and from the Commission and its members in the case of legal proceedings; and
- (d) the definition and trial of offences in relation to the functions of the Commission and the imposition of penalties for such offences:

Provided that no such penalty shall exceed a fine of one thousand dollars or imprisonment for a term of one year or both such fine and imprisonment."

**Addition of new Part VIA to Constitution**

14. The following new Part and sections shall be inserted in the Constitution after section 66:—

**“PART VIA****THE COMPLAINTS COMMISSIONER AND REGISTER OF INTERESTS**

The  
Complaints  
Commissioner.

**66A.**—(1) There shall be a Complaints Commissioner for the Virgin Islands.

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

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

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

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

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

(5) Subject to such exceptions as the Governor, acting in his discretion, may authorise by directions in writing, the Complaints Commissioner shall not hold any other office of emolument either in the public service or otherwise nor engage in any occupation for reward other than the duties of his office.

Functions of  
Complaints  
Commissioner.

**66B.**—(1) The Complaints Commissioner shall have such functions and jurisdiction as may be prescribed by law.

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

Registration  
of interests.

**66C.**—(1) There shall be for the Virgin Islands a Register of Interests, which shall be maintained by a Registrar who shall be appointed, and may be removed from office, by the Governor acting in his discretion.

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

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

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

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

#### **Transitional provisions**

15.—(1) Any person who, immediately before the day on which section 11 of this Order comes into force, holds or is acting in the office of a member of the Public Service Commission shall, on and after that day, continue to hold or act in that office as if he had been appointed to hold or act in it by the Governor acting in his discretion or, as the case may be, after consultation with the Civil Service Association in accordance with section 51 of the Constitution as amended by this Order:

Provided that any such person who under or by virtue of this Constitution would have been required to vacate his office at the expiration of any period shall vacate his office at the expiration of that period.

(2) Any regulations made by the Governor in pursuance of section 52(2) or 53 of the Constitution before the day on which sections 12 and 13 of this Order come into force shall have effect on and after that day as if they had made in pursuance of section 52(2) or 53 of the Constitution as amended by this Order.

*A. K. Galloway*  
Clerk of the Privy Council

**EXPLANATORY NOTE**

*(This note is not part of the Order)*

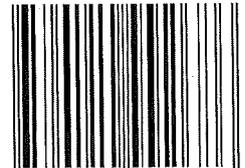
This Order amends the Constitution of the Virgin Islands by making provision to revise the definition of persons deemed to belong to the Virgin Islands, to define the functions of the Deputy Governor, to permit the number of Ministers to be increased to five, for the sittings of the Legislative Council, for a public register of interests and for a Complaints Commissioner; and for matters relating to the powers of the Governor, the quorum of Executive Council, Legislative Council disqualifications, the election of the Speaker and the Public Service.

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**2007 No. 1678**

**CARIBBEAN AND NORTH ATLANTIC TERRITORIES**

**The Virgin Islands Constitution Order 2007**

*Made* - - - - *13th June 2007*

*Laid before Parliament* *14th June 2007*

*Came into force* *15<sup>th</sup> June, 2007*

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SCHEDULE 1 — FORMS OF OATHS AND AFFIRMATIONS  
SCHEDULE 2 — REVOCATIONS

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

Present,

The Queen's Most Excellent Majesty in Council

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

**Citation, commencement and establishment of Constitution**

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

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

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(a) 1962 c. 19.

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

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

## THE CONSTITUTION OF THE VIRGIN ISLANDS

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

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

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

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

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

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

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

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

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

### CHAPTER 1 INTERPRETATION

#### **Interpretation**

- 2.—**(1) In this Constitution, unless it is otherwise provided or required by the context—
- “the Chief Justice” means the Chief Justice of the Eastern Caribbean Supreme Court;
  - “the Court of Appeal” means the Court of Appeal established by the Supreme Court Order 1967(a);
  - “dollars” means dollars in the currency of the Virgin Islands or the United States of America;

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

“election” means election of an elected member of the House of Assembly and “general election” shall be construed accordingly;

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

“the High Court” means the High Court established by the Supreme Court Order 1967;

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

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

“public office” means, subject to section 3, any office of emolument in the public service or any office of emolument under any local government council or authority in the Virgin Islands;

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

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

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

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

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

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

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

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

### **References to public office**

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

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

(2) If it is provided by any law in force in the Virgin Islands that an office shall not be a public office for the purposes of section 66(1)(a), this Constitution shall have effect accordingly as if that provision of that law were enacted herein.

(3) References in section 60 and Chapter 7 to public offices shall not be construed as including references to—

- (a) the office of a member of any board, committee or other similar body (whether incorporated or not) established by any law in force in the Virgin Islands; or
- (b) any office of emolument under any local government council or authority in the Virgin Islands.

### **Appointments**

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

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

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

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

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

### **Re-election or reappointment**

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

### **Removal from office**

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

### **Resignation**

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

### **Power to amend or revoke instruments**

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

## **CHAPTER 2**

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

#### **Fundamental rights and freedoms of the individual**

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

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

Whereas it is recognised that those fundamental rights and freedoms apply, subject to respect for the rights and freedoms of others and for the public interest, to each and all of the following, namely—

- (a) life, equality, liberty, security of the person and the protection of the law;
- (b) freedom of conscience, expression, movement, assembly and association; and
- (c) protection for private and family life, the privacy of the home and other property and from deprivation of property save in the public interest and on payment of fair compensation;

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

## **Interpretation of Chapter 2**

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

“contravention”, in relation to any requirement, includes a failure to comply with that requirement, and cognate expressions shall be construed accordingly;

“court” means any court of law or tribunal having jurisdiction in the Virgin Islands, including Her Majesty in Council, but excepting, save in section 14, a court established by or under disciplinary law;

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

“disciplined force” means—

- (a) a naval, military or air force;
- (b) any police force of the Virgin Islands;
- (c) the prison service of the Virgin Islands;

“member”, in relation to a disciplined force, includes any person who, under the law regulating the discipline of that force, is subject to that discipline;

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

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

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

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

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

## **Protection of right to life**

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

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

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

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

## **Equality before the law**

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

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

## **Protection from inhuman treatment**

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

### **Protection from slavery and forced labour**

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

### **Protection of right to personal liberty**

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

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

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

(7) For the purpose of subsection (2)(a), a person charged with a criminal offence in respect of whom a special verdict has been returned that he or she was guilty of the act or omission charged but was insane when he or she did the act or made the omission shall be regarded as a person who has been convicted of a criminal offence, and the detention of that person in consequence of such a verdict shall be regarded as detention in execution of the order of a court.

### **Provisions to secure protection of law**

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

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

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

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

(3) No person shall be held to be guilty of a criminal offence on account of any act or omission that did not, at the time it took place, constitute such an offence, and no penalty shall be imposed for any criminal offence that is severer in degree or description than the maximum penalty that might have been imposed for that offence at the time when it was committed.

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

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

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

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

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

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

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

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

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

- (a) by law be empowered to do and may consider necessary or expedient in circumstances where publicity would prejudice the interests of justice or in interlocutory proceedings or in the interests of the welfare of minors or the protection of the private lives of persons concerned in the proceedings; or
- (b) by law be empowered or required to do in the interests of defence, public safety, public order or public morality.

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

- (a) subsection (2)(a), to the extent that the law in question imposes on any person charged with a criminal offence the burden of proving particular facts;
- (b) subsection (2)(e), to the extent that the law in question imposes reasonable conditions that must be satisfied if witnesses called to testify on behalf of an accused person are to be paid their expenses out of public funds; or
- (c) subsection (4), to the extent that the law in question authorises a court to try a member of a disciplined force for a criminal offence notwithstanding any trial and conviction or acquittal of that member under the disciplinary law of that force; but any court so trying and convicting such a member shall in imposing any sentence take into account any punishment imposed on that member under that disciplinary law.

**Protection of right of prisoners to humane treatment**

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

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

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

**Protection of freedom of movement**

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

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

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

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

- (a) for the imposition of restrictions on the movement or residence within the Virgin Islands or on the right to leave the Virgin Islands of persons generally or any class of persons that are reasonably justifiable in a democratic society in the interests of defence, public safety, public order, public morality or public health;
  - (b) for the imposition of restrictions, by order of a court, on the movement or residence within the Virgin Islands of any person or on any person's right to leave the Virgin Islands either in consequence of that person having been found guilty of a criminal offence or for the purpose of ensuring that he or she appears before a court later for trial for a criminal offence or for proceedings relating to his or her extradition or lawful removal from the Virgin Islands;
  - (c) for the imposition of restrictions on persons who do not belong to the Virgin Islands; but—
    - (i) no restriction may be imposed by virtue only of this paragraph on the right of any such person, so long as he or she is lawfully present in the Virgin Islands, to move freely throughout the Virgin Islands and to reside anywhere in the Virgin Islands;
    - (ii) no restriction may be imposed by virtue only of this paragraph on the right of any such person to leave the Virgin Islands; and
    - (iii) no such person shall be liable, by virtue only of this paragraph, to be expelled from the Virgin Islands unless the requirements specified in subsection (4) are satisfied;
  - (d) for the imposition of restrictions on the acquisition or use by any person of any land or other property in the Virgin Islands and the imposition of any fee in respect thereof;
  - (e) for the imposition of restrictions on the movement or residence within the Virgin Islands or on the right to leave the Virgin Islands of any public officer that are reasonably required for the proper performance of his or her functions;
  - (f) for the removal of a person from the Virgin Islands to be tried or punished in some other country for a criminal offence under the law of that other country or to undergo imprisonment in some other country in execution of the sentence of a court in respect of a criminal offence of which he or she has been convicted, or to relocate to some other country for the protection of the person with his or her consent; or
  - (g) for the imposition of restrictions on the right of any person to leave the Virgin Islands that are reasonably justifiable in a democratic society in order to secure the fulfilment of any obligations imposed on that person by law.
- (4) The requirements to be satisfied for the purposes of subsection (3)(c)(iii) are as follows—
- (a) the decision to expel that person is taken by an authority, in a manner and on grounds prescribed by law;
  - (b) that person has the right, save where the interests of defence, public safety or public order otherwise require, to submit reasons against his or her expulsion to a competent authority prescribed by law;
  - (c) that person has the right, save as aforesaid, to have his or her case reviewed by a competent authority prescribed by law; and
  - (d) that person has the right, save as aforesaid, to be represented for the purposes of paragraphs (b) and (c) before the competent authority or some other person or authority designated by the competent authority.

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

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

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

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

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

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

### **Protection of the right to marry and found a family**

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

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

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

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

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

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

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

### **Protection of freedom of conscience**

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

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

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

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

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

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

- (a) in the interests of defence, public safety, public order, public morality or public health; or
- (b) for the purpose of protecting the rights and freedoms of other persons, including the right of any person to observe and practise his or her religion or belief without the unsolicited intervention of adherents of any other religion or belief.

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

### **Protection of the right to education**

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

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

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

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

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

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

### **Protection of freedom of expression**

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

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

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

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

(b) for the purpose of protecting the reputations, rights and freedoms of other persons, or the private lives of persons concerned in legal proceedings or proceedings before statutory tribunals, preventing the disclosure of information received in confidence, maintaining the authority and independence of the courts, or regulating telecommunications, posts, broadcasting or public shows; or

(c) that imposes restrictions on public officers that are reasonably required for the proper performance of their functions.

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

### **Protection of freedom of assembly and association**

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

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

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

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

(b) for the purpose of protecting the rights and freedoms of other persons; or

(c) for the imposition of restrictions on public officers that are reasonably required for the proper performance of their functions.

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

### **Protection from deprivation of property**

**25.—**(1) No property of any description shall be compulsorily taken possession of, and no interest in or right to or over property of any description shall be compulsorily acquired, except in accordance with law and where—

(a) the taking of possession or acquisition is necessary or expedient in the interests of defence, public safety, public order, public morality, public health, or the development or utilisation of any property in such manner as to promote the public benefit;

(b) there is reasonable justification for any hardship that may result to any person having an interest in or right to or over the property;

(c) provision is made by a law applicable to the taking of possession or acquisition—

(i) for the prompt payment of adequate compensation; and

(ii) securing to any person having an interest in or right to or over the property a right of access to the High Court, whether direct or on appeal from a tribunal or other authority, for the determination of his or her interest or right, the legality of the taking of possession or acquisition and the amount of compensation to which he or she is entitled, and for the purpose of obtaining prompt payment of that compensation; and

(d) the same rights of appeal as are accorded generally to parties to civil proceedings in the High Court sitting as a court of original jurisdiction are given to any party to proceedings in that Court relating to such a claim.

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

- (3) Nothing in any law or done under its authority shall be held to contravene subsection (1)—
- (a) to the extent that the law in question makes provision for the taking of possession or acquisition of any property, interest or right—
    - (i) in satisfaction of any tax, rate, statutory contribution, levy or due;
    - (ii) by way of penalty for breach of the law or forfeiture in consequence of breach of the law;
    - (iii) as an incident of a lease, tenancy, mortgage, charge, bill of sale, pledge or contract;
    - (iv) by way of the taking of a sample for the purposes of any law;
    - (v) when the property consists of an animal, upon its being found trespassing or straying;
    - (vi) in the execution of a judgment or order of a court;
    - (vii) in circumstances where it is reasonably necessary so to do because the property is in a dangerous state or likely to be injurious to the health of human beings, animals or plants;
    - (viii) in consequence of any law with respect to the limitation of actions or prescription;
    - (ix) for so long as may be necessary for the purposes of any examination, investigation, trial or enquiry or, in the case of land, for the purpose of carrying out on it work of reclamation, erection of a utility service item for the public benefit, drainage, soil conservation or the conservation of other natural resources or work relating to agricultural development or improvement (being work relating to such development or improvement that the owner or occupier of the land has been required, and has, without reasonable excuse, refused or failed, to carry out),

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

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

(4) Nothing in any law or done under its authority shall be held to contravene this section to the extent that the law in question makes provision for the compulsory taking of possession of any property, or the compulsory acquisition of any interest in or right to or over property, where that property, interest or right is held by a body corporate established by law for public purposes in which no moneys have been invested other than moneys provided from public funds.

### **Protection from discrimination**

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

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

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

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

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

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

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

- (a) for the imposition of taxation or appropriation of revenue by the Government of the Virgin Islands or any local authority or body for local purposes;
- (b) with respect to the entry into or exclusion from, or the employment, engaging in any business or profession, movement or residence within, the Virgin Islands of persons who do not belong to the Virgin Islands, or for any other purpose with respect to such persons to the extent that the provision is reasonably justifiable in a democratic society;
- (c) for the application, in the case of persons of any such description as is mentioned in subsection (1)(a) (or of persons connected with such persons), of the law with respect to adoption, marriage, divorce, burial, devolution of property on death or other like matters that is the personal law applicable to persons of that description; or
- (d) whereby persons of any such description as is mentioned in subsection (1)(a) may be subjected to any disability or restriction or may be accorded any privilege or advantage that, having regard to its nature and to special circumstances pertaining to those persons or to persons of any other such description, is reasonably justifiable in a democratic society.

(5) Nothing in any law shall be held to contravene subsection (2) to the extent that it makes provision with respect to qualifications (not being qualifications specifically relating to any such description as is mentioned in subsection (1)(a)) for service as a public officer or as a member of a disciplined force or for the service of a local government authority or a body corporate established by law for public purposes.

(6) Subsection (3) shall not apply to anything that is expressly or by necessary implication authorised to be done by any such provision of law as is referred to in subsection (4) or (5).

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

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

(8) Nothing in subsection (3) shall affect any discretion relating to the institution, conduct or discontinuance of civil or criminal proceedings in any court that is vested in any person by or under this Constitution or any other law.

### **Provisions for periods of public emergency**

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

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

(b) the declaration is considered necessary by the Governor to maintain or restore peace and order.

(2) A proclamation shall be taken to be published if it is published in the *Gazette* or in a newspaper published in the Virgin Islands, or if it is posted in prominent public places or announced on the radio.

(3) Without prejudice to the power of the Legislature to make laws under this Constitution, during a period of public emergency the Governor may make such regulations for the Virgin Islands as appear to him or her to be necessary or expedient for securing the public safety, the defence of the Virgin Islands or the maintenance of public order, or for maintaining supplies and services essential to the life of the community.

(4) Regulations made under subsection (3) shall—

- (a) have effect only prospectively;
- (b) have effect, subject to this section, notwithstanding the provisions of any other law in force in the Virgin Islands or any rule of law having effect therein;
- (c) unless previously revoked, expire at the end of the period of public emergency during which they were made unless provision for their continuance in force (without or without modification) is made by the Legislature.

(5) Nothing in any law or done under its authority shall be held to contravene any of the provisions of this Chapter other than sections 11, 13, 14(1), 16(2)(a), 16(3), 16(4), 16(5) and 16(6) to the extent that the law authorises the taking during any period of public emergency of measures that are reasonably justifiable for dealing with the situation that exists in the Virgin Islands during that period.

(6) Before exercising any function under subsection (1) or (3) or under any law enacted by the Legislature to like effect, the Governor shall consult the Cabinet or, if that is not practicable in the circumstances, the Premier; but if in the judgement of the Governor it is impracticable for him or her to consult either the Cabinet or the Premier, the function shall be exercised by the Governor acting in his or her discretion.

(7) Where the Governor has consulted the Cabinet or the Premier under subsection (6), the Governor shall, save in matters falling within the Governor's special responsibilities under section 60(1), act in accordance with any advice given to him or her by the Cabinet or the Premier, unless instructed otherwise by a Secretary of State.

(8) Where any proclamation of emergency has been made by the Governor under subsection (1), a copy of the proclamation shall as soon as practicable be laid before and debated in the House of Assembly, and if the House is not due to meet within five days of the making of that proclamation it shall meet within that period or as soon as practicable thereafter.

(9) A proclamation of emergency shall, unless it is sooner revoked by the Governor, cease to be in force at the expiration of a period of fourteen days beginning on the date on which it was made or such longer period as may be provided under subsection (10), but without prejudice to the making of another proclamation of emergency at or before the end of that period.

(10) If at any time while a proclamation of emergency is in force (including any time while it is in force by virtue of this subsection) a resolution is passed by the House of Assembly approving its continuance in force for a further period not exceeding three months, beginning on the date on which it would otherwise expire, the proclamation shall, if not sooner revoked, continue in force for that further period.

(11) Nothing contained in this section or any emergency regulations shall be construed to preclude the House of Assembly from—

- (a) meeting whenever practicable in accordance with its Standing Orders; and
- (b) directing that reports relating to the emergency, including the implementation of any emergency regulations, be prepared and presented in such manner and within such periods to the House of Assembly as the House may determine.

### **Protection of persons detained under emergency laws**

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

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

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

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

### **Protection of the environment**

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

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

### **Protection of children**

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

### **Enforcement of protective provisions**

**31.**—(1) If any person alleges that any of the foregoing provisions of this Chapter has been, is being or is likely to be contravened in relation to him or her (or, in the case of a person who is detained, if any other person alleges such a contravention in relation to the detained person), then, without prejudice to any other action with respect to the same matter that is lawfully available, that person (or that other person) may apply to the High Court for redress.

(2) The High Court shall have original jurisdiction—

- (a) to hear and determine any application made by any person under subsection (1); and
- (b) to determine any question arising in the case of any person that is referred to it under subsection (7),

and may make such declarations and orders, issue such writs and give such directions as it may consider appropriate for the purpose of enforcing or securing the enforcement of any of the foregoing provisions of this Chapter to the protection of which the person concerned is entitled.

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

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

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

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

(7) If in any proceedings in any court (other than the High Court, the Court of Appeal, Her Majesty in Council or a court-martial) any question arises as to the contravention of any of the foregoing provisions of this Chapter, the person presiding in that court may, and shall if any party to the proceedings so requests, refer the question to the High Court unless, in the opinion of the court in which the question arose, the raising of the question is merely frivolous or vexatious.

(8) Where any question is referred to the High Court under subsection (7), the High Court shall give its decision on the question and the referring court shall dispose of the case in accordance with that decision or, if that decision is the subject of an appeal to the Court of Appeal or to Her Majesty in Council, in accordance with the decision of the Court of Appeal or, as the case may be, of Her Majesty in Council.

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

(10) The Legislature may by law confer on the High Court such powers in addition to those conferred by this section as may appear to be necessary or desirable for the purpose of enabling that Court more effectively to exercise the jurisdiction conferred on it by this section.

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

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

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

### **Proceedings which might affect freedom of conscience**

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

### **Proceedings which might affect freedom of expression**

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

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

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

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

### **Establishment of a Human Rights Commission**

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

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

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

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

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

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

CHAPTER 3  
THE GOVERNOR

**Governor**

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

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

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

(4) A person appointed to the office of Governor shall, before entering upon the functions of that office, make oaths or affirmations of allegiance and for the due execution of that office in the forms set out in Schedule 1.

**Deputy Governor**

36.—(1) There shall be a Deputy Governor who shall be such person, being a Virgin Islander as defined in section 65(2), as Her Majesty may designate as such by instructions given through a Secretary of State and who shall hold office during Her Majesty's pleasure.

(2) If the office of Deputy Governor is vacant or if the person holding that office is—

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

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

**Acting Governor**

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

- (a) the Deputy Governor; or
- (b) if the office of Deputy Governor is vacant, or the Deputy Governor is absent from the Virgin Islands or is for any other reason unable to perform the functions of the office of Governor, such person as Her Majesty may designate by instructions given through a Secretary of State (in this section referred to as "the person designated"),

shall, during Her Majesty's pleasure, act in the office of Governor and shall perform the functions of that office accordingly.

(2) Before assuming the functions of the office of Governor, the Deputy Governor or the person designated shall make the oaths or affirmations directed by section 35(4) to be made by the Governor.

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

the person designated shall not continue to act in that office after the Governor or Deputy Governor has so notified him or her.

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

- (a) by reason that he or she is in passage from one part of the Virgin Islands to another;
- (b) at any time when there is a subsisting appointment of a deputy under section 39; or
- (c) by reason of absence from the Virgin Islands for a period not exceeding forty-eight hours for the purpose of visiting the United States Virgin Islands.

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

### **Functions of Deputy Governor**

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

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

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

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

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

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

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

### **Deputy to Governor**

**39.**—(1) Whenever the Governor—

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

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

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

(2) The power and authority of the Governor shall not be affected by the appointment of a deputy under this section, and a deputy shall comply with such instructions as the Governor, acting in his or her discretion, may from time to time address to the deputy; but the question whether or not a deputy has in any matter complied with any such instructions shall not be enquired into in any court.

(3) A person appointed as a deputy under this section shall hold that appointment for such period as may be specified in the instrument by which he or she is appointed, and the appointment may be revoked at any time by Her Majesty by instructions given through a Secretary of State or by the Governor, acting in his or her discretion.

### **Exercise of Governor's functions**

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

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

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

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

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

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

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

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

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

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

### **Crown lands**

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

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

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

### **Powers to constitute offices and make appointments, etc**

**42.** Subject to Chapter 7 and any law for the time being in force in the Virgin Islands, the Governor, in Her Majesty's name and on Her Majesty's behalf, may—

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

### **Powers of pardon, etc**

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

- (a) grant to any person concerned in or convicted of any offence against any law in force in the Virgin Islands a pardon, either free or subject to lawful conditions;
- (b) grant to any person a respite, either indefinite or for a specified period, from the execution of any sentence passed on that person for such an offence;
- (c) substitute a less severe form of punishment for that imposed by any sentence for such an offence; or
- (d) remit the whole or any part of any sentence passed for such an offence or any penalty or forfeiture otherwise due to Her Majesty on account of such an offence.

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

### **Advisory Committee on the Prerogative of Mercy**

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

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

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

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

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

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

### **The public seal**

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

## CHAPTER 4 THE EXECUTIVE

### **Executive authority of the Virgin Islands**

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

(2) Subject to this Constitution, the executive authority of the Virgin Islands may be exercised on behalf of Her Majesty by the Governor, either directly or through officers subordinate to him or her.

(3) Nothing in subsection (2) shall operate so as to prejudice any law for the time being in force in the Virgin Islands whereby functions are, or may be, conferred on persons or authorities other than the Governor.

### **Cabinet**

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

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

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

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

### **Meetings of the Cabinet**

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

### **Proceedings in the Cabinet**

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

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

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

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

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

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

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

### **Summoning of persons to the Cabinet**

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

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

### **Cabinet Secretary**

**51.**—(1) There shall be—

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

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

(3) The Cabinet Secretary shall—

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

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

## **Appointment of Ministers**

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

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

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

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

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

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

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

## **Tenure of office of Ministers**

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

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

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

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

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

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

### **Absence of Ministers from the Virgin Islands**

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

### **Performance of functions of Premier in certain events**

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

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

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

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

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

### **Assignment of responsibilities to Ministers**

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

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

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

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

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

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

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

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

### **National Security Council**

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

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

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

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

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

(4) The Commissioner of Police shall—

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

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

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

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

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

### **Attorney General**

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

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

### **Director of Public Prosecutions**

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

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

- (a) to institute and undertake criminal proceedings against any person before any civil court in respect of any offence against any law in force in the Virgin Islands;
- (b) to take over and continue any such criminal proceedings that have been instituted by any other person or authority; and
- (c) to discontinue at any stage before judgment is delivered any such criminal proceedings instituted or undertaken by himself or herself or any other person or authority.

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

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

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

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

### **Governor's special responsibilities**

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

- (a) external affairs, subject to subsection (4);
- (b) defence, including the armed forces;
- (c) internal security, including the Police Force, without prejudice to section 57;
- (d) the terms and conditions of service of persons holding or acting in public offices, without prejudice to section 92; and
- (e) the administration of the courts;

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

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

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

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

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

- (a) the Caribbean Community, the Organisation of Eastern Caribbean States, the Association of Caribbean States, the United Nations Economic Commission for Latin America and the Caribbean, or any other Caribbean regional organisation or institution;
- (b) other Caribbean regional affairs relating specifically to issues that are of interest to or affect the Virgin Islands;
- (c) the relationship between the Virgin Islands and the United States Virgin Islands in matters of mutual interest;
- (d) tourism and tourism-related matters;
- (e) taxation and the regulation of finance and financial services; and
- (f) European Union matters directly affecting the interests of the Virgin Islands.

(5) The terms and conditions referred to in subsection (4) are the following—

- (a) separate authority shall be required from or on behalf of a Secretary of State for the commencement of formal negotiation and the conclusion of any treaty or other international agreement by the Government of the Virgin Islands, provided that general authority may be granted in specified matters to commence the formal negotiation of, and where it is deemed appropriate, to conclude any such treaty or international agreement;
- (b) no political declaration, understanding or arrangement in the field of foreign policy shall be signed or supported in the name of the Government of the Virgin Islands without the prior approval of a Secretary of State;
- (c) a formal invitation to a member of government or Head of State of another country to visit the Virgin Islands shall not be issued without prior consultation with the Governor;
- (d) the costs of any activities in pursuance of subsection (4) shall be borne by the Government of the Virgin Islands;
- (e) the Premier or other Minister shall keep the Governor fully informed of any activities in pursuance of subsection (4); and
- (f) the Premier or other Minister shall provide to the Governor on request all papers and information, including the text of any instrument under negotiation, available to the Premier or other Minister with respect to any activities in pursuance of subsection (4).

(6) Any matter that is delegated to the Premier or to any other Minister under subsection (4) shall be performed by the Premier or such other Minister in a manner that is in the best interests of the Virgin Islands and not prejudicial to the interests of Her Majesty and, for this purpose, the Governor and the Premier shall from time to time hold conference to ensure the proper safeguard of those interests.

(7) In the event of any disagreement regarding the exercise of any delegated authority under subsection (4), the matter shall be referred to a Secretary of State whose decision on the matter shall be final and whose directions shall be complied with.

(8) Where the Governor, acting in his or her discretion, determines that the exercise of any function conferred on any other person or authority (other than the House of Assembly) would involve or affect any matter mentioned in subsection (1), the Governor may, acting after consultation with the Premier, give directions as to the exercise of that function, and the person or authority concerned shall exercise the function in accordance with those directions.

### **Oaths and affirmations**

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

CHAPTER 5  
THE LEGISLATURE  
*Composition*

**Composition of Legislature**

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

**House of Assembly**

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

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

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

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

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

**Elected members**

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

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

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

**Qualifications for elected membership**

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

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

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

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

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

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

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

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

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

#### **Disqualifications for elected membership**

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

- (a) holds, or is acting in, any public office;
- (b) has been adjudged or otherwise declared bankrupt under any law in force in any country and has not been discharged;
- (c) is a person certified to be insane or otherwise adjudged to be of unsound mind under any law in force in any country;
- (d) at the date of election, is under sentence of death imposed on him or her by a court of law in any country, or is serving or has at any time within the period of five years immediately preceding that date been serving any part of a sentence of imprisonment (by whatever name called) of at least twelve months imposed on him or her by such a court or substituted by competent authority for some other sentence imposed on him or her by such a court; or is under such a sentence of imprisonment the execution of which has been suspended;
- (e) is disqualified for membership of the House of Assembly by or under any law in force in the Virgin Islands relating to offences connected with elections; or
- (f) is a party to, or a partner in a firm or a director or manager of a company which is a party to, any contract with the Government of the Virgin Islands for or on account of the public service, and has not, within fourteen days before his or her nomination as a candidate for election, published in the *Gazette* or in a newspaper circulating in the Virgin Islands a notice setting out the nature of such contract and his or her interest, or the interest of such firm or company, in it.

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

- (a) two or more sentences of imprisonment that are required to be served consecutively shall be regarded as separate sentences if none of those sentences exceeds twelve months, but if any one of such sentences exceeds that term they shall be regarded as one sentence; and
- (b) no account shall be taken of a sentence of imprisonment imposed as an alternative to or in default of the payment of a fine.

## **Tenure of seats of members of House of Assembly**

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

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

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

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

(4) If circumstances such as are referred to in subsection (3)(d) arise because a member is declared bankrupt, adjudged to be of unsound mind, under sentence of death or imprisonment or convicted of an offence relating to elections and if it is open to the member to appeal against the decision (either with the leave of the court or other authority or without such leave) he or she shall forthwith cease to perform his or her functions as a member but, subject to subsection (5), he or she shall not vacate his or her seat in the House until the expiration of a period of thirty days thereafter; but the Speaker may, at the request of the member, from time to time extend that period for further periods of thirty days to enable the member to pursue an appeal against the decision, so, however, that extensions of time exceeding in the aggregate one hundred and fifty days shall not be given without the approval, signified by resolution, of the House of Assembly.

(5) If, on the determination of any appeal, the circumstances referred to in subsection (4) continue to exist and no further appeal is open to the member or if, by reason of the expiration of any period for entering an appeal or notice of appeal or the refusal of appeal or for any other reason, it ceases to be open to the member to appeal, he or she shall forthwith vacate his or her seat.

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

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

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

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

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

### **Qualifications of voters**

**68.**—(1) Subject to subsection (3), a person shall be qualified to be registered as a voter for the purposes of elections if, and shall not be so qualified unless, he or she belongs to the Virgin Islands and on the qualifying date has attained the age of eighteen years and he or she either—

- (a) is domiciled and resident in the Virgin Islands on the qualifying date; or
- (b) on that date is domiciled in the Virgin Islands and resident in the United States Virgin Islands.

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

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

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

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

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

- (a) two or more sentences of imprisonment that are required to be served consecutively shall be regarded as separate sentences if none of those sentences exceeds twelve months, but if any one of those sentences exceeds that term they shall be regarded as one sentence; and
- (b) no account shall be taken of a sentence of imprisonment imposed as an alternative to or in default of the payment of a fine.

### **Speaker and Deputy Speaker**

**69.**—(1) When the House of Assembly first meets after any general election and before it proceeds to the despatch of any other business it shall elect a person to be the Speaker of the House.

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

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

(4) When the House of Assembly first meets after any general election and before it proceeds to the despatch of any other business except the election of the Speaker, it shall elect a member of the House who is not a member of the Cabinet to be Deputy Speaker of the House.

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

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

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

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

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

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

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

### **Leader of the Opposition**

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

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

- (a) a member of the House of Assembly recommended by a majority of the elected members of the House who are members of any opposition party whose numerical strength in the House is greater than that of any other opposition party; or
- (b) if there is no such party or if no recommendation is made under paragraph (a), the member of the House of Assembly who in the judgement of the Governor is best able to command the support of the members of the House in opposition to the Government.

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

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

- (a) if for any reason other than a dissolution of the House of Assembly the holder of that office ceases to be a member of the House; or
- (b) if the holder of that office is appointed as a Minister.

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

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

### *Powers and Procedure*

#### **Power to make laws**

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

#### **Standing Orders**

72. Subject to this Constitution, the House of Assembly may make, amend and revoke Standing Orders for the regulation and orderly conduct of its own proceedings and the despatch of business, and the passing, entitling and numbering of Bills and the presentation of Bills to the Governor for assent.

#### **Oaths and affirmations**

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

#### **Presiding in the House of Assembly**

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

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

#### **Voting**

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

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

- (a) in an election of the Speaker or Deputy Speaker;
- (b) on a motion on the Order Paper for the removal from office of the Speaker or Deputy Speaker; or
- (c) on a motion on the Order Paper that the House of Assembly should declare a lack of confidence in the Government of the Virgin Islands.

(3) The person presiding shall not vote unless on any question the votes are equally divided in which case he or she shall have and exercise a casting vote; but where the motion before the House of Assembly is one to which subsection (2) applies the person presiding shall not have a casting vote unless he or she is an elected member.

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

### **Validity of proceedings**

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

### **Quorum**

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

(2) If at any sitting of the House of Assembly any member who is present draws the attention of the person presiding at the sitting to the absence of a quorum and, after such interval as may be prescribed in the Standing Orders of the House, the person presiding at the sitting ascertains that a quorum of the House is still not present, the House shall be adjourned.

### **Introduction of Bills, etc**

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

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

- (a) proceed upon any Bill (including any amendment to a Bill) which, in the opinion of the person presiding in the House, makes provision for imposing or increasing any tax, for imposing or increasing any charge on the revenues or other funds of the Virgin Islands or for altering any such charge otherwise than by reducing it or for compounding or remitting any debt due to the Virgin Islands; or
- (b) proceed upon any motion (including any amendment to a motion) the effect of which, in the opinion of the person presiding in the House, is that provision would be made for any of the purposes mentioned in paragraph (a).

### **Assent to Bills**

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

- (a) the Governor has assented to it in Her Majesty's name and on Her Majesty's behalf and has signed it in token of such assent; or
- (b) Her Majesty has given Her assent to it through a Secretary of State and the Governor has signified such assent by proclamation published in the *Gazette*.

(2) When a Bill is presented to the Governor for assent the Governor shall declare that he or she assents to it or that he or she reserves the Bill for the signification of Her Majesty's pleasure; but unless the Governor has been authorised by a Secretary of State to assent to it, the Governor shall reserve for the signification of Her Majesty's pleasure any Bill which appears to him or her, acting in his or her discretion—

- (a) to be inconsistent with any obligation of Her Majesty or of Her Majesty's Government in the United Kingdom towards any other state or power or any international organisation;
- (b) to be likely to prejudice the Royal prerogative; or
- (c) to be in any way repugnant to or inconsistent with this Constitution.

## **Disallowance of laws**

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

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

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

## **Governor's reserved power**

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

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

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

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

(4) This section applies to any motion—

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

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(a) 1978 c. 30.

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

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

### **Privileges, immunities and powers of House of Assembly**

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

### *Miscellaneous*

### **Sessions of House of Assembly**

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

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

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

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

### **Prorogation and dissolution**

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

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

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

### **Recalling dissolved House of Assembly in case of emergency**

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

### **General elections**

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

### **Determination of questions as to membership**

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

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

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

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

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

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

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

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

- (a) the circumstances and manner in which, and the imposition of conditions upon which, any application may be made to the High Court for the determination of any question under this section; and
- (b) the powers, practice and procedure of the High Court in relation to any such application.

(6) An appeal shall lie as of right to the Court of Appeal from any final decision of the High Court determining such a question as is referred to in subsection (1).

(7) No appeal shall lie from any decision of the Court of Appeal in exercise of the jurisdiction conferred by subsection (6), and no appeal shall lie from any decision of the High Court in proceedings under this section other than a final decision determining such a question as is referred to in subsection (1).

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

### **Penalty for unauthorised sitting or voting**

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

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

CHAPTER 6  
THE JUDICATURE

**Eastern Caribbean Supreme Court**

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

**Subordinate courts and tribunals**

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

CHAPTER 7  
THE PUBLIC SERVICE  
*Public Service - General*

**Public Service Commission**

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

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

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

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

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

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

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

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

(5) If the office of a member of the Public Service Commission is vacant or a member is for any reason unable to perform the functions of his or her office, the Governor, acting in the manner prescribed by subsection (1) for the appointment of that member, may appoint a person who is qualified for appointment as a member of the Commission to act as a member of the Commission, and any person so appointed shall, subject to subsection (4), continue so to act until he or she is notified by the Governor, acting in his or her discretion, that the circumstances giving rise to the appointment have ceased to exist; but in the case of a vacancy in the office of the Chairman or the inability of the holder of that office to perform his or her functions, the functions of the office of Chairman shall be performed by such member of the Commission or person acting as a member as the Governor, acting after consultation with the Premier, may designate.

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

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

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

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

#### **Power to appoint, etc, to public office**

**92.—**(1) Subject to this section and to the other provisions of this Constitution, power to make appointments to public offices and to remove and to exercise disciplinary control over persons holding or acting in such offices shall vest in the Governor, acting in accordance with the advice of the Public Service Commission; but the Governor, acting in his or her discretion, may act otherwise than in accordance with that advice if he or she determines that compliance with that advice would prejudice Her Majesty's service.

(2) Before exercising the powers vested in the Governor by subsection (1), the Governor may, acting in his or her discretion, once refer the advice of the Public Service Commission back to the Commission for reconsideration by it.

(3) If the Public Service Commission, having reconsidered its original advice under subsection (2), substitutes for it different advice, subsection (2) shall apply to that different advice as it applies to the original advice.

(4) Before appointing any person to the office of head of department or any more senior office the Governor shall in addition consult with the Premier.

(5) Power to make appointments to the office of Cabinet Secretary is vested in the Governor, acting in accordance with the advice of the Premier; but the Governor, acting in his or her discretion, may decline to act in accordance with that advice if he or she determines that compliance with that advice would prejudice Her Majesty's service.

(6) Where the Governor declines to act in accordance with the advice of the Premier under subsection (5), he or she shall refer the matter to the Premier requesting advice on the appointment, pursuant to subsection (7), of another person to the office of Cabinet Secretary and the Governor shall act in accordance with that advice.

(7) Whenever occasion arises for making an appointment under subsection (5) the Public Service Commission shall submit to the Premier a list of persons who appear to the Commission to be qualified and competent for the appointment and the Premier shall advise the Governor to appoint a person whose name appears on the list, provided that the Premier may request once an additional list of persons from the Public Service Commission from which to advise an appointment.

(8) The Governor, acting after consultation with the Public Service Commission, may, by regulations published in the *Gazette*, delegate to any member of the Commission or any public officer or class of public officer, to such extent and subject to such conditions as may be prescribed in the regulations, any of the powers vested in the Governor to make appointments to

public offices and to remove or exercise disciplinary control over persons holding or acting in such offices; and except in so far as regulations made under this subsection otherwise provide, any power delegated by such regulations may be exercised by any person to whom it is delegated without reference to the Public Service Commission.

(9) The Premier may from time to time request a report from the Public Service Commission about the functioning of the public service.

(10) This section does not apply to—

- (a) any office to which section 95 applies; or
- (b) any office in the Police Force.

### **Teaching Service Commission**

**93.**—(1) There shall be in and for the Virgin Islands a Teaching Service Commission which shall consist of three members, of whom—

- (a) one shall be appointed by the Governor, acting in his or her discretion;
- (b) one shall be appointed by the Governor, acting in accordance with the advice of the Cabinet; and
- (c) one shall be appointed by the Governor, acting after consultation with the British Virgin Islands Teachers Union.

(2) The provisions of section 91(2) to (9) shall apply in relation to the Teaching Service Commission as they apply in relation to the Public Service Commission and for that purpose shall have effect as if the references therein to the latter were references to the former; but for that purpose the reference in section 91(6) to “four members” shall have effect as if it were a reference to “two members”.

(3) The provisions of section 92(1), (2), (3) and (8) shall, in their application to any office of teacher in the Government Teaching Service, have effect in relation to any such office as if the references therein to the Public Service Commission were references to the Teaching Service Commission.

### **Judicial and Legal Services Commission**

**94.**—(1) There shall be in and for the Virgin Islands a Judicial and Legal Services Commission which shall consist of—

- (a) the Chief Justice, who shall be Chairman;
- (b) one judge of the Court of Appeal or the High Court nominated by the Chief Justice after consultation with the Governor and the Virgin Islands General Legal Council;
- (c) the Chairman of the Public Service Commission; and
- (d) two other members appointed by the Governor, acting in accordance with the advice of the Premier and the Leader of the Opposition who will each nominate one member, at least one of whom shall be a legal practitioner.

(2) For the purpose of subsection (1)(d), the Premier and the Leader of the Opposition shall alternate in nominating a legal practitioner, with the Premier making the first such nomination upon the commencement of this Constitution, provided that such nomination shall not be construed as precluding the nomination of two legal practitioners under subsection (1)(d).

(3) No person shall be qualified to be appointed under subsection (1)(d) if he or she is a member of, or a candidate for election to, the House of Assembly or holds or is acting in any public office.

(4) The office of a member of the Judicial and Legal Services Commission appointed under subsection (1)(d) shall become vacant—

- (a) at the expiration of five years from the date of his or her appointment or such earlier time as may be specified in the instrument by which he or she was appointed;
- (b) if he or she resigns office by writing under his or her hand addressed to the Governor;

- (c) if he or she becomes a member of, or a candidate for election to, the House of Assembly, or is appointed to or to act in any public office; or
- (d) if the Governor, acting in his or her discretion, directs that he or she shall be removed from office for inability to discharge the functions of that office (whether arising from infirmity of body or mind or any other cause) or for misbehaviour.

(5) If the office of a member of the Judicial and Legal Services Commission appointed under subsection (1)(d) becomes vacant or if such a member is for any reason unable to perform the functions of that office, the Governor, acting in accordance with the advice of the Premier or the Leader of the Opposition, as the case may be, may appoint another suitably qualified person to that office for the unexpired term of the previous holder of the office or until the holder of the office is able to resume his or her functions.

(6) Any decision of the Judicial and Legal Services Commission shall require the concurrence of not less than three members of the Commission, and the Commission shall take its decisions in such form and manner as it may determine.

(7) In the exercise of its functions, the Judicial and Legal Services Commission—

- (a) shall not be subject to the direction or control of any other person or authority; and
- (b) may regulate its own procedure.

### **Power to appoint, etc, to legal offices**

**95.**—(1) Power to make appointments to the offices to which this section applies, and to remove and to exercise disciplinary control over persons holding or acting in such offices, shall vest in the Governor, acting in accordance with the advice of the Judicial and Legal Services Commission; but the Governor, acting in his or her discretion, may act otherwise than in accordance with that advice if he or she determines that compliance with that advice would prejudice Her Majesty's service.

(2) Before exercising the powers vested in the Governor by subsection (1), the Governor may, acting in his or her discretion, once refer the advice of the Judicial and Legal Services Commission back to the Commission for reconsideration by it.

(3) If the Judicial and Legal Services Commission, having reconsidered its original advice under subsection (2), substitutes for it different advice, subsection (2) shall apply to that different advice as it applies to the original advice.

(4) This section applies to the offices of—

- (a) Attorney General;
- (b) Director of Public Prosecutions;
- (c) Magistrate;
- (d) any office in the public service of the Attorney General's Chambers or of any Registrar or other officer of the High Court who is required to possess legal qualifications;

and to such other offices in the public service, for appointment to which persons are required to possess legal qualifications, as may be prescribed by any law or Government policy for the time being in force in the Virgin Islands.

(5) No person shall be appointed to the office of Attorney General unless he or she is qualified to be admitted in the Virgin Islands as a legal practitioner and has had at least ten years' practical experience as a legal practitioner.

(6) No person shall be appointed to the office of Attorney General unless he or she belongs to the Virgin Islands unless, in the opinion of the Judicial and Legal Services Commission, there is no such person who is suitably qualified and able and willing to be so appointed.

(7) No person shall be appointed to the office of Director of Public Prosecutions unless he or she is qualified to be admitted in the Virgin Islands as a legal practitioner and has had at least seven years' practical experience as a legal practitioner.

(8) A person qualified under subsection (7) shall be appointed to act in the office of Director of Public Prosecutions whenever the office falls vacant and until a person is appointed substantively to that office, or whenever the holder of that office is for any reason unable to perform his or her functions (including by reason of suspension under subsection (10)).

(9) A person holding the office of Attorney General, Director of Public Prosecutions or Magistrate may only be removed from office for inability to discharge the functions of his or her office (whether arising from infirmity of body or mind or any other cause) or for misbehaviour.

(10) Where the issue of the removal of the Director of Public Prosecutions from office has been referred to the Judicial and Legal Services Commission, the Governor shall suspend the Director of Public Prosecutions from performing the functions of his or her office pending the outcome of the referral.

### **Police Service Commission**

**96.**—(1) There shall be in and for the Virgin Islands a Police Service Commission which shall consist of five members, of whom—

- (a) two shall be appointed by the Governor, acting in his or her discretion;
- (b) one shall be appointed by the Governor, acting in accordance with the advice of the Premier;
- (c) one shall be appointed by the Governor, acting in accordance with the advice of the Leader of the Opposition; and
- (d) one shall be appointed by the Governor, acting after consultation with the Police Welfare Association.

(2) The provisions of section 91(2) to (9) shall apply in relation to the Police Service Commission as they apply in relation to the Public Service Commission and for that purpose shall have effect as if the references therein to the latter were references to the former.

### **Power to appoint, etc, to offices in the Police Force**

**97.**—(1) Power to make appointments to offices in the Police Force and to remove and to exercise disciplinary control over persons holding or acting in such offices shall vest in the Governor, acting in accordance with the advice of the Police Service Commission; but the Governor, acting in his or her discretion, may act otherwise than in accordance with that advice if he or she determines that compliance with that advice would prejudice Her Majesty's service.

(2) Where the Police Service Commission advises that any person should be appointed to an office in the Police Force of a rank superior to Chief Inspector, that advice shall require the approval of the National Security Council before being submitted to the Governor; but the Governor, acting in his or her discretion, may act without the approval of the National Security Council if he or she determines that to do otherwise would prejudice Her Majesty's service.

(3) Before exercising the powers vested in the Governor by subsection (1), the Governor may, acting in his or her discretion, once refer the advice of the Police Service Commission back to the Commission for reconsideration by it.

(4) If the Police Service Commission, having reconsidered its original advice under subsection (3), substitutes for it different advice, subsection (3) shall apply to that different advice as it applies to the original advice.

(5) The Governor, acting after consultation with the Police Service Commission, may, by regulations published in the *Gazette*, delegate to any member of the Commission or any public officer or class of public officer, to such extent and subject to such conditions as may be prescribed in the regulations, any of the powers vested in the Governor to make appointments to offices in the Police Force and to remove or exercise disciplinary control over persons holding or acting in such offices; and except in so far as regulations made under this subsection otherwise provide, any power delegated by such regulations may be exercised by any person to whom it is delegated without reference to the Police Service Commission.

## **Legislation regarding Commissions**

**98.**—(1) The Legislature may by law make provision for—

- (a) the organisation of the work of a Commission and the manner in which it performs its functions;
- (b) consultation by a Commission with persons or authorities other than its members;
- (c) the protection and privileges of members of a Commission in respect of the performance of their functions and the privilege of communications to and from a Commission and its members in the case of legal proceedings;
- (d) the definition and trial of offences in relation to the functions of a Commission and the imposition of penalties for such offences; and
- (e) conferring on a Commission other related functions, without prejudice to the functions conferred on such Commission by this Constitution.

(2) In this section “Commission” means the Public Service Commission, the Teaching Service Commission, the Judicial and Legal Services Commission or the Police Service Commission.

## *Pensions*

### **Applicability of pension law**

**99.**—(1) Subject to section 101, the law applicable to the grant and payment to any officer, or to his or her widow or widower, children, dependants or personal representatives, of any pension, gratuity or other like allowance (in this section and sections 100 and 101 referred to as an “award”) in respect of the service of that officer in the public service shall be that in force on the relevant day or any later law not less favourable to the person concerned.

(2) For the purposes of this section the relevant day is—

- (a) in relation to an award granted before the appointed day, the day on which the award was granted;
- (b) in relation to an award granted or to be granted on or after the appointed day to or in respect of a person who was a public officer before that day, the day immediately before that day;
- (c) in relation to an award granted or to be granted to or in respect of a person who first becomes a public officer on or after the appointed day, the day on which he or she becomes a public officer.

(3) For the purposes of this section, in so far as the law applicable to an award depends on the option of the person to or in respect of whom it is granted or to be granted, the law for which he or she opts shall be taken to be more favourable to him or her than any other law for which he or she might have opted.

(4) In this section “the appointed day” means the date of commencement of this Constitution.

### **Pensions, etc, charged on Consolidated Fund or Pension Fund**

**100.** Awards granted under any law for the time being in force in the Virgin Islands shall be charged on and paid out of the Consolidated Fund or the Pension Fund of the Virgin Islands.

### **Grant and withholding of pensions, etc**

**101.**—(1) The power to grant any award under any pensions law in force in the Virgin Islands (other than an award to which, under that law, the person to whom it is payable is entitled as of right) and, in accordance with any provisions in that respect contained in any such law, to withhold, reduce in amount or suspend any award payable under any such law is hereby vested in the Governor, acting in his or her discretion.

(2) In this section “pensions law” means any law relating to the grant to any person, or to the widow or widower, children, dependants or personal representatives of that person, of an award in respect of the services of that person in a public office, and includes any instrument made under any such law.

## CHAPTER 8

### FINANCE

#### **Consolidated Fund**

**102.** All revenues or other moneys raised or received by or for the purposes of the Government of the Virgin Islands (not being revenues or other moneys that are payable by or under any law into some other fund established for any specific purpose or that may, by or under any law, be retained by the authority that received them for the purpose of defraying the expenses of that authority) shall be paid into and form a Consolidated Fund.

#### **Withdrawal of money from Consolidated Fund or other public funds**

**103.**—(1) No money shall be withdrawn from the Consolidated Fund except on the authority of a warrant under the hand of the Minister charged with responsibility for finance (in this Chapter referred to as “the Minister”); but where, in the opinion of the Governor, acting in his or her discretion, moneys are required to enable the Governor to discharge his or her responsibilities under section 60, such moneys may be withdrawn from the Consolidated Fund either—

- (a) on the authority of a warrant under the hand of the Minister; or
- (b) on the authority of a warrant under the hand of the Governor, acting in his or her discretion.

(2) No warrant shall be issued by the Minister for the purpose of meeting any expenditure unless—

- (a) the expenditure has been authorised for the financial year during which the withdrawal is to take place—
  - (i) by an Appropriation Act; or
  - (ii) by a supplementary estimate approved by resolution of the House of Assembly;
- (b) the expenditure has been authorised in accordance with section 105; or
- (c) it is expenditure (in this Chapter referred to as “statutory expenditure”) that is charged on the Consolidated Fund by this Constitution or any other law.

(3) No moneys shall be withdrawn from any public fund other than the Consolidated Fund unless the issue of those moneys had been authorised by or under any law.

#### **Authorisation of expenditure**

**104.**—(1) The Minister shall cause to be prepared and laid before the House of Assembly as soon as practicable before the beginning of each financial year estimates of the revenues and expenditure of the Virgin Islands for that year; but if the House is dissolved less than three months before the beginning of any financial year, the estimates for that year may be laid before the House as soon as practicable after the beginning of that year.

(2) The heads of expenditure contained in the estimates (other than statutory expenditure) shall be included in a Bill to be known as an Appropriation Bill which shall be introduced into the House of Assembly to provide for the issue from the Consolidated Fund of the sums necessary to meet that expenditure and for the appropriation of those sums to the purposes specified in it.

(3) If in respect of any financial year it is found—

- (a) that the amount appropriated by the Appropriation Act to any purpose is insufficient or that a need has arisen for expenditure for a purpose to which no amount has been appropriated by that Act; or
- (b) that any moneys have been expended for any purpose in excess of the amount appropriated to that purpose by the Appropriation Act or for a purpose to which no amount has been appropriated by that Act,

a supplementary estimate, showing the sums required or spent, shall be laid before the House of Assembly.

(4) Where in respect of any financial year any supplementary estimates have been laid before the House of Assembly in accordance with subsection (3) and approved by resolution of the House, a Supplementary Appropriation Bill shall, as soon as practicable after the end of that year, be introduced into the House to provide for the appropriation to the purposes in question of the sums included in such estimates that have been expended for that year.

(5) Where in respect of any financial year moneys have been withdrawn from the Consolidated Fund on the authority of a warrant issued by the Governor by virtue of section 103(1)(b), the Minister shall, if the circumstances of the case so require, cause a statement of expenditure in respect of such moneys to be prepared and laid before the House of Assembly.

### **Authorisation of expenditure in advance of appropriation**

**105.** If the Appropriation Act in respect of any financial year has not come into force by the beginning of that financial year, the House of Assembly may by resolution empower the Minister to authorise the withdrawal of moneys from the Consolidated Fund for the purpose of meeting expenditure necessary to carry on the services of the Government of the Virgin Islands until the expiration of four months from the beginning of that financial year or the coming into force of the Appropriation Act, whichever is the earlier.

### **Contingencies Fund**

**106.—**(1) The Legislature may by law make provision for the establishment of a Contingencies Fund and for authorising the Minister to make advances from that fund if he or she is satisfied that there is an urgent and unforeseen need for expenditure for which no other provision exists.

(2) When any advance is made from the Contingencies Fund a supplementary estimate shall, as soon as practicable, be laid before the House of Assembly for the purpose of authorising the replacement of the amount so advanced.

### **Public debt**

**107.—**(1) All debt charges for which the Virgin Islands are liable shall be a charge on the Consolidated Fund or the Debt Service Fund.

(2) For the purposes of this section, debt charges include interest, sinking fund charges, the repayment or amortisation of debt, and all expenditure in connection with the raising of loans on the security of the revenues of the Virgin Islands or the Consolidated Fund and the service and redemption of debt thereby created.

### **Remuneration of certain officers**

**108.—**(1) There shall be paid to the holders of the offices to which this section applies such salary or other remuneration and such allowances as may be prescribed by or under any law enacted by the Legislature.

(2) The remuneration and allowances payable to the holders of those offices shall be a charge on the Consolidated Fund.

(3) The remuneration prescribed in pursuance of this section in respect of the holder of any such office and his or her other terms of service (other than allowances that are not taken into account

in computing, under any law in that respect, any pension payable in respect of his or her service in that office) shall not without the consent of that person be altered to his or her disadvantage after his or her appointment.

(4) Where a person's remuneration or other terms of service depend upon his or her option, the remuneration or terms for which he or she opts shall, for the purpose of subsection (3), be deemed to be more advantageous to that person than any others for which he or she might have opted.

(5) This section applies to the offices of Deputy Governor, Chairman or other member of the Public Service Commission, the Teaching Service Commission, the Judicial and Legal Services Commission and the Police Service Commission, Attorney General, Director of Public Prosecutions, Magistrate, Auditor General, Complaints Commissioner and Registrar of Interests.

### **The Auditor General**

**109.**—(1) There shall be an Auditor General whose office shall be a public office.

(2) The accounts of the House of Assembly and all Government departments and offices (including the Public Service Commission, the Teaching Service Commission, the Police Service Commission and such other body as may be designated by law) shall be audited and reported on annually by the Auditor General, and for that purpose the Auditor General or any person authorised by him or her shall have access to all books, records, returns and other documents relating to such accounts.

(3) The Auditor General shall submit his or her reports made under subsection (2) to the Minister who shall, within three months of the receipt of the reports, cause them to be laid before the House of Assembly.

(4) In the exercise of his or her functions under this section, the Auditor General shall not be subject to the direction or control of any other person or authority.

## **CHAPTER 9**

### **THE COMPLAINTS COMMISSIONER AND REGISTER OF INTERESTS**

#### **The Complaints Commissioner**

**110.**—(1) There shall be a Complaints Commissioner for the Virgin Islands.

(2) The Complaints Commissioner shall be appointed by the Governor, acting after consultation with the Premier and the Leader of the Opposition, by instrument under the public seal.

(3) No person shall be qualified to be appointed as Complaints Commissioner if he or she is or has been within the preceding three years—

- (a) an elected member of the House of Assembly; or
- (b) the holder of any office in any political party.

(4) The office of the Complaints Commissioner shall become vacant—

- (a) at the expiration of the period specified in the instrument by which he or she was appointed;
- (b) if he or she resigns office by writing under his or her hand addressed to the Governor;
- (c) if he or she becomes an elected member of the House of Assembly or the holder of any office in any political party; or
- (d) if the Governor, acting in his or her discretion, directs that he or she shall be removed from office for inability to discharge the functions of the office (whether arising from infirmity of body or mind or any other cause) or for misbehaviour, or for contravention of subsection (5).

(5) Subject to such exceptions as the Governor, acting in his or her discretion, may authorise by directions in writing, the Complaints Commissioner shall not hold any other office of emolument

either in the public service or otherwise nor engage in any occupation for reward other than the duties of his or her office.

### **Functions of Complaints Commissioner**

**111.**—(1) The Complaints Commissioner shall have such functions and jurisdiction as may be prescribed by law.

(2) In the exercise of his or her functions, the Complaints Commissioner shall not be subject to the direction or control of any other person or authority.

### **Registration of interests**

**112.**—(1) There shall be for the Virgin Islands a Register of Interests, which shall be maintained by a Registrar who shall be appointed, and may be removed from office, by the Governor acting in his or her discretion.

(2) It shall be the duty of any person to whom this section applies to declare to the Registrar, for entry in the Register of Interests, such interests, assets, income and liabilities of that person, or of any other person connected with him or her, as may be prescribed by law.

(3) A person shall make a declaration under subsection (2) upon assuming the functions of his or her office and at such intervals thereafter (being no longer than twelve months) as may be prescribed by law.

(4) This section applies to all members of the House of Assembly (including Ministers) and the holders of such other offices (except that of Governor) as may be prescribed by law.

(5) A law made under this Constitution shall make provision for giving effect to this section, including the sanctions which may be imposed for a failure to comply with, or the making of false statements in purported compliance with, subsections (2) and (3) and, notwithstanding anything contained in Chapter 5, the sanctions which may be imposed may include the suspension of a member of the House of Assembly from sitting and voting in the House for such period as may be prescribed in such a law.

## **CHAPTER 10**

### **TRANSITIONAL AND MISCELLANEOUS**

#### **Meaning of the appointed day**

**113.** In this Chapter, “the appointed day” means the day referred to in section 1(2) of this Order, that is to say the date of commencement of this Constitution.

#### **Revocations**

**114.** The instruments specified in Schedule 2 are revoked with effect from the appointed day.

#### **Existing laws**

**115.**—(1) Subject to this section, the existing laws shall have effect on and after the appointed day as if they had been made in pursuance of or in consistency with this Constitution and shall be construed with such adaptations and modifications as may be necessary to bring them into conformity with this Constitution.

(2) The Legislature may by law make such amendments to any existing law as appear to it to be necessary or expedient for bringing that law into conformity with this Constitution or otherwise for giving effect to this Constitution; and any existing law shall have effect accordingly from such day, not being earlier than the appointed day, as may be specified in the law made by the Legislature.

(3) In this section “existing laws” means laws and instruments (other than Acts of the Parliament of the United Kingdom and instruments made under them) having effect as part of the law of the Virgin Islands immediately before the appointed day.

### **Existing offices and officers**

**116.**—(1) Any office established by or under the Virgin Islands (Constitution) Order 1976<sup>(a)</sup> and existing immediately before the appointed day shall on and after that day, so far as consistent with this Constitution, continue as if it had been established by or under this Constitution.

(2) Any person who immediately before the appointed day holds or is acting in any office continued by virtue of subsection (1) shall, on and after that day, continue to hold or act in that office as if he or she had been appointed to hold or act in it in accordance with or under this Constitution.

(3) Any person to whom subsection (2) applies who, before the appointed day, has made any oath or affirmation required to be made before assuming the functions of his or her office shall be deemed to have made any like oath or affirmation so required by this Constitution or any other law.

(4) The person who, immediately before the appointed day, holds the office of Chief Minister shall, on and after that day, perform the functions of the office of Premier in accordance with this Constitution; and (in accordance with section 1(3) (a) until the day after the polling in the first general election after the appointed day that office shall continue to be called Chief Minister.

### **Standing Orders**

**117.** The Standing Orders of the Legislative Council established by the Virgin Islands (Constitution) Order 1976 as those Standing Orders are in force immediately before the appointed day shall, except as may be provided under section 72, have effect on and after that day as if they had been made under that section as Standing Orders of the House of Assembly established by this Constitution, but they shall be construed with such adaptations and modifications as may be necessary to bring them into conformity with this Constitution.

### **Elections**

**118.** A general election shall be held at such time within three months, but not earlier than twenty-one days, of the appointed day as the Governor shall appoint by proclamation published in the *Gazette*.

### **Power reserved to Her Majesty**

**119.** There is reserved to Her Majesty full power to make laws for the peace, order and good government of the Virgin Islands.

*Meriel McCullagh*  
Deputy Clerk of the Privy Council

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(a) S.I. 1976/2145, amended by S.I. 1979/1603, 1982/151, 1991/2871, 1994/1638, 2000/1343.

**SCHEDULE 1**      Sections 35(4), 37(2), 61 and 73

**FORMS OF OATHS AND AFFIRMATIONS**

**1. Oath of allegiance**

I, ....., do swear that I will be faithful and bear true allegiance to Her Majesty Queen Elizabeth the Second, Her Heirs and Successors, according to law. So help me God.

**2. Affirmation of Allegiance**

I, ....., do solemnly and sincerely affirm and declare that I will be faithful and bear true allegiance to Her Majesty Queen Elizabeth the Second, Her Heirs and Successors, according to law.

**3. Oath for due execution of office**

I, ....., do swear that I will well and truly serve Her Majesty Queen Elizabeth the Second and the people of the Virgin Islands in the office of [here insert the description of the office]. So help me God.

**4. Affirmation for due execution of office**

I, ....., do solemnly and sincerely affirm and declare that I will well and truly serve Her Majesty Queen Elizabeth the Second and the people of the Virgin Islands in the office of [here insert the description of the office].

**SCHEDULE 2**      Section 114

**REVOCATIONS**

The Virgin Islands (Emergency Powers) Order 1967 (S.I. 1967/472)

The Virgin Islands (Constitution) Order 1976 (S.I. 1976/2145)

The Virgin Islands (Constitution) (Amendment) Order 1979 (S.I. 1979/1603)

The Virgin Islands (Constitution) (Amendment) Order 1982 (S.I. 1982/151)

The Virgin Islands (Constitution) (Amendment) Order 1991 (S.I. 1991/2871)

The Virgin Islands (Constitution) (Amendment) Order 1994 (S.I. 1994/1638)

The Virgin Islands (Constitution) (Amendment) Order 2000 (S.I. 2000/1343)

## **EXPLANATORY NOTE**

*(This note is not part of the Order)*

This Order establishes a new Constitution for the Virgin Islands, to replace the Constitution of 1976. The new Constitution includes, for the first time, a chapter setting out the fundamental rights and freedoms of the individual and provisions for their enforcement. It provides for a Governor as Her Majesty's representatives in the Islands, and for a Premier and Ministers who form a Cabinet together with the Attorney General. It provides for an elected House of Assembly, which together with Her Majesty forms the Legislature. The Eastern Caribbean Supreme Court continues to have jurisdiction in the Islands. Provision is made for a Public Service Commission, a Teaching Service Commission, a Judicial and Legal Services Commission, and a Police Service Commission to provide advice on appointments to offices in these services. A new National Security Council is established, as is the office of Director of Public Prosecutions. Provision is also made for public finance, a Complaints Commissioner, and a Register of Interests.

**2015 No. 1767**

**CARIBBEAN AND NORTH ATLANTIC TERRITORIES**

**The Virgin Islands Constitution (Amendment) Order 2015**

*Made* - - - - *8th October 2015*

*Laid before Parliament* *15th October 2015*

*Coming into force* - - *5th November 2015*

At the Court at Buckingham Palace, the 8th day of October 2015

Present,

The Queen's Most Excellent Majesty in Council

Her Majesty, in exercise of the powers conferred by sections 5 and 7 of the West Indies Act 1962<sup>(a)</sup> and of all other powers enabling Her to do so, is pleased, by and with the advice of Her Privy Council, to order as follows:

**Citation, construction and commencement**

1.—(1) This Order may be cited as the Virgin Islands Constitution (Amendment) Order 2015 and comes into force on 5th November 2015.

(2) The Virgin Islands Constitution Order 2007<sup>(b)</sup> (hereinafter referred to as the “principal Order”) and this Order shall be construed as one and may be cited together as the Virgin Islands Constitution Orders 2007 to 2015.

**Amendment of principal Order**

2. The principal Order is amended by inserting after section 52 the following—

“**52A.**—(1) The Governor, acting in accordance with the advice of the Premier, may appoint no more than two Junior Ministers from among the elected members of the House of Assembly to assist in the performance of Ministerial functions relating to economic development.

(2) Section 50(1) shall apply in relation to Junior Ministers as it applies in relation to public officers.

(3) Sections 3(1)(b), 52(5) and (6), 53(3) and (4), 54, 56, 69(3) and 112(4) shall apply in relation to Junior Ministers as they apply in relation to Ministers.

(4) Sections 61, 69(4) and (5) and 74(1) shall apply in relation to Junior Ministers as they apply in relation to members of the Cabinet.”.

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(a) 1962 c. 19.  
(b) S.I. 2007/1678.

*Richard Tilbrook*  
Clerk of the Privy Council

## **EXPLANATORY NOTE**

*(This note is not part of the Order)*

This Order amends the Virgin Islands Constitution Order 2007 to allow for the appointment of up to two Junior Ministers to assist Ministers in the performance of their functions relating to economic development and makes corresponding consequential amendments.

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## CHAPTER 237.

### COMMISSIONS OF INQUIRY.

(29th July, 1880.)

5/1880  
2/1933  
S.R.O. 22/1956  
13/1963  
17/1970

**1.** This Act may be cited as the Commissions of Inquiry Act.

Short title.

**2.** It shall be lawful for the Governor whenever he shall deem it advisable, to issue a commission appointing one or more commissioners, and authorising such commissioners, or any quorum of them therein mentioned, to inquire into the conduct or management of any department of the public service in the Territory, or of any public officer of the Territory, or of any parish or district thereof, or into any matter in which an inquiry would, in the opinion of the Governor, be for the public welfare. Each such commission shall specify the subject of inquiry, and may, in the discretion of the Governor, if there is more than one commissioner, direct which commissioner shall be chairman, and direct where and when such inquiry shall be made, and the report thereof rendered, and prescribe how such commission shall be executed, and may direct whether the inquiry shall, or shall not, be held in public. In the absence of a direction to the contrary, the inquiry shall be held in public, but the commissioners shall nevertheless be entitled to exclude any particular person, or persons, for the preservation of order, for the due conduct of the inquiry or for any other reason:

Power to Governor to appoint commissions of inquiry.

Provided that, when any inquiry, as aforesaid, shall be directed not to be held in public, it shall not be lawful for any person, without the authority of the Governor, to write, print, publish, circulate, or make public, or to procure for the purpose of writing, printing, publishing, circulating, or making public, or to cause to be written, printed, published, circulated, or made public, or to be in any way concerned in the writing, printing, publication, circulation, or making public of, the evidence, or any part thereof, taken on such inquiry, or the proceedings, or any part thereof, on such

inquiry; and any person so offending shall be guilty of a misdemeanour, and shall be liable to pay a fine not exceeding four hundred and eighty dollars, or to be imprisoned for any period not exceeding one year, or both.

Filling up of vacancies and alterations of commissions.

**3.** In case any commissioner shall be or become unable or unwilling to act, or shall die, the Governor may appoint another commissioner in his place; and any commission issued under this Act may be altered, as the Governor may deem fit, by any subsequent commission issued by the Governor, or may be revoked altogether by a notification to that effect published in the Gazette.

Death etc., of Governor not to affect commission.

**4.** No commission issued under this Act shall lapse by reason of, or be otherwise affected by, the death, absence, or removal of the Governor issuing the same.

Oath of commissioner.

**5.** It shall be the duty of each commissioner appointed under this Act to make and subscribe an oath that he will, faithfully, fully, impartially, and to the best of his ability, discharge the trust, and perform the duties, devolving upon him by virtue of such commission, which oath may be taken before any Justice of the Peace or Magistrate, and shall be deposited by the Commissioner with the Governor.

Appointment of secretary.

**6.** The Governor may appoint a secretary to attend the sittings of the commission, to record their proceedings, to keep their papers, summon and minute the testimony of witnesses, and generally to perform such duties, connected with such inquiry, as the commissioners shall prescribe, subject to the directions, if any, of the Governor.

Duties of commissioners.

**7.** It shall be the duty of the commissioners, after taking such oath, to make a full, faithful, and impartial inquiry into the matter specified in such commission, and to conduct such inquiry in accordance with the directions, if any, in the commission, and, in due course, to report to the Governor, in writing, the result of such inquiry, and also, when required, to furnish to the Governor, a full statement of the proceedings of such commission, and of the reasons leading to the conclusions arrived at or reported.

Chairman to have casting vote.

**8.** If the commissioners shall, in any case, be equally divided in any question that arises during the proceedings of the commission, the chairman of the commission shall have a second or casting vote.

**9.** The commissioners acting under this Act may make such rules for their own guidance, and the conduct and management of proceedings before them, and the hours and times and places for their sittings, not inconsistent with their commission, as they may, from time to time, think fit, and may, from time to time, adjourn for such time and to such place as they may think fit, subject only to the terms of their commission.

Commissioners may make rules, and adjourn meetings.

**10.** (1) Commissioners acting under this Act shall have the powers of a Judge of the High Court within the Territory in respect of the following matters—

Powers in relation to witnesses. 13/1963.

(a) summoning witnesses and parties concerned and examining such persons on oath;

(b) calling for the production of books, plans and documents; and

(c) receiving evidence by affidavit ordering that interrogatories be administered and requiring the person concerned to make a full and true reply.

(2) All summonses for the attendance of witnesses and other persons, or for the production of documents, may be in the form specified in the Schedule, and shall be signed by one of the commissioners, or by the secretary.

**11.** Every commissioner acting under this Act shall have in the exercise of his duty as a commissioner the same protection and immunity as a Judge of the High Court.

Protection of commissioners. 13/1963.

**12.** Any person whose conduct is the subject of inquiry under this Act, or who is in any way implicated, or concerned in the matter under inquiry, shall be entitled to be represented by counsel at the whole of the inquiry, and any other person who may consider it desirable that he should be so represented may, by leave of the commission, be represented in the manner aforesaid.

Representation by Counsel.

2/1933. 13/1963.

**13.** A barrister or solicitor appointed by the Attorney General to assist the commissioners, or a barrister or solicitor authorised by the commissioners to appear before them for the purpose of representing any person, or any other person authorised by the commissioners to appear before them may, so far as the commissioners think proper, examine or cross-examine any witness on any matter which the commissioners deem relevant to the inquiry and a witness so

Examination of witness by counsel, etc. 13/1963.

examined or cross-examined shall have the same privileges and be subject to the same liabilities as if he were examined by a commissioner.

Punishment of witnesses for perjury.

**14.** Any witness who shall wilfully give false evidence in any such inquiry, concerning the subject matter of such inquiry, shall be guilty of perjury, and be liable to be prosecuted and punished accordingly.

Attendance of witnesses, payment of expenses.

**15.** All persons summoned to attend and give evidence, or to produce books, plans or documents, or any other matter, at any sitting of any such commission, shall be bound to obey the summons served upon them as fully, in all respects, as witnesses are bound to obey subpoenas issued from the High Court, and shall be entitled to the like expenses as if they had been summoned to attend the High Court on a criminal trial, if the same shall be allowed by the commissioners, but the commissioners may disallow the whole or any part of such expenses in any case, if they think fit. Orders for the payment of such witnesses shall be made, as nearly as may be, as orders are made for the payment of witnesses at the High Court, and shall be paid at such time and in such manner as the Governor may direct. Every person refusing or omitting, without sufficient cause, to attend at the time and place mentioned in the summons served on him, and every person attending, but leaving the commission without the permission of the commissioners, or refusing to answer, or to answer fully and satisfactorily to the best of his knowledge and belief, all questions put to him by or with the concurrence of the commissioners, or refusing or omitting, without sufficient cause, to produce any books, plans, or documents, or other matters in his possession or under his control, and mentioned or referred to in the summons served on him, and every person who shall, at any sitting of the commission, wilfully insult any commissioner, or the secretary, or wilfully interrupt the proceedings of the commission, shall be liable, on summary conviction, to a penalty not exceeding one hundred and forty-four dollars:

13/1963.

Provided always, that no person giving evidence before the commission shall be compellable to incriminate himself, and every such person shall, in respect of any evidence given by him before the commission, be entitled to all the privileges to which a witness giving evidence before the High Court is entitled in respect of evidence given by him before such Court.

**16.** No statement made by any person who is called as a witness before any commission of inquiry, or any commissioners appointed in pursuance of this Act, in answer to any question put by or before such commission or commissioners, shall, except in cases of indictments for perjury, be admissible in evidence in any proceeding, civil or criminal.

Statement of witness before commission not admissible.

**17.** The Governor may direct the Commissioner of Police to detail constables to attend upon any such commissioners to preserve order during the proceedings of the commission, and to perform such other duties as usually pertain to their office when in attendance upon the High Court, and to serve summonses on witnesses, and to perform such ministerial duties as such commissioners shall direct.

Police to attend at commissions.

**18.** The Governor may direct what remuneration, if any, shall be paid to any commissioners acting under this Act, and to their secretary, and to any other persons employed in or about any such commission, and may direct payment of any other expenses attendant upon the carrying out of any such commission, or under any proceedings for any penalty under this Act. Such sums, so directed to be paid, shall be paid by the Financial Secretary out of the ordinary cash balance in the Treasury of the Territory.

Remuneration of commissioners and secretary.

**19.** All commissions and all process and proceedings before the commissioners under this Act shall be free from stamp duty.

Commissions free from stamp duty.

**20.** All commissions under this Act, and all revocations of any such commissions, shall be published in the Gazette, and shall take effect from the date of such publication.

Publication of commissions.

**21.** No proceedings shall be commenced for any penalty under this Act, except by the direction of the Attorney General, or of the commissioners. The commissioners may direct their secretary, or such other person as they may think fit, to commence and prosecute the proceedings for such penalty.

Recovery of penalties.

SCHEDULE.

13/1963.

S. 10.

SUMMONS TO WITNESS.

To A.B. (*name of person summoned, and his calling and residence, if known*).

You are hereby summoned to appear before (*here name the commissioners*) appointed by the Governor to inquire (*state briefly the subject of inquiry*) at (*place*), upon the day of , 19 , at o'clock in the noon, and to give evidence respecting such inquiry, (*if the person summoned is to produce any documents, add*) and you are required to bring with you (*specify the books, plans, and documents required*).

Given under the hand of , Commissioner, this day of , 19 .

\_\_\_\_\_

6/1914  
 9/1927  
 5/1927  
 5/1930  
 30/1937  
 11/1939  
 S.R.O. 22/1956  
 4/1963  
 5/1968  
 5/1982

**CHAPTER 36.**

**JURY.**

(1st July, 1914.)

PRELIMINARY.

1. This Act may be cited as the Jury Act. Short title.
2. (1) In this Act— Interpretation.

“alphabetical order” means alphabetical order of surnames;

“business” includes the cultivation of land:

Provided that, where two or more parcels of land are cultivated as distinct units, the cultivation of each such parcel shall be deemed to be a distinct business;

“civil proceeding” means any proceeding other than a criminal proceeding;

“counters” means slips, disks or pieces of wood, metal, paper, parchment, bone, ivory, or other similar substance;

“juror” means a person whose name is included in a jurors’ register for the time being in force;

“jurors’ register” when not qualified by the addition of a year, means jurors’ register for the time being in force;

“prescribed particulars” means the place of abode and the title, quality, calling, or business, and the property qualification;

“proceeding” includes cause, matter, or issue of fact, in the High Court;

“Registrar” includes representative authorised in writing by the Registrar;

"special jurors' list" when not qualified by the addition of a year, means the special jurors' list for the time being in force;

(2) "The prescribed manner" of distinguishing as a special juror in any list made under the provisions of section 8, and in any jurors' register, a person whose name is therein included, is by writing the letters "S.J." in the column headed "Remarks," opposite to the name of such person;

(3) "The prescribed manner" of entering names in a panel of array is by entering the names in alphabetical order; writing opposite to each name the place of abode of the person named; and prefixing the number "1" to the first name, the number "2" to the second name, and so on, in respect of each name, in an arithmetical series.

Books, ballot box and counters.

3. (1) The Registrar shall, if and when necessary, at the expense of the Territory, provide himself with a jurors' book, a special jurors' book, a preliminary panel book, a ballot box and a sufficient number of counters for carrying out the provisions of this Act.

(2) The counters so provided shall be numbered, respectively, in an arithmetical series, from one upwards, and shall be, as far as possible, exactly similar each to the other, except as regards the numbers, so as not to be distinguishable to the touch.

#### PART I.

##### QUALIFICATION OF JURORS.

4. Every person, between the ages of 21 and 60 years, who—

(a) has in his or her own name, or in trust for him or her, any lands or tenements, in the Territory, of the value of two hundred and forty dollars or upwards; or

(b) rents any lands or tenements, in the Territory, of the annual value of forty eight dollars, or upwards; or

(c) holds any office or situation, in the Territory, at a salary amounting, with allowances, to the sum of two hundred and forty dollars per annum, or upwards; or

Qualification of common jurors.  
14/1963.

(d) is in receipt of an income, from whatever source derived, of one hundred and forty-four dollars per annum, or upwards,

shall, unless exempted or disqualified under the provisions of sections 6 and 7, be liable to serve as a common juror.

5. Every person, between the ages of 21 and 60 years, who—

Qualification of special jurors.  
14/1963.

(a) has, in his or her own name, or in trust for him or her, any lands or tenements, in the Territory, of the value of four thousand, eight hundred dollars, or upwards; or

(b) has, in his own name, or in trust for him, any lands, within the Territory, of not less than one hundred acres in extent; or

(c) holds any office or situation, in the Territory, at a salary amounting, with allowances, to the sum of nine hundred and sixty dollars per annum, or upwards; or

(d) is in receipt of any income, from whatever source derived, of seven hundred and twenty dollars per annum, or upwards; or

(e) is the attorney of any tenant or trustee, absent from the Territory of lands, within the Territory, of not less than one hundred acres in extent,

shall, unless exempted or disqualified under the provisions of sections 6 and 7 be liable to serve as a special juror: Provided that every person, liable, for the time being, to serve as a special juror, shall also be liable to serve as a common juror.

6. Each of the persons described in the First Schedule shall be exempt from serving either as a common juror or a special juror.

Exemption.  
First Schedule.

7. Each of the following persons shall be disqualified from serving either as a common juror or a special juror, viz—

(a) aliens who have not been previously domiciled in the Territory for at least 10 years;

Disqualification.

(b) persons disabled by unsoundness of mind, or by deafness, blindness, or other permanent infirmity of body;

(c) persons who have been previously convicted of any treason, felony, or infamous crime, and have not received a free pardon; and

(d) persons who cannot read and write the English language and understand the same when spoken.

## PART II.

### JURORS' REGISTER AND SPECIAL JURORS' LIST.

8. Between the 1st and 7th days of December of every year, the Registrar—

Jurors' list.

(a) shall make out, in the form in the Second Schedule, a list, for the ensuing calendar year, in alphabetical order, of all persons resident in the Territory, who, in his opinion, are liable to serve as common jurors, with the full Christian name and surname, and the prescribed particulars, or each such person set forth, to the best of his knowledge and belief, in the proper columns of the list, and shall also distinguish in the list, in the prescribed manner, such of the said persons as are, in his opinion, also liable to serve as special jurors; and

Second Schedule.

(b) when the list is complete, shall write at the end thereof a notice, in the form in the Second Schedule, stating the day on which the list will be revised by the Magistrate as hereinafter provided; which day shall be the day of the first sitting of the Magistrate's Court after the expiration of 14 days from the day of the publication of the list and notice as hereinafter provided.

9. (1) As soon as practicable after the Registrar has completed any such list and notice, he shall publish the same by causing a copy of the list and notice to be posted in a conspicuous place at, or near, the door, or one of the doors, of the Court House, and in such other place or places as the Governor may direct.

Publication of jurors' list.

(2) When the list and notice are published by copies being posted as aforesaid, the copies shall be kept posted until after the list has been revised as hereinafter provided.

10. (1) When any such list and notice have been made out and published by the Registrar, as aforesaid, then, at the first sitting of the Magistrate's Court which shall be held after

Revision of jurors' list.

the expiration of 14 days from the day of the publication aforesaid—

(a) the Registrar shall produce to the Magistrate the original list and notice; satisfy the Magistrate as to the day on which the same were published as aforesaid; and answer such questions as may be put to him by the Magistrate touching the list; and

(b) the Magistrate shall revise the said list and shall upon any evidence which may be adduced before him, or of his own knowledge, information and belief—

(i) strike out from the list the name of any person therein included, who, in the opinion of the Magistrate, is not liable to serve as a common juror;

(ii) add to the list the name of any person, who, in the opinion of the Magistrate, is liable to serve as a common juror: Provided that where the name of any person is so added, the full Christian name and surname, and the prescribed particulars, of each such person shall be set forth in the proper columns of the list, to the best of the Magistrate's knowledge, information and belief;

(iii) decide which of the persons, whose names were originally included in, or have been added by him to the list, are also liable to serve as special jurors, and see that the name of each of the persons, who, in his opinion, are so liable, is distinguished in the list in the prescribed manner, and that the name of no other person included in the list is so distinguished; and

(iv) correct any error or omission which shall appear to him to have been made in respect of the prescribed particulars of any person included in the list:

Provided that, before making any alteration in the list, the Magistrate shall hear any objection which the Registrar may make thereto.

(2) Any person may appear at the revision, either personally, or by his counsel or solicitor, and claim, and adduce evidence to show, that he is, or is not, liable to serve as a common juror, or as a special juror, as the case may be, or may,

instead of appearing at the revision, give the Magistrate notice in writing of the particulars of his claim, supporting the same by such evidence as he may think fit, and, in this latter case, the Magistrate shall, as far as he reasonably can, inquire into the claim notwithstanding that the claimant does not appear before him:

Provided that, in any case where any claim is made under this subsection, the burden of proof shall lie on the person making it.

(3) The Magistrate may call any evidence which he may think fit with respect to any matter touching the revision.

(4) As soon as the list has been revised by the Magistrate, as aforesaid, he shall write a certificate thereon in the form in the Third Schedule and shall return the list to the Registrar.

Third Schedule.

Jurors' register.

**11.** (1) On the receipt of any such list, so revised and certified as aforesaid, the Registrar shall cause the list, but not the notice and certificate at the end thereof, to be copied into the jurors' book:

Provided that—

(a) in the heading, the word "Register" shall be substituted for the word "List."

(b) the names of the persons included in the list, as revised by the Magistrate, shall be copied in the jurors' book in alphabetical order.

(2) The copy of the jurors' list so made in the jurors' book shall be the jurors' register for the calendar year stated in the heading.

(3) Every jury register shall continue in force during the calendar year stated in the heading.

(4) Every person, whose name is included in the jurors' register, shall, while the register is in force, be liable to be summoned to, and serve as a common juror, as hereinafter provided.

Special jurors' list.

**12.** (1) As soon as any juror's register has been completed under the provisions of section 11, the Registrar shall cause a list to be made, in the special jurors' book, of the names of the persons included in the register, and therein distinguished, in the prescribed manner, as special jurors. In such list the names shall be copied in alphabetical order, and

opposite to each name, shall be written the prescribed particulars, copied from the jurors' register, and the number "1" shall be prefixed to the first name, and the number "2" to the second name, and so on, in an arithmetical series until the last name is numbered. The list so made in the special jurors' book shall be headed "Special Jurors' List for the year" (filling in the year stated in the heading of the jurors' register) and shall be known as the special jurors' list for that year, and shall continue in force during that year.

(2) Every person whose name is included in the special jurors' list shall, while the list is in force, be liable to be summoned to serve as a special juror as hereinafter provided.

### PART III.

#### AMENDMENT OF JURORS' REGISTER.

**13.** (1) At any time while a juror's register is in force—

Amendment of jurors' register.

(a) the Registrar, if he has cause to believe that any person, whose name is included in the register, is dead, or has permanently ceased to reside in the Territory, or is permanently disabled from serving as a juror by unsoundness of mind, or by blindness, deafness, or other bodily infirmity, shall bring the matter to the notice of the Magistrate, at the same time producing the register; and

(b) the Magistrate shall thereupon inquire into the matter, and if, either upon evidence adduced, or of his own knowledge, information and belief, he is of opinion that the person is dead, or has permanently ceased to reside in the Territory, or is permanently disabled from serving as a juror by unsoundness of mind, or bodily infirmity, as aforesaid, may cancel the entry in the jurors' register relating to such person, by ruling lines through the entry, and writing in the column of the register headed "Remarks," opposite to the entry, the word "cancelled," together with his signature and the date.

(2) When any entry in a register is cancelled under this section, the Registrar shall thereupon cancel the corresponding entry, (if any), in the special jurors' list, and shall also, if the name of the person to whom the entry relates is included in the last preliminary panel, and is not therein

marked "Impanelled," cancel the name where it occurs in the said panel.

#### PART IV.

##### ARRAYS OF COMMON JURORS.

Time of  
impanelling.  
Number to be  
impanelled.

**14.** (1) Whenever the date approaches for a sitting of the High Court, the Registrar shall, on such a day as will leave sufficient time for the persons impanelled to be duly summoned, as hereinafter provided, impanel in the manner hereinafter prescribed, an array of common jurors to serve at the said Court.

(2) Subject to the provisions of subsection (4) of section 16, every array of common jurors shall consist of thirty persons, but any judge may, by an order in writing under his hand, direct a greater number to be impanelled and, when any such order has been made, the number directed in the order shall be impanelled accordingly.

Certain jurors  
not to be  
impanelled.

**15.** (1) Subject to the provisions of subsection (4) of section 16, the Registrar shall not impanel in an array of common jurors any juror, who is known, or believed, by him to be temporarily absent from the Territory, and not likely to return in time to be summoned to attend a sitting of the High Court, and shall not impanel in the same array of common jurors more than one of the jurors, who, to the best of his knowledge, information and belief, are employed, at the time, in the same business:

Provided that where the number of jurors employed in the same business exceeds eight the Registrar may impanel in the same array of common jurors one third of the number of jurors so employed at the time.

(2) Where two or more distinct businesses are carried on by, or on behalf or for the benefit of, the same person, or persons, the fact that a juror, employed in one of such businesses, has been impanelled to serve on an array, shall not excuse another juror, employed in another of such businesses, from being impanelled in the same array.

(3) Any person carrying on, or for the time being in charge of, any business in the Territory, may, from time to time, give to the Registrar a list of jurors employed in the business,

and the Registrar, upon receiving the said list, shall, when he next proceeds to impanel a jury, make such enquiries as he may think fit, and act accordingly.

(4) The decision of the Registrar as to whether two or more jurors are, or are not, employed in the same business shall, for the purposes of this section, be final.

**16.** (1) When the Registrar is impaneling an array of common jurors, he shall, subject to the provisions of subsection (4), make in the preliminary panel book a preliminary panel, in the form in the Fourth Schedule, in which he shall, after any names, which under the provisions of section 17, are to be inserted therein, insert as many more names as may be required, taken alternately from the first and the last parts of the jurors' register, as follows, namely—

Mode of  
impanelling.

Fourth Schedule.

(a) he shall ascertain which of the persons, whose names are included in the first part of the jurors' register, was impanelled last, at the last impaneling of an array of common jurors, whether in the same or the preceding year, and shall insert in the preliminary panel, as the next name, the name which in the register, immediately succeeds the name of such person;

(b) he shall next ascertain which of the persons, whose names are included in the last part of the register, was impanelled last, at the last impaneling aforesaid, and shall insert in the preliminary panel, as the next name, the name which, in the register, immediately precedes the name of such person;

(c) he shall insert in the preliminary panel, as the next name, the name, which, in the register, is the second name below the name of the person first ascertained, as above provided, and as the next name, the name which, in the register, is the second name above the name of the person last ascertained, as above provided, and so on, until as many names as may be required are inserted in the preliminary panel: Provided that, if and whenever, this is no longer possible, he shall insert in the preliminary panel the first name in the register, and next the last name in the register, and next the second name in the register and next the last name but one in the register, and so on, until as many names, as may be required, are inserted in the preliminary panel.

(2) As each name is included in the preliminary panel, whether taken from the last preceding preliminary panel, as prescribed in section 17, or from the register, as prescribed in subsection (1) the Registrar shall—

(a) if there is no objection, under section 15 to the person named being impanelled, write the word "Impanelled" opposite the name in the preliminary panel; or

(b) if the person named is known by the Registrar to be temporarily absent from the Territory, and not likely to return in time to be duly summoned for a sitting of the High Court, or is known to be employed in any business in which another person, whose name has already been inserted in the preliminary panel and therein marked "Impanelled," is known by the Registrar to be employed, the Registrar shall write in the preliminary panel, opposite the name of the person so absent, or so employed as first mentioned, instead of the word "Impanelled," the words, according to the circumstances, "Temporarily absent," or "Employed in the same business as \_\_\_\_\_," (inserting the name previously inserted in the preliminary panel, and therein marked "Impanelled," of the person known by the Registrar to be employed in the same business.)

(3) When thirty names inserted in the preliminary panel have been marked "Impanelled," as aforesaid, the preliminary panel shall be complete.

(4) Notwithstanding anything hereinbefore contained, if, when the Registrar is impanelling an array of common jurors to serve at the High Court, the number of jurors, whose names are included in the jurors' register, does not exceed thirty, the Registrar shall impanel, as the array to serve at the said Court, all the jurors whose names are included in the register, and such array shall be good and valid, although the number impanelled is less than thirty.

Preliminary panel.

**17.** Every preliminary panel shall be made in the preliminary panel book, and shall be signed and dated by the Registrar, and, whenever the Registrar is making out a preliminary panel under this section, if there are any names included, but not marked "Impanelled" in the last preceding preliminary panel the Registrar shall insert such names, or such of them as have not been cancelled under the provisions

of section 13 as the first names in the new preliminary panel, in the same order in which they occur in the last preceding preliminary panel.

Panel of array.

**18.** (1) As soon as the Registrar has completed a preliminary panel as aforesaid, he shall cause the names, therein marked "Impanelled," to be entered in the prescribed manner in a panel of array.

(2) When an array is impanelled under subsection (4) of section 16 the names of the persons impanelled shall be entered in the prescribed manner in a panel of array.

#### PART V.

##### ARRAYS OF SPECIAL JURORS.

Special jury in criminal cases.

**19.** In any criminal proceeding, any Judge may, upon the application of the Crown, or the person charged, order the proceeding to be tried by a special jury, and, if he shall think fit, appoint a special day for the trial.

Special jury in civil cases.

**20.** (1) Any party to any civil proceeding, who is entitled to have the same tried by a Judge and jury, may, subject to the provisions of subsection (1) of section 44, have the proceeding tried by a Judge and special jury, on giving notice in writing to that effect to the other party to the proceeding, and also to the Registrar:

Provided that such notice is given not less than 14 days before the day fixed for the holding of the Court at which the proceeding is to be tried.

(2) A Judge may, at any time, on the application of any party to any civil proceeding, order, subject to the provisions of subsection (1) of section 44, that the proceeding be tried by a Judge and special jury upon such terms as he may think fit, and may appoint a special day on which the trial shall commence.

(3) The time specified in subsection (1) may be varied by rules of Court.

Mode of impanelling.

**21.** (1) Whenever an order has been made for the trial of any proceeding by a Judge and special jury, or whenever notice has been given pursuant to the provisions of subsection

(1) of section 20, the Registrar shall, subject to the provisions of subsection (2), and subsection (1) of section 44, appoint a time for impanelling the array of special jurors pursuant to such order, or notice, and shall give notice of the time so appointed to every party to the proceeding, and, at the time so appointed shall proceed to impanel the array as follows—

(a) he shall put into the ballot box, for every name included in the special jurors' list, a counter inscribed with a number corresponding to the number prefixed to that name in the said list, and, having thoroughly intermixed the counters, shall draw out of the box, one by one, thirty of the said counters, and, as each counter is drawn, write down in a list the number inscribed on the counter and the name in the special jurors' list to which that number is prefixed:

Provided that, if the number of names in the special jurors' list is less than thirty, the Registrar shall first enter in the list all the names included in the special jurors' list, and shall then, fairly and indifferently select, out of the persons of the greatest repute, property and intelligence, whose names are included in the jurors' register such a number, as, in addition to those whose names are already entered in the list then being prepared, will make up the full number of thirty, and shall enter in the last mentioned list the name of each person so selected;

(b) the plaintiff in the proceeding shall then be at liberty to strike out one of the thirty names contained in the said list and the defendant in the proceeding, another, and so on alternately, until eighteen names have been struck out:

Provided that if either the plaintiff or the defendant is absent or unrepresented or does not exercise his right, the Registrar shall strike out on his behalf:

And provided that in the case of a criminal proceeding the word "plaintiff" means the Crown and the word "defendant" the person charged;

(c) the Registrar shall then cause the twelve names remaining in the list to be entered in the prescribed manner in a panel of array;

(d) the persons, whose names are included in the said panel, shall be the array of special jurors to be summoned for the trial of the said proceeding;

(e) the Registrar shall, on demand of any party to the proceeding, supply him with a copy of the said panel as soon as possible after the panel is complete;

(f) any party to the proceeding, who is dissatisfied with the manner in which the array has been impanelled, or with the conduct of the Registrar in impanelling it, may apply to a Judge, who may, if he sees sufficient grounds, set aside the impanelling, and order another array to be impanelled, and give such directions in the matter as he may think fit.

(2) Whenever, in any proceeding, an array of special jurors has been impanelled, the parties to any other proceeding, which is to be tried with a special jury at the same Court as the first-mentioned proceeding, may agree in writing that the array impanelled in the first-mentioned proceeding shall be impanelled as the array in the proceeding to which they are parties, and, on the agreement being filed, the Registrar shall, subject to the provisions of subsection (1) of section 44, impanel the said array accordingly.

## PART VI.

### SUMMONING OF JURORS.

22. As soon as an array, whether of common or special jurors, has been impanelled, the Registrar shall proceed to summon each of the jurors included in the array to attend on the day fixed for the holding of the next sitting of the High Court, unless, in the case of an array of special jurors, another day has been appointed by a Judge, in which case the jurors included in the array shall be summoned to attend on that day.

Day for which jurors to be summoned.

Service of summons.

23. A summons to attend as a juror shall be signed by the Registrar, and may be served either—

(a) by being delivered to the juror, or left at his usual place of abode, at least six days before the day on which the juror is summoned to attend; or

(b) through the post office in the manner and on the conditions following—

(i) the summons and the duplicate thereof shall each be legibly addressed to the juror at his place of abode, as described in the jurors' register, or, at such other address as the

Registrar shall, after enquiry, believe to be correct, and the summons and the duplicate thereof shall each have the words "Jury Summons" legibly written thereon on the same side as the address;

- (ii) the summons, together with the duplicate thereof, shall be delivered to the postmaster of the principal post office in the Territory at his office during business hours at least eight days before the day on which the juror is cited to attend;
- (iii) the postmaster shall compare the address on the duplicate with the address on the summons, and if they both agree, and if the summons and the duplicate both have legibly written thereon the words "Jury Summons," shall stamp the duplicate with the stamp of the post office, and return it to the person who brought it to him, and shall keep the summons for transmission to its address, treating it in all respects as a registered letter except that it shall be forwarded open and that no fee shall be charged;
- (iv) if it is reported to the postmaster that any summons so kept by him has not been delivered at its address, the postmaster shall endorse thereon the cause of the non-delivery, and forward it without delay to the Registrar, who shall forthwith endorse on the face of the duplicate the words "Not delivered" and sign and date such endorsement;
- (v) a duplicate purporting to be a summons to a juror, stamped as hereinbefore provided and not endorsed "Not delivered," as hereinbefore provided, shall be prima facie evidence that the summons was duly served on the juror:

Provided that no such summons shall be served through the post office in any part of the Territory in the manner herein provided, unless and until the Governor shall, in writing, notify the postmaster that jury summonses may be served through the post office in the Territory or in that part thereof, and the Governor may cancel, alter, or amend such notification at any time.

## PART VII.

## TRIALS.

**24.** Every application, made at a sitting of the High Court, for the quashing of an array, shall be heard and determined by the presiding Judge, and no array shall be quashed on the ground of any formal defect, or of any breach of any of the provisions of this Act, unless the presiding Judge is satisfied that it is expedient, on the merits and in the interests of justice, that the array should be quashed.

Quashing of array.

**25.** If, at any sitting of the High Court, a proceeding is brought on for trial before the jury impanelled for the trial of any other proceeding have been discharged, the presiding Judge may order another jury to be impanelled from the jurors who are not then impanelled.

Impanelling of further jury.

**26.** Every jury impanelled for the trial of any proceeding shall consist of nine persons and no more.

Number of jury.

**27.** When a common jury is being impanelled for the trial in the High Court of any person or persons charged with any treason, felony or misdemeanour—

Peremptory challenges and standing by.

(a) the person charged, or each of the persons charged, may peremptorily and without assigning cause challenge any number of jurors not exceeding three;

(b) the Crown shall have the same right as, at the commencement of this Act, it has in England, to ask that jurors stand by until the panel has been "gone through" or perused.

**28.** (1) When a jury is being impanelled for the trial of any proceeding, any juror, whose name has been drawn as hereinbefore provided, may be challenged for cause by any of the parties to the issue, and, where any such challenge is made, the same shall be inquired into by the presiding Judge, who, after hearing any evidence which may be adduced, may allow, or disallow such challenge, and the decision of the Judge, as to what is or is not, sufficient cause, shall be final.

Challenges for cause.

(2) In this section "cause" means anything which, in the opinion of the presiding Judge, renders it improper, or inadvisable, that the person challenged should be impanelled for the trial of the proceeding.

Mode of  
impaneling  
juries.

**29.** (1) A jury for the trial of a proceeding shall be impanelled as follows, that is to say—

(a) the Registrar shall place in the ballot box, for every name included in the panel of the array, whether it be an array of common or special jurors, a counter inscribed with a number corresponding to the number prefixed to the name in the panel, and, having thoroughly intermixed the counters, shall proceed to draw, one by one, out of the box, nine counters, and, as each counter is drawn, shall write down the number inscribed on the counter, and, opposite to the number, the name in the panel to which that number is prefixed, and call out the name. The juror named shall then enter the jurors' box:

Provided that, if any jurors so drawn and called do not appear and enter the jurors' box, or, in a criminal proceeding, being present, are asked by the Crown to stand by, the Registrar shall proceed in the manner above mentioned until nine jurors have entered the jurors' box. If, from any cause, the full number of nine cannot be made up from the jurors included in the array, the presiding Judge may require as many other jurors present to serve on the jury as may be necessary to complete the full number, and every juror so required shall be liable to serve as a juror for the trial of the said proceeding, and shall, as soon as his name is called, enter the jurors' box.

(b) When nine jurors are in the jurors' box, if any challenges are made, whether peremptorily or for cause, as each challenge is made, it shall be heard and determined, and, if the challenge is allowed, the juror challenged shall leave the box, and another juror be selected in the manner above mentioned, and, on his entering the box, the next challenge, if any, shall be made and determined, and, if it is allowed, the juror challenged shall leave the box, and another juror be selected in his stead, in the manner above mentioned, and shall enter the box.

(c) As soon as nine men are in the jurors' box, if any are not challenged, or have not been successfully challenged, they shall be the jurors impanelled for the trial of the proceeding, and shall then be counted and sworn.

(d) In every criminal proceeding, the person charged shall, before any juror is sworn, be informed of his right, and be given a reasonable opportunity to

challenge whether peremptorily or for cause, before the Registrar begins to administer the oath to any of the jurors, but no challenge shall be allowed after the Registrar has, with the leave of the presiding Judge, begun to administer the oath to any of the jurors impanelled.

(2) Notwithstanding anything hereinbefore contained, where, at any sitting of the High Court, no objection shall be made by any party to a proceeding, the proceeding may be tried by the Judge with the same jury which, at the same Court has previously tried, or been drawn to try, another proceeding, or the Judge may order any of the said jury to whom both parties object, or who is, or are, excused by the Judge, or successfully challenged, to withdraw, and another juror or other jurors to be drawn instead, and may try the first mentioned proceeding with a jury composed of the residue of the original jury and such additional juror or jurors. The Jury, by whom any proceeding is to be tried under this section, shall first be duly sworn for the trial of the proceeding in the same manner as if they had been impanelled under subsection (1).

**30.** Jurors impanelled for the trial of any proceeding shall be sworn in the same manner, subject to the provisions of section 51, and with the same form of oath, in and with which jurors, impanelled in England for the trial of a similar proceeding, might, at the commencement of this Act, be sworn.

Swearing jury.

**31.** Whenever, at the trial of any proceeding, the presiding Judge is of opinion that it is expedient, in the interest of justice, that the jury impanelled to try the proceeding should have a view of any place, or of any real or personal property, connected with the proceeding, the Judge may order such view to be made accordingly, under such conditions as to costs, and generally, as he shall think fit.

View.

**32.** After a jury has been impanelled and sworn for the trial of a proceeding, they may, in the discretion of the presiding Judge, and subject to such conditions as he may think fit, be allowed, at any time before giving their verdict, reasonable refreshment, to be procured in criminal cases at the expense of the Crown, and in civil cases at their own expense.

Refreshment to jury.

Death, absence or incapacity of juror.

**33.** If, during the trial of any proceeding, not being the trial of a capital charge, one of the jury shall die, or become incapable of serving, or shall absent himself, it shall not be necessary to discharge the jury, or to add thereunto another juror, but the trial shall be proceeded with by the remaining eight jurors notwithstanding such death, absence or incapacity.

Separation of jury during adjournments. 5/1968

**34.** (1) Whenever, at any sitting of the High Court, the trial of any person charged with any felony, other than treason, or treason felony, or with any misdemeanour, is adjourned, before the jury begin to consider their verdict, either from one day to another day, or from one hour to another hour of the same day the Judge may permit the jury to leave the Court and separate until the close of the said adjournment, provided the following oath has been previously administered to them in open court—

"You swear that, during any adjournment of this trial of the issue joined between Our Sovereign Lady the Queen and the prisoner at the bar (*or* defendant *as the case may be*) which you have been sworn to try, you will not, whilst separated and until you shall be assembled in Court again, speak with, listen to, or hold any communication, verbal, written or otherwise, with any person whomsoever, other than your fellow jurors impanelled and sworn for the trial of the said issue, on any matter whatever relative to the said trial; and that, upon the termination of every adjournment of the said trial, you will again come into this Court. So help you God."

(2) When the said oath has once been taken by a juror in the course of a trial, it shall not be necessary to administer it to him again during the same trial.

(3) If any juror shall refuse to take the said oath, his refusal shall not prevent the separation or departure of so many of the jurors as shall have taken it, but the juror so refusing shall be kept, during such adjournment by the proper officers sworn, in the usual manner, neither themselves to speak to, nor hold any communication with, such juror touching any matter relative to the said trial.

Verdict.

**35.** A verdict of a jury shall not, in any proceeding, be accepted within two hours after the conclusion of the Judge's summing up, unless it is unanimous; but, after the expiration

of two hours from the conclusion of the summing up, any verdict, in which seven of them agree, may be accepted as the verdict of the whole, unless it is the verdict of guilty, or not guilty, of a capital charge, which shall not be accepted at any time unless it is unanimous.

**36.** If, in any proceeding, no verdict is delivered by a jury within four hours after the conclusion of the summing up of the presiding Judge, and the Judge is satisfied that there is no prospect of the jury agreeing, he may discharge them.

Jury not agreeing may, in certain cases, be discharged.

**37.** Whenever, from any cause, the trial of any proceeding shall prove abortive, the presiding Judge may discharge the jury, and the proceeding may be tried with a new jury, duly impanelled and sworn, either at the same, or, if the Judge so order, at the next sitting of the High Court, in the same manner as if the former abortive trial had not taken place.

New trial in case of abortive trial.

## PART VIII.

### EXCUSES OF JURORS.

Excusing jurors.

**38.** No juror, duly summoned to attend at a sitting of the High Court, shall be entitled to be excused from attendance thereat, on the ground of any exemption, or disqualification, or on any other ground, save and except illness or unavoidable accident, but the Judge presiding at the said Court, or, before the commencement of the sitting, any Judge, or, if no Judge is present in the Territory, the Registrar, may, upon reasonable and sufficient cause being shown upon oath, or where the cause is the state of the juror's health, on a certificate purporting to be signed by a duly qualified medical practitioner, exempt a juror summoned to attend thereat from attendance during the whole or any part of the sitting.

**38A.** Any Judge before whom a case is or may be heard may, in his discretion, on an application made by a woman to be exempted from service on a jury by reason of the nature of the evidence to be given or of the issues to be tried, grant such exemption.

Exemption of woman in certain cases.

14/1963.

## PART IX.

## FINES OF JURORS.

Fines.

**39.** (1) As soon as may be convenient after the opening of a sitting of the High Court, the names of the jurors impanelled to serve thereat shall be called, and every juror, who, having been duly summoned, does not answer to his name, after it has been thrice called, may be fined by the presiding Judge any sum not exceeding four dollars and eighty cents.

(2) Whenever at any sitting of the said Court a jury is being impanelled and sworn for the trial of any proceeding—  
 (a) every juror duly summoned to attend the Court, provided he has not been excused, and provided he is not at the time serving on a jury for the trial of another proceeding; and

(b) every juror present in Court and required by the Judge to serve on a jury under the provisions of subsection (1) of section 29,

who fails to answer to his name when called, or refuses to enter the jury box, or leaves the jury box without the permission of the Judge, or refuses to be sworn for the trial of the proceeding, may be fined by the presiding Judge any sum not exceeding two hundred and forty dollars.

(3) Every juror sworn to try a proceeding at a sitting of the High Court, who shall leave the jury box without the permission of the presiding Judge, or who, when the jury are allowed to separate during any adjournment of the Court, fails to return into Court at the termination of the adjournment, may be fined by the presiding Judge any sum not exceeding two hundred and forty dollars.

Registrar to record fines.

**40.** Whenever a juror is fined under the preceding section of this Act, the Registrar shall record in his minute book the name of the juror and the amount and cause of the fine.

Reduction or remission of fines.

**41.** (1) Whenever a juror is fined under this Act, the presiding Judge may, at any time during, or within one week after the closing of the Court, upon sufficient cause being shown, reduce or remit the fine.

(2) Whenever a Judge, under this section, reduces, or remits, any fine, he shall give due notice of such reduction or

remission, to the Registrar, and the Registrar shall thereupon duly note such remission or reduction, accordingly, in the margin of his minute book, opposite to the entry therein of the imposing of the fine.

Payment and recovery of fines.

**42.** (1) Where any fine has been imposed on a juror under this Act, and the fine has not been remitted, the amount of the fine, or, if the fine has been reduced, the amount to which the fine has been reduced, shall be paid to the Registrar before the closing of the session of the Court then in progress, and, in case of default, the Registrar shall immediately after the closing of the said session issue a warrant, directed to the Provost Marshal, requiring him to levy by distress and sale of the goods and chattels of the juror, the amount of the fine, or, if the fine has been reduced, the amount to which the fine has been reduced, and every such warrant shall be executed in the same manner as a writ of *fiere facias* in the High Court.

(2) Where any such levy is made, the amount of the fine, or, if the fine has been reduced, the amount to which the fine has been reduced, shall, together with the reasonable expenses of the levy, be paid out of the proceeds thereof, and the surplus, if any, of the proceeds of the levy shall be returned to the juror.

(3) In case any warrant is issued, as in this section provided, and no goods and chattels of the juror can be found on which to levy, or, in case any levy is made as in this section provided, and the proceeds of the levy shall be insufficient to pay the reasonable expenses of the levy and the amount to recover which the levy was made, any Judge, on the application of the Registrar, such application being supported by an affidavit, or affidavits, verifying the facts, may, by warrant of commitment under his hand directed to the Provost Marshal and the keeper of the prison, order the juror to be imprisoned for any period not exceeding one month, unless the amount due in respect of the warrant to levy and the execution thereof, is sooner paid, and may issue such further process as may be necessary to enforce the said order.

Provided that, where any application is made under this section for a warrant of commitment, the Judge may adjourn the application and order notice thereof to be served on the juror.

## PART X.

## PAYMENT OF JURORS.

Scale in civil proceedings.

**43.** (1) Every juror who attends at the Court for the trial of a civil proceeding in obedience to a summons served upon him in that behalf, under this Act, shall be entitled to receive the sums in this subsection mentioned, that is to say—

(a) in the case of special jurors summoned as such and duly sworn for the trial of the proceeding, the sum of one dollar and forty-four cents for each day or part of a day during which they shall serve as jurors;

(b) in the case of special jurors summoned as such but not sworn for the trial of the proceeding, the sum of one dollar and forty-four cents only;

(c) in the case of common jurors duly sworn for the trial of the proceeding, the sum of ninety-six cents for each day or part of a day during which they shall serve as jurors;

(d) in the case of common jurors not sworn for the trial of the proceeding, the sum of ninety-six cents only;

(e) in the case of all jurors, the expenses actually incurred in travelling to the Court where the civil proceeding is tried, but not exceeding twelve cents per mile for every mile of the journey travelled:

Provided that jurors not sworn for the trial of a proceeding shall be entitled to receive the expenses incurred for travelling in respect of the first day's attendance only.

(2) Every common juror who attends at the High Court for the trial of criminal proceedings in obedience to a summons served upon him in that behalf under this Act, and who is duly sworn for the trial of a civil proceeding, shall be entitled to receive—

(a) the sum of ninety-six cents for each day or part of a day during which he serves as a juror in the civil proceeding.

(b) the expenses actually incurred in travelling to the Court where the civil proceeding is tried, but not exceeding twelve cents per mile:

Provided that no juror shall receive an allowance under this enactment who shall be entitled to receive the allowance provided by subsection (1) of section 47.

(3) Every juror who by reason of his service as a juror in the trial of a civil proceeding is necessarily absent from his home at night shall be entitled to receive in addition to the sums hereinbefore in this section mentioned, the following sums, that is to say—

(a) in the case of a special juror, for each night while so absent, the sum of ninety-six cents;

(b) in the case of a common juror, for each night while so absent, the sum of forty-eight cents.

**44.** (1) No array of special jurors shall be impanelled in any civil proceeding, unless the party applying for the impanelling shall first deposit with the Registrar such sum as the Registrar may think fit, for the payment, in accordance with section 43, of such of the jurors, included in the said array, as may afterwards be impanelled as a jury for the trial of the said proceeding.

Deposit in advance of jury money.

(2) No common jury shall be impanelled for the trial of any civil proceeding, unless the party applying for the impanelling has first deposited with the Registrar, such sum as the Registrar may think fit, for the payment of the jury, in accordance with the provisions of section 43.

(3) Where the decision of the Registrar as to the amount of any deposit payable under this section is questioned by the party by whom it is to be paid, then, if or whenever a judge is present in the Territory, the Judge shall hear the Registrar and the party, and decide what shall be the amount of the deposit.

**45.** (1) Where any deposit is made, in any civil proceeding, under the provisions of section 44, the Registrar shall, at the close of each day during which the jury serve on the trial of the proceeding, pay, out of the deposit, to each of the jurors impanelled, the sum to which he is entitled under the provisions of section 43, and, if, after the jury have been discharged, the deposit is not yet exhausted, shall pay the surplus to the party by whom the deposit was made, but, if and whenever, at the close of any day, the money deposited for the payment of the jurors is exhausted, he shall at once report the fact to the presiding Judge, who shall forthwith discharge the jury, unless the party, at whose instance the jury was impanelled, or any other party to the proceeding, shall forthwith deposit with the Registrar such further sum as the Judge shall think fit for the payment of the jury as aforesaid.

Payment of jurors during trial.

(2) Whenever a jury is discharged under the provisions of this section, the trial shall proceed before the Judge alone in the same manner as if the jury had not been impanelled.

Costs consequent on trial by jury.

**46.** (1) Whenever any civil proceeding is tried by a common jury, and the costs of the trial are awarded to the party to the proceeding at whose instance the jury was impanelled, such costs shall, unless the presiding Judge otherwise order, include the moneys which have been paid to the jury under the provisions of section 45.

(2) Whenever a civil proceeding is tried by a special jury, and the costs of the trial are awarded to the party to the proceeding at whose instance the special jury was impanelled, the costs so awarded shall not include any of the additional costs occasioned by the proceeding being tried by a special jury instead of a common jury, unless the Judge, before whom the proceeding was tried shall, before the taxation of the costs, certify in writing, under his hand, that the same was, in his opinion, a proper proceeding to be tried by a special jury.

Provided that, in default of such certificate, the party to whom the costs have been awarded, shall unless the Judge presiding at the trial otherwise order, be allowed the sums, which would, under the provisions of section 45, have been paid to a common jury.

Rules for payment of jurors out of public funds.

**47.** (1) The Governor in Council may make rules authorising the payment, of such allowances, on such scales and in such cases, as he may think fit, to jurors attending at the High Court, in pursuance of summonses under this Act, or impanelled under the provisions of this Act:

Provided that no juror shall receive any allowance, under the said rules, in respect of any day on which he has served on a jury impanelled and sworn for the trial of a civil proceeding.

(2) The said allowances may include compensation for loss of time, and expenses paid, or incurred, in going to, attending at, and returning from, the said Court.

(3) All allowances payable under any such rules, shall be paid, on the warrant of the Governor, out of the Treasury.

## PART XI.

### GENERAL PROVISIONS.

**48.** No alien shall be entitled to be tried by a jury *de medietate linguae*, but every alien shall be triable by a jury impanelled and sworn under this Act, in the same manner as if he were a British subject. Trial of aliens.

**49.** Where any person holds the combined offices of Registrar and Magistrate, he may perform the duties imposed on him by this Act in respect of each of the said offices, notwithstanding such combination. Combination of offices.

**50.** Whenever the taking of an oath is required under this Act, the provisions of the Oaths Act shall apply. Affirmations in lieu of oath. Cap. 51.

**51.** Whenever a juror is sworn, under the provisions of this Act, upon a Book, he shall not be required to kiss the Book, but shall hold it in his right hand, while the oath is being administered to him, and when the oath has been administered to him, shall say "I will," or such other words of assent as shall be directed by the presiding Judge. Kissing the Book in swearing.

5/1982.

### FIRST SCHEDULE.

S. 6

The Governor and his spouse.

Members of the Executive Council and their spouses.

The Clerk of the Executive Council.

Members of the Legislative Council and their spouses.

The Clerk of the Legislative Council.

Magistrates and their clerks.

Police Officers.

Keepers and other officers of prisons and the masters and officers and nurses of hospitals.

Officers of courts of law, and barristers and solicitors in actual practice and their clerks.

Generally recognised Ministers of religion.

Properly qualified medical practitioners in actual practice.

Managers of licensed banks.

All consular representatives of foreign powers being of foreign nationality, and any such representatives being of British nationality as the Governor in Council may, by notice published in the Gazette, declare to be exempt from service on juries: Provided that any such exemption may be cancelled by the Governor in Council at any time.

SECOND SCHEDULE.

S. 8

JURORS' LIST FOR THE YEAR 19

Christian and Surname at length.	Place of abode.	Calling.	Nature of Qualification.	Remarks.

NOTICE.

The above are the persons whom it is proposed should be inserted in the Jurors' Register for the year 19 . The list will be revised at the sittings of the Magistrates' Court to be holden at \_\_\_\_\_, on the \_\_\_\_\_ day of \_\_\_\_\_, at \_\_\_\_\_ o'clock, and the Magistrate may then make such changes therein as he may think fit, either by adding or striking out names, or otherwise. Any person, whether included or not included in the said list, may then appear personally, or by his counsel or solicitor, and claim that he is, or is not, liable to serve as a common or special juror, as the case may be, or, if unable to attend personally, may give the Magistrate notice in writing of his claim, supporting it by such evidence as he may think fit, and the Magistrate will then, as far as he reasonably can, inquire into the claim. The Magistrate's decision in revising the said list will be conclusive, and all persons included in the said list, after it has been revised by the Magistrate, will be liable during the year 19 to be summoned and serve as common or

special jurors, as the case may be, notwithstanding any disqualification or exemption other than illness or unavoidable accident.

Dated this \_\_\_\_\_ day of \_\_\_\_\_ 19 .  
Registrar.

THIRD SCHEDULE.

S. 10 (4).

I CERTIFY that this list has been revised by me, and that it is, to the best of my knowledge, information and belief, a true and correct list of the persons who are liable to serve in the Territory as common jurors, and that such, and such only, of the said persons as are also liable to serve as special jurors, are, in the said list, distinguished as such in the prescribed manner.

Dated this \_\_\_\_\_ day of \_\_\_\_\_ 19 .  
Magistrate.

FOURTH SCHEDULE.

S. 16 (1).

PRELIMINARY PANEL

FOR THE SITTING OF THE HIGH COURT TO BE HELD ON THE \_\_\_\_\_ DAY OF \_\_\_\_\_ 19

Name of juror.	Whether taken from last Preliminary Panel or direct from Jurors' Register.*	Whether impanelled and if not, why not.

\* Put P.P. for last Preliminary Panel and J.R. For Juror's Register.

CHAPTER 122.

NON-BELONGERS LAND HOLDING REGULATION.

AMENDED BY ACT 6 OF 1994  
" ACT 2 OF 1998 (1st February, 1923.)  
" Act 9 + 35 | 2004

14/1922  
3/1949  
S.R.O. 22/1956  
10/1960.  
9/1961  
9/1970  
3/1972  
31/1977  
8/1980  
8/1982  
5/1986  
13/1987

1. This Act may be cited as the Non-belongers Land Holding Regulation Act.

Short title.  
31/1977.

2. In this Act—

Interpretation.

“banker” means any person, body corporate, partnership or unincorporated body of persons lawfully carrying on the business of banking in the Territory who holds a general banking licence under section 5 (2) (a) of the Banking Ordinance;

“debenture” includes every mortgage or charge by a company whether floating or otherwise on any of the company’s property or on its undertaking or on its uncalled capital and also every obligation by the company (not being a bill of exchange or promissory note) for the payment of a debt or the repayment of money lent or to be lent;

“member of a company” includes any person entitled under the memorandum or articles or any resolution of the company to participate in its assets or in its divisible profits but a servant or agent of the company shall not be deemed to be a member by reason only that the amount of his emoluments depends wholly or partially on the amount of the company’s profits;

“mortgage” includes every instrument creating a mortgage or charge on land except a debenture;

“non-belonger” means any person other than a person deemed to belong to the Virgin Islands under the provisions of section 2 (2) of the Constitution and includes a non-belonger company;

13/1987.

“non-belonger company” means—

13/1987.

(i) any company incorporated outside the Territory;

(ii) any company incorporated in the Territory and to which the provisions of section 6 apply;

“share” includes stock and in the case of a company not having a share capital the interest of a member in the assets of the company;

“unlicensed non-belonger” means a non-belonger who does not hold a licence granted under this Act.

#### PART I.

##### HOLDING OF LAND BY UNLICENSED NON-BELONGERS.

Forfeiture of land and mortgages held by unlicensed aliens.

**3.** Subject to the provisions of this Act, neither land in the Territory nor a mortgage on land in the Territory shall, after the commencement of this Act, be held by an unlicensed alien, and any land or mortgage so held shall be forfeited to Her Majesty:

Provided that—

9/1961.

(a) land may be acquired and held by on an annual tenancy or for any less interest for the purposes of his residence, trade, or business, but an unlicensed non-belonger shall not so hold more than five acres of land in all;

9/1961.

(b) land or any interest therein acquired by a banker in the exercise of any right of foreclosure of a mortgage held by such banker shall not be forfeited to Her Majesty while such land or interest therein is held by such banker within a period of five years from the date of such acquisition or within such extended time (if any) as the Governor may decide to be reasonable;

13/1987.

(c) land or any interest therein acquired by an unlicensed non-belonger by sale from a banker who—

(i) holds such land or interest therein under the preceding paragraph (b); or

(ii) sells such land or interest therein in the exercise of any right or power as mortgagee under a mortgage held by such banker,

shall not be subject to the provisions of this Act;

*Amended  
25/87*

(d) land acquired by an unlicensed non-belonger under a will or on an intestacy shall not be forfeited if, within one year from the death of the testator or intestate or within such extended time (if any) as the Governor may decide to be reasonable, the land is sold or the non-belonger obtains a licence to hold the land;

(e) a mortgage acquired by an unlicensed non-belonger under a will or on an intestacy shall not be forfeited; but the non-belonger shall not unless he obtains a licence to hold the mortgage, be entitled to foreclose or enter into possession of the mortgage land;

(f) (i) nothing in this Act shall affect the interest of a judgment creditor in the land of his judgment debtor, but save as hereinafter provided the debtor's land shall not be acquired by an unlicensed non-belonger; 9/1961.

(ii) land or any interest therein acquired by an unlicensed non-belonger on sale in the enforcement of any right or power as mortgagee under a mortgage held by a banker shall not be subject to the provisions of this Act; 13/1987.

(g) nothing in this Act shall affect the estate or interest of a non-belonger in any land or mortgage held by him at the commencement of this Act;

(h) nothing in this Act shall affect any citizen or subject of a foreign state upon whom there has been conferred by Treaty the right to hold land within the Territory or the Government of any foreign state in so far as such Government may be enabled to own land within the Territory for consular use. 13/1987.

4. (1) The Governor may grant a licence—

(a) to a non-belonger;

(b) to a non-belonger company that has been granted any licence required under section 9,

to hold any land or any interest therein as owner, tenant or mortgagee.

Licenses for non-belongers and non-belonger companies to hold land or mortgages. 13/1987.

(2) A licence granted under subsection (1), other than a licence granted under the provisions of the Banking Act, to hold a general banking licence shall—

(a) be subject to such terms and conditions as the Governor may deem fit; and

(b) be operative only as to the person or company, as the case may be, and the land described and as to the interest specified therein.

(3) A licence granted under this Act shall be of no force or effect until registered in the Record Office of the Territory.

(4) On the breach of any condition in a licence granted under this Act, the land or interest therein of the non-belonger or the non-belonger company held under authority thereof shall be forfeited to Her Majesty or such non-belonger or non-belonger company shall be subject to such penalty as the Governor may determine.

Effect of  
forfeiture.

5. (1) Land or a mortgage forfeited under this Act shall not vest in Her Majesty unless and until a judgment is obtained declaring the forfeiture; but on such judgment being obtained the title of Her Majesty shall relate back to and commence at the time when the forfeiture took place.

(2) A judgment declaring a forfeiture of land shall operate to vest in Her Majesty all the estate and interest of the non-belonger in the forfeited land.

(3) A judgment declaring a forfeiture of a mortgage shall operate to vest in Her Majesty all the estate and interest of the non-belonger in the mortgaged land subject to any right of redemption subsisting therein, and also to vest in Her Majesty the right to recover and receive and to enforce all securities for the mortgage money.

## PART II.

### RESTRICTIONS ON COMPANIES UNDER NON-BELONGER CONTROL HOLDING OR INTENDING TO ACQUIRE LAND OR ANY INTEREST THEREIN.

6. (1) For the purposes of this Act a company shall be deemed to be under non-belonger control—

(a) if any of its directors is an unlicensed non-belonger,

(b) if more than one-third of the votes exercisable at any meeting of the company or which would be exercisable if a meeting of the company was held are vested in unlicensed non-belongers, or

13/1987.

Companies  
under  
non-belonger  
control.

Non-belonger

(c) in the case of a company if more than one-third of the shares are held by non-belongers,

(d) in the case of a company if more than one-third of the capital, if more than one-third of the shares are unlicensed non-belongers,

(e) if the company has, within twelve months of the date of the company who a non-belonger or one-third of the shares of the company as directors,

(f) if more than one-third of the outstanding shares of the unlicensed non-belongers,

(g) if the company for twelve months of the non-belongers exercise of the right on all the debentures or other securities outstanding.

(2) Every company to which the provisions of this Act apply, shall make arrangements for the grant of any licence required.

7. Shares or debentures acquired by an unlicensed non-belonger on sale in consideration on sale in the case of shares held by a banker shall be subject to the provisions of this Act unless the sale is made by a person other than the banker. In such sale a person other than the banker shall pay to such banker a sum in respect of the interest and cost unpaid on the shares on the reason of its enforcement.

8. Notwithstanding anything to the contrary relating to companies, associations of companies, or any instrument for securing a loan, a company incorporated in the Territory shall not hold land or interest in land

(a) restrict the issue of shares or debentures

(c) in the case of a company having a share capital, if more than one-third of the nominal amount of its issued shares are held by unlicensed non-belongers, or

(d) in the case of a company not having a share capital, if more than one-third in number of its members are unlicensed non-belongers, or

(e) if the amount paid or payable in any period of twelve months as dividends to those members of the company who are unlicensed non-belongers exceeds one-third of the total amount paid or payable by the company as dividends in the same period, or

(f) if more than one-third of the nominal value of the outstanding debentures of the company are held by unlicensed non-belongers, or

(g) if the annual interest on the debentures of the company for the time being held by unlicensed non-belongers exceeds one-third of the annual interest on all the debentures of the company for the time being outstanding.

(2) Every company to which the provisions of subsection (1) apply, shall make an application to the Governor for the grant of any licence required under the provisions of section 9. 13/1987.

7. Shares or debentures of any company which are acquired by an unlicensed non-belonger for valuable consideration on sale in the enforcement of any charge or lien held by a banker shall not thereafter be subject to the provisions of this Act until such shares or debentures are held by a person other than a non-belonger, unless at the time of such sale a person other than a non-belonger shall have offered such banker a sum in cash sufficient to pay all principal, interest and cost unpaid and due upon such judgment and by reason of its enforcement. Shares and debentures held as security. 31/1977.

8. Notwithstanding anything contained in any law relating to companies, or in the memorandum or articles of association of the company, or in any debenture, or in any instrument for securing any issue of debentures, a company incorporated in the Territory holding or intending to acquire land or interest in land may— Power for a company to restrict the holding by non-belongers of its shares and debentures. 13/1987.

(a) restrict or prohibit the issue or transfer of its shares or debentures to non-belongers;

(b) restrict or prohibit the holding by non-belongers of share warrants and of debentures transferable by delivery;

(c) refuse to register a non-belonger as a member or as the holder of a debenture;

(d) require such evidence as it may think fit as to the nationality of any person desiring to be registered as a member or as the holder of a debenture, and as to the nationality of the holder of a share warrant or debenture transferable by delivery or of a coupon or other document entitling the bearer to payment of any dividend or interest.

Licences for non-belongers to hold directorships, shares or debentures. 13/1987.

**9.** (1) Where a company has made an application under the provisions of section 6, the Governor may, if he thinks fit, grant licences, either subject to conditions or not, for all or any of the following matters, that is to say—

(a) for a non-belonger to be a director of a company,

(b) for a non-belonger to vote at meetings of a company,

(c) for a non-belonger to hold shares or debentures, and

(d) for a non-belonger to be a member of a company having no share capital:

Provided that a licence shall be operative only as to the company named therein and as to the number of votes, shares, or debentures specified therein.

(2) On breach of any condition in a licence granted under this section, the licensee shall forthwith cease to be a director of the company and to be entitled to vote at any meeting of the company, and all shares and debentures in the company held by the licensee shall be forfeited to Her Majesty.

Effect of forfeiture of shares.

**10.** (1) A judgment declaring that a share or debenture has become forfeited under this Act shall operate to vest in the Governor the right to transfer that share or debenture and to recover and receive dividends or income thereof as from the time when the forfeiture took place.

(2) A share or debenture which has been declared to be forfeited under this Act shall be sold or otherwise dealt with for the benefit of the Territory as the Governor may direct.

11. Repealed.

31/1977.

12. (1) A company shall cause a copy of every licence received by it to be recorded in the company's register of members or debenture holders (as the case may require) opposite the name of the licensee, and to be endorsed on every share certificate or debenture issued in respect of any share or debenture held by the licensee.

Registration of licence by company.

(2) If a company makes default in complying with the requirements of this section it shall be liable on summary conviction to a fine not exceeding twenty-four dollars for every day during which the default continues, and every director, manager and officer of the company who knowingly and wilfully authorises or permits the default shall be liable on summary conviction to a like penalty.

13. (1) A company shall not without the consent of the Governor issue a share warrant or debenture transferable by delivery in respect of any share or debenture held by a non-belonger under a licence granted under this Act.

Restriction on the issue of share warrants or debentures to bearer to licensed non-belongers.

(2) If a company issues a share warrant or a debenture transferable by delivery in breach of the provisions of this section it shall be liable on summary conviction to a fine not exceeding four hundred and eighty dollars in respect of each share specified in the warrant and in respect of each debenture, and every director, manager, and officer of the company who knowingly and wilfully authorises or permits such issue shall be liable on summary conviction to a like penalty.

14. Notwithstanding anything contained in any law relating to companies, or in the memorandum or articles of association of the company, or in any shares, debentures, or in any instrument for securing the issue of shares or debentures, no transfer of a share or debenture held by a non-belonger or a non-belonger company under a licence shall be made unless—

Transfer of shares or debentures held under licences. 13/1987.

(a) such transfer is by an instrument in writing;

(b) such instrument has been submitted to the Commissioner of Inland Revenue for assessment of stamp duty under section 21;

(c) the requisite stamp duty, assessed on such instrument has been paid; and

(d) the consent of the Governor has been obtained.

Fees.  
31/1977.

**14A.** (1) Every application for a licence under section 4 or 9 shall be accompanied by a licence application fee of fifty dollars in respect of each person in whose favour it is desired that a licence shall issue.

(2) All moneys received under the provisions of subsection (1) shall be paid forthwith into the Consolidated Fund and shall not be refundable in the event of an application being unsuccessful.

(3) In the event of a successful application for a licence under section 4 or 9 such licence shall be granted subject to the payment of a licence fee of one hundred and fifty dollars in respect of each person in whose favour the licence shall issue, which fee shall be in addition to any fee paid under subsection (1) and which shall be paid by the licensee into the Consolidated Fund before such licence is registered in the Record Office of the Territory.

### PART III.

#### RESTRICTION ON TRUSTS IN FAVOUR OF NON-BELONGERS.

Restriction on  
trusts in favour  
of non-belongers.

**15.** (1) This section applies to the following property only, namely land situate in the Territory, mortgages of such land, and shares and debentures of any company incorporated in the Territory.

(2) With a view to preventing evasion of the foregoing provisions of this Act, no person shall without the licence of the Governor hold any property to which this section applies in trust for a non-belonger, and any such property so held shall be forfeited to Her Majesty.

(3) Any person who intentionally contravenes the provisions of this section shall be guilty of a misdemeanour punishable summarily by a Magistrate or on indictment:

Provided that the punishment on summary conviction shall not exceed a fine of ninety-six dollars.

(4) Nothing in this Act shall apply to a trust in favour of a non-belonger subsisting at the commencement of this Act.

(5) In  
arrangements  
and whether  
to which the  
rights attached  
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(5) In this section the expression "trust" includes any arrangement whether written or oral, expressed or implied, and whether legally enforceable or not, whereby any property to which this section applies or any interest therein or any rights attached thereto is or are held for the benefit of or to the order or at the disposal of a non-belonger but does not include—

(a) the duties incident to a mortgage;

(b) the duties of a satisfied mortgagee to the mortgagor, if within three months after satisfaction of the mortgage the mortgaged property is vested in the mortgagor or his interest therein is extinguished;

(c) the duties of a vendor to the purchaser pending payment of the purchase money, or after payment of the purchase money, if within three months after such payment the property sold is vested in the purchaser or his interest therein is extinguished;

(d) the duties of a trustee in bankruptcy to the bankrupt or his creditors; or

(e) the duties of a trustee for the purpose of any composition or scheme of arrangement for the payment of debts to the debtor or his creditors.

**16.** The provision of this Act, as to licences and the effect of breach of a condition in a licence shall apply to land, mortgages, shares and debentures intended to be held or held in trust for a non-belonger in like manner as it applies to land, mortgages, shares or debentures intended to be held or held by a non-belonger.

Licences to hold property in trust for non-belongers.

#### PART IV.

##### PROCEDURE AND EVIDENCE.

**17.** For the purposes of establishing as forfeiture under this Act the Attorney General may, in accordance with the procedure provided by the Crown Proceedings Ordinance, apply to the High Court for a declaration that any right, title or interest sought to be affected is forfeited to the Crown.

Procedure.

Cap. 21.

**18.** (1) Without prejudice to any other right to discovery the Attorney General may in proceedings for

Discovery.

establishing a forfeiture under this Act administer interrogatories to and obtain discovery of documents from a defendant as to any matter or document tending to prove his alienage or the alienage of any other person or to discover any land, mortgage, share or debentures held by him or in trust for him or as to any relevant matter or document.

(2) It shall not be a valid ground for refusing to answer any such interrogatory or to disclose or produce any document that the answer or document might or would expose the defendant or any other person to the risk of a prosecution under this Act:

Provided that in the prosecution of a defendant under this Act, the fact that he has disclosed any matter in answer to an interrogatory administered under this section and disclosed or produced any document in compliance with an order for discovery obtained under this section shall not be admissible in evidence.

Regulations  
31/1977.

**19.** The Governor may make regulations, not inconsistent with this Ordinance, prescribing all matters which are required or permitted to be prescribed or which are necessary or convenient to be prescribed for carrying out or giving effect to this Ordinance.

Section 14(2) of  
Cap. 67 not to  
apply.  
31/1977.

**20.** The provisions of section 14(2) of the Registration and Records Ordinance shall not apply to any licence granted under this Act.

Instruments  
executed for  
transfer of right,  
title or interest of  
property liable to  
stamp duty  
specified in  
Schedule.  
Cap. 212.  
13/1987.

**21.** Notwithstanding the provisions of the Stamp Act, every instrument executed conveying any right, title or interest of any property, to a non-belonger shall be liable to stamp duty at the rate specified in the Schedule hereto, in lieu of such duty under the Stamp Act.

Provisions of this  
Act to prevail  
over any other  
law.  
8/1980.

**22.** Where there is any conflict or inconsistency between the provisions of this Act and any other law the provisions of this Act shall prevail over the provisions of such other law.

SCHEDULE

S. 21 8/1980.  
8/1982.  
5/1986.

Conveyance or Transfer on sale — 8% of the consideration or the market value of the property, whichever is higher.

Conveyance or Transfer of any other kind — ~~8%~~<sup>4</sup>% of the market value of the property.

Conveyance or Transfer by way of security of any property or of any security —

(a) by a non-belonger —

(i) to a non-belonger carrying on the business of banking in the Territory under a general banking licence issued under the Banking Ordinance — 5% of the amount secured.

(ii) to any other non-belonger — 5% of the market value of the property or the amount secured, whichever is higher.

(b) by a person other than a non-belonger — to any non-belonger — 2½% of the amount secured.

Lease —

(a) for a term of 20 years or more — ~~8%~~<sup>1½</sup>% of the total of rent payable for 20 years and other money consideration, however described, to be paid under the lease.

(b) for a term of less than 20 years — ~~8%~~<sup>1½</sup>% of the total of rent payable for the period and other money consideration, however described, to be paid under the lease.

No. 1 of 1950. *Virgin Islands Constitution.*

LEEWARD ISLANDS.

[L.S.]

I ASSENT,

P. D. MACDONALD,

Acting Governor.

21th July, 1950.

# LEEWARD ISLANDS.

## No. 1 of 1950.

An Act to alter the present legislative authority of, and to provide for the constitution of a Legislative Council for, the Presidency of the Virgin Islands.

WHEREAS by section 10 of the Leeward Islands Act, 1871, it is enacted that, subject as is therein mentioned, the Governor with the consent of the General Legislative Council may make laws for the Leeward Islands or any part thereof, on, among other matters, such subjects in respect of each Presidency as the Island Legislature thereof may declare to be within the competency of the General Legislature:

Preamble.  
34 & 35 Vict,  
c. 107.

AND WHEREAS by the Constitution Ordinance, 1902, of the Presidency of the Virgin Islands, it is enacted and declared that the constitution of the said Presidency is a subject within the legislative competency of the General Legislature:

1/1902.

AND WHEREAS in pursuance of the said enactment and declaration the Virgin Islands Act was passed whereunder the Legislative Council then constituted for the Presidency of the Virgin Islands ceased to be determined after the commencement of the said Act and the Governor of the Leeward Islands was thereunder empowered to make Ordinances for the peace, order and good government of the said Presidency:

Cap. 82.

AND WHEREAS it is expedient that the constitution of the said Presidency of the Virgin Islands should now be altered and that a Legislative Council be constituted for the said Presidency in manner hereinafter appearing:

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LEEWARD ISLANDS.

2 *Virgin Islands Constitution*, No 1 of 1950

BE IT THEREFORE ENACTED by the Governor and General Legislative Council of the Leeward Islands as follows:—

Short title.

1. This Act may be cited as the Virgin Islands Constitution Act, 1950.

Interpretation.

2. (1) In this Act, unless the context otherwise requires—

“clear income” means the gross income received by a person for his own use, less such payments made by him as would be allowable as deductions—excepting those allowed in respect of earned income, residence in the Presidency, British nationality, a wife, children and life insurance premiums—in arriving at a chargeable income under the provisions of any Income Tax Ordinance, or regulations made thereunder, for the time being in force in the Presidency;

“Commissioner” means the person for the time being holding the office of Commissioner of the Presidency and includes every person for the time being acting as Commissioner in his stead;

“Council” means the Legislative Council of the Presidency;

“dollars” mean dollars in the currency of the Colony;

“election” means an election of members to the Council;

“minister of religion” means any clergyman, minister, priest, or other person who exercises spiritual functions or performs the offices of religion for or in respect of any Christian or other Church, community or body within the Presidency;

“Proclamation” means a written or printed notice under the hand of the Governor, published by his order in the Presidency;

of the Virgin Islands, 1951. 3 ISLANDS.

“Presidency” means the Presidency of the Virgin Islands in the Colony;

“public office” means any office of emolument in the service of the Crown, or of a municipal corporation within the Presidency;

“registering officer” means a person appointed as such by the Governor in respect of the registration of voters.

(2) References in this Act to His Majesty's dominions shall have effect as if they included references to all British protectorates and British protected states and to all territories administered by the Government of any part of His Majesty's dominions under the trusteeship system of the United Nations.

(3) For the purposes of this Act a person shall not be considered to hold an office of emolument under the Crown by reason only that he is in receipt of a pension or other like allowance in respect of service under the Crown; and if it shall be declared by any law in force in the Presidency that an office shall not be an office of emolument under the Crown for all or any of the purposes of this Act, this Act shall have effect accordingly as if such law were enacted therein.

(4) This Act shall be construed—

(a) as if subsection (1) of section 1 of the India (Consequential Provision) Act, 1949, applied to it in the same way as that subsection applies to laws in force on the date mentioned in that subsection; and

12, 13 & 14  
Geo. 6. c. 92

(b) as if subsection (2) of section 3 of the British Nationality Act, 1948, as interpreted by subsection (1) of section 1 of the Ireland Act, 1949, and subsection (2) of section 1 of the Ireland Act, 1951, applied to it as if those subsections applied to laws in

11 & 12 Geo. 6.  
c. 56

12 & 13 Geo. 6.  
c. 41

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LEEWARD ISLANDS. 4 *Virgin Islands Constitution. No. 1 of 1950.*

force at the dates of the commencement of those Acts respectively.

Abrogation of power of Governor to legislate and constitution of Legislative Council.

3. From and after the coming into operation of this Act, the power vested in the Governor to make Ordinances for the peace, order and good government of the Presidency shall cease and determine, and there shall be in and for the Presidency a Legislative Council which shall be constituted in such manner and have such powers as are hereinafter provided.

Composition of Council.

4. The Council shall be composed of three official members, two nominated members and four elected members.

Official members.

5. (1) The official members shall be—

(a) The Commissioner as President.

(b) Two other persons holding office in the public service of the Colony or the Presidency, appointed by office or by name by His Majesty by any Instruction or Warrant under the Royal Sign Manual and Signet, or by the Governor by Instrument under the Public Seal of the Presidency in pursuance of instructions from His Majesty through the Secretary of State.

Nominated members.

(2) The nominated members shall be such persons not holding public office as may from time to time be appointed by His Majesty by any Instruction or Warrant under the Royal Sign Manual and Signet, or by the Governor by Instrument under the Public Seal of the Presidency in pursuance of instructions from His Majesty through the Secretary of State.

Elected members.

(3) The elected members shall be persons qualified as hereinafter provided and elected in manner provided by or in pursuance of any law enacted under this Act.

Precedence of members.

6. The members of the Council shall take precedence as His Majesty may specially assign and in default thereof, first the official members according to the priority of the Instruments appointing them to be members or, if appointed by the same

Instrument, according to the order in which they are named therein; secondly, the nominated and elected members according to the respective dates of the Instruments appointing them or upon which they were declared elected, as the case may be.

If as regards two or more members other than official members such dates coincide, the members shall take precedence—

(a) in the case of two nominated members appointed by the same Instrument, in the order in which they are named therein;

(b) in the case of two or more elected members, not having obtained the same number of votes, according to the number of votes obtained by each;

(c) in any other case according to the alphabetical order of their names.

7. The Commissioner may summon to the Council the person for the time being performing the functions of head of any Government department in the Colony notwithstanding that such person may not be a member of the Council, when in the opinion of the Commissioner the business before the Council renders the presence of such person desirable. Any person so summoned shall be entitled to take part in the proceedings of the Council relating to the matter in respect of which he was summoned but shall not thereby become a member of the Council and shall not have the right to vote in the Council.

Power to summon officials to attend meetings of Council.

8. (1) Whenever the functions of an office, the holder of which is *ex-officio* a member of the Council, are being lawfully discharged by some other official member of the Council, whether appointed by office or by name or whenever any official member shall be declared by the Governor by Instrument under the Public Seal of the Presidency to be incapable of acting as a member of the Council, or be suspended from the exercise of his functions as a member or be absent from the Presidency, the Governor may by Instrument under the Public Seal of the Pres-

Provisional appointment of official and nominated members.

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Presidency appoint some other person holding public office under the Government of the Colony or the Presidency to be provisionally a member of the Council to fill the vacancy thereby created in the number of the official members. Every such provisional appointment may be disallowed by His Majesty through the Secretary of State, or may be revoked by the Governor by any such Instrument as aforesaid.

(2) Whenever any nominated member of the Council shall be declared by the Governor by Instrument under the Public Seal of the Presidency to be incapable of acting as a member of the Council, or be suspended from the exercise of his functions as a member or be absent from the Presidency, the Governor may by Instrument under the Public Seal of the Presidency appoint some other person to be provisionally a member of the Council in the place of such member. Every such provisional appointment may be disallowed by His Majesty through the Secretary of State, or may be revoked by the Governor by any such Instrument as aforesaid.

(3) The Governor shall without delay report to His Majesty through the Secretary of State every provisional appointment of any person as a member of the Council.

(4) Every person provisionally appointed shall be to all intents and purposes a member of the Council until the next dissolution of the Council after his appointment or until his appointment shall be disallowed or revoked or superseded by the permanent appointment of an official member or a nominated member of the Council or until the functions of the office, the holder of which is *ex-officio* a member of the Council cease to be discharged as aforesaid or until the person whose place he has been appointed shall be declared by the Governor by Instrument under the Public Seal of the Presidency to be incapable of acting as a member of the Council or shall cease to be suspended or shall return to the Presidency, as the case may be.

9. No person shall be elected as an elected member of the Council who:—

Disqualifications for elected membership.

(a) is, by virtue of his own act, under any acknowledgment of allegiance, obedience or adherence to a foreign Power or State;

(b) holds, or is acting in, any public office;

(c) is a minister of religion;

(d) is an undischarged bankrupt, having been adjudged or otherwise declared bankrupt under any law in force in any part of His Majesty's dominions;

(e) has been sentenced by a court in any part of His Majesty's dominions to death or to imprisonment (by whatever name called) for a term exceeding twelve months, and has not either suffered the punishment to which he was sentenced or such other punishment as may by competent authority have been substituted therefor, or received a free pardon;

(f) is disqualified for membership of the Council by any law in force in the Presidency relating to offences connected with elections;

(g) is not entitled to be registered as a voter;

(h) does not—

(i) possess a clear income of at least four hundred and eighty dollars per annum; or

(ii) own real property in the Presidency of the value of at least one thousand four hundred and forty dollars above all charges and encumbrances affecting the same; or

(iii) occupy land in the Presidency, as tenant to another, of rental value of at least two hundred and forty dollars per annum.

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Tenure of office of members.

10. (1) Every official member of the Council appointed by name and every nominated member of the Council shall hold his seat in the Council during His Majesty's pleasure.

(2) Every official member of the Council appointed by name and every nominated and elected member of the Council shall in any case cease to be a member at the next dissolution of the Council after his appointment or election, or previously thereto if his seat shall become vacant under the provisions of this Act.

(3) The seat of an elected member of the Council shall become vacant—

(a) upon his death;

(b) if, without the leave of the Commissioner previously obtained, he shall be absent from three consecutive meetings of the Council;

(c) if he shall take any oath, or make any declaration or acknowledgment of allegiance, obedience or adherence to any foreign Power or State; or do, concur in or adopt any act done with the intention that he shall become a subject or citizen of any foreign Power or State;

(d) if he shall be adjudged or otherwise be declared bankrupt under any law in force in any part of His Majesty's dominions;

(e) if he shall be sentenced by a court in any part of His Majesty's dominions to death or imprisonment (by whatever name called) for a term exceeding twelve months;

(f) if he shall become subject to any of the disqualifications specified in paragraphs (b), (c), (d), (e) or (f) of section 9 of this Act.

(4) An official member of the Council appointed by name or a nominated or elected member of the Council may by writing under

his hand addressed to the Governor resign his seat on the Council. The seat of any such official member or of a nominated member shall become vacant upon the acceptance of his resignation by the Governor, and the seat of an elected member shall become vacant upon the receipt of his resignation by the Governor.

(5) Any person whose seat in the Council has become vacant may, if qualified, again be appointed or elected as a member of the Council from time to time.

11. The Council shall not be disqualified for the transaction of business by reason of any vacancy or vacancies among the official, nominated, or elected members, and any proceedings therein shall be valid notwithstanding that some person, who was not entitled to do so, sat or voted in the Council or otherwise took part in the proceedings.

Vacancies amongst members not to prevent transaction of business.

12. No member of the Council, who has not already subscribed to the Oath of Allegiance in respect of the office which he holds, shall sit or vote therein until he shall have taken and subscribed the following oath before the Governor or some person authorised by the Governor to administer such oath:—

Oath of Allegiance to be taken by members.

“I, A.B., do swear that I will be faithful and bear true allegiance to His Majesty King George the Sixth, His Heirs and Successors according to law. So help me God!”

Provided that any person may make an affirmation in like terms instead of the said oath.

13. (1) The Governor may, by Instrument under the Public Seal of the Presidency, suspend an official or nominated member from the exercise of his functions as a member of the Council. Every such suspension shall be forthwith reported by the Governor to His Majesty through the Secretary of State, and shall remain in force unless and until either it shall be removed by the Governor by Instrument under the said Seal or it shall be disallowed by His Majesty through the Secretary of State and such removal or disallowance shall be published in the *Gazette*.

Suspension etc. of official or nominated members.

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(2) The Governor may, by Instrument under the Public Seal of the Presidency, declare an official member appointed by name or a nominated member of the Council to be, by reason of illness, temporarily incapable of discharging his functions as a member of the Council, and thereupon such member shall not sit or vote in the Council until he is declared, in manner aforesaid, again to be capable of discharging his said functions.

Governor may summon prorogue or dissolve Council.

14. The Governor may, at any time, by Proclamation, summon, prorogue or dissolve the Council.

Duration of Council.

15. The Governor shall dissolve the Council at the expiration of three years from the date of the return of the first writs at the last preceding general election, if it shall not have been sooner dissolved.

Penalty for unqualified persons sitting or voting.

16. Every person who, having been returned as an elected member of the Council, but not having been at the time of his election qualified to be an elected member, sits or votes in the Council, shall for every day on which he sits or votes, and every person who sits or votes in the Council after his seat has become vacant, shall for every day on which he sits or votes after his seat has become vacant, be liable to a penalty of ninety-six dollars to be recoverable by action in the Supreme Court at the suit of the Attorney General.

Qualification of voters.

17. Every person who—

(a) has attained the age of twenty-one years; and

(b) is not a lunatic so found under any law in force in the Presidency; and

(c) is a British subject; and

(d) has resided in the Presidency for twelve months immediately preceding the date of registration or is domiciled in the Presidency and is resident therein at the date of such registration; and

(e) is not disqualified from being registered as a voter by any law in force in the Presidency relating to offences connected with elections,

shall be entitled to be registered as a voter and when registered, to vote at the election of members of the Council;

Provided that—

Firstly, no person shall be registered as a voter or be entitled to vote for the election of a member of the Council who has been convicted of perjury in any Court in His Majesty's dominions or in any territory under His Majesty's protection, or who has been sentenced by any such Court to death, or penal servitude, or imprisonment for a term exceeding twelve months, and has not either suffered the punishment to which he was sentenced or such other punishment as by competent authority may have been substituted for the same or received a free pardon from His Majesty; and

Secondly, no person shall be registered as a voter who has within twelve months immediately preceding the first day of January in any year in which a register of voters is prepared, received any relief from public funds except such special relief as may be declared by the Governor by Proclamation in the *Gazette* not to be relief for the purposes of this proviso; and

Thirdly, no person shall be registered as a voter unless he shall with his own hand have subscribed his name to his claim to be registered and written thereon the date of such subscription, or, if he is incapacitated by blindness or any other physical cause from so doing, such subscription and writing shall be performed on his behalf by the registering officer.

18. A general election shall be held at such time, within two months after every dissolution of the Council, as the Governor shall by Proclamation appoint:

General  
Elections.

Provided that the first general election after the coming into operation of this Act shall be held

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on such date as the Commissioner shall by Proclamation appoint.

Meetings of Council.

19. There shall be at least one meeting of the Council in every year, and there shall not be an interval of more than twelve months between any two consecutive meetings thereof.

Person to preside over meetings.

20. The Commissioner, or in his absence any member of the Council appointed in writing by him, or in default of such appointment, the member present who shall stand first in order of precedence, shall preside at every meeting of the Council.

Voting.

21. Subject to the provisions of this Act, all questions brought before the Council shall be decided by a majority of the votes of the members present and voting, and the Commissioner shall have a casting vote if the votes be equally divided, but shall not have an original vote.

In the absence of the Commissioner from the Council, the member presiding shall have an original vote, and also a casting vote if the votes are equally divided.

Quorum.

22. No business except that of adjournment shall be transacted in the Council if objection is taken by any member present that there are less than five members present besides the President or other member presiding.

Standing Orders.

23. (1) Subject to the provisions of this Act and of any Instructions under His Majesty's Sign Manual and Signet, the Council may from time to time make, amend and revoke Standing Orders for the regulation and orderly conduct of its own proceedings and the despatch of business, and for the passing, intituling and numbering of Bills, and for the presentation thereof to the Governor for assent.

(2) The first Standing Orders of the Council shall be made by the Governor and may be amended or revoked by the Council under sub-section (1) of this section.

24. It shall be competent for any member of the Council to propose any question for debate therein; and such question, if seconded by any other member, shall be debated and disposed of according to the Standing Orders:

Question etc., for debate.

Provided that—

- (i) no Ordinance, vote, resolution or question, the object or effect of which may be to dispose of or charge any part of His Majesty's revenue arising within the Presidency, or to revoke, alter or vary any such disposition or charge, shall be proposed, except by the Commissioner or with his consent; and
- (ii) no vote, resolution or question, the object or effect of which may be to suspend the Standing Orders of the Council, shall be proposed except by the Commissioner or with his consent.

25. It shall be lawful for the Governor, with the advice and consent of the Council, to make laws for the peace, order and good government of the Presidency.

Power of Council.

26. If the Governor shall consider that it is expedient—

Powers of Governor.

(a) in the interest of public faith or of good government (which expression shall, without prejudice to their generality, include the responsibility of the Presidency as a component part of the British Empire, and all matters pertaining to appointment, salary and other conditions of service of any public officer or officers); or

(b) to secure detailed control of the finances of the Presidency during such time as, by virtue of receipt of financial assistance by the Presidency from His Majesty's Exchequer for the purpose of balancing the annual budget or otherwise, such control rests with His Majesty's Government;

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LEEWARD  
ISLANDS,

14 *Virgin Islands Constitution*, No. 1 of 1950.

that any bill introduced, or any motion, resolution or vote proposed for decision, in the Council should have effect, then if the Council fail to pass such bill, motion, resolution or vote within such time as the Governor may think reasonable and expedient, the Governor, at any time within his discretion, may, notwithstanding any provisions of any law of the Colony or Presidency or of any Standing Orders of the Council, declare that such bill, motion, resolution or vote shall have effect, and thereupon the same shall have effect as if it had been passed by the Council, and in the case of any such bill; the provisions of this Act as to assent to bills and disallowance of Ordinances shall apply accordingly.

Assent to bills.

27. When a bill has been passed by the Council the Governor shall declare according to his discretion, but subject to any Instructions addressed to him under the Royal Sign Manual and Signet or through the Secretary of State, either that he assents thereto, that he refuses assent thereto or that he reserves the same for signification of His Majesty's pleasure thereon. If the Governor assents, the bill shall be signed by him or by the Commissioner in token of such assent.

Disallowances  
of Ordinances.

28. When the Governor assents to a bill, he shall by the first convenient opportunity send an authentic copy of the Ordinance to the Secretary of State, and it shall be lawful for His Majesty, at any time within eighteen months after such copy is received by the Secretary of State, to notify the Governor of his disallowance of such Ordinance, and every such Ordinance shall cease to have effect from the date upon which the Governor shall signify such disallowance by message to the Council, or a date to be named by Proclamation, and thereupon any enactment repealed or amended by, or in pursuance of, the Ordinance disallowed shall have effect as if such Ordinance had not been made. Subject as aforesaid, the provisions of subsection (1) of section 6 of the Interpretation of Laws Ordinance, 1898, of the Presidency, shall apply to such disallowance as they apply to the repeal of an Ordinance.

1/1899.

29. A bill reserved for the signification of His Majesty's pleasure shall take effect as soon as His Majesty has given his assent to the same by Order in Council, or through a Secretary of State, and the Governor has signified such assent by message to the Council or by Proclamation.

Reserved bills.

30. For the purpose of the election of members of the Council the Presidency shall form one electoral district.

Electoral district.

31. Subject to the provisions of this Act, provision may be made, by or in pursuance of any law enacted under this Act, for the election of elected members of the Council including (without prejudice to the generality of the foregoing power) the following matters, that is to say:—

Laws as to elections, &c.

(a) the registration of voters;

(b) the ascertainment of the qualifications of voters and of candidates for election;

(c) the holding of elections;

(d) the determination of all questions which may arise as to the right of any person to be or remain a member of the Council;

(e) the definition and trial of offences relating to the elections and the imposition of penalties therefor, including disqualification for membership of the Council, or for registration as a voter, or for voting at elections, of any person concerned in any such offence.

32. (1) At any time before the coming into operation of this Act the Governor may, by Ordinance made for the Presidency, make such provision as appears to him to be necessary or expedient for giving effect to the provisions of this Act and in particular and without prejudice to the generality of the foregoing power may make provision for all or any of the matters specified in section 31 of this Act.

Provisions necessary to give effect to this Act.

(2) This section shall come into operation forthwith.

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ISLANDS.

Repeal.  
Cap. 82.

33. The Virgin Islands Act is hereby repealed.

Commence-  
ment.

34. This Act shall, save as otherwise expressly provided in this Act, come into operation on such day as the Governor may appoint by Proclamation published in the *Gazette*.

10.8.50  
(Gaz. 9.8.50)

P. D. MACDONALD,  
*President.*

Passed the General Legislative Council this  
20th day of July, 1950.

A. E. PENN,  
*Clerk of the Council.*

ANTIGUA.

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## CHAPTER 166.

### PRISON.

(1st July, 1956.)

12/1954  
7/1956  
37/1961  
12/1975  
1/1985

**1.** This Ordinance may be cited as the Prison Ordinance. Short title.

**2.** In this Ordinance— Interpretation.

“prisoner” means any person lawfully sentenced or ordered to be imprisoned or detained in prison;

“prison” means gaol, and includes the airing ground or other ground or buildings occupied by prison officers and contiguous thereto and any other place which the Governor shall by proclamation published in the Gazette declare to be a prison.

#### PROVISION, MAINTENANCE AND CLOSING OF PRISONS.

**3.** There shall be provided and maintained at the expense of the Territory, adequate accommodation for its prisoners in a prison: Territory to provide and maintain prison.

Provided however that the buildings and premises in the Territory now used as a prison shall continue to be used as the prison for the Territory.

**4.** The Governor may with the approval of the Legislative Council alter, enlarge or rebuild any prison in the Territory or may, if necessary, build new prisons in lieu of or in addition to any existing prisons. Power to alter prisons and build new ones.

**4A.** The Governor may by proclamation published in the Gazette declare any place to be a prison. Governor may declare any place to be a prison.  
12/1975.

**5.** (1) The Governor may at any time by proclamation declare any prison in the Territory to be closed; and every prison which the Governor shall so declare to be closed shall, Closing of prisons.

as from the date of the proclamation, cease to be used as a prison accordingly.

(2) Persons committed to any prison closed under this section shall, upon the closing of such prison, be deemed to be committed to the prison nearest thereto, or to such other prison as the Governor may appoint or determine.

#### VISITING COMMITTEE.

Visiting  
committee.

**6.** (1) Rules made under section 27 shall provide for the constitution by the Governor of a visiting committee of a prison consisting of Justices of the Peace of the Territory appointed at such times, in such manner and for such periods as may be prescribed by the Rules.

(2) Rules made as aforesaid shall prescribe the functions of the visiting committee and shall among other things require members to pay frequent visits to a prison and hear any complaints which may be made by the prisoners, to consider periodically the character, conduct and prospects of each prisoner and report to the Governor any matter which they consider it expedient to report; and any member of the visiting committee may at any time enter the prison and shall have free access to every part of it and to every prisoner.

#### PRISON OFFICERS.

Prison officers.

**7.** (1) The Governor shall appoint an officer with such title as he may approve who shall be in charge of the prison in the Territory and shall superintend and manage the same.

(2) In addition to the officer appointed under subsection (1) the Governor shall appoint such other officers including an honorary chaplain, as may be necessary, for the efficient management of the prison.

(3) The duties of the officers appointed by virtue of subsections (1) and (2) shall be such as may be prescribed by rules made under section 27.

Powers of prison  
officers.

**8.** Every male prison officer while acting as such shall have all the powers, authority, protection and privileges of a constable.

## CONFINEMENT AND TREATMENT OF PRISONERS.

**9.** (1) A prisoner, whether sentenced to imprisonment or committed to prison on remand or pending trial or otherwise, may be lawfully confined in any prison.

Place of  
confinement of  
prisoners.

(2) Prisoners shall be committed to such prisons as the Governor may from time to time direct; and may by direction of the Governor be removed during the term of their imprisonment from the prison in which they are confined to any other prison in the Territory.

(3) A writ, warrant or other legal instrument addressed to the officer in charge of a prison and identifying that prison by its situation or by any other sufficient description shall not be invalidated by reason only that the prison is usually known by a different description.

**10.** (1) Every prisoner shall be deemed to be in the legal custody of the officer in charge of the prison.

Legal custody of  
prisoner.

(2) A prisoner shall be deemed to be in legal custody while he is confined in, or is being taken to or from, any prison and while he is working, or is for any other reason, outside the prison in the custody or under the control of an officer of the prison.

**11.** (1) Except as provided by this section, corporal punishment shall not be inflicted in any prison.

Corporal  
punishment in  
prisons.

(2) Rules made under section 27 may authorise the infliction of corporal punishment for mutiny, incitement to mutiny, or gross personal violence to an officer of a prison when committed by a male prisoner.

(3) The rules shall not authorise the infliction of corporal punishment except by order of the visiting committee made at a meeting at which not less than three members are present; and no such order shall be made except after an inquiry in which the evidence is given on oath:

Provided that the Governor may, if he thinks fit in any particular case, direct that the functions exercisable as aforesaid by the visiting committee shall be exercised by a magistrate appointed by him in that behalf.

(4) The punishment which may be inflicted under such an order as aforesaid shall not exceed—

(a) in the case of a person appearing to the visiting committee or magistrate to be not less than twenty-one years of age, eighteen strokes of a cat-o'-nine-tails or tamarind rod; or

(b) in the case of a person appearing to them or him to be under that age, twelve strokes of a tamarind rod, and if corporal punishment is inflicted, no further punishment by way of confinement in cells or restricted diet shall be imposed.

(5) Where an order for the infliction of corporal punishment has been made under this section, a copy of the notes of the evidence given at the inquiry, a copy of the order and a statement of the grounds on which it was made shall forthwith be given to the Governor; and the order shall be carried into effect only after confirmation by the Governor and, if the Governor confirms the order with modifications, in accordance with the modifications.

(6) A refusal by the Governor to confirm such an order as aforesaid shall not prejudice any power to impose another punishment for the offence for which the order was made.

Duty of officer in charge to deliver calendar of prisoners.

**12.** The officer in charge of every prison in which persons committed for trial before the High Court are confined shall deliver to that Court a calendar of those persons.

Removal of prisoners for judicial and other purposes.

**13.** (1) Rules made under section 27 may provide in what manner an appellant within the meaning of the Court of Appeal Rules, when in custody, is to be taken to, kept in custody at, and brought back from, any place at which he is entitled to be present for the purposes of those rules, or any place to which the Court of Appeal or any judge thereof may order him to be taken for the purpose of any proceedings of that Court.

(2) The Governor may—

(a) if he is satisfied that the attendance at any place in the Territory of a person detained in a prison in the Territory is desirable in the interests of justice or for the purposes of any public inquiry, direct him to be taken to that place;

(b) if he is satisfied that a person so detained requires medical or surgical treatment of any description, direct him to be taken to a hospital or other suitable place for the purpose of the treatment,

and where any person is directed under this subsection to be taken to any place he shall, unless the Governor otherwise directs, be kept in custody while being so taken, while at that place, and while being taken back to the prison in which he is required in accordance with law to be detained.

(3) It shall be lawful for any magistrate, in any case where he may see fit to do so, upon application to issue a warrant or order under his hand for any prisoner to be taken from the prison to his Court for the purpose of answering any charge that may be preferred against him.

**14.** For the purpose of taking a person to or from any prison under the order of any authority competent to give the order a constable or other officer may act outside the area of his jurisdiction and shall notwithstanding that he is so acting have all the powers, authority, protection and privileges of his office.

Power of constable, etc., to act outside his jurisdiction.

**15.** (1) In any sentence of imprisonment the word "month" shall, unless the contrary is expressed, be construed as meaning calendar month.

Calculation of term of sentence.

(2) A prisoner who but for this subsection would be discharged on a Sunday, Christmas Day or Good Friday, shall be discharged on the day next preceding.

**16.** (1) Rules made under section 27 may make provision whereby, in such circumstances as may be prescribed by the rules, a person serving a sentence of imprisonment for such a term as may be so prescribed may be granted remission of such part of that sentence as may be so prescribed on the ground of his industry and good conduct, and on the discharge of a person from prison in pursuance of any such remission as aforesaid his sentence shall expire.

Remission for good conduct and award of gratuities.

(2) Rules made as aforesaid may also provide for the award of gratuities on their discharge to prisoners who have been sentenced to imprisonment with hard labour for a term of or exceeding twelve months.

**17.** (1) If the Governor is satisfied that by reason of the condition of a prisoner's health it is undesirable to detain him in prison, but that, such condition of health being due in whole or in part to the prisoner's own conduct in prison, it is desirable that his release should be temporary and conditional only, the Governor may, if he thinks fit, having regard to all the

Power of Governor to discharge prisoners temporarily on account of ill-health.

circumstances of the case, by order authorise the temporary discharge of the prisoner for such period and subject to such conditions as may be stated in the order.

(2) Where an order of temporary discharge is made in the case of a prisoner not under sentence, the order shall contain conditions requiring the attendance of the prisoner at any further proceedings on his case at which his presence may be required.

(3) Any prisoner discharged under this section shall comply with any conditions stated in the order of temporary discharge, and shall return to prison at the expiration of the period stated in the order, or of such extended period as may be fixed by any subsequent order of the Governor, and if the prisoner fails so to comply or return, he may be arrested without warrant and taken back to prison.

(4) Where a prisoner under sentence is discharged in pursuance of an order of temporary discharge, the currency of the sentence shall be suspended from the day on which he is discharged from prison under the order to the day on which he is received back into prison, so that the former day shall be reckoned and the latter shall not be reckoned as part of the sentence.

(5) Nothing in this section shall affect the duties of the medical officer of a prison in respect of a prisoner whom the Governor does not think fit to discharge under this section.

Prisoner may be released under compulsory supervision order.  
37/1961.

**17A.** (1) Any prisoner sentenced to imprisonment may be released under the provisions of a compulsory supervision order.

(2) A compulsory supervision order shall be issued by the Governor and shall be enforced for a period not exceeding twelve months from the date on which the prisoner is discharged from prison, and it shall be lawful for the Governor to revoke such order at his discretion.

(3) A compulsory supervision order may be made in regard to a period which may extend beyond the date on which the prisoner's sentence of imprisonment ends, provided that no such order shall be enforced for a period exceeding twelve months from the date of the prisoner's release.

(3A) Nothing in subsections (2) and (3) shall be construed as preventing the Governor from issuing successive supervision orders in respect of the same prisoner if— 1/1985.

(a) the fresh supervision order takes effect immediately upon the expiry of the previous supervision order;

(b) the fresh supervision order is not being issued for a greater period than twelve months; and

(c) the Governor is satisfied that the circumstances of the case are such that the issue of a fresh supervision order is desirable.

(3B) For the purposes of paragraph (a) of subsection (3A), a fresh supervision order shall be deemed to take effect immediately upon the expiration of another supervision order if— 1/1985.

(a) the fresh supervision order is served on the prisoner before the expiration of a period of two weeks following the date on which the previous order expired; or

(b) the fresh supervision order is served on the prisoner after the expiration of a period of two weeks referred to in paragraph (a) by reason of a failure to serve the order if the failure is due to—

(i) the conduct of the prisoner; or

(ii) circumstances that, the Governor is satisfied, could not have been avoided.

(4) Every compulsory supervision order shall be in the form prescribed in the Schedule and shall be issued subject to the prescribed conditions, provided that the Governor may waive any condition in the case of any particular prisoner.

(5) If a prisoner released under the provisions of a compulsory supervision order is convicted of any offence or fails to comply with any of the conditions of such order, the order may be revoked by the Governor.

(6) When any compulsory supervision order is revoked, the prisoner in respect of whom such order was made, shall, after undergoing any other punishment to which he has been sentenced, undergo a further term of imprisonment equal to the portion of his imprisonment remaining unexpired at the date of his release under the said order. For the purpose of remission, any sentence imposed on the prisoner while under

the provisions of a compulsory supervision order and the period of imprisonment remaining unexpired at the time of his release under the order shall be regarded as one sentence.

(7) A prisoner released from prison after having been recalled to prison in consequence of the Governor having revoked his compulsory supervision order shall be released under the provisions of a compulsory supervision order for a period not exceeding twelve months from the date on which the prisoner is so released.

(8) Whenever a compulsory supervision order is revoked by the Governor the Magistrate shall, on production to him of a certificate of such revocation signed by the Governor, issue a warrant for the apprehension of the person in respect of whom such order was made; and such person on being apprehended shall be brought before the Magistrate, who shall make out his warrant for the recommitment of such person to undergo the residue of his sentence remaining unexpired at the date of his release under the order.

(9) For the purpose of this section the Governor may, by notice published in the Gazette, determine what class or classes of prisoners shall be subject to compulsory supervision.

#### OFFENCES.

Escape, attempt to escape, and prison breach.

**18.** Every prisoner who—

(a) escapes or attempts to escape from any prison wherein he is lawfully confined; or

(b) escapes or attempts to escape during the time of his conveyance to or from a prison, or whilst on his way to or from any road or public work, or during the time of his employment therein; or

(c) forcibly breaks out of any cell or other place in which he is lawfully confined or makes any breach therein with intent to escape,

shall be guilty of an offence against this Ordinance and on conviction thereof on indictment be liable to imprisonment for a period not exceeding two years.

Rescue, or promotion of rescue, of prisoners.

**19.** Every person who rescues, or attempts to rescue any person who has been convicted, or who is in custody, on a charge of felony, shall be guilty of felony and shall be liable to be imprisoned, with or without hard labour, for any term not

exceeding three years; and every person who rescues, or attempts to rescue, any person who has been convicted, or who is in custody, on a criminal charge other than felony, shall be guilty of a misdemeanour, and shall be liable to be imprisoned, with or without hard labour, for any term not exceeding eighteen months; and all persons aiding, assisting or abetting the commission of any such offence as aforesaid shall be liable to be prosecuted and punished in the same manner as principals.

**20.** Every person having the custody of a prisoner, who shall knowingly and wilfully allow him to escape, shall be liable to be imprisoned, with or without hard labour, for any term not exceeding two years.

Wilfully  
permitting  
prisoner to  
escape.

**21.** Every person having the custody of a prisoner, who, through negligence or carelessness, allows any such prisoner to escape, shall be liable to fine or imprisonment, or both, at the discretion of the Court.

Negligently  
permitting  
prisoner to  
escape.

**22.** Any person who assaults or resists any prison officer in the execution of his duty, or aids or excites any person so to assault or resist any such officer shall be liable on summary conviction to a penalty not exceeding one hundred dollars, or to imprisonment, with or without hard labour, for any term not exceeding two months; or, if the offender be a prisoner, he shall be liable, on conviction on indictment, to be imprisoned, with or without hard labour, for any term not exceeding one year:

Assaulting or  
resisting prison  
officers.

Provided however that no prisoner shall be liable both to punishment under this section and section 11 for an assault against a prison officer.

**23.** Any person who aids any prisoner in escaping or attempting to escape from a prison or who, with intent to facilitate the escape of any prisoner, conveys anything into a prison or to a prisoner or places anything anywhere outside a prison with a view to its coming into the possession of a prisoner, shall be guilty of felony and liable to imprisonment for a term not exceeding two years.

Assisting  
prisoner to  
escape.

**23A.** Any person who knowingly harbours a prisoner who has escaped from prison or gives him any assistance with intent to prevent, hinder or interfere with his being retaken into prison or custody shall be guilty of an offence and shall be

Assisting escaped  
prisoner an  
offence.  
12/1975.

liable on summary conviction to a fine of two hundred dollars or to imprisonment for a term of twelve months.

Unlawful conveyance of spirits or tobacco into prison, etc.

**24.** Any person who contrary to the rules of a prison brings or attempts to bring into the prison or to a prisoner any spirituous or fermented liquor or tobacco, or places any such liquor or any tobacco anywhere outside the prison with intent that it shall come into the possession of a prisoner, and any officer who contrary to those rules allows any such liquor or any tobacco to be sold or used in the prison, shall be liable on summary conviction to imprisonment for a term not exceeding six months or a fine not exceeding one hundred dollars.

Unlawful introduction of other articles.

**25.** Any person who contrary to the rules of a prison conveys or attempts to convey any letter or any other thing into or out of the prison or to a prisoner or places it anywhere outside the prison with intent that it shall come into the possession of a prisoner shall, where he is not thereby guilty of an offence under either section 23 or section 24 be liable on summary conviction to a fine not exceeding fifty dollars.

Display of notice of penalties.

**26.** The officer in charge of every prison shall cause to be affixed in a conspicuous place outside such prison a notice of the penalties to which persons committing offences under sections 23, 24 and 25 are liable.

#### RULES.

Power to make rules.  
12/1975.

**27.** (1) The Governor in Council may make rules for the regulation and management of prisons, the conduct, discipline and duties of the officers employed therein, and the classification, treatment, employment, discipline and control of prisoners.

(2) Rules made under this section shall make provision for ensuring that a person who is charged with any offence under the rules shall be given a proper opportunity of presenting his case.

SCHEDULE

37/1961

S. 17A

COMPULSORY SUPERVISION ORDER

NOTICE TO PERSON RELEASED FROM PRISON

To

You will be released from prison on

The Governor gives you this notice and hopes that it will prevent you from breaking the law and that you will not be sent to prison again.

From                      until

you will be under the supervision of

So long as you are under supervision you must follow these instructions.

1. Within                      of leaving you must report to

2. You shall not change your address or your employment without the written permission of

or

3. You must do what                      or

tells you.

4. You must not break the law.

If you do not follow the above instructions and do what

or

tells you, you may be punished.

If you follow these instructions carefully you will be free.

If you find yourself in trouble go to

or

and tell him about it. He will try to help you.

Keep this notice carefully. If you lose it or if it is destroyed, ask  
or to get you  
a fresh copy.

The Governor wishes you well in the future.

Date

Signed

Governor

Declaration by Prison Officer

I certify that has had this notice explained  
to him in my presence.

Date

Signed

Prison Officer.

Declaration by Prisoner

This notice has been explained to me and I have understood it.

Date

Signature or mark of  
prisoner.

(space for  
photograph  
of prisoner)

(space for  
fingerprints  
of prisoner.)

**CHAPTER 229.**

**REGISTERED LAND.**

(20th July, 1970.)

8/1970  
15/1977\*  
15/1979

**PART I.**

**PRELIMINARY.**

**1.** This Ordinance may be cited as the Registered Land Ordinance. Short title.

**2.** \*\*In this Ordinance— Interpretation.

“application book” means the application book kept under section 4(d);

“charge” means an interest in land securing the payment of money or money’s worth or the fulfilment of any condition, and includes a subcharge and the instrument creating a charge;

“chargee” means the proprietor of a charge;

“chargor” means the proprietor of charged land or of a charged lease or charge;

“court” save as is otherwise expressly provided, means the High Court;

“dealing” includes disposition and transmission;

\* Not in force on May 1, 1990.

\*\* With effect from the date on which the Registered Land (Amendment) Ordinance, 1977 is brought into force, section 2 shall be amended by the addition in its correct alphabetical order of the following new definition—

“Chief Registrar” means the person appointed as Chief Registrar of Lands under section 5.” — (Vide section 2 of the Registered Land (Amendment) Ordinance, 1977).

“disposition” means any act *inter vivos* by a proprietor whereby his rights in or over his land, lease or charge are affected, but does not include an agreement to transfer, lease or charge;

“easement” means a right attached to a parcel of land which allows the proprietor of the parcel either to use the land of another in a particular manner or to restrict its use to a particular extent, but does not include a profit;

“to file” means to place in relative parcel file;

“guardian” means any person responsible for protecting the interests of any person who is under a disability, whether by reason of age, unsoundness of mind or any other cause;

“instrument” includes any deed, judgment, decree, order or other document requiring or capable of registration under this Ordinance;

“interest” in land includes absolute ownership of land;

“land” includes land covered with water, all things growing on land and buildings and other things permanently affixed to land;

“Land Register” means the Land Register compiled under Division 2 of Part II;

“lease” means the grant, with or without consideration, by the proprietor of land of the right to the exclusive possession of his land, and includes the right so granted and the instruments granting it, and also includes a sublease, but does not include an agreement for lease;

“lessee” means the holder of a lease;

“lessor” means the proprietor of leased land;

“licence” means a permission given by the proprietor of land or a lease which allows the licensee to do some act in relation to the land or the land comprised in the lease which would otherwise be a trespass, but does not include an easement or a profit;

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- “parcel” means an area of land separately delineated on the registry map and given a number;
- “periodic tenancy” means a tenancy from year to year, half year to half year, quarter to quarter, month to month, week to week, or the like;
- “personal representative” means executor of the will or administrator of the estate;
- “profit” means the right to go on the land of another and take a particular substance from that land, whether the soil or products of the soil;
- “proprietor” means the person registered under this Ordinance as the owner of land or a lease or a charge;
- “the register” means the leaf of the Land Register kept in respect of a parcel of land or of a registered lease;
- “to register” means to make an entry, note or record in the register under this Ordinance, and “registered”, “unregistered” and “registration” bear a corresponding meaning;
- “Registrar” means the Registrar of Lands appointed under section 5;
- “registration section” means a registration section established under section 14;
- “registry” means the land registry established under section 4;
- “Registry Map” means the map or series of maps referred to in section 14;
- “transfer” means the passing of land, a lease or a charge by act of the parties and not by operation of law, and also the instrument by which such passing is effected, but does not include an agreement to transfer;
- “transmission” means the passing of land, a lease or a charge from one person to another by operation of law on death or insolvency or otherwise howsoever, and includes the compulsory acquisition of land under any written law;
- “trustee” includes personal representatives;

“valuable consideration” includes marriage, but does not include a nominal consideration.

Reconciliation  
with other laws.

**3.** Except as otherwise provided in this Ordinance, no other written law and no practice or procedure relating to land shall apply to land registered under this Ordinance so far as it is inconsistent with this Ordinance:

Provided that, except where a contrary intention appears, nothing contained in this Ordinance shall be construed as permitting any dealing which is forbidden by the express provisions of any other written law or as overriding any provision of any other written law requiring the consent or approval of any authority to any dealing.

## PART II.

### ORGANISATION AND ADMINISTRATION.

#### Division 1—Land Registries and Officers.

Registration  
Districts.

**4.** For the purposes of this Ordinance there shall be established and maintained at Road Town a land registry in which there shall be kept—

(a) a register, to be known as the Land Register, in accordance with Division 2 of this Part;

(b) a map to be known as the Registry Map, in accordance with Division 3 of this Part;

(c) parcel files containing the instruments which support subsisting entries in the land register and any filed plans and documents;

(d) a book, to be known as the application book, in which shall be kept a record of all applications numbered consecutively in the order in which they are made at the registry;

(e) an index, in alphabetical order, of the names of the proprietors of land, leases and charges, showing the numbers of the parcels in which they are interested; and

(f) a register and a file of powers of attorney;

(g) such registers as are specified under the Condominium Ordinance.

15/1979.  
Cap. 219.

5.\* The Governor shall appoint a Registrar of Lands, who shall be responsible for administering the land registry in accordance with this Ordinance.

Registrar.

6. The Registrar\*\* may exercise the following powers in addition to any other powers conferred on him by this Ordinance, that is to say—

General powers of Registrar.

(a) he may require any person to produce any instrument, certificate or other document or plan relating to the land, lease or charge in question, and that person shall produce the same;

(b) he may summon any person to appear and give any information or explanation respecting land, a lease or a charge, or any instrument, certificate or other document or plan relating to the land, lease or charge in question, and such person shall appear and give such information or explanation;

\* With effect from the date on which the Registered Land (Amendment) Ordinance, 1977 is brought into force, section 5 shall be repealed and replaced by the following new section—

5. (1) The Governor shall appoint a Chief Registrar of Lands who shall be responsible for administering the Land Registry in accordance with this Ordinance.

Appointment of Chief Registrar and Registrar.

(2) The Governor shall appoint a Registrar of Lands who shall be responsible for assisting the Chief Registrar of Lands in administering the Land Registry and for carrying out such functions as may be delegated to him in accordance with subsection (3).

(3) The Chief Registrar may by notice in writing delegate to the Registrar all or any of the powers and functions conferred upon him under the provisions of this Ordinance which notice may also specify the manner in which the Registrar shall carry out such delegated powers and functions." — Vide section 2 of the Registered Land (Amendment) Ordinance, 1977.

\*\* With effect from the date on which the Registered Land (Amendment) Ordinance, 1977 is brought into force, the words "Chief Registrar" shall be substituted for the word "Registrar" — Vide section 4 of the Registered Land (Amendment) Ordinance, 1977.

(c) he may refuse to proceed with any registration if any instrument, certificate or other document, plan, information or explanation required to be produced or given is withheld or any act required to be performed under this Ordinance is not performed;

(d) he may administer oaths or take a declaration in lieu thereof, and may require that any proceedings, information or explanation shall be verified on oath or by statutory declaration;

(e) he may order that the costs, charges and expenses incurred by him or by any person in connection with any investigation or hearing held by him for the purposes of this Ordinance shall be borne and paid by such person in such manner and in such proportions as he may think fit, and the amount of any such costs, charges and expenses as shall have been incurred by the Registrar shall be deemed to be a fee to which the provisions of sections 154 and 155 shall apply.

Indemnity of  
Officers.

**7.** The Registrar\* shall not, nor shall any other officer of the registry, be liable to any action or proceeding for or in respect of any act or matter done or omitted to be done in good faith in the exercise or supposed exercise of the powers of this Ordinance, or any regulations made thereunder.

Seal of Registry.

**8.** The registry shall have a seal, and every instrument purporting to bear the imprint of such seal shall be received in evidence and, unless the contrary is shown, shall be deemed without further proof to be issued by or under the direction of the Registrar.\*

#### Division 2—The Land Register.

The Land  
Register.  
15/1979.  
Cap. 223.

**9.** (1) The Land Register shall comprise a register in respect of every parcel which has been adjudicated in accordance with the Land Adjudication Ordinance or in respect of each strata lot to be registered in accordance with section 5 of the Condominium Ordinance, and a register in respect of each lease required by this Ordinance to be registered.

Cap. 219.

\* With effect from the date on which the Registered Land (Amendment) Ordinance, 1977 is brought into force, the words "Chief Registrar" shall be substituted for the word "Registrar" — *Vide* section 4 of the Registered Land (Amendment) Ordinance, 1977.

(2) Each register shall show whether the land is private land or Crown land and, in respect of private land, whether the title is absolute or provisional, and shall be divided into three sections as follows—

A—the property section, containing a brief description of the land, strata lot or lease, together with particulars of its appurtenances and, where the title is provisional of the information recorded in the adjudication record under section 16(1)(d) of the Land Adjudication Ordinance, and a reference to the Registry Map and filed plan, if any;

B—the proprietorship section, containing the name, and, where possible, address of the proprietor and a note of any inhibition, caution or restriction affecting his right of disposition;

C—the incumbrances section, containing a note of every incumbrance and every right adversely affecting the land strata lot or lease.

(3) No entry shall be required in the proprietorship section of land which is described as Crown Land.

**10.** Whenever an adjudication record has become final under section 23 of the Land Adjudication Ordinance and the Adjudication Officer has delivered the adjudication record to the Registrar\*, the Registrar\* shall prepare a register for each parcel shown in the adjudication record and for any lease required to be registered, and shall register therein any of the particulars in the adjudication record which requires registration.

**11.** (1) The first registration of any parcel shall be effected by the preparation of a register in accordance with the provisions of section 9 and the signing by the Registrar\* of the particulars of the ownership and the particulars of incumbrances, if any, appearing thereon.

Manner of registration.

\* With effect from the date on which the Registered Land (Amendment) Ordinance, 1977 is brought into force, the words "Chief Registrar" shall be substituted for the word "Registrar" — *Vide* section 4 of the Registered Land (Amendment) Ordinance, 1977.

(2) Every subsequent registration shall be effected by an entry in the register in such form as the Registrar\* may from time to time direct, and by the cancellation of the entry, if any, which it replaces.

Cancellation of  
obsolete entries.

**12.** The Registrar\* may cancel any entry in the register which he is satisfied has ceased to have any effect.

New editions of  
Register.

**13.** The Registrar\* may at any time open a new edition of a register showing only subsisting entries and omitting therefrom all entries that have ceased to have any effect.

#### Division 3—Maps, Parcels and Boundaries

Registry Map.

**14.** (1) The Registry Map shall be compiled from the demarcation maps made under the Land Adjudication Ordinance, and shall be divided into registration sections which, so far as is possible, shall have the same boundaries and names as the adjudication sections; the registration sections, where the adjudication sections are so divided, shall be divided into blocks which shall be given the same letters or numbers or combinations of letters and numbers as the adjudication blocks.

(2) The parcels in each registration section or block shall be numbered consecutively following the numbering in the adjudication proceedings, and the name of the registration section and the number or letter of the block (if any) and the number of the parcel shall together be a sufficient reference to any parcel.

(3) The Registrar\* may, at any time, cause registration sections or blocks to be combined or divided, or cause their boundaries to be varied.

(4) A plan may be filed in respect of a particular parcel to augment the information available from the registry map, and the filing of the plan shall be noted in the register.

Correction of the  
Registry Map  
and new editions.

**15.** (1) The Registrar\* may cause to be made a survey of any land for the purposes of this Ordinance and, after informing every person affected thereby, may cause the Registry Map to be corrected as a result of such survey.

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\* With effect from the date on which the Registered Land (Amendment) Ordinance, 1977 is brought into force, the words "Chief Registrar" shall be substituted for the word "Registrar" — *Vide* section 4 of the Registered Land (Amendment) Ordinance, 1977.

(2) The Registrar\* may, at any time, direct the preparation of a new Registry Map or any part thereof, and there may be omitted therefrom any matter which the Registrar\* considers obsolete.

**16.** (1) On the application of a proprietor of land, and subject to the agreement of all persons affected thereby, the Registrar\* may order the alteration of the Registry Map, but no such alteration shall be effected except on the instructions of the Registrar\* in writing in the prescribed form, to be known as a mutation form, and the mutation form shall be filed.

Mutation.

(2) Whenever the boundary of a parcel is altered on the Registry Map, the parcel number shall be cancelled and the parcel shall be given a new number.

**17.** (1) Except where, under section 18, it is noted in the register that the boundaries of a parcel have been fixed, the Registry Map and any filed plan shall be deemed to indicate the approximate boundaries and the approximate situation only of the parcel.

General boundaries.

(2) Where any uncertainty or dispute arises as to the position of any boundary, the Registrar\*, on the application of any interested party, shall, on such evidence as the Registrar\* considers relevant, determine and indicate the position of the uncertain or disputed boundary.

(3) Where the Registrar\* exercises the power conferred by subsection (2), he shall make a note to that effect on the Registry Map and in the register and shall file such plan or description as may be necessary to record his decision.

(4) No court shall entertain any action or other proceedings relating to a dispute as to the boundaries of registered land unless the boundaries have been determined as provided in this section.

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\* With effect from the date on which the Registered Land (Amendment) Ordinance, 1977 is brought into force, the words "Chief Registrar" shall be substituted for the word "Registrar" — *Vide* section 4 of the Registered Land (Amendment) Ordinance, 1977.

(5) Except where, as aforesaid, it is noted in the register that the boundaries of a parcel have been fixed the court or the Registrar\* may, in proceedings concerning the parcel, receive such evidence as to its boundaries and situation as it or he thinks fit.

Fixed boundaries.

**18.** (1) If the Registrar in his discretion considers it desirable to indicate on a filed plan, or otherwise to define in the register, the precise position of the boundaries of a parcel or any parts thereof, or if any interested person makes application to the Registrar\*, the Registrar\* shall give notice to the owners and occupiers of the land adjoining the boundaries in question of the intention to ascertain and fix the boundaries.

(2) The Registrar\* shall, after giving all persons appearing by the register to be affected an opportunity of being heard, cause to be defined by survey the precise position of the boundaries in question, file a plan containing the necessary particulars and make a note in the register that the boundaries have been fixed and thereupon the plan shall be deemed to define accurate the boundaries of the parcel.

Maintenance of boundary features.

**19.** (1) Every proprietor of land shall maintain in good order any features which demarcate his boundaries, whether established pursuant to the requirements of any other written law or pursuant to an order of the Registrar\* or of the proprietor's own accord.

(2) The Registrar\* may in writing order the demarcation within a specified time of any boundary by the erection of a boundary mark in such permanent manner as he may direct, and any person who fails to comply with such an order shall be guilty of an offence against this Ordinance and on summary conviction before a Magistrate shall be liable to a fine not exceeding twenty-five dollars.

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\* With effect from the date on which the Registered Land (Amendment) Ordinance, 1977 is brought into force, the words "Chief Registrar" shall be substituted for the word "Registrar" — *Vide* section 4 of the Registered Land (Amendment) Ordinance, 1977.

(3) The Registrar\* may in writing order which of adjoining proprietors shall be responsible for the care and maintenance of any feature demarcating a common boundary feature or any part of it to fall into disrepair or to be destroyed or removed shall be guilty of an offence and liable on summary conviction to a fine not exceeding one hundred dollars.

**20.** (1) Any person who wilfully defaces, removes, injures or otherwise impairs any boundary feature or any part of it unless authorised to do so by the Registrar\* shall be guilty of an offence and liable on summary conviction to a fine not exceeding two hundred dollars or to imprisonment for a term not exceeding two months.

Interference with  
boundary  
features.

(2) Any person convicted of such offence, whether or not any penalty therefor is imposed upon him, shall be liable on summary conviction to pay the cost of restoring the boundary feature, and such cost shall be recoverable as a civil debt by any person responsible under section 19 for the maintenance of the feature.

**21.** (1) Where contiguous parcels are owned by the same proprietor and are subject in all respects to the same rights and obligations, the Registrar\*, on application by the proprietor, may combine those parcels by closing the registers relating to them and opening a new register or registers in respect of the parcel or parcels resulting from the combination.

Combinations  
and subdivisions.

(2) Upon the application of the proprietor of a parcel for the division of his parcel into two or more parcels, the Registrar\* shall effect the division by closing the register relating to the parcel and opening new registers in respect of the new parcels resulting from the division, and recording in the new registers all subsisting entries appearing in the closed register:

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\* With effect from the date on which the Registered Land (Amendment) Ordinance, 1977 is brought into force, the words "Chief Registrar" shall be substituted for the word "Registrar" — *Vide* section 4 of the Registered Land (Amendment) Ordinance, 1977.

Provided that—

- (i) nothing shall be done under this section which would be inconsistent with this Ordinance or any other written Ordinance; and
- (ii) no parcel which is subject to a lease shall be subdivided so as to subdivide the land comprised in such lease; and
- (iii) where a proprietor is subdividing his parcel for the purpose of building development, the Registrar\* may require him to submit a plan of the proposed subdivisions prepared by a surveyor authorised under the Land Surveyor's Ordinance, and certified by the appropriate authority as conforming with the requirements of any planning law for the time being in force.

Cap. 215.

Reparcellation.

**22.** (1) The Registrar\* may, on the application of the proprietors of continuous parcels who are desirous of changing the layout of their parcels, and with the consent in writing of all other persons in whose names any right or interest in such parcels is registered, and of any cautioner, cancel the registers relating to such parcels and prepare new registers in accordance with the revised layout:

Provided that, where in the opinion of the Registrar\* a proposed reparcellation involves substantial changes of ownership which should be effected by transfers without invoking this section, he may refuse to effect such reparcellation.

(2) Upon any such reparcellation, the new parcel shall, notwithstanding section 37 vest in the persons in whose names they are registered.

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\* With effect from the date on which the Registered Land (Amendment) Ordinance, 1977 is brought into force, the words "Chief Registrar" shall be substituted for the word "Registrar" — *Vide* section 4 of the Registered Land (Amendment) Ordinance, 1977.

## PART III.

## EFFECT OF REGISTRATION.

**23.** Subject to the provisions of section 27, the registration of any person as the proprietor with absolute title of a parcel shall vest in that person the absolute ownership of that parcel, together with all rights and privileges belonging or appurtenant thereto, free from all other interests and claims whatsoever, but subject—

Effect of registration with absolute title.

(a) to the leases, charges and other incumbrances and to the conditions and restrictions, if any, shown in the register; and

(b) unless the contrary is expressed in the register, to such liabilities, rights and interests as affect the same and are declared by section 28 not to require noting on the register:

Provided that—

(i) nothing in this section shall be taken to relieve a proprietor from any duty or obligation to which he is subject as a trustee.

(ii) the registration of any person under this Ordinance shall not confer on him any right to any minerals or to any mineral oils unless the same are expressly referred to in the register.

**24.** Subject to the provisions of section 27, the registration of any person as the proprietor with a provisional title of a parcel shall not affect or prejudice the enforcement of any estate, right or interest adverse to or in derogation of the title of that proprietor arising before such date or under such instrument or in such other manner as is specified in the register of that parcel, but save as aforesaid, such registration shall have the same effect as the registration of a person with absolute title.

Effect of registration with provisional title.

**25.** Subject to the provisions of section 27, the registration of a person as the proprietor of a lease shall vest in that person the leasehold interest described in the lease, together with all implied and expressed rights and privileges belonging or appurtenant thereto and subject to all implied and expressed agreements, liabilities and incidents of the lease:

Effect of registration of a lease.

Provided that if the title of the lessor is a provisional title the enforcement of any estate, right or interest affecting or in derogation of the right of the lessor to grant the lease shall not be prejudiced.

Effect of  
registration as  
Crown Land.

**26.** The registration of land as Crown land shall, subject to any registered incumbrances, enable the Governor in Council by a disposition registered under this Ordinance to dispose of such land.

Voluntary  
transfer.

Cap. 285.

**27.** Every proprietor who has acquired land, a lease or a charge by transfer without valuable consideration shall hold it subject to any unregistered rights or interests subject to which the transferer held it, and subject also to the provisions of any law relating to bankruptcy and to the winding-up provisions of the Companies Ordinance, but save as aforesaid such transfer when registered shall in all respects have the same effect as a transfer for valuable consideration.

Overriding  
interests.

**28.** Unless the contrary is expressed in the register, all registered land shall be subject to such of the following overriding interests as may for the time being subsist and effect the same, without their being noted on the register—

(a) rights of way, rights of water and any easement or profit subsisting at the time of first registration under this Ordinance;

(b) natural rights of light, air, water and support;

(c) rights of compulsory acquisition, resumption, entry, search, user or limitation of user conferred by any other written Ordinance;

(d) leases or agreements for leases for a term not exceeding two years, and periodic tenancies within the meaning of section 2.

(e) any unpaid moneys which, without reference to registration under this Ordinance are expressly declared by any written law to be a charge upon land;

(f) rights acquired or in process of being acquired by virtue of any written law relating to the limitation of actions or by prescription;

(g) the rights of a person in actual occupation of land or in receipt of the rents and profits thereof save where inquiry is made of such person and the rights are not disclosed;

(h) electric supply lines, telephone and telegraph lines, or poles, pipelines, aqueducts, canals, weirs and dams erected, constructed or laid in pursuance or by virtue of any power conferred by any written law;

(i) arrears of land or house tax due to the Government:

Provided that the Registrar\* may direct registration of any of the liabilities, rights and interests hereinbefore defined in such manner as he thinks fit.

**29.** (1) Any proprietor registered with a provisional title or any interested person may at any time apply to the Registrar\* to be registered or to have the proprietor registered, as the case may be, with an absolute title.

Conversion of provisional into absolute title.

(2) If the applicant satisfies the Registrar\* that the qualification to which the provisional title is subject has ceased to be of effect, the Registrar\* shall make an order for the registration of the proprietor with absolute title after such advertisement as the Registrar\* may think fit.

(3) On the making of any such order or on the application of any interested party after the expiration of twenty years from the date of first registration with a provisional title, the Registrar\* shall substitute in the register the words "absolute title" for the words "provisional title" and the title of the proprietor shall thereupon become absolute.

**30.** Every proprietor acquiring any land, lease or charge shall be deemed to have had notice of every entry in the register relating to the land, lease or charge.

Entries to constitute actual notice.

\* With effect from the date on which the Registered Land (Amendment) Ordinance, 1977 is brought into force, the words "Chief Registrar" shall be substituted for the word "Registrar" — *Vide* section 4 of the Registered Land (Amendment) Ordinance, 1977.

## PART IV.

## CERTIFICATES AND SEARCHES.

Land certificates  
and certificates  
of lease.

**31.** (1) The Registrar\* shall, if requested by any proprietor of land or a lease where no land certificate or certificate of lease has been issued, issued to him a land certificate or a certificate of lease, as the case may be, in the prescribed form showing all subsisting entries in the register affecting that land or lease:

Provided that—

- (i) only one such certificate shall be issued in respect of each parcel of land or lease;
- (ii) no certificate of lease shall be issued unless the lease is for a certain period exceeding twenty five years.

(2) A land certificate or certificate of lease shall be only prima facie evidence of the matters shown therein, and the land or lease shall be subject to all entries in the register whether they are shown on the certificate or not.

(3) When there is more than one proprietor, the proprietors shall agree among themselves as to who shall receive the certificate, and failing agreement the certificate shall be filed in the registry.

(4) The date of issue of a land certificate or certificate of lease shall be noted in the register.

Production of  
certificates.

**32.** (1) If a land certificate or a certificate of lease has been issued, then, unless it is filed in the registry, or the Registrar\* dispenses with its production it shall be produced on the registration of any dealing with the land or lease to which it relates, and a note of such registration shall be made on the certificate.

(2) If the disposition is a transfer, the certificate if produced shall be destroyed, and in such case a new certificate may be issued to the new proprietor.

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\* With effect from the date on which the Registered Land (Amendment) Ordinance, 1977 is brought into force, the words "Chief Registrar" shall be substituted for the word "Registrar"— *Vide* section 4 of the Registered Land (Amendment) Ordinance, 1977.

(3) If the disposition is a charge, the certificate, if any, shall be filed in the registry.

**33.** On the registration of any disposition of a lease or charge the duplicate and the triplicate of the lease or charge shall be produced to the Registrar\*, who shall note particulars of the disposition on the filed lease or charge and on the duplicate and triplicate thereof unless the Registrar\* is satisfied that they cannot be produced.

Dispositions of leases and charges.

**34.** (1) If a land certificate or certificate of lease is lost or destroyed, the proprietor may apply to the Registrar\* for the issue of a new certificate, and shall produce evidence to satisfy the Registrar\* of the loss or destruction of the previous certificate.

Lost or destroyed certificates.

(2) The Registrar\* may require a statutory declaration that the certificate has been lost or destroyed.

(3) The Registrar\*, if satisfied with the evidence as to the destruction or loss of the certificate, and after the publication of such notice as he may think fit, may issue a new certificate.

(4) When a lost certificate is found, it shall be delivered to the Registrar for cancellation.

**35.** (1) Any person, on application in the prescribed form and on payment of the prescribed fee, may inspect during official hours of business any register and any sheet of the Registry Map or any filed instrument or plan.

Searches and copies.

(2) Any person, on application in the prescribed form and on payment of the prescribed fee, may require an official search in respect of any parcel, and the Registrar\* shall issue a certificate of official search setting forth particulars of the subsisting entries in the register of that parcel.

(3) Any person, on application in the prescribed form and on payment of the prescribed fee, shall be entitled to a certified copy of any register or part of the Registry Map or any plan or instruments filed in the registry.

\* With effect from the date on which the Registered Land (Amendment) Ordinance, 1977 is brought into force, the words "Chief Registrar" shall be substituted for the word "Registrar" — *Vide* section 4 of the Registered Land (Amendment) Ordinance, 1977.

Evidence.

**36.** (1) A certified copy of the register or part of the Registry Map or any plan or instrument filed in the registry shall be admissible in evidence in all actions and matters and between all persons or parties, to the same extent as the original, and a signature on any such certified copy purporting to be the signature of the Registrar\* shall be presumed to be the signature of the Registrar\* until the contrary is proved.

(2) No legal practitioner, trustee, personal representative or other person in a fiduciary position shall be answerable in respect of any loss occasioned by the inaccuracy of any such certified copy as is referred to in subsection (1).

(3) No process for compelling the production of the register, or of the Registry Map, or of any filed instrument or plan, shall issue from any court except with the leave of that court, which leave shall not be granted if a certified copy will suffice, and any such process, if issued, shall bear thereon a statement that it is issued with the leave of the court.

## PART V.

### DISPOSITIONS.

#### Division 1—General.

Subsequent  
dealings

**37.** (1) No land, lease or charge shall be capable of being disposed of except in accordance with this Ordinance, and every attempt to dispose of such land, lease, or charge otherwise than in accordance with this Ordinance shall be ineffectual to create, extinguish, transfer, vary or affect any estate, right or interest in the land, lease or charge.

(2) Nothing in this section shall be construed as preventing any unregistered instrument from operation as a contract, but no action may be brought upon any contract for the disposition of any interest in land unless the agreement upon which such action is brought, or some memorandum or note thereof, is in writing, and is signed by the party to be charged or by some other person thereunto by him lawfully authorised:

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\* With effect from the date on which the Registered Land (Amendment) Ordinance, 1977 is brought into force, the words "Chief Registrar" shall be substituted for the word "Registrar" — *Vide* section 4 of the Registered Land (Amendment) Ordinance, 1977.

Provided that such an action shall not be prevented by reason only of the absence of writing, where an intending purchaser or lessee who has performed or is willing to perform his part of a contract—

- (i) has in part performance of the contract taken possession of the property or any part thereof; or
- (ii) being already in possession, continues in possession in part performance of the contract and has done some other act in furtherance of the contract.

**38.** (1) No person dealing or proposing to deal for valuable consideration with a proprietor shall be required or in any way concerned—

Protection of persons dealing in registered land.

(a) to inquire or ascertain the circumstances in or the consideration for which such proprietor or any previous proprietor was registered; or

(b) to see to the application of any consideration or any part thereof; or

(c) to search any register kept under the Registration and Records Ordinance.

(2) Where the proprietor of land, a lease or a charge is a trustee he shall, in dealing therewith, be deemed to be absolute proprietor thereof, and no disposition by such trustee to a bona fide purchaser for valuable consideration shall be defeasible by reason of the fact that such disposition amounted to a breach of trust.

**39.** Where an instrument is presented for registration later than three months from the date of the instrument then, as well as the registration fee, an additional fee equal to the registration fee shall be payable for each three months which have elapsed since such date:

Additional fee for delayed registration.

Provided that in no such case shall the additional fee exceed five times the original registration fee payable.

**40.** (1) If he is satisfied that any person, through his wilful default has failed to register any instrument which is

Power to compel registration.

registerable under this Ordinance, the Registrar\* may by notice in writing order such person to present such instrument for registration, and thereupon the registration fee and any additional fee payable under section 39 shall become due and shall be payable whether the instrument is presented for registration or not.

(2) Any person who fails to comply with an order of the Registrar under subsection (1) within one month of the service of the notice shall be guilty of an offence against this Ordinance and shall be liable on summary conviction before a Magistrate to a fine not exceeding sixty dollars.

Priority of registered interests.

**41.** (1) Interests appearing in the register shall have priority according to the order in which the instruments which led to their registration were presented to the registry, irrespective of the dates of the instruments and notwithstanding that the actual entry in the register may be delayed:

Provided that where an instrument is prepared in the registry it shall be deemed to have been presented on the date on which application for its preparation was made to the Registrar.

(2) Instruments sent by post or under cover and received during the hours of business shall be deemed to be presented simultaneously immediately before the closing of the office on that day, and instruments so sent but received between the time of closing and the next opening of the office for business shall be deemed to be presented simultaneously immediately after such opening.

(3) Where more than one instrument or application are presented on the same day, or on different days but at so short an interval from each other that in the opinion of the Registrar\* there is doubt as to their order of priority, the Registrar\* may refuse registration until he has heard and determined the rights of the parties interested thereunder.

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\* With effect from the date on which the Registered Land (Amendment) Ordinance, 1977 is brought into force, the words "Chief Registrar" shall be substituted for the word "Registrar" — *Vide* section 4 of the Registered Land (Amendment) Ordinance, 1977.

**42.** (1) Where any person proposing to deal with registered land has, with the consent in writing of the proprietor, applied for an official search and has stated in his application the particulars of the proposed dealing, the registration of any instrument affecting the land to be comprised in or affected by the proposed dealing shall be stayed for a period (hereinafter referred to as the suspension period) of fourteen days from the time at which application for the search was made, and a note shall be made in the register accordingly.

Stay of registration.

(2) If within the suspension period a properly executed instrument affecting the proposed dealing is presented for registration, such instrument shall have priority over any other instrument which may be presented for registration during the suspension period, and shall be registered notwithstanding any caution or other entry for which application for registration may have been made during the suspension period.

(3) Subject to subsection (2), any instrument or document for which application for registration is made during the suspension period other than that affecting the proposed dealing shall be dealt with in the same manner, shall have the same priority and shall be as effectual as if no stay of registration had been obtained.

**43.** Where, upon the registration of a dealing, the interest of—

Merger of registered interests.

(a) lessor and lessee; or

(b) chargor and chargee; or—

(c) the proprietor of a parcel which is burdened with an easement, profit or restrictive agreement and the proprietor of a parcel which benefits therefrom

vest in the same proprietor, such interests shall not merge unless a surrender or discharge is registered or the parcels are combined or there is a declaration of merger, which may be contained in the instrument evidencing the dealing.

#### Division 2 – Leases.

**44.** Subject to the provisions of this Ordinance and of any other written law, the proprietor of land may lease the land or part of it to any person for a definite period or for the life of the lessor or of the lessee or for a period which though

Leases.

indefinite may be terminated by the lessor or the lessee, and subject to such conditions as he may think fit:

Provided that, if only part is leased, the lease shall be accompanied by a plan or other description which the Registrar, in his absolute discretion, deems adequate to identify the part leased.

Periodic  
tenancies.

**45.** (1) Where in any lease the term is not specified and no provision is made for the giving of notice to terminate the tenancy, the lease shall be deemed to have created a periodic tenancy.

(2) Where the proprietor of a land permits the exclusive occupation of the land or any part thereof by any other person at a rent but without any agreement in writing, that occupation shall be deemed to constitute a periodic tenancy.

(3) The period of a periodic tenancy created by this subsection shall be the period by reference to which the rent is payable, and the tenancy may be determined by either party giving to the other notice, the length of which shall, subject to any other written law, be not less than the period of the tenancy and shall expire on one of the days on which rent is payable.

Registration of  
leases.

**46.** A lease for a specified period exceeding two years or for the life of the lessor or of the lessee, or a lease which contains an option whereby the lessee may require the lessor to grant him a further term or terms which, together with the original term, exceed two years, shall be in the prescribed form, and shall be completed by—

(a) opening a register in respect of the lease in the name of the lessee; and

(b) filing the lease; and

(c) noting the lease in the incumbrances section of the register of the lessor's land or lease.

Lessor's consent  
to dealing with  
lease.

**47.** Upon the registration of a lease containing an agreement, expressed or implied, by the lessee that he will not transfer, sub-let, charge or part with possession of the land leased or any part thereof without the written consent of the lessor, the agreement shall be noted in the register of the lease,

and no dealing with the lease shall be registered until the consent of the lessor, verified in accordance with section 108, has been produced to the Registrar\*.

**48.** Where any land is subject to a charge, no lease of such land shall be registered without the previous consent in writing of the proprietor of the charge, verified in accordance with section 108, unless the charge expressly dispenses with the necessity for such consent.

Lease of charged land.

**49.** (1) Where the period of a lease is expressed as commencing on a particular day, that day is excluded in computing that period.

Duration of leases.

(2) Where no day of commencement is named, the period commences on the date of execution of the lease, and that day is excluded in computing that period.

(3) Where the period is a year or a number of years, in the absence of an express agreement to the contrary, the lease shall last during the whole anniversary of the day on which such period commences.

**50.** (1) A lease may be made for a period to commence on a future date, not being later than twenty-one years from the date on which the lease is executed, but shall be of no effect unless it is registered.

Future leases.

(2) Any instrument purporting to create a lease to commence on a date more than twenty-one years after the date of the instrument, or to take effect on the fulfilment of any condition, is void.

**51.** (1) Where a person, having lawfully entered into occupation of any land as lessee, continues to occupy that land with the consent of the lessor after the termination of the lease he shall, in the absence of any evidence to the contrary, be deemed to be a tenant holding the land on a periodic tenancy on the same conditions as those of the lease so far as those conditions are appropriate to a periodic tenancy.

Holding over.

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(2) For the purposes of this section, the acceptance of rent in respect of any period after the termination of the lease shall, if the former tenant is still in occupation and subject to any agreement to the contrary, be taken as evidence of consent to the continued occupation of the land.

Agreements  
implied in leases  
on part of lessor.

**52.** Save as otherwise expressly provided in the lease, there shall be implied in every lease agreements by the lessor with the lessee binding the lessor—

(a) that, so long as the lessee pays the rent and observes and performs the agreements and conditions contained, or implied in the lease and on his part to be observed and performed, the lessee shall and may peaceably and quietly possess and enjoy the leased premises during the period of the lease without any lawful interruption from or by the lessor or any person rightfully claiming through him;

(b) not to use or permit to be used any adjoining or neighbouring land of which he is the proprietor or lessee in any way which would render the leased premises unfit or materially less fit for the purpose for which they were leased;

(c) where part only of a building is leased, to keep the roof, main walls and main drains, and the common passages and common installations, in repair;

(d) where any dwelling-house, flat or room is leased furnished, that such house, flat or room is fit for habitation at the commencement of the tenancy; and

(e) that if at any time the leased premises or any part thereof are destroyed or damaged by fire, civil commotion or accident not attributable to the negligence of the lessee, his servants or his licensees, so as to render the leased premises or any part thereof wholly or partially unfit for occupation or use, the rent or a just proportion thereof according to the nature and extent of the damage sustained shall be suspended and cease to be payable until the leased premises have again been rendered fit for occupation and use; but that if the leased premises have not been so rendered fit for occupation and use within six months of their destruction or damage as aforesaid, the lessee may at his option, and on giving one month's written notice of his intention so to do, terminate the lease.

**53.** Save as otherwise expressly provided in the lease, there shall be implied in every lease agreements by the lessee with the lessor binding the lessee—

Agreements  
implied in leases  
on part of lessee.

(a) to pay the rent reserved by the lease at the times and in the manner therein specified;

(b) to pay all rates, taxes, and other outgoings which are at any time payable in respect of the leased premises during the continuance of the lease unless the same are payable exclusively by the lessor by virtue of any written law;

(c) in the case of agricultural land, to farm the same in accordance with the practice and any rules of good husbandry and to yield up the land at the end of the term in good heart;

(d) except where part only of a building is leased, or where a dwelling-house is leased furnished, to keep all buildings comprised in the lease and all boundary marks in repair;

(e) where part only of a building is leased, or where a dwelling-house is leased furnished, to keep the leased premises, except the roof, main walls and main drains, and the common passages and common installations in repair;

(f) where the lease is of furnished premises, to keep the furniture of the period, fair wear and tear only excepted, and to replace such articles as are lost, destroyed or so damaged as to be beyond repair with articles of equal value to those so lost, destroyed or damaged;

(g) to permit the lessor or his agent with or without workmen or others at all convenient times and after reasonable notice to enter on the leased premises and examine their condition;

(h) to repair or otherwise make good any defect or breach of agreement for which the lessee is responsible and of which notice has been given by the lessor to the lessee, within such reasonable period as may be specified in the notice; and

(i) not to transfer, charge, sublease or otherwise part with the possession of the leased premises or any part thereof without the previous written consent of the lessor, but such consent shall not be unreasonably withheld.

Meaning of "in repair."

**54.** Where an agreement is contained or implied in any lease to keep a building or a particular part of a building "in repair", it shall, in the absence of an express provision to the contrary, mean in such state of repair as that in which a prudent owner might reasonably be expected to keep his property, due allowance being made for the age, character and locality of the building at the commencement of the lease:

Provided that there shall not be read into such an agreement an undertaking to put any building into a better state of repair than that in which it was at the commencement of the lease.

Lessor's right of forfeiture and effect of forfeiture of subleases.

**55.** (1) Subject to the provisions of section 57 and to any provision to the contrary in the lease, the lessor shall have the right to forfeit the lease if the lessee—

(a) commits any breach of, or omits to perform, any agreement or condition on his part expressed or implied in the lease; or

(b) is adjudicated bankrupt; or

(c) being a company, goes into liquidation.

(2) The right of forfeiture may be—

(a) exercised, where neither the lessee nor any person claiming through or under him is in occupation of the land, by entering upon and remaining in possession of the land; or

(b) enforced by action in the court.

(3) The right of forfeiture shall be taken to have been waived if—

(a) the lessor accepts rent which has become due since the breach of agreement or condition which entitled the lessor to forfeit the lease or has by any other positive action shown an intention to treat the lease as subsisting; and

(b) the lessor is, or should by reasonable diligence have become, aware of the commission of the breach;

Provided that the acceptance of rent after the lessor has commenced an action in the court under subsection (2) shall not operate as a waiver.

(4) The forfeiture of a lease shall terminate every sublease and every other interest appearing in the register relating to that lease, but—

(a) where the forfeiture is set aside by the court on the grounds that it was procured by the lessor in fraud of the sub lessee; or

(b) where the court grants relief against the forfeiture under section 57 of this Ordinance, every such sublease and other interest shall be deemed not to have terminated.

**56.** Notwithstanding anything to the contrary contained in the lease, no lessor shall be entitled to exercise the right of forfeiture for the breach of any agreement or condition in the lease, whether expressed or implied, until the lessor has served on the lessee a notice—

Notice before forfeiture.

(a) specifying the particular breach complained of; and

(b) if the breach is capable of remedy, requiring the lessee to remedy the breach within such reasonable period as is specified in the notice; and

(c) in any other than non-payment of rent, requiring the lessee to make compensation in money for the breach, and the lessee has failed to remedy the breach within a reasonable time thereafter, if it is capable of remedy, and to make reasonable compensation in money.

**57.** (1) A lessee upon whom a notice has been served under section 56, or against whom the lessor is proceeding, by action or re-entry, to enforce his right of forfeiture, may apply to the court for relief; and the court may grant or refuse relief, as the court, having regard to the proceedings and the conduct of the parties and the circumstances of the case, thinks fit, and, if it grants relief, may grant it on such terms as it thinks fit.

Relief against forfeiture.

(2) The court on application by any person claiming as sublessee or chargee any interest in the property or part of the property comprised in the lease forfeited or sought to be forfeited, may make an order vesting the property or such part in such sublessee or chargee for the whole period of the lease or any loss period, upon such conditions as the court in the circumstances of the case thinks fit:

Provided that nothing in this subsection shall apply in the case of a forfeiture arising from a breach to which the sublessee is a party or from the breach of an express agreement or condition against subleasing, parting with the possession of or disposing of the property leased.

(3) For the purpose of this section a lease limited to continue as long only as the lessee abstains from committing a breach of agreement or condition shall be and take effect as a lease to continue for any longer term for which it could subsist, but terminable by a proviso for re-entry on such breach.

(4) This section shall have effect notwithstanding any stipulation or agreement to the contrary and whether the lease is registered or not.

Variation and extension of leases.

**58.** Subject to the provisions of section 56, the agreements and conditions contained or implied in any registered lease may be varied, negatived or added to, and the period of any registered lease may from time to time be extended, by an instrument executed by the lessor and the lessee for the time being and registered before the expiration of the then current term of the lease.

Substitution.

**59.** Where upon presentation of a lease for registration the Registrar\* is satisfied that the lessee is the person registered as the proprietor of a prior lease in respect of the same land, he shall cancel the registration of the prior lease and register the new lease subject to the incumbrances registered against the prior lease.

Subleases.

**60.** (1) Subject to any provision in his lease affecting his right to do so, the proprietor of a registered lease may, by a sublease in the prescribed form, sublease for any period which is less than the remainder of the period of his lease.

(2) Save as otherwise expressly provided in this Ordinance, the provisions of this Ordinance affecting leases, lessors and lessees shall apply to subleases, sublessors and sublessees, with such adaptations as are necessary.

(3) If a lease is terminated by operation of law or under any law relating to bankruptcy or liquidation proceedings such termination shall terminate the sublease.

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(4) In addition to the agreements specified by this Ordinance to be implied in leases, there shall be implied in every sublease under this Ordinance an agreement by the sublessor that he will, during the continuance of the sublease, pay the rent reserved by the lease under which the sublessor holds, and observe and perform the agreements and conditions thereof.

(5) Where a sublessee has paid to the sublessor's lessor the rent or any part of the rent payable by the sublessor under the lease which the sublessor holds, the sublease shall be entitled to set off any sum so paid against the rent payable by him to the sublessor in respect of the sublease.

**61.** (1) Where the lessor and the lessee agree that the lease shall be surrendered, it shall be surrendered in the following manner—

Surrender of leases.

(a) an instrument shall be prepared in the prescribed form, or else the word "surrendered" shall be inscribed on the lease or on the duplicate or triplicate thereof;

(b) the instrument or inscription shall then be executed by the lessor and lessee;

(c) the Registrar shall then cancel the registration of the lease; or

(d) the instrument or inscribed lease shall then be filed,

and thereupon, or upon such earlier date as is expressed in the instrument or inscription, the interest of the lessee shall cease.

(2) No lease which is subject to a charge or a sublease shall be surrendered without the consent in writing of the proprietor of the charge or sublease.

**62.** (1) Where —

Determination of leases.

(a) the period of a lease has expired; or

(b) an event upon which a lease is expressed to terminate has happened; or

(c) a lessor has lawfully re-entered; or

(d) a notice duly given to terminate the lease has expired, and the lessor has recovered possession of the land leased, the lease and every other interest appearing on the register relating to the lease shall thereupon

terminate, and the lessor may apply in writing to the Registrar\* to cancel the registration.

(2) An application under this section shall be supported by such evidence of the matters giving rise to the termination and the recovery of possession by the lessor as the Registrar\* may require, and the Registrar\* on being satisfied of the matters set forth in the application shall cancel the registration of the lease.

Voluntary registration of leases.

**63.** Where application is made to the Registrar\* to register any lease which is not compulsorily registrable under this Ordinance but which is capable of registration, the Registrar\* shall not register such lease unless—

(a) it is in the prescribed form, or in such form as the Registrar\* may approve; and

(b) in the case of a sublease, every lease superior to that sublease complies with condition (a) and is registered in priority to the sublease.

Division 3 – Charges

Form and effect of charges.

**64.** (1) A proprietor may, by an instrument in the prescribed form, charge his land or lease or charge to secure the payment of an existing or a future or a contingent debt or other money or money’s worth or the fulfilment of a condition, and the instrument shall, except where section 72 has by the instrument been expressly excluded, contain a special acknowledgement that the chargor understands the effect of that section, and the acknowledgement shall be signed by the chargor or, where the chargor is a corporation, by one of the persons attesting the affixation of the common seal.

(2) A date for the repayment of the money secured by a charge may be specified in the charge instrument, and where no such date is specified or repayment is not demanded by the chargee on the date specified the money shall be deemed to be repayable three months after the service of a demand in writing by the charge.

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(3) The charge shall be completed by its registration as an incumbrance and the registration of the person in whose favour it is created as its proprietor and by filing the instrument.

(4) A charge shall not operate as a transfer but shall have effect as a security only.

(5) There shall be included, in an instrument of charge securing the fulfilment of a condition or the payment of an annuity or other periodical payment not of the nature of interest on a capital sum, such provisions as the parties think fit for disposing, subject to the provisions of section 76, of the money which may arise on the exercise by the chargee of his power of sale, either by setting aside the proceeds of sale or part thereof and investing it to make future periodical payments, or by payment to the chargee of such proceeds or part thereof to the extent of the estimated capital value of the chargee's interest or otherwise.

**65.** A proprietor whose land or lease or charge is subject to a charge may create a second or subsequent charge in the same manner as the first charge and then the same provisions shall apply thereto, but any sale under the power expressed or implied in any such charge shall be expressed to be subject to all prior charges unless all those charges have been discharged.

Second or subsequent charges.

**66.** If any question arises whether any payment made by the chargor is in respect of principal or interest, such payment shall be presumed to be in respect of interest to the extent of all interest which is due and payable at the date of payment.

Presumption that money paid is interest.

**67.** There shall be implied in every charge, unless the contrary is expressed therein, agreements by the chargor with the chargee binding the chargor—

Agreements implied in charges.

(a) to pay the principal money on the day therein appointed and, so long as the principal money or any part thereof remains unpaid, to pay interest thereon, or on so much thereof as for the time being remains unpaid, at the rate and on the days and in manner therein specified;

(b) to pay all rates, taxes and other outgoings which are at any time payable in respect of the charged property;

(c) to repair and keep in repair all buildings and other improvements upon the charged land or comprised in the charged lease and to permit the chargee or his agent, at all reasonable times and after reasonable notice to the chargor, to enter the land and examine the state and condition of such buildings and improvements;

(d) to insure and keep insured all buildings upon the charged land or comprised in the charged lease against loss or damage by fire in the joint names of the chargor and chargee with insurers approved by the chargee to the full value thereof;

(e) in the case of a charge of agricultural land, to farm the land in accordance with the rules of good husbandry;

(f) in the case of a charge of land or of a lease, not to lease the charged land or any part thereof, or sublease the whole or any part of the land comprised in the charged lease, for any period longer than one year without the previous consent in writing of the chargee, but such consent shall not be unreasonably withheld;

(g) not to transfer the land, lease or charge charged or any part thereof without the previous written consent of the chargee but such consent shall not be unreasonably withheld;

(h) in the case of a charge of a lease, during the continuance of the charge to pay the rent reserved by the lease and observe and perform the agreement and conditions thereof, and to keep the chargee indemnified against all proceedings, expenses and claims on account of the nonpayment of the rent or any part thereof, or the breach or nonobservance of the said agreements and condition or any of them, and, if the lessee has an enforceable right to renew the lease, to renew it;

(i) where the charge is a second or subsequent charge, that the chargor will pay the interest from time to time accruing due on each prior charge when it becomes due, and will at the proper time repay the principal money due on each prior charge; and

(j) where the chargor fails to comply with any of the agreements implied by paragraphs (b), (c), (d), (e), (g) and (h) that the chargee may spend such money as is necessary to remedy the breach, and may add the amount

so spent to the principal money, and that thereupon the amount shall be deemed for all purposes to be part of the principal money secured by the charge.

**68.** Where a charge contains an agreement, expressed or implied, by the chargor with the chargee that he will not transfer the land, lease or charge charged or any part thereof without the written consent of the chargee, the agreement shall be noted in the register and no transfer by the chargor shall be registered until the written consent of the chargee, verified in accordance with section 108 has been produced to the Registrar\*.

Chargee's  
consent to  
transfer.

**69.** The amount secured, the method of repayment, the rate of interest or the term of the charge may be varied by the registration of an instrument of variation executed by the parties to the charge, but no such variation shall affect the rights of the proprietor of any subsequent charge, unless he has consented to the variation in writing on the instrument of variation.

Variation of  
charges.

**70.** (1) Subject to the provisions of this section, a chargor, on payment of all money due and owing under the charge at the time of payment or on fulfilment of any condition secured thereby and on payment of any costs or expenses properly incurred by the chargee in exercising any power conferred on him by section 72, may redeem the charged land or lease or charge at any time before it has been sold under section 75, and any agreement or provision which purports to deprive the chargor of this right of redemption shall be void; and, for the purpose of this subsection, land, a lease or a charge shall be deemed to have been sold when a bid has been accepted at the auction sale.

Right of  
redemption.

(2) If the chargor wishes to redeem the charged land or lease or charge before the date for repayment specified in the charge, he shall be entitled to do so on payment to the chargee, in addition to any other money then due or owing under the charge, of interest on the principal sum secured thereby for the unexpired portion of the term of the charge.

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(3) If the chargor seeks to redeem the charged land or lease or charge after the date specified in the charge, or where no such date is specified, he shall give the chargee three months' notice of his intention to redeem the charge or shall pay him three months' interest in lieu thereof.

(4) If at any time the chargor is entitled and desires to repay the money secured by the charge, and the chargee is absent or cannot be found, or the Registrar\* is satisfied that the charge cannot be discharged otherwise, the chargor may deposit the amount due with the Registrar\* in trust for the person entitled thereto, and thereupon the obligations of the chargor under the charge shall cease, and the Registrar\* shall cancel the registration of the charge and shall pay the amount deposited to the chargee if the chargee applies for it within six years of the date of deposit, and if the amount is not so paid it shall be paid into the public Treasury.

Right of third party to transfer of charge.

**71.** On his tendering to the chargee such sums as would have been payable to the chargee if the chargor had sought to redeem the charge under section 70, any of the following persons, that is to say—

(a) any person, other than the chargor, who has an interest in the land or lease or charge charged; or

(b) any surety for the payment of the amount secured by the charge; or

(c) any creditor of the chargor who has obtained a decree for sale of the charged land, lease or charge, may require the chargee to transfer the charge to him.

Chargee's remedies.

**72.** (1) If default is made in payment of the principal sum or of any interest or any other periodical payment or of any part thereof, or in the performance or observance of any agreement expressed or implied in any charge, and continues for one month, the chargee may serve on the chargor notice in writing to pay the money owing or to perform and observe the agreement, as the case may be.

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(2) If the chargor does not comply, within three months of the date of service, with a notice served on him under subsection (1), the chargee may—

(a) appoint a receiver of the income of the charged property; or

(b) sell the charged property:

Provided that a chargee who has appointed a receiver may not exercise the power of sale unless the chargor fails to comply, within three months of the date of service, with a further notice served on him under that subsection.

(3) The chargee shall be entitled to sue for the money secured by the charge in the following cases only—

(a) where the chargor is bound to repay the same;

(b) where, by any cause other than the wrongful act of the chargor or chargee the charged property is wholly or partially destroyed or the security is rendered insufficient and the chargee has given the chargor a reasonable opportunity of providing further security which will render the whole security sufficient, and the chargor has failed to provide such security;

(c) where the chargee is deprived of the whole or part of his security by, or in consequence of, the wrongful act or default of the chargor:

Provided that—

(i) in the case specified in paragraph (a)—

(a) a transferee from the chargor shall not be liable to be sued for the money unless he has agreed with the chargee to pay the same; and

(b) no action shall be commenced until a notice served in accordance with subsection (1) has expired;

(ii) the court may, at its discretion, stay a suit brought under paragraph (a) or paragraph (b), notwithstanding any agreement to the contrary, until the chargee has exhausted all his other remedies against the charged property.

**73.** (1) The appointment of a receiver under the powers conferred by section 72 shall be in writing signed by the chargee.

Appointment powers, remuneration and duties of receiver.

(2) A receiver may be removed at any time and a new receiver appointed in writing signed by the chargee.

(3) A receiver appointed under this section shall be deemed to be the agent of the chargor for the purposes for which he is appointed; and the chargor shall be solely responsible for the receiver's acts and defaults unless the charge otherwise provides.

(4) The receiver shall have power to demand and recover all the income of which he is appointed receiver by action or otherwise, in the name of the chargor, and to give effectual receipts accordingly for the same.

(5) A person paying money to the receiver shall not be concerned to inquire into the validity of the receiver's appointment.

(6) Subject to the provisions of subsection (8) the receiver shall be entitled to retain out of any money received by him all costs, charges and expenses incurred by him as receiver, and, for his remuneration, a commission at such rate, not exceeding five per cent of the gross amount of all moneys received, as is specified in his appointment, or if no rate is so specified at the rate of five per cent of that gross amount, or such other rate as the chargor and the chargee and other chargees, if any, agree or the court thinks fit to allow on application made by the receiver for that purpose.

(7) The receiver shall apply insurance money in making good the loss or damage in respect of which the money is received.

(8) Subject to the provisions of subsection (7), the receiver shall apply all money received by him in the following order of priority—

(a) in discharge of all rents, rates, taxes and out-goings whatever affecting the charged property; or

(b) in keeping down all annual sums or other payments and the interest on all principal sums, having priority to the charge in right whereof he is receiver; and

(c) in payment of his commission, costs, charges and expenses and of the premiums on fire, life and other insurance, if any, properly payable under the charge instrument or under this Ordinance, and the cost of executing necessary or proper repairs directed in writing by the chargee; and

(d) in payment of the interest accruing due in respect of any principal money due under the charge; and

(e) in or towards the discharge of the money secured by the charge, if so directed in writing by the chargee, and shall pay the residue, if any, of the money received by him to the person who, but for the appointment of the receiver, would have been entitled to receive the income of which he is appointed receiver, or who is otherwise entitled to the charged property.

**74.** (1) The proprietor of a charge on land or a lease who has appointed a receiver under the powers conferred on him by section 77 shall, in the absence of any express provision to the contrary contained in the charge, have power, subject to the provisions of this Ordinance and of any other written law—

Chargee's powers of leasing.

(a) to grant leases in respect of the charged land or the land comprised in the charged lease or any part or parts thereof; and

(b) to accept a surrender of any lease so granted and of any lease created by the chargor,

and may, for such purposes, execute in the place of the chargor any instrument required to effect such lease or surrender.

(2) Every lease granted by a chargee shall—

(a) be made to take effect in possession not later than twelve months after its date;

(b) reserve the best rent that can reasonably be obtained, regard being had to the circumstances of the case, but without a fine or premium being obtained;

(c) be for a term not exceeding twenty-one years; and

(d) contain a declaration by the chargee that he has appointed a receiver, with the date of appointment.

**75.** (1) A chargee exercising his power of sale shall act in good faith and have regard to the interests of the chargor, and may sell or concur with any person in selling the charged land, lease or charge, or any part thereof, together or in lots, by public auction for a sum payable in one amount or by instalments, subject to such reserve price and conditions of sale as the chargee thinks fit, with power to buy in at the auction and to resell by public auction without being answerable for any loss occasioned thereby.

Power of sale.

(2) Where the chargor is in possession of the charged land or the land comprised in the charged lease, the chargee

shall become entitled to recover possession of the land upon a bid being accepted at the auction sale.

(3) A transfer by a chargee in exercise of his power of sale shall be made in the prescribed form, and the Registrar\* may accept it as sufficient evidence that the power has been duly exercised, and any person suffering damage by an irregular exercise of the power shall have his remedy in damages only against the person exercising the power.

(4) Upon registration of such transfer, the interest of the chargor as described therein shall pass to and vest in the transferee freed and discharged from all liability on account of the charge, or on account of any other incumbrance to which the charge has priority (other than a lease, easement or profit subsisting at the time and the charge was effected or to which the chargee has consented in writing).

(5) A chargee, in exercising his power of sale, shall have the same powers and rights in regard to easements and restrictive agreements as are conformed upon a proprietor by sections 93 and 94.

Application of  
purchase money.

**76.** The purchase money received by a chargee who has exercised his power of sale, after discharge of any prior incumbrances to which the sale is not made subject or after payment into court of a sum sufficient to meet any such prior incumbrances, shall be applied—

(a) first, in payment of all costs and expenses properly incurred and incidental to the sale or any attempted sale;

(b) secondly, in accordance with any express provision in the charge (as required by section 64) for disposing of such money and, in the absence of any such express provision, in discharge of the money due to the chargee at the date of the sale; and

(c) thirdly, in payment of any subsequent charges in the order of their priority,

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and the residue of the money so received shall be paid to the person who immediately before the sale was entitled to redeem the charged land, lease or charge.

**77.** The provisions of sections 70(2) and (3), 72, 73, 74 and 75 may in their application to a charge be varied or added to in the charge:

Variation of powers.

Provided that any such variation or addition shall not be acted upon, unless the court, having regard to the proceedings and conduct of the parties and to the circumstances of the case, so orders.

**78.** For the avoidance of doubt, it is hereby declared that the chargee shall not be entitled to foreclose, nor to enter into possession of the charged land or the land comprised in a charged lease or to receive the rents and profits thereof by reason only that default has been made in the payment of the principal sum or of any part thereof or in the performance or observance of any agreement expressed or implied in the charge.

No right of entry into possession or foreclosure.

**79.** (1) A discharge, whether of the whole or of a part of a charge, shall be made by an instrument in the prescribed form, or (if of the whole) the word "Discharged" may be endorsed on the charge or the duplicate or triplicate and the endorsement executed by the chargee and dated.

Discharge of charge.

(2) A discharge shall be completed by cancellation in the register of the charge, or part thereof as the case may require, and filing the instrument of discharge or the endorsed charge.

**80.** Upon proof to the satisfaction of the Registrar—

Satisfaction of charges.

(a) that all money due under a charge has been paid to the chargee or by his direction; or

(b) that there has occurred the event or circumstances upon which, in accordance with the provisions of any charge, the money thereby secured ceases to be payable and that no money is owing under the charge, the Registrar\* shall order the charge to be cancelled in the register, and thereupon the land, lease or charge shall cease to be subject to the charge.

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Tacking and further advances.

**81.** (1) Provision may be made in the charge for a chargee to make further advances or give credit to the chargor on a current or continuing account, but, unless that provision is noted in the register, further advances shall not rank in priority to any subsequent charge except with the consent in writing of the proprietor of the subsequent charge.

(2) Except as provided in this section, there is no right to tack.

Consolidation.

**82.** A chargee has no right to consolidate his charge with any other charge unless the right is expressly reserved in the charges or in one of them and is noted in the register against all the charges so consolidated.

#### Division 4—Transfer.

Transfer.

**83.** (1) A proprietor, by an instrument in the prescribed form, may transfer his land, lease or charge to any person with or without consideration.

(2) The transfer shall be completed by registration of the transferee as proprietor of the land, lease or charge and by filing the instrument.

(3) The transferee of a charge may require the chargor to execute the transfer for the purpose of acknowledging the amount due under the charge at the date of execution of the transfer.

Certificates as to payment of rates.

**84.** The Registrar\* shall not register any instrument purporting to transfer or to vest any land, or a lease of land, situated within the area of a rating authority unless there is produced to the Registrar a written statement by the authority that all rates and other charges payable to the authority in respect of the land for the last twelve years have been paid, up to and including the last rateable period before the day on which the instrument was presented for registration.

Provided that no such statement shall be required where the instrument relates to—

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- (i) land which is subject to a lease, and the leasehold interest is, by virtue of any written law, the rateable property; or
- (ii) a lease, and the land or another leasehold interest is, by virtue of any written law, the rateable property.

**85.** A transfer to take effect on the happening of any event or on the fulfilment of any condition or at any future time shall not be capable of registration.

Transfer to take effect immediately.

**86.** (1) Any condition or limitation purporting to restrain absolutely a transferee or any person claiming under him from disposing of the interest transferred shall be void.

Conditions repugnant to interest transferred.

(2) Any condition or limitation made in relation to a transfer which purports to determine the interest of the transferee on the happening of any future event or on the failure of any future event to happen shall be void.

(3) Except as provided in Division 5 of this Part, no transfer of land shall contain a direction that the land shall be used or enjoyed by the transferee in a particular manner.

**87.** No part of the land comprised in a register shall be transferred unless the proprietor has first subdivided the land and new registers have been opened in respect of each subdivision.

Transfers of part.

**88.** On the transfer of a lease, unless the contrary is expressed in the transfer, there shall be implied—

Transfer of leases.

(a) a warranty on the part of the transferor that the rent, agreements and conditions on the part of the lessee to be paid, performed and observed have been so paid, performed and observed up to the date specified in the transfer or, if no such date is specified the date of the transfer; and

(b) an agreement on the part of the transferee to pay the said rent as from the day following the date specified in the transfer or the date of the transfer, as the case may be, and to perform and observe the said agreements and conditions.

**89.** A transferee from a lessor or from a lessee shall possess all the rights, and be subject to all the liabilities, of the lessor or lessee, as the case may be, expressed or implied in the

Effect of transfer on agreements in leases.

lease, or arising or which have arisen thereunder, and the transferor shall cease to be under any obligation or possessed of any rights in respect of the lease:

Provided that nothing in this section shall affect the rights or liabilities of the lessor or lessee, as the case may be, in respect of a breach of any of the agreements expressed or implied in the lease which occurred before the transfer.

Transfer subject to charge.

**90.** In every transfer of land or a lease subject to a charge, there shall be implied an agreement by the transferee with the transferor to pay the interest secured by the charge at the rate and at the times and in the manner specified in the charge and to keep the transferor indemnified against the principal sum secured by the charge and from and against all liability in respect of any of the agreements on the part of the transferor therein contained or implied.

Transfer subject to lease.

**91.** A transfer of land which is subject to a lease shall be valid without the lessee acknowledging the transferee as lessor, but nothing in this section—

(a) affects the validity of any payment of rent made by the lessee to the transferor; or

(b) renders the lessee liable, on account of his failure to pay rent to the transferee for any breach of agreement to pay rent,

before notice of the transfer is given to the lessee by the transferee or transferor.

Transfer of unregistered leases.

**92.** A transfer of a lease of registered land which lease does not require registration, and is not so registered, shall not itself require registration, but if application is made to the Registrar to register such transfer, he shall not do so unless the transfer is in the prescribed form and the lease and prior transfers or other dealings therewith have been registered.

Division 5—Easements, Restrictive Agreements, Profits and Licences.

Easements.

**93.** (1) The proprietor of land or a lease may, by an instrument in the prescribed form, grant an easement over his land or the land comprised in his lease, to the proprietor or lessee of other land for the benefit of that other land.

(2) Any proprietor transferring or leasing land or a lease may in the transfer or lease grant an easement, for the benefit of the land transferred or leased, over land retained by him, or reserve an easement for the benefit of land retained by him.

(3) The instrument creating the easement shall specify clearly—

(a) the nature of the easement, the period for which it is granted and any conditions, limitations or restrictions intended to affect its enjoyment; and

(b) the land burdened by the easement and, if required by the Registrar\*, the particular part thereof so burdened; and

(c) the land which enjoys the benefit of the easement,

and shall, if so required by the Registrar\*, include a plan sufficient in the Registrar's estimation to define the easement.

(4) The grant or reservation of the easement shall be completed by its registration as an incumbrance in the register of the land burdened and in the property section of the land which benefits, and by filing the instrument.

(5) An easement granted by the proprietor of a lease shall be capable of existing only during the subsistence of the lease.

**94.** (1) Where an instrument, other than a lease or charge, contains an agreement (hereinafter referred to as a restrictive agreement) by one proprietor restricting the building on or the user or other enjoyment of his land for the benefit of the proprietor of other land, and is presented to the Registrar\*, the Registrar\* shall note the restrictive agreement in the incumbrances section of the register of the land or lease burdened by the restrictive agreement, either by entering particulars of the agreement or by referring to the instrument containing the agreement and shall file the instrument.

Restrictive  
agreements.

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(2) Unless it is noted in the register, a restrictive agreement is not binding on the proprietor of the land or lease burdened by it or on anybody acquiring the land or lease.

(3) The note of a restrictive agreement in the register does not give the restrictive agreement any greater force or validity than it would have had if it had not been registerable under this Ordinance and had not been noted.

(4) In so far as the restrictive agreement is capable of taking effect, not only the proprietors themselves but also their respective successors in title shall be entitled to the benefit and subject to the burden of it respectively, unless the instrument otherwise provides.

Profits.

**95.** (1) The proprietor of land or a lease may, by an instrument in the prescribed form, grant a profit.

(2) The instrument shall indicate clearly the nature of the profit, the period for which it is to be enjoyed and—

(a) whether it is to be enjoyed in gross, or as appurtenant to other land or a lease; and

(b) whether it is to be enjoyed by the grantee exclusive or by him in common with the grantor.

(3) The grant of a profit shall be completed—

(a) by its registration as an incumbrance in the register of the land or lease which it affects; and

(b) where it is appurtenant to other land or a lease, by its registration in the property section of the register of the land or lease to which it is appurtenant; and

(c) by filing the instrument.

(4) A profit which is not appurtenant to land may be dealt with as though it were land.

(5) A profit granted by the proprietor of a lease shall be capable of subsisting only during the subsistence of the lease.

Release and extinguishment of easements, profits and restrictive agreements.

**96.** (1) Upon presentation of a duly executed release in the prescribed form, the registration of the easement, profit or restrictive agreement shall be cancelled, and the easement, profit or restrictive agreement shall thereupon be extinguished.

(2) On the application of any person affected thereby, the Registrar\* may cancel the registration of an easement, profit or restrictive agreement upon proof to his satisfaction that—

(a) the period of time for which it was intended to subsist has expired; or

(b) the event upon which it was intended to terminate has occurred; or

(c) it has been abandoned.

**97.** The Court shall have power, on the application of any person interested in land affected by an easement, restrictive agreement or profit by order wholly or partially to extinguish or modify any such easement, profit or restrictive agreement (with or without payment by the applicant of compensation to any person suffering loss in consequence of the order), on being satisfied—

Discharge and modification of easements, profits and restrictive agreements.

(a) that, by reason of changes in the character of the property or the neighbourhood or other circumstances of the case which the court deems material, the easement, profit or restrictive agreement ought to be held to be obsolete; or

(b) that the continued existence of the easement, profit or restrictive agreement impedes the reasonable user of the land for public or private purposes without securing practical benefits to other persons or, as the case may be, will unless modified so impede such user; or

(c) that the proposed discharge or modification will not injure the person entitled to the benefit of the easement, profit or restrictive agreement.

**98.** Nothing in this Ordinance shall be construed as derogating from the natural right to support, light, air or access to a highway appertaining to any land nor from such ancillary rights as are necessary for effective enjoyment of an easement.

Natural rights.

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Licences.

**99.** (1) Without prejudice to section 127, a licence is not capable of registration.

(2) A licence relating to the use or enjoyment of land is ineffective against a bona fide purchaser for valuable consideration unless the licensee has protected his interest by lodging a caution under that section.

Division 6—Co-proprietorship and Partition.

Registration of more than one proprietor

**100.** (1) Every instrument made in favour of two or more persons, and the registration giving effect to it, shall show—

(a) whether such persons are joint proprietors or proprietors in common; and

(b) where they are proprietors in common, the share of each proprietor.

(2) The Governor in Council may for any registration section prescribe either—

(a) the maximum number (whether one or a greater number) of persons who are allowed to be registered in the same register as proprietors; or

(b) the maximum denominator of the vulgar fraction which expresses the share of any proprietor,

or both of them, and no dealing shall be registered if its effect would be that that number or that denominator as the case may be, would be exceeded.

Characteristics of joint proprietorship and severance thereof.

**101.** (1) Where the land, lease or charge is owned jointly no proprietor is entitled to any separate share in the land, and consequently—

(a) dispositions may be made only by all the joint proprietors; and

(b) on the death of a joint proprietor, his interest shall vest in the surviving proprietor or the surviving proprietors jointly.

(2) For avoidance of doubt, it is hereby declared that—

(a) the sole proprietor of any land, lease or charge may transfer the same to himself and another person jointly; and

(b) a joint proprietor of any land, lease or charge may transfer his interest therein to all the other proprietors.

(3) Joint proprietors, not being trustees, may execute an instrument in the prescribed form signifying that they agree to sever the joint proprietorship, and the severance shall be completed by registration of the joint proprietors as proprietors in common in equal shares and by filing the instrument.

**102.** (1) Where any land, lease or charge is owned in common, each proprietor shall be entitled to an undivided share in the whole, and on the death of a proprietor his share shall be administered as part of his estate.

Characteristics of proprietorship in common.

(2) No proprietor in common shall deal with his undivided share in favour of any person other than another proprietor in common of the same land, except with the consent in writing of the remaining proprietor or proprietors of the land, but such consent shall not be unreasonably withheld.

**103.** (1) An application for the partition of the land owned in common may be made in the prescribed form to the Registrar\* by—

Partition of land owned in common.

(a) any one or more of the proprietors; or

(b) any person in whose favour an order has been made for the sale of an undivided share in the land in execution of a decree,

and subject to the provisions of this Ordinance and of any written law by or under which minimum areas or frontages are prescribed or the consent of any authority to a partition is required, the Registrar\* shall effect the partition of the land in accordance with any agreement to the proprietors in common, or, in the absence of agreement, in such manner as the Registrar\* may order.

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(2) Partition shall be completed by closing the register of the parcel partitioned and opening registers in respect of the new parcels created by the partition and filing the agreement or order.

When Registrar\* may order sale.

**104.** (1) Where for any reason the land sought to be partitioned is incapable of partition or the partition would adversely affect the proper use of the land, and a demand is made by the applicant or one or more of the other proprietors in common that the land or any share or shares in the land be sold, the Registrar\* shall on order of a Judge, in default of any agreement between the proprietors in common, value the land and the shares of the proprietors in common and order the sale of the land or the separation and sale of such shares by public auction or make such other order for the disposal of the application as he thinks fit.

(2) A proprietor in common shall be entitled to purchase the land or any share so offered for sale, either at the auction or at any time by private treaty before the auction.

Procedure where share is small.

**105.** (1) Where the land sought to be partitioned is capable of partition generally, but the resultant share of any particular proprietor in common would be less in area than any minimum prescribed by or under any written law, the Registrar\* shall add such share to the share of any other proprietor or distribute such share amongst two or more other proprietors in such manner and in such proportions as, in default of agreement, he thinks fit.

(2) Where the Registrar\* proceeds in accordance with subsection (1), he shall assess the value of the share added or distributed and shall order that there be paid to the proprietor of the share by each proprietor who has received in addition to his share the value of such addition.

(3) Where any sum is payable under subsection (2) by any proprietor in common to any other proprietor in common, the Registrar\* may order that such sum be secured by way of charge on the share of the person liable to pay it.

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## PART VI.

## INSTRUMENTS AND AGENTS.

**106.** (1) Every disposition of land, a lease or a charge shall be affected by an instrument in the prescribed form or in such other form as the Registrar may in any particular case approve, and every person shall use a printed form issued by the Registrar unless the Registrar\* otherwise permits.

Form of  
instruments.

(2) Leases and charges shall be presented for registration in triplicate.

(3) Instruments shall contain a true statement of the amount of value of the purchase price or loan or other consideration (if any), and an acknowledgement of the receipt of the consideration.

**107.** (1) Every instrument evidencing a disposition shall be executed by all persons shown by the register to be proprietors of the interest affected and by all other parties to the instrument:

Execution of  
instruments.

Provided that the Registrar\* may dispense with execution by any particular party (other than the donee under a disposition by way of gift) where he considers that such execution is unnecessary.

(2) Subject to section 120(2) an instrument shall be deemed to have been executed only—

- (a) by a natural person, if signed by him;
- (b) by a corporation—
  - (i) if sealed with the common seal of the corporation, affixed thereto in the presence of and attested by its clerk, secretary or other permanent officer and by a member of the board of directors, council or other governing body of the corporation; or

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- (ii) in the case of a corporation not required by law to have a common seal, if signed by such persons as are authorised in that behalf by any law or by the statute or charter of the corporation or, in the absence of any express provision, by the persons duly appointed in writing for that purpose by the corporation, evidence of which appointment has been produced to the satisfaction of the Registrar\*.

Verification of execution.

**108.** (1) Subject to subsection (3), a person executing an instrument shall appear before the Registrar\* or such public officer or other person as is prescribed and, unless he is known to the Registrar\* or such public officer or other person, shall be accompanied by a creditable witness for the purpose of establishing his identity.

(2) The Registrar\* or public officer or other person shall satisfy himself as to the identity of the person appearing before him and ascertain whether he freely and voluntarily executed the instrument, and shall complete thereon a certificate to that effect.

(3) An instrument which is required to be executed by or on behalf of the Crown, shall be deemed to be executed when it has been signed by the Governor.

(4) The Registrar\* may dispense with verification under this section—

(a) if he considers that it cannot be obtained or can be obtained only with difficulty and he is otherwise satisfied that the document has been properly executed; or

(b) in cases in which to his knowledge the document has been properly executed, and shall record on the document his reasons for dispensing with the appearance of the parties.

(5) No instrument executed out of the Virgin Islands shall be registered unless it has endorsed thereon or attached thereto a certificate in the prescribed form completed—

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(a) if the instrument was executed in the Commonwealth, by a Judge, magistrate, justice of the peace, notary public, commissioner for oaths or administrative officer;

(b) if the instrument was executed in a foreign country, by a British consular officer or pro-consul or such other person or class of persons as the Governor may determine.

**109.** No instrument required by law to be stamped shall be accepted for registration unless it is duly stamped. Stamps.

**110.** (1) Subject to subsection (2) and to section 112 (2), all instruments accepted by the Registrar\* shall be retained in the registry for as long as they support a current entry in the register and for six years thereafter. Disposal of instruments.

(2) When a lease or charge is registered, particulars of registration shall be noted on the duplicate and the triplicate thereof, and the duplicate and the triplicate shall be returned to the person who presented them.

(3) Six years or more after an entry in the register has been superseded or has ceased to have any effect, the Registrar\* may destroy any instrument which supported the entry.

**111.** (1) For the avoidance of doubt, it is hereby declared that the name of a person under the age of twenty-one years may be entered in the register either on the first registration or as a transferee or on transmission. Minors.

(2) Nothing in this section enables any such person to deal with land or any interest in land by virtue of such registration, and, where to his knowledge a minor is registered, the Registrar\* shall enter a restriction accordingly.

(3) Where a disposition by a minor whose minority has not been disclosed to the Registrar\* has been registered, such disposition may not be set aside only on the grounds of minority.

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Agents and persons under disability.

**112.** (1) Except as provided in subsection (3) of this section no instrument executed by any person as agent for any other person shall be accepted by the Registrar\* unless the person executing it was authorised in that behalf by a power of attorney executed and verified in accordance with sections 107 and 108.

(2) The original of such power of attorney or, with the consent of the Registrar\*, a copy thereof by the Registrar shall be filed.

(3) Where any person who, if not under a disability might have made any application, done any act or been a party to any proceeding under this Ordinance or under any rules made thereunder is a minor, a person of unsound mind or a person under any other disability, the guardian of such person, or if there is no such guardian, a person appointed under some written law to represent that person may make any application, do any act and be party to any proceeding on behalf of that person, and shall generally represent that person for the purposes of this Ordinance.

(4) Before accepting any document executed by a guardian or a person so appointed to represent a person under a disability, the Registrar\* shall satisfy himself that the person claiming to be the guardian is entitled to execute the document or require the production of the appointment of the person so appointed, and shall file a note of the explanation which satisfied him or a copy of the appointment, as the case may be.

Gift to person under disability.

**113.** A person under a disability who has been registered as proprietor of land, a lease or a charge acquired by him by way of gift may, within six months after he ceases to be under a disability, repudiate the gift if he has not already disposed of the subject-matter thereof, but no such repudiation shall be effective until—

(a) he has transferred the land, lease or charge to the donor who shall be bound to accept it; and

(b) the transfer has been registered.

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**114.** (1) Upon the application of the donor or the donee of a power of attorney which contains any power to dispose of any interest in land, such power of attorney shall be entered in the register of powers of attorney and the original, or with the consent of the Registrar\* a copy thereof certified by the Registrar shall be filed in the file of powers of attorney.

Powers of attorney.

(2) Every such power of attorney shall be in the prescribed form or such other form as the Registrar\* may in any particular case approve, and shall be executed and verified in accordance with section 107 and 108.

(3) The donor of a power of attorney filed in accordance with the provisions of subsection (1) of this section may at any time give notice to the Registrar\* in the prescribed form that the power has been revoked, and thereupon the revocation shall be entered in the register of powers of attorney and noted upon the power, and the notice shall be filed in the file of powers of attorney.

(4) Any interested person may give notice in writing to the Registrar\* that a power of attorney which has been registered under subsection (1) has been revoked by the death, bankruptcy or disability of the donor or the death or disability of the donee, accompanied by such evidence as the Registrar\* requires, and thereupon the revocation shall be entered in the register of powers of attorney and noted upon the power and the notice shall be filed in the file of powers of attorney.

(5) Subsections (3) and (4) do not apply to a power of attorney given for valuable consideration during any time during which it is, by virtue of the terms thereof, irrevocable.

(6) If owing to the length of time since the execution of a power of attorney or for any other reason the Registrar\* considers it desirable, he may require evidence that the power has not been revoked, and may refuse to register any disposition by the donee of the power of attorney until satisfactory evidence is produced.

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Effect of registered power of attorney.

**115.** (1) A power of attorney which has been registered under section 114 and of which no notice of revocation has been registered under that section shall be deemed to be subsisting as regards any person acquiring any interest in land affected by the exercise of revocation and in good faith, or any person deriving title under such a person.

(2) Any person making any payment or doing any act in good faith in pursuance of a power of attorney registered under section 114 shall not be liable in respect of the payment or act by reason only that before the payment or act the donor of the power had died or become subject to a disability or become bankrupt or had revoked the power, if the fact of death, disability, bankruptcy or revocation was not at the time of the payment or act known to the person making or doing the payment or act.

PART VII.

TRANSMISSIONS AND TRUSTS.

Transmission on death of joint proprietor.

**116.** If one of two or more joint proprietors of any land, lease or charge dies, the Registrar, on proof of his satisfaction of the death, shall delete the name of the deceased from the register.

Transmission on death of sole proprietor or proprietor in common.

**117.** (1) If a sole proprietor or a proprietor in common dies, his personal representative, on application to the Registrar\* in the prescribed form and on production to him of the grant, shall be entitled to be registered by transmission as proprietor in the place of the deceased with the addition after his name of the words "as executor of the will of ..... deceased" or "as administrator of the estate of ..... deceased", as the case may be.

(2) Upon production of a grant, the Registrar\* may, without requiring the personal representative to be registered, register by transmission—

\* With effect from the date on which the Registered Land (Amendment) Ordinance, 1977 is brought into force, the words "Chief Registrar" shall be substituted for the word "Registrar" — *Vide* section 4 of the Registered Land (Amendment) Ordinance, 1977.

(a) any transfer by the personal representative;

(b) any surrender of a lease or discharge of a charge by personal representative.

(3) In this section, "grant" means the grant of probate of the will or the grant of letters of administration of the estate of the deceased proprietor.

**118.** (1) Subject to any restriction on his power of disposing of the land, lease or charge contained in his appointment, the personal representative or the person beneficially entitled on the death of the deceased proprietor, as the case may be, shall hold the land, lease or charge subject to any liabilities, rights or interests which are unregistered but are nevertheless enforceable and subject to which the deceased proprietor held the same but for the purpose of any dealing he shall be deemed to have been registered as proprietor thereof with all the rights conferred by this Ordinance on a proprietor who has acquired land, a lease or a charge, as the case may be, for valuable consideration.

Effect of transmission by death.

(2) The registration of any person as aforesaid shall relate to and take effect from the date of the death of the proprietor.

**119.** (1) A trustee in bankruptcy shall, upon production to the Registrar\* of a certified copy of the order of court adjudging a proprietor bankrupt, or directing that the estate of a deceased proprietor shall be administered according to the law of bankruptcy, be registered as proprietor of any land, lease or charge of which the bankrupt or deceased proprietor is proprietor, in his place, and a copy of the order shall be filed.

Transmission in bankruptcy.

(2) A trustee in bankruptcy shall be described in the register as "trustee of the property of ..... a bankrupt".

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(3) The trustee in bankruptcy shall hold any land, lease or charge of which he is registered as proprietor subject to any restrictions contained in any Ordinance relating to bankruptcy or in any order of court and subject to any liabilities, rights or interests which are unregistered but are nevertheless enforceable and subject to which the bankrupt or the deceased proprietor held the same, but for the purpose of any dealing with such land, lease or charge the trustee in bankruptcy shall have all the rights and be subject to all the limitations conferred or imposed by this or any other written law on a proprietor who has acquired land, a lease or a charge for valuable consideration.

Liquidation.

**120.** (1) Where a company is being wound up, the liquidator shall produce to the Registrar\* any resolution or order appointing him liquidator, and the Registrar\* shall enter the appointment in respect of any land, lease or charge of which the company is registered as proprietor, and shall file the copy of the resolution or order.

(2) An instrument executed by or on behalf of a company in liquidation delivered for registration after the appointment of the liquidation has been entered under subsection (1) of this section shall be sealed with the common seal of the company and attested by the liquidator or, in the case of a company not required by law to have a common seal, shall be signed by the liquidator whose signature shall be verified in accordance with section 10.

Transmission by compulsory acquisition or judgment of court.

**121.** Where the crown or any person has become entitled to any land, lease or charge under any law or by virtue of any order or certificate of sale made or issued under any law, the Registrar\* shall, on the application of any interested person supported by such evidence as he may require, register the Crown or the person entitled, as the proprietor.

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\* With effect from the date on which the Registered Land (Amendment) Ordinance, 1977 is brought into force, the words "Chief Registrar" shall be substituted for the word "Registrar" — *Vide* section 4 of the Registered Land (Amendment) Ordinance, 1977.

**122.** (1) A person acquiring land or a lease or a charge in a fiduciary capacity may be described by that capacity in the instrument of acquisition and, if so described, shall be registered with the addition of the words "as trustee", but the Registrar\* shall not enter particulars of any trust in the register. Trusts.

(2) An instrument which declares or is deemed to declare any trusts, or a certified copy thereof, may be deposited with the Registrar\* for safe custody; but such instrument or copy shall not form part of the register or be deemed to be registered.

(3) Where the proprietor of land, a lease or a charge is a trustee, he shall hold the same subject to any unregistered liabilities, rights or interests to which it is subject by virtue of the instrument creating the trusts, but for the purpose of any registered dealings he shall be deemed to be the absolute proprietor thereof, and no person dealing in good faith for valuable consideration shall be deemed to have notice of the trust, nor shall any breach of the trust create any right to indemnify under this Ordinance.

(4) Any *cestui que* trust under a deed shall have the right to present a caution to the Registrar\* to prevent any dealing with the land by the trustee in a manner inconsistent with the provisions of the trust deed.

**123.** Whenever two or more proprietors are registered jointly as trustees, and the survivor of such proprietors would not be entitled to exercise alone the powers which are vested in them, the Registrar\* shall enter a restriction to that effect.

Survivor of trustees.

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\* With effect from the date on which the Registered Land (Amendment) Ordinance, 1977 is brought into force, the words "Chief Registrar" shall be substituted for the word "Registrar" — *Vide* section 4 of the Registered Land (Amendment) Ordinance, 1977.

## PART VIII.

## RESTRAINTS ON DISPOSITION.

## Division 1—Inhibitions.

Power of court to inhibit registered dealings.

**124.** (1) The court may make an order (hereinafter referred to as an inhibition) inhibiting for a particular time, or until the occurrence of a particular event, or generally until further order, the registration of any dealing with any land, lease or charge.

(2) A copy of the inhibition under the seal of the court, with particulars of the land, lease or charge affected thereby, shall be sent to the Registrar\*, who shall register it in the appropriate register, and no inhibition shall bind or affect the land, lease or charge until it has been registered.

Effect of inhibition.

**125.** So long as an inhibition remains registered, no instrument which is inconsistent with it shall be registered.

Cancellation of inhibition.

**126.** The registration of an inhibition shall be cancelled in the following cases and in no others—

(a) on the expiration of the time limited by the inhibition; or

(b) on proof to the satisfaction of the Registrar\* of the occurrence of the event specified in the inhibition; or

(c) on the land, lease or charge being sold by a chargee unless such sale is itself inhibited; or

(d) by order of the court.

## Division 2—Cautions.

Lodging of cautions.

**127.** (1) Any person who—

(a) claims any unregistrable interest whatsoever, in land or a lease or a charge; or

(b) is entitled to a licence; or

(c) has presented a bankruptcy petition against the proprietor of any registered land, lease or charge; or

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\* With effect from the date on which the Registered Land (Amendment) Ordinance, 1977 is brought into force, the words "Chief Registrar" shall be substituted for the word "Registrar" — *Vide* section 4 of the Registered Land (Amendment) Ordinance, 1977.

(d) being a bank, has advanced money on a current account to the proprietor of land or a lease or a charge, may lodge a caution with the Registrar\* forbidding the registration of dispositions of the land, lease or charge concerned and the making of entries affecting the same.

(2) A caution may either—

(a) forbid the registration of dispositions and the making of entries altogether; or

(b) forbid the registration of dispositions and the making of entries to the extent therein expressed.

(3) A caution shall be in the prescribed form and shall state the interest claimed by the cautioner and the Registrar may require the cautioner to support it by a statutory declaration.

(4) The Registrar\* may reject a caution which he considers unnecessary.

(5) Subject to the provisions of this section, the caution shall be registered in the appropriate register.

**128.** (1) The Registrar\* shall give notice in writing of a caution to the proprietor whose land, lease or charge is affected by it.

Notice and effect of caution.

(2) So long as a caution remains registered, no disposition which is inconsistent with it shall be registered except with the consent of the cautioner or by order of the court.

**129.** (1) A caution may be withdrawn by the cautioner or removed by order of the court, or, subject to the provisions of subsection (2), by order of the Registrar\*.

Withdrawal and removal of caution.

(2) (a) The Registrar\* may, on the application of any person interested, serve notice on the cautioner warning him that his caution will be removed at the expiration of the time stated in the notice.

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\* With effect from the date on which the Registered Land (Amendment) Ordinance, 1977 is brought into force, the words "Chief Registrar" shall be substituted for the word "Registrar" — *Vide* section 4 of the Registered Land (Amendment) Ordinance, 1977.

(b) If at the expiration of the time stated the cautioner has not objected, the Registrar may remove the caution.

(c) If the cautioner objects to the removal of the caution, he shall notify the Registrar in writing of his objection within the time specified in the notice, and the Registrar\*, after giving the parties an opportunity of being heard, shall make such order as he thinks fit, and may in the order make provision for the payment of costs.

(3) On registration of a transfer by a chargee in exercise of his power of sale under section 75, the Registrar shall remove any caution which purports to prohibit any dealing by the chargor and which was registered after the charge by virtue of which the transfer has been effected.

(4) On the withdrawal or removal of a caution, its registration shall be cancelled, but any liability of the cautioner previously incurred under section 131 shall not be affected by the cancellation.

Second caution  
in respect of  
same matter.

**130.** The Registrar\* may refuse to accept a further caution by the same person or anyone on his behalf in relation to the same matter as a previous caution.

Wrongful  
cautions.

**131.** Any person who lodges or maintains a caution wrongfully and without reasonable cause shall be liable, in an action for damages at the suit of any person who has thereby sustained damage, to pay compensation to such person.

#### Division 3—Restrictions.

Restrictions.

**132.** (1) For the prevention of any fraud or improper dealing or for any other sufficient cause, the Registrar\* may, either with or without the application of any person interested in the land, lease or charge, after directing such inquiries to be made and notices to be served and hearing such persons as he thinks fit, make an order (hereinafter referred to as a restriction) prohibiting or restricting dealings with any particular land, lease or charge.

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(2) A restriction may be expressed to endure—

(a) for a particular period; or

(b) until the occurrence of a particular event; or

(c) until the making of a further order, and may prohibit or restrict all dealings or only such dealings as do not comply with specified conditions, and the restrictions shall be registered in the appropriate register.

(3) The Registrar\* shall order a restriction to be entered in any case where it appears to him that the power of the proprietor to deal with the land, lease or charge is restricted.

**133.** (1) Upon the entry of a restriction the Registrar\* shall give notice thereof in writing to the proprietor affected thereby.

Notice, and effect of restriction.

(2) So long as any restriction remains registered, no instrument which is inconsistent with it shall be registered except by order of the court or of the Registrar\*.

**134.** (1) The Registrar\* may at any time, upon application by any person interested or of his own motion, and after giving the parties affected thereby an opportunity of being heard, order the removal or variation of a restriction.

Removal and variation of restrictions.

(2) Upon the application of a proprietor affected by restriction, and upon notice thereof to the Registrar\*, the court may order a restriction to be removed or varied or make such other order as it thinks fit, and may make an order as to costs.

## PART IX.

### PRESCRIPTION.

**135.** (1) The ownership of land may be acquired by peaceable, open and uninterrupted possession without the permission of any person lawfully entitled to such possession for a period of twenty years:

Acquisition of land by prescription.

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Provided that no person shall so acquire the ownership of Crown land.

(2) Any person who claims to have acquired the ownership of land by virtue of the provisions of subsection (1) may apply to the Registrar\* for registration as proprietor thereof.

Principles of possession.

**136.** (1) Where it is shown that a person has been in possession of land, or in receipt of the rents or profits thereof, at a certain date and is still in possession or receipt thereof, it shall be presumed that he has, from that date, been in uninterrupted possession of the land or in uninterrupted receipt of the rents or profits until the contrary be shown.

(2) Possession of land or receipt of the rents or profits thereof by any person through whom a claimant derives his possession shall be deemed to have been the possession or receipt of the rents or profits by the claimant.

(3) Where from the relationship of the parties or from other special cause it appears that the person in possession of land is or was in possession on behalf of another his possession shall be deemed to be or to have been the possession of that other.

(4) If a person whose possession of land is subject to conditions imposed by or on behalf of the proprietor continues in such possession after the expiry of the term during which such conditions subsist, without fulfilment or compliance with them by such person and without any exercise by the proprietor of his right to the land, such subsequent possession shall be deemed to be peaceable, open and uninterrupted possession within the meaning of section 135.

(5) For the purposes of subsection (4)—

(a) a tenancy at will shall be deemed to have terminated at the expiration of a period of one year from the commencement thereof unless it has previously been determined;

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(b) a periodic tenancy shall be deemed to have terminated at the expiration of the period:

Provided that where any rent has subsequently been paid in respect of the tenancy it shall be deemed to have terminated at the expiration of the period for which the rent has been paid.

(6) Possession shall be interrupted—

(a) by physical entry upon the land by any person claiming it in opposition to the person in possession with the intention of causing interruption if the possessor thereby loses possession; or

(b) by the institution of legal proceedings by the proprietor of the land to assert his right thereto; or

(c) by any acknowledgement made by the person in possession of the land to any person claiming to be the proprietor thereof that such claim is admitted.

(7) No person possessing land in a fiduciary capacity on behalf of another shall acquire by prescription the ownership of the land as against such other.

**137.** (1) On application by any person for registration as proprietor under section 135 the application shall be advertised by the Registrar\* at the expense of the applicant in such manner as the Registrar\* may direct.

Procedure on application.

(2) The Registrar\* shall give notice of any such application to the proprietor of the land affected and to any other persons who may, in his opinion, be affected thereby.

(3) After one month has elapsed from the date of giving notice under subsection (2) the Registrar\*, on being satisfied that the applicant has acquired the ownership of the land claimed, may allow the application and register him as proprietor of the land claimed, subject to any interests on the register which have not been extinguished by the possession.

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Acquisition of easements and profits by prescription.

**138.** (1) Except in respect of Crown land, easements and profits may be acquired without registration by peaceable, open and uninterrupted enjoyment thereof for a period of twenty years:

Provided that no easement or profit shall be so acquired unless the proprietor of the land burdened by such easement or profit is, or by reasonable diligence might have been aware of such enjoyment by his own efforts have prevented it.

(2) Where any person claims to have acquired an easement or profit by virtue of the provisions of subsection (1) he may apply to the Registrar\* for the registration thereof and the Registrar\*, on being satisfied as to the claim and subject to such notices, advertisements and conditions as the Registrar\* may direct, shall register the easement or profit as an incumbrance on the register of the land affected and, in the case of an easement, in the property register of the land which benefits.

## PART X.

### RECTIFICATION AND INDEMNITY.

Certification by Registrar\*.

**139.** (1) The Registrar\* may rectify the register or any instrument presented for registration in the following cases—

(a) in formal matters and in the case of errors or omissions not materially affecting the interests of any proprietor;

(b) where any person has acquired an interest in land by prescription under Part IX;

(c) in any case and at any time with the consent of all persons interested;

(d) where, upon resurvey, a dimension or area shown in the register or registry map is found to be incorrect, but in such case the Registrar shall first give notice to all persons appearing by the register to be interested or affected of his intention so to rectify.

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(2) Upon proof of the change of the name or address of any proprietor, the Registrar\* shall, on the written application of the proprietor, make an entry in the register to record the change.

**140.** (1) Subject to the provisions of subsection (2) the court may order rectification of the register by directing that any registration be cancelled or amended where it is satisfied that any registration including a first registration has been obtained, made or omitted by fraud or mistake.

Rectification by court.

(2) The register shall not be rectified so as to affect the title of a proprietor who is in possession or is in receipt of the rents or profits and acquired the land, lease or charge for valuable consideration, unless such proprietor had knowledge of the omission, fraud or mistake in consequence of which the rectification is sought, or caused such omission, fraud or mistake or substantially contributed to it by his act, neglect or default.

**141.** (1) Subject to the provisions of this Ordinance and of any written law relating to the limitation of actions, any person suffering damage by reason of—

Right of indemnity.

(a) any rectification of the register under this Ordinance; or

(b) any mistake or omission in the register which cannot be rectified under this Ordinance, other than a mistake or omission in a first registration; or

(c) any error in a certificate of official search issued by the Registrar\* or in a copy of or extract from the register or in a copy of or extract from any document or plan, certified under the provisions of this Ordinance,

shall be entitled to be indemnified by the Government out of moneys provided by the Legislative Council.

\* With effect from the date on which the Registered Land (Amendment) Ordinance, 1977 is brought into force, the words "Chief Registrar" shall be substituted for the word "Registrar" — *Vide* section 4 of the Registered Land (Amendment) Ordinance, 1977.

(2) No indemnity shall be payable under this Ordinance to any person who has himself caused or substantially contributed to the damage by his fraud or negligence, or who derives title (otherwise than under a registered disposition made bona fide for valuable consideration) from a person who so caused or substantially contributed to the damage.

Amount of indemnity.

**142.** Where an indemnity is awarded in respect of the loss of any interest in land, it shall not exceed—

(a) where the register is not rectified, the value of the interest at the time when the mistake or omission which caused the damage was made; or

(b) where the register is rectified, the value of the interest immediately before the time of rectification.

Procedure for claiming indemnity.

**143.** The Registrar\* may, on the application of any interested party, determine whether a right of indemnity has arisen under this Part and, if so, award indemnity, and may add thereto any costs and expenses properly incurred in relation to the matter.

Recovery of indemnity paid.

**144.** Where any moneys are paid by way of indemnity under this Part, the Governor shall be entitled to recover by suit or otherwise the amount so paid from any person who has caused or substantially contributed to the loss of his fraud or negligence, and to enforce any express or implied agreement or other right which the person who is indemnified would have been entitled to enforce in relation to the matter in respect of which the indemnity has been paid.

Errors in survey.

**145.** (1) As between the Government and a proprietor, no claim to indemnity shall arise and no suit shall be maintained on account of any surplus or deficiency in the area or measurement of any land disclosed by a survey showing an area measurement differing from the area or measurement disclosed on any subsequent survey or from the area or measurement shown in the register or on the Registry Map.

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\* With effect from the date on which the Registered Land (Amendment) Ordinance, 1977 is brought into force, the words "Chief Registrar" shall be substituted for the word "Registrar" — *Vide* section 4 of the Registered Land (Amendment) Ordinance, 1977.

(2) As between a proprietor and any person from or through whom he acquired the land, no claim to indemnity shall be maintainable on account of any surplus or deficiency in the area or measurement above or below that shown in any other survey or above or below the area or measurement shown in the register or on the Registry Map, after a period of six months from the date of registration of the instrument under which the proprietor acquired the land.

## PART XI.

### DECISIONS OF REGISTRAR AND APPEALS.

**146.** Whenever any question arises with regard to the exercise of any power or the performance of any duty conferred or imposed on him by this Ordinance, the Registrar\* may and shall if required to do so by an aggrieved party state a case for the opinion of the High Court; and thereupon the High Court shall give its opinion thereon, which shall be binding upon the Registrar\*.

Power of Registrar to state case.

**147.** (1) The Governor or any person aggrieved by a decision, direction, order, determination or award of the Registrar\* may, within thirty days of the decision, direction, order, determination or award, give notice to the Registrar\* in the prescribed form of his intention to appeal to the High Court against the decision, direction, order, determination or award.

Appeals.

(2) On receipt of a notice of appeal, the Registrar\* shall prepare and send to the Court and to the appellant, and to any other person appearing to him from the register to be affected by the appeal, a brief statement of the question in issue.

(3) On the hearing of the appeal, the appellant and the Registrar\* and any other person who, in the opinion of the Court, is affected by the appeal may, subject to any rules of court, appear and be heard in person or by a legal practitioner.

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\* With effect from the date on which the Registered Land (Amendment) Ordinance, 1977 is brought into force, the words "Chief Registrar" shall be substituted for the word "Registrar" — *Vide* section 4 of the Registered Land (Amendment) Ordinance, 1977.

(4) The Court may make such order on the appeal as the circumstances may require, and every such order shall be given effect to by the Registrar.

(5) The costs of the appeal shall be in the discretion of the Court.

Effect of appeal on disposition.

**148.** (1) An appeal to the Court shall not affect a disposition for valuable consideration made in good faith and registered before delivery of notice of the appeal to the Registrar\*.

(2) A note that an appeal is pending shall be made in the register affected by the appeal and any disposition shall be subject to such notice.

Appeal Rules.

**149.** The Chief Justice may make rules of Court for regulating applications and appeals to the Court under the provisions of this Ordinance, and for the fees to be paid in respect thereof.

## PART XII.

### MISCELLANEOUS.

Addresses.

**150.** Any person who under this Ordinance submits a caution or any instrument for registration, or is the proprietor of any land, lease or charge, shall furnish to the Registrar\* in writing a postal address within the Virgin Islands for service, and shall notify him in writing of any change in that address:

Provided that the Registrar\* may in his discretion dispense with this requirement in regard to any particular registration or kind of registration.

Service of notices.

**151.** A notice under this Ordinance shall be deemed to have been served on or given to any person—

(a) if served on him personally; or

(b) if served on an attorney holding a power of attorney whereunder such attorney is authorised to accept such service; or

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(c) if sent by registered post to him at his last known postal address in this territory or elsewhere and a receipt purporting to have been signed by him has been received in return; or

(d) if service cannot be effected in one of the above-mentioned ways, by displaying it in a prominent place on the land affected and by publishing in three consecutive issues of the Gazette.

**152.** (1) Where by this Ordinance a thing is to be or may be done after giving a person an opportunity of being heard that person shall be deemed to have been given such an opportunity—

Meaning of  
"opportunity of  
being heard".

(a) if he attends before the Registrar\* personally or by a legal practitioner or other agent, and is given such an opportunity; or

(b) if he intimates, personally or by a legal practitioner or other agent, that he does not wish to be heard; or

(c) if he fails to attend pursuant to a notice in writing indicating the nature of the thing to be done and appointing a day and time not less than ninety days after service of the notice at which he will, if he attends before the Registrar\*, be heard.

(2) Where a person or a legal practitioner or other agent on his behalf attends before the Registrar\* concerning a matter on which he is entitled to an opportunity of being heard, or fails to attend pursuant to such a notice as aforesaid, the Registrar\* may, if he thinks fit, adjourn the hearing from time to time, and, notwithstanding failure to attend, may, if he thinks fit, hear such person at any time.

(3) Where by this Ordinance all persons interested are to be given an opportunity of being heard, it shall be sufficient if all persons who, according to any subsisting entry in the register, appear to be so interested or affected are given such opportunity.

\* With effect from the date on which the Registered Land (Amendment) Ordinance, 1977 is brought into force, the words "Chief Registrar" shall be substituted for the word "Registrar" — *Vide* section 4 of the Registered Land (Amendment) Ordinance, 1977.

Offences.

**153.** (1) Any person who—

(a) knowingly misleads or deceives any person authorised by or under this Ordinance to require information in respect of any land or interest in land; or

(b) fraudulently issues or makes, or fraudulently procures the issue or making, of any certificate or other document, or any registration, or any erasure or alteration in any certificate or other document or in any register; or

(c) fraudulently uses, assists in fraudulently using or is privy to the fraudulent use of any instrument or form purporting to be issued or authorised by the Registrar\*; or

(d) causes any defacement, obliteration, mutilation or unauthorised entry or alteration to be made on or in any register or filed instrument,

shall be guilty of an offence against this Ordinance and shall be liable on summary conviction before a Magistrate to a fine not exceeding three thousand dollars, or to imprisonment for a term not exceeding three years.

(2) If any person after the delivery to him of a summons to attend before the Registrar\* or to produce any document neglects or refuses without reasonable cause to attend in accordance with the summons, or to produce any document which he is required by the summons to produce, or to answer upon oath or otherwise any question which is lawfully put to him by the Registrar\* under the powers conferred by this Ordinance, he shall be guilty of an offence against this Ordinance and shall on summary conviction before a Magistrate be liable to a fine not exceeding fifty dollars.

Fees.

**154.** (1) There shall be payable in respect of land certificates, certificates of leases, searches, survey plans, printed forms and all other matters connected with registration, such fees as shall from time to time be prescribed, and the Registrar\* may refuse registration until the fees are paid.

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(2) The Registrar\* may act notwithstanding that the prescribed fee or any part thereof has not been paid, but the unpaid fee or part of a fee shall be recorded in the register.

(3) The Registrar\* may refuse to register a disposition of any land, lease or charge against which unpaid fees are recorded until such fees are paid.

**155.** Unpaid fees or expenses incurred by the Registrar\* shall constitute a civil debt recoverable by the Registrar\* in a Magistrate's court.

Recovery of fees and expenses.

**156.** An order for the payment of a sum of money made by the Registrar\* under any power conferred by this Ordinance, shall be deemed to be an order of a Magistrate's court and shall be enforceable as such.

Enforcement of Registrar's orders for payment.

**157.** Civil suits and proceedings relating to the ownership or the possession of land, or to a lease or charge, registered under this Ordinance or to any interest in any such land, lease or charge, being an interest which is registered or registrable under this Ordinance, or being an interest which is referred to in section 28, shall be tried by the High Court, or where the value of the subject matter in dispute does not exceed five hundred dollars by a Magistrate's Court.

Jurisdiction of Courts.

**158.** The Governor may make rules generally to give effect to the purposes and provisions of this Ordinance, and in particular, and without prejudice to the generality of the foregoing, for prescribing the forms to be used under this Ordinance and the fees payable for anything to be done thereunder, and for prescribing anything which under this Ordinance may be prescribed.

Rules.

**159.** Nothing in this Ordinance shall prejudice any of the interests, rights, powers and privileges conferred on the Crown or the Government by any other written Ordinance.

Saving of rights.

**160.** Subject to section 159, this Ordinance binds the Crown and the Government.

Act to bind Crown and Government.

\* With effect from the date on which the Registered Land (Amendment) Ordinance, 1977 is brought into force, the words "Chief Registrar" shall be substituted for the word "Registrar" — *Vide* section 4 of the Registered Land (Amendment) Ordinance, 1977.

Other law.

**161.** Any matter not provided for in this Ordinance or in any other written law in relation to land, leases and charges registered under this Ordinance and interests therein shall be decided in accordance with the principles of justice, equity and good conscience.

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**CHAPTER 194.**

**PUBLIC HEALTH.**

(1st January, 1977.)

10/1976

1. This Ordinance may be cited as the Public Health Ordinance. Short title.

2. For the purposes of this Ordinance— Interpretation.

“animal” includes birds;

“area” means an area in the Territory which is divided by the Minister by Notice under section 3;

“Board” means a Board established under the provisions of section 8 (1);

“Committee” means a Committee established under the provisions of section 8 (1);

“communicable disease” means any disease declared to be such by regulations made by the Minister under section 10 or by subsidiary legislation still in force by virtue of section 23;

“Medical Officer of Health” means any medical practitioner appointed by the Governor to be Chief Medical Officer or a Medical Officer of Health for the purposes of this Ordinance;

“Minister” means the Minister responsible for Health;

“notifiable disease” means any disease declared to be such by regulations made under section 10 or by any subsidiary legislation in force by virtue of section 23;

“offensive matter” includes sewages;

“owner” includes the person for time being entitled to receive the rent of the premises in relation to which the expression is used, whether on his own account or as agent of or trustee for any other person, or who would be so entitled if the premises were let at a rent;

“premises” means any messuages, buildings, easements and hereditaments of any tenure and includes any land whether open or closed whether built on or not, whether public or private and whether or not maintained under any enactment and in any aircraft, ship, vessel, boat, bulk, barge, tent, caravan, shed or similar structure.

Minister responsible for health of inhabitants.

3. The Minister shall generally be responsible for the promotion and preservation of the health of the inhabitants of the Territory and for this purpose may, by Notice published in the Gazette, divide the Territory into such areas as he may determine, establish such health or sanitation districts within any such area, and assign duties to such persons in relation thereto as he thinks necessary.

Functions of Minister.

4. (1) The Minister shall be responsible for the administration of this Ordinance, and without limiting the generality of the foregoing, his functions shall include—

(a) the prevention, treatment, limitation and suppression of disease, including the conduct of investigations and enquiries in respect thereof; and

(b) the publishing of reports, information and advice concerning public health including the education of the public in the preservation of health.

(2) The Minister may—

(a) delegate to any Board or Committee established under section 8 (1) such of his functions under subsection (1) as he thinks fit; and

(b) give directions to any Board or Committee established under section 8 (1) as to the exercise and performance of any function delegated to it under paragraph (a) and the Board or Committee so directed shall give effect to such directions.

(3) A Board or Committee to which the Minister delegates any of his functions under subsection (2) (a) shall permit the Chief Medical Officer and such other Medical Officer of Health as may be nominated by the Chief Medical Officer to attend every meeting thereof which is concerned with any matter relating to those functions.

Minister may establish health services.

5. (1) The Minister may establish at suitable places in any area—

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- (a) general hospitals;
- (b) hospitals and other health service units for special purposes;
- (c) health centres;
- (d) outpatients' clinics;
- (e) maternity hospitals;
- (f) district hospitals including infirmaries;
- (g) dispensaries; and
- (h) combinations of all or any of the foregoing.

(2) The expenses of establishing and maintaining such services shall be defrayed out of moneys voted for those purposes by the Legislative Council.

6. (1) The Minister may—

- (a) cause sewers to be constructed, repaired and maintained; and
- (b) make provision by means of sewerage disposal works or otherwise for effectively dealing with the contents of such sewers.

Construction of sewers.

(2) Any such sewer may be constructed in, under or over any street or under any cellar or vault below any street.

7. (1) For the purposes of constructing, repairing, maintaining or in any way altering a sewer it shall be lawful for any person duly authorised in writing by the Minister to—

Opening and breaking up of highways etc.

- (a) open and break up the surface soil, and pavement of any street or bridge;
- (b) open and break up any sewer, drain or tunnel in or over such street or bridge;
- (c) remove and use all earth and material in and under any such street or bridge;
- (d) do all other acts which the Minister considers necessary,

causing as little damage as possible in the exercise of the powers granted by this section.

8. (1) The Minister may establish such Boards and Committees as he thinks fit for the purposes of this Ordinance, consisting of such members not exceeding five as may be appointed by him by Notice published in the Gazette and in

Minister may appoint Boards and Committees.

like manner, he may revoke the appointment of any such member, at any time without assigning any reason therefor.

(2) The procedure and by-laws of every such Board or Committee shall be such as may be determined by the Minister.

(3) The functions of every such Board or Committee established under subsection (1) shall be—

(a) to advise the Minister on such matters relating to his functions under this Ordinance as he may refer to it for advice; and

(b) to discharge any functions delegated to it by the Minister under section 4 (2).

(4) No remuneration shall be payable to members of any such Boards or Committees except with the approval of the Governor in Council.

Chief Medical Officer to discharge functions of Minister.

**9.** (1) Except as the Minister may otherwise direct the Chief Medical Officer shall discharge the functions conferred on the Minister under this Ordinance and every Medical Officer of Health, Public Health Nurse, Public Health Inspector or other public health officer shall discharge functions under this Ordinance as directed by the Minister or the Chief Medical Officer and in so doing shall be deemed to be acting under the authority of this Ordinance.

(2) Subject to subsection (1) such officers may take such steps as are necessary for the execution and administration of this Ordinance, the regulations made thereunder and of any orders or directives given by the Minister or the Chief Medical Officer and may call upon any member of the Police Force to lend such assistance as may be required in the execution and administration thereof.

Regulations.

**10.** (1) The Minister may make regulations for the better carrying out of the provisions of this Ordinance and without limiting the generality of the foregoing may make regulations in relation to—

(a) the forms to be used for the purposes of this Ordinance;

(b) the declaration of notifiable and communicable disease, the treatment and prevention thereof and the isolation of patients suffering therefrom;

(c) the prevention, treatment, limitation and suppression of disease, the closing or destruction of buildings in which infected persons have lodged or resided, and the restriction of the movement of persons into and out of infected areas;

(d) the collection and publication of epidemiological and other data pertaining to the public health;

(e) the prevention of the overcrowding of premises;

(f) the institution of measures for ensuring the purity of water supplies;

(g) the prevention, abatement or removal of nuisances and insanitary conditions on premises;

(h) sewers and sewage disposal works;

(i) the collection, removal and sanitary disposal of rubbish, night-soil and other offensive matter;

(j) the licensing of persons, places and institutions for the carrying on of prescribed businesses in the interest of public health;

(k) prescribing the method of carrying on any offensive trade or business;

(l) the slaughtering of animals for use as food for human consumption;

(m) the keeping of domestic animals;

(n) the disposal of dead animals;

(o) the control and destruction of mosquitoes, termites and other insects, rodents and other vermin;

(p) the importation, preparation and distribution of food and drink intended for human consumption in so far as it concerns public health;

(q) the inspection and prevention from contamination of food and drink intended for human consumption, the analysing and testing of samples of such food and drink, the issuing of certificates in relation thereto, the condemnation, seizure and disposal of such articles as are unfit for human consumption;

(r) the inspection of hotels, boarding-houses and other places of accommodation;

(s) the provision and maintenance of sanitary conditions in schools;

- (*t*) the inspection of the places of business of barbers, hairdressers and beauticians;
- (*u*) the inspection and sanitary conditions of beaches and swimming pools in the interest of public health;
- (*v*) the medical and dental examination and treatment of school children, the removing of children from school and the closing of schools in the interest of public health;
- (*w*) the interment of the dead, the entry into the Territory and the exit therefrom of dead bodies and matters incidental thereto;
- (*x*) the inspection of undertaking establishments, morgues, crematoria and other places used in connection with the preparation, transportation and disposal of dead bodies;
- (*y*) the method of carrying on an offensive trade or business;
- (*z*) the control and use of public baths, washrooms and sanitary conveniences;
- (*aa*) the registration, proper management, control and inspection of private hospitals and nursing homes, nurseries and kindergartens or other similar institutions;
- (*bb*) the notification of the birth of children and the form and manner of such notification;
- (*cc*) environmental pollution;
- (*dd*) occupational diseases and employment health hazards;
- (*ee*) protection against radiation;
- (*ff*) creating offences for the contravention of or failure to comply with any regulation made under this section which offence may be punishable in such regulations by way of a fine of five hundred dollars and to imprisonment for six months.

Minister may compel the execution of works in the interest of public health.

11. (1) Where it appears to the Minister that for the protection or in the interest of public health any works in or on any premises are necessary, the Minister may serve or cause to be served on the owner or occupier of such premises a notice in writing signed by the Minister or any person authorised by

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him in that behalf requiring him to execute such works as the Minister considers necessary.

(2) A notice under subsection (1) shall indicate the nature of the works to be executed and specify a period of time after the expiration of which the Minister may cause the work to be carried out if they have not previously been executed.

(3) A person served with a notice under subsection (1) or any person having an estate or interest in the premises to which the notice relates may, at any time before the expiration of the period of time specified in the notice or twenty-one days whichever is the longer and in accordance with any rules of court for the time being in force, appeal to a Judge in Chambers against the notice on any of the following grounds—

(a) that the notice or requirement is not justified for the protection or in the interest of public health;

(b) that there is some informality, defect or error in or in connection with the notice;

(c) that the Minister has refused unreasonably to approve the execution of alternative works;

(d) that works required by the notice to be executed are unreasonable in character or extent or are unnecessary;

(e) that in the time within the works are required by the notice to be executed is not reasonably sufficient for the purpose;

(f) that the notice might lawfully have been served on the occupier of the premises to which it relates instead of the owner or on the owner instead of the occupier and it would have been equitable for it to have been so served;

(g) where the work is work for the common benefit of the premises to which the notice relates and other premises, or that some other person being the owner or occupier of the other premises to be benefited, ought to contribute towards the expenses of executing any works required.

(4) Where an appeal under subsection (3) is based on the grounds specified in paragraph (b) thereof, the Judge shall dismiss the appeal if he is satisfied that the informality, defect or error was not a material one.

(5) Where the grounds upon which an appeal is brought under subsection (3) include a ground specified in paragraph (f) or (g) of that subsection, the appellant shall serve a copy of his notice of appeal on each other person referred to therein and may serve a copy thereof on any other person having an estate or interest in the premises to which the notice under subsection (1) relates.

(6) On the hearing of an appeal under subsection (5) the Judge may make such order as he thinks fit in respect of the person by whom any work is required to be executed and the contribution to be made by any other person towards the cost of the work or as to the proportion in which any expenses which may become recoverable by the Minister under subsection (11) are to be borne by the appellant and such other person.

(7) In exercising his powers under subsection (6), the Judge shall have regard—

(a) as between an owner and an occupier to the terms and conditions, whether contractual or statutory, of the tenancy and to the nature of the works required; and

(b) in any case, to the degree of benefit to be derived by the different persons concerned.

(8) Where an appeal is brought under subsection (3), the Judge shall give directions for giving effect to his decisions including, where appropriate, directions for quashing the notice to which the appeal relates or for varying the terms of such notice in favour of the appellant.

(9) Where the notice to which the appeal relates is varied, or the appeal is dismissed, the Judge may, if he thinks fit, direct that the notice shall not come into force until such date, being not more than twenty-eight days from the determination of the appeal, as he thinks fit.

(10) The determination of an appeal under subsection (3) by a Judge in Chambers shall be final.

(11) If at the expiration of the period specified in the notice under subsection (1) or directed by a Judge in the determination of an appeal under subsection (3), the work specified in the notice as varied by a Judge has not been executed, the Minister may cause such work to be carried out and on completion thereof may recover the reasonable costs

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(12) In any proceedings under subsection (11) the validity of the notice to which the proceedings relate shall not be questioned on any ground specified in subsection (3).

**12.** (1) If at the expiration of the period specified in the notice under section 11 (1) or directed by the Judge in the determination of the appeal under subsection 11 (3), an owner or operator of a business has failed to execute the work specified in the notice, or in the notice as varied by the Judge, as the case may be, the Minister may, without prejudice to the provisions of section 11 (11), apply to the High Court for an order for closure of such business.

Order for closure.

(2) If the High Court having heard an application under subsection (1) is made, is satisfied as to the matters referred to in subsection (1), it may make an order for closure.

(3) The High Court may, at any time on being satisfied that the works required to be executed by the notice have been executed, revoke an order for closure made under subsection (2).

**13.** (1) Where any Board or Committee established under this Ordinance reports to the Minister—

Overall enforcement powers of Minister.

(a) the existence of any local condition in any part of the country tending to endanger public health, and there are no powers under any law other than this section whereby such condition may be guarded against; or

(b) that any part of the country appears to be threatened with or affected by any communicable disease in epidemic proportions, and that measures apart from or in addition to those specifically provided for in this Ordinance, should be taken promptly,

the Minister may by Order published in the Gazette direct the enforcement of any measures recommended by the Board or Committee, or any other measures that he thinks expedient for removing or otherwise guarding against any such condition and the probable consequences thereof, or for preventing or mitigating as far as possible any such disease.

(2) An Order made under subsection (1) may extend to the whole Territory or to such part thereof or to such particular places in the Territory as may be specified therein.

(3) A copy of every Order made under subsection (1) shall be posted in a conspicuous place at every police station and post office in the Territory.

(4) Any person who contravenes the provisions of any Order made under subsection (1) shall be guilty of an offence.

Minister may prohibit assembly of persons.

**14.** (1) Where he has reasonable cause to believe that there is prevalent in the Territory or in any part thereof any communicable disease in epidemic proportions, the Minister may, by Order published in the Gazette, prohibit the assembly of persons exceeding such number as may be prescribed in that Order at any place specified therein, and such prohibition may be applicable to the whole Territory or to any part thereof.

(2) Every person who is present at, or promotes, aids or assists in the promotion of any assembly prohibited under subsection (1) shall be guilty of an offence and liable on summary conviction to a fine of one thousand dollars and to imprisonment for twelve months.

Minister may order closure of public places or schools.

**15.** (1) Where he has reasonable cause to believe there is prevalent in the Territory or in any part thereof, any communicable disease in epidemic proportions, and is satisfied that it is in the interest of public health to do so, the Minister may by Order published in the Gazette, direct that any public place or any school in the Territory, or in the area in which such disease is prevalent shall be closed for such period as he thinks necessary.

(2) Any person who fails to comply with any Order made under subsection (1) shall be guilty of an offence and liable on summary conviction to a fine of one thousand dollars and to imprisonment for twelve months in respect of every day in which there has been failure so to comply.

Powers of entry.

**16.** (1) The Chief Medical Officer, a Medical Officer of Health or any person authorised in writing by the Minister may at all reasonable times enter, if necessary using such force as may be required, any premises for the purpose of—

(a) ascertaining whether there is or has been on or in connection with the premises any contravention of this Ordinance or any regulations made thereunder;

(b) ascertaining whether or not circumstances exist which would authorise or require the Minister to take any

action or execute any work under this Ordinance or any regulations made thereunder;

(c) taking any action or executing any work authorised or required to be taken or executed under this Ordinance or any regulations made thereunder;

(d) performing any function conferred on the Minister or on any such Medical Officer or other authorised person under this Ordinance or any regulations made thereunder; or

(e) generally examining and inspecting the premises.

(2) Any officer or person authorised to enter any premises under subsection (1), on leaving any unoccupied premises which he has entered pursuant to that subsection, shall leave the premises as effectually secured against trespassers as he found them.

(3) Where any power of entry conferred under this section is to be exercised by a person authorised by the Minister, the Chief Medical Officer or a Medical Officer of Health, the person claiming the right to enter shall produce the document authorising him in that behalf.

(4) A document purporting to have been signed by the Minister, the Chief Medical Officer or a Medical Officer of Health shall be deemed, until the contrary is proved, to have been signed by that person.

17. (1) Any person who—

Offences.

(a) assaults, resists, obstructs or intimidates;

(b) uses indecent, abusive or insulting language to;

(c) interferes with or hinders; or

(d) by any gratuity, bribe, promise or other inducement prevents or attempts to prevent the due execution of his duty by,

any officer or other person acting under the authority of this Ordinance or any regulations made thereunder shall be guilty of an offence and liable on summary conviction to a fine of five hundred dollars and to imprisonment for six months.

(2) Any person who fails to carry out or contravenes any of the provisions of this Ordinance for which no specific penalty is provided shall be guilty of an offence and liable on

summary conviction to a fine of five hundred dollars and to imprisonment for six months, and in the case of a second or subsequent offence to a fine of one thousand dollars and to imprisonment for twelve months.

Exception from liability.

**18.** (1) Nothing done by the Minister, the Chief Medical Officer, a Medical Officer of Health or any duly authorised person shall, if done bona fide for the purpose of executing any of the provisions of this Ordinance or by any regulations made thereunder, subject such person to any action, suit, prosecution, legal proceeding, liability, claim or demand whatsoever.

(2) Where a person is so personally exempt by reason of subsection (1) the Crown shall be liable to the extent that it would be as if the person were a servant or agent of the Crown.

Persons entitled to take proceedings.

**19.** Proceedings against any person for an offence against this Ordinance and for the recovery of any fines imposed under this Ordinance or any regulations made thereunder may be instituted by any person authorised in that behalf by the Minister, and such authorised person may prosecute or conduct such proceedings.

Prosecutions to be commenced within six months.

**20.** All prosecutions for offences against this Ordinance or any regulations made thereunder shall be commenced within six months next after the commission of such offence.

Reference to owner or occupier in certain proceedings.

**21.** Where in any proceedings under this Ordinance relating to nuisances it becomes necessary to mention or refer to the owner or occupier of any premises and his name is unknown or cannot on reasonable enquiry be ascertained, it shall be sufficient to designate him as the "owner" or "occupier" of such premises, without name or description.

Payment of administrative expenses.

**22.** Any expenses incurred in the administration of this Ordinance shall be defrayed out of moneys voted for the purpose by the Legislative Council.

Savings.

**23.** Notwithstanding the other provisions of this Ordinance, any statutory rules, orders or regulations which are in force at the commencement of this Ordinance shall be deemed to have been made under this Ordinance and shall,

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except insofar as they are inconsistent with this Ordinance or any regulations made hereunder, continue in force until revoked under this Ordinance, and anything begun under the Public Health Ordinance, 1969 may be continued under this Ordinance as if begun thereunder.

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THE REVISED LAWS  
OF  
**THE VIRGIN ISLANDS**

PREPARED UNDER THE AUTHORITY  
OF THE  
REVISED EDITION OF THE LAWS ACT, 1991

BY

Donald Trotman, *Attorney General (Chairman)*  
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1991

**CHAPTER 130.**

**IMMIGRATION AND PASSPORT.**

(7th July, 1977.)

9/1977

**PART I.**

**INTRODUCTORY.**

**1.** This Ordinance may be cited as the Immigration and Passport Ordinance. Short title.

**2.** In this Ordinance— Interpretation.

“authorised port of entry” means a port designated as an authorised port of entry under regulations made under section 49(b);

“Board” means the Board of Immigration established under section 13;

“British subject” has the meaning assigned thereto by the British Nationality Acts 1948 to 1965 of the United Kingdom or any Acts of the United Kingdom amending or replacing them;

“Chief Immigration Officer” means the person appointed as such by the Governor under section 4(1)(a);

“child” means a person under the age of eighteen years who is the child, stepchild, or lawfully adopted child of any person; and “children” shall be construed accordingly;

“deserter” means a member of the crew of a ship who being permitted to land in the Territory in accordance with section 22 fails to leave the Territory in accordance with the provisions of that section;

“embark” means embark in a vessel and any reference to “embark” shall be construed as including a reference to attempting to embark;

“engage in gainful occupation” means, subject to any exceptions which may be prescribed—

- (a) to take and continue in any employment; or
- (b) to practise any profession or to carry on any trade or to engage in business or to engage in such other form of occupation as may be prescribed, where such employment, profession, trade, or business is taken or continued, or is practised, carried on or engaged in, either directly or indirectly for reward, profit or gain:

Provided that such expression shall not include any exemption which may be prescribed;

“immigration officer” includes the Chief Immigration Officer, the Deputy Chief Immigration Officer and any person appointed by the Governor under section 4 to be an immigration officer;

“land” means land from a vessel and any reference to “land” shall be construed as including a reference to attempting to land;

“lien” in relation to any ship means a maritime lien;

“master” or “captain” as the case may be, means the person having command or charge of a vessel;

“member of crew” in relation to a vessel, means any person actually employed in the working or service of the vessel including the master or captain;

“Minister” means the Minister from time to time charged with portfolio responsibility for immigration and passport matters;

“passenger” means any person arriving in or departing from the Territory in any vessel other than a member of the crew;

“passport” means a valid passport issued not more than ten years previously by or on behalf of the Government of the country of which the person to whom it relates is a subject or citizen, or some other recognised travel document satisfactorily establishing the national status and identity of the person to whom it relates which passport or

document is still in force and has attached to it a photograph of the person to whom it relates;

“resident” means any person to whom a valid and subsisting certificate of residence granted under section 18 relates;

“police officer” has the meaning ascribed thereto by section 2 of the Police Act; Cap. 165.

“port” includes airport;

“regulations” means regulations made under section 49;

“ship” means any steam-ship, sloop, boat or craft of any kind for travel or transport other than by air;

“stop list” means the list maintained by the Chief Immigration Officer under section 25;

“Supreme Court” means the Eastern Caribbean Supreme Court;

“Territory”, other than in section 49(g)(ii), means the Territory of the Virgin Islands; and

“vessel” means any ship, and any description of aircraft or other means of travel by sea or air.

3. (1) For the purposes of this Ordinance a person shall be deemed to belong to the Territory if that person—

(a) is a British subject and was born in the Territory;

(b) is a British subject and was born outside the Territory of a father or mother who was born within the Territory;

(c) has obtained the status of a British subject by reason of the grant by the Governor of a certificate of naturalisation under the British Nationality and Statute of Aliens Act, 1914 or the British Nationality Acts 1948 to 1965 of the United Kingdom; or

(d) is a person to whom a certificate has been granted under section 16 and has not been revoked under section 17;

(e) is a British subject above the age of eighteen years who immediately before attaining that age was the child of a person to whom a certificate had been granted under section 16 and not revoked under section 17:

Persons who are deemed to belong to the Territory.

Provided that a person shall cease to be deemed to belong to the Territory under the provisions of this paragraph who,—

- (i) subsequent to attaining the age of twenty-one years is ordinarily resident outside the Territory for a period of not less than five years; or
- (ii) being a female, marries a person who is not deemed to belong to the Territory under the provisions of this subsection; or
- (iii) is declared to be no longer a person deemed to belong to the Territory by an order made by the Governor in accordance with the provisions of the Ordinance; or

(f) is the wife of a person to whom any of the foregoing paragraphs apply and is not living apart from such person under a decree of a competent court or a deed of separation; or

(g) is the child of any person to whom any of the foregoing paragraphs of this subsection apply; or

(h) is a British subject and the widow of a person who immediately before his death was, or would but for his death have been, deemed to belong to the Territory under any of the foregoing paragraphs of this subsection and who was at the time of his death lawfully married to her and not living apart from her under a decree of a competent court or a deed of separation:

Provided that a woman shall cease to be deemed to belong to the Territory under the provisions of this paragraph if—

- (i) subsequent to the death of her husband she is ordinarily resident outside the Territory for a period of five years or longer; or
- (ii) she marries a person who is not deemed to belong to the Territory under the provisions of this subsection.

(2) The Governor may, at any time, by order declare any person deemed to belong to the Territory by virtue only of subsection (1)(c) to be no longer deemed to belong to the Territory on the grounds that such person—

(a) has shown himself by act or speech to be disloyal or disaffected towards Her Majesty;

(b) has during any war in which Her Majesty was engaged, unlawfully traded or communicated with an

enemy or been associated with or engaged in any business that was to his knowledge carried on in such manner as to assist any enemy in that war; or

(c) has within five years of the grant of such certificate been imprisoned in any country for a criminal offence for a period of one year or more,

or where the certificate has been revoked under section 17(2)(d) and upon publication of such order in the Gazette such person shall cease to be deemed to belong to the Territory.

(3) Any reference in this Ordinance to a power to detain any person shall be construed as a power to detain that person in any place approved by the Governor for that purpose, and such person shall, while so detained, be deemed to be in legal custody.

(4) Subject to the express provisions of this Ordinance or any other Act, Ordinance or law from time to time in force, where the provisions of this Ordinance are in conflict with any other Act, Ordinance or law the provisions of this Ordinance shall prevail.

(5) Nothing in this Ordinance shall be construed as derogating in any way from or abridging any of the provisions of the Quarantine Ordinance or of any rules made thereunder by or which the movements of any person may be restricted.

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(6) Nothing in this Ordinance shall be construed as derogating from or abridging—

(a) any provision of any agreement made under the authority of any Ordinance whereby special provision is made with respect to admission into residence or occupation in or departure from the Territory of certain persons or classes of persons mentioned in such agreement; or

(b) the exercise of any power conferred upon the Governor by the British Nationality Acts 1948 to 1965 of the United Kingdom.

11 & 12 Geo. 6  
c.56  
6 & 7 Eliz. 2  
c.10  
1964 c.22  
1965 c.34.

## PART II.

## IMMIGRATION OFFICERS.

Appointment of  
immigration  
officers.

4. (1) (a) The Governor shall appoint a Chief Immigration Officer for the purposes of this Ordinance.

(b) The Governor may from time to time appoint a Deputy Chief Immigration Officer and such officer shall, subject to the provisions of section 13, have and exercise all the powers vested in the Chief Immigration Officer by this Ordinance.

(c) The Governor may appoint such number of persons to be immigration officers as may be necessary or expedient for all or any specified parts of the Territory for the purpose of carrying out the provisions of this Ordinance.

(2) The Minister may from time to time give to the Chief Immigration Officer, any Deputy Chief Immigration Officer or immigration officer general or special directions, not inconsistent with the provisions of this Ordinance as to the exercise or performance of their powers, discretions, or functions under this Ordinance and the Chief Immigration Officer and all immigration officers shall comply with any such general or special directions so given.

General powers  
of immigration  
officers.

5. (1) For the purpose of exercising his powers and functions and carrying out his duties under this Ordinance, any immigration officer may—

(a) board any ship within the territorial waters of the Territory or any aircraft which has landed in the Territory;

(b) without a search warrant, search any such vessel or anything contained therein or any vehicle being landed in the Territory from any such vessel;

(c) interrogate any person reasonably supposed not to belong to the Territory who—

(i) desires to enter or leave the Territory;

(ii) being in the Territory is reasonably suspected of having entered without leave in contravention of section 20;

(iii) having been granted leave to land in the Territory for a specified period is reasonably believed to have remained in the Territory in excess of that period;

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(iv) being in the Territory is reasonably believed to be engaging, or to have engaged, in gainful occupation in the Territory without having been granted a work permit so to do under the Labour Code Ordinance;

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(d) require any person who desires to enter or leave the Territory to make and sign any prescribed form or declaration;

(e) require any person who desires to enter the Territory to submit to be examined by a medical practitioner appointed in writing in that behalf by the Chief Medical Officer (who is hereby empowered so to do) and to undergo, and to assist in the carrying out of, any test or investigation which such medical practitioner may require; and

(f) require the master or captain of a vessel arriving from or leaving for any place outside the Territory, or the agent of such vessel to furnish a list in duplicate signed by himself of the names of all persons in the vessel and such other information as may be required.

(2) Any immigration officer may, in writing, summon for the purposes of interrogation any person whom he is empowered by subsection (1)(c) to interrogate, and may require any such person to produce any document in his custody or possession or under his control relating to the matter upon which he may be interrogated.

(3) Any immigration officer shall, while discharging any duty, or while exercising any power, imposed or conferred on an immigration officer by or under this Ordinance, and regulations made hereunder or any other written law or by or under any Act of the Parliament of the United Kingdom, be deemed to have the powers and immunities conferred upon police officers by any statutory provision to the extent that such powers or immunities are required in his case for the effective discharge of the duties or, as the case may be, the exercise of the powers, as aforesaid.

**6.** If any immigration officer has reasonable cause to suspect that any person, other than a person who is deemed to belong to the Territory, has committed an offence under this Ordinance or any regulations made thereunder and if it appears to him to be necessary to arrest such person immediately in order to secure that the ends of justice for the

Powers of arrest.

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purposes of this Ordinance shall not be defeated he may arrest such person without warrant whereupon the provisions of section 37 of the Magistrate's Code of Procedure Act shall apply in every such case.

Penalties for failing to answer.

**7.** Any person who, under the provisions of section 5—

(a) having been summoned under subsection (2), without reasonable excuse fails to attend at the time and place appointed;

(b) refuses or fails to answer fully and truthfully any question or inquiry lawfully put to him in the course of interrogation under subsection (1)(c);

(c) gives any answer which he knows or has reasonable cause to believe to be false or misleading to any such question or inquiry, as aforesaid;

(d) when required to produce any document under subsection (2), refuses or fails to produce within a reasonable time any such document which it is in his power to produce or, with the intention of misleading any immigration officer produces any document which he knows or has reasonable cause to believe to be false or misleading; or

(e) otherwise knowingly misleads or attempts to mislead any immigration officer acting under subsection (1)(c) or (2),

shall be guilty of an offence.

Admissibility of answers given in interrogation.

**8.** (1) All answers to questions lawfully put in interrogation under section 5(1)(c) and all documents produced on requisition under section 5(2) shall be admissible in evidence in relation to any matter arising under or connected with this Ordinance or any regulations, in any proceedings to which this section applies.

(2) This section shall apply to—

(a) any civil proceedings; and

(b) any criminal proceedings in respect of an offence under section 7.

(3) Nothing in this section shall be construed as rendering any such answer or document inadmissible in

evidence in any proceedings in which it would otherwise be admissible.

9. It shall be the duty of every police officer and customs officer to aid and assist generally in carrying out the provisions of this Ordinance; and if any contravention of, or failure to comply with any of the provisions of this Ordinance, or of any regulations made thereunder, or of any orders or directions given thereunder, becomes known to any police officer or customs officer, then it shall be the duty of such officer forthwith to report the contravention or failure to comply to an immigration officer.

Duties of police and customs officer.

10. (1) The Governor shall have the powers and discharge the duties conferred or imposed upon the Governor by or under the provisions of this Ordinance.

Functions of Governor.

(2) Any determination, decision, direction or Order come to, given or made by the Governor in exercise of any power conferred upon him, or in discharge of any duty imposed upon him, by or under the provisions of this Ordinance shall be final and conclusive, and shall not be subject to question or review by any court or tribunal whatsoever; and it shall not be incumbent upon the Governor or any public officer, to give any reasons to any person or to any public authority whatsoever for any such determination, decision, direction or order.

PART III.

DEPARTMENT AND BOARD OF IMMIGRATION.

11. There shall be a Department of Immigration consisting of the Chief Immigration Officer, the Deputy Chief Immigration Officer and such other officers as may be appointed by the Governor.

Department of Immigration.

12. The Chief Immigration Officer shall be responsible for the administration and discipline of the Department.

Chief Immigration Officer responsible for Department.

13. (1) There shall be a Board called "The Board of Immigration" consisting of the Chief Immigration Officer and

Board of Immigration.

six other members who shall be appointed by the Governor, acting on the advice of the Minister.

(2) (a) The Governor, acting on the advice of the Minister, shall appoint one of the members to be Chairman of the Board.

(b) If the Chairman is unable to attend a Board meeting because of illness, absence from the Territory or other cause and the Governor does not appoint someone to act during his inability to attend, the Board shall appoint someone from among their own number to be Chairman for that meeting.

(3) The Governor, acting on the advice of the Minister, may appoint another person to be a temporary member during the absence of any member of the Board who, through illness, absence from the Territory or for any other cause is unable to sit on the Board.

(4) The Board may act by any three of its members notwithstanding any vacancy in the number of members constituting it.

(5) The Board shall have power to regulate its own procedure.

(6) The Deputy Chief Immigration Officer may attend meetings of the Board and take part, but shall have no vote.

(7) In the absence of the Chief Immigration Officer however, the Deputy Chief Immigration Officer shall have all the powers (for the purpose of meetings of the Board) of the Chief Immigration Officer.

(8) Every member other than the Chief Immigration Officer shall hold office for a term of two years from the date of his appointment but a member may at any time tender his resignation to the Governor by written notice through the Chairman of the Board.

Functions of Board.

**14.** (1) Subject to the provisions of section 15 the Board shall be advisory and consultative and shall have no executive or administrative functions.

(2) It shall be the duty of the Board to advise upon all questions concerning or connected with the entry of persons into the Territory, and the residence and occupation in the Territory of persons who do not belong to the Territory

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(hereinafter in this Ordinance referred to as "designated matters"), which may be referred to the Board by the Minister or the Chief Immigration Officer, and further it shall be competent for the Board to make recommendation to the Minister or the Chief Immigration Officer in connection with such questions without previous reference.

15. (1) The Board shall—

(a) cause to be made enquiries as they think expedient or as the Minister may require, in respect of any matters concerning or connected with any of the designated matters or in respect of any other matters in respect of which their permission, approval or consent or the permission, approval or consent of any immigration officer, is required under this Ordinance;

(b) in respect of matters connected with the designated matters, cause such statistical data to be obtained and recorded by the Department of Immigration and such records or reports to be published, as they may think expedient, or as the Minister may from time to time require; and

(c) cause records to be kept and maintained of the entry of all persons into the Territory and of the departure of all persons from the Territory.

(2) Without prejudice to anything in the Evidence Act any record required to be kept under subsection (1) shall be received in evidence in any court or in any tribunal whatsoever in the Territory as prima facie evidence of any entry or particulars entered therein.

Information and statistics relating to designated matters.

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PART IV.

CERTIFICATE THAT A PERSON BELONGS TO THE TERRITORY: RESIDENCE.

16. (1) Subject to the provisions of this section, on the recommendation of the Board the Governor in Council may upon application being made in the manner prescribed grant a certificate certifying that the person who applied for the same belongs to the Territory for the purposes of this Ordinance to any person who either—

(i) (a) is a British subject;

Certificate that person belongs to the Territory.

(b) is of good character;

(c) is not less than eighteen years of age;

(d) has been ordinarily resident in the Territory for a period of not less than seven years immediately prior to his application;

(e) has held a certificate of residence granted under section 18 for a period of not less than twelve months immediately preceding the date of application; and

(f) in his application has restated his intention of making the Territory his permanent home and who has satisfied the Board that it is his intention so to do:

Provided that the Governor in Council after consultation with the Board where in the exceptional circumstances of any case it considers it fit so to do, may grant such a certificate to any person who is a British subject and is of good character and who is at the date of making the application for such a certificate ordinarily resident in the Territory and who has been so ordinarily resident for a period or periods amounting in the aggregate to at least ten years notwithstanding that such person has not been so ordinarily resident for the period of not less than seven years immediately prior to his application; or

(ii) is the husband of a person who is deemed to belong to the Territory under section 3(a), (b) or (c) and who is ordinarily resident with such person in the Territory.

(2) In deciding whether a certificate shall be granted under subsection (1)(i) in respect of any applicant the Governor in Council shall consider whether—

(a) the economic situation in the Territory is such that the grant of a certificate to the person concerned will prejudice the protection afforded under this Ordinance to other persons engaging in which the applicant is engaged or in which he is likely to engage;

(b) that the applicant has established a close personal connection with the Territory;

(c) the applicant's character and previous conduct are unexceptional; and

(d) the applicant's continued residence in the association with the Territory may afford some advantage to the Territory.

17. (1) Where a person is granted a certificate under section 16(1) such certificate shall cease to be valid—

Validity of certificate issued under section 16.

(a) if granted under paragraph (i) thereof, subsequent to the grant of the certificate such person is ordinarily resident outside the Territory continuously for a period of five years;

(b) if granted under paragraph (i) thereof, such person ceases to have the status of a British subject; or

(c) if granted under paragraph (ii) thereof, such husband lives apart from his spouse under a decree of a competent court or a deed of separation.

(2) A certificate granted under section 16 may be revoked by the Governor in Council by Order on the grounds that the person to whom it was granted—

(a) has shown himself by act or speech to be disloyal or disaffected towards Her Majesty;

(b) has during any war in which Her Majesty was engaged, unlawfully traded or communicated with an enemy or been associated with or engaged in any business that was to his knowledge carried on in such manner as to assist an enemy in that war;

(c) has, within five years of the grant of such certificate, been imprisoned in any country for a criminal offence for a period of one year or more; or

(d) has obtained such certificate by means of fraud, false representation or concealment of any material fact.

(3) No Order shall be made in exercise of the powers conferred by subsection (2), unless the Chief Immigration Officer has first given the person against whom the Order is proposed to be made a notice in writing of the grounds on which it is proposed to be made and has offered such person an opportunity to be heard.

18. (1) Subject to the other provisions of this section, on the recommendation of the Board the Governor in Council may grant a certificate of residence to any person who applies for the same in the prescribed manner and who—

Certificate of residence.

(a) is of good character; and

(b) in his application has stated his intention of residing permanently in the Territory.

(2) When a certificate of residence is granted to any person under this section, the Governor in Council may then, or on the subsequent application by that person endorse the certificate to relate also to the wife and any dependent child under the age of eighteen years of that person ordinarily resident with him subject to such conditions as the Governor in Council may impose.

Revocation of certificate of residence.

**19.** The Governor in Council may, after consultation with the Board, revoke a certificate of residence or any endorsement thereon on the grounds that the person to whom it relates—

(a) subsequent to the grant of such certificate has been ordinarily resident outside the Territory continuously for a period of three years;

(b) since the coming into force of this Ordinance has engaged in any gainful occupation without first obtaining a work permit under the Labour Code Ordinance, if he is so required to do under the said Ordinance;

(c) has in any country including the Territory been imprisoned for a criminal offence for one year or more;

(d) has so conducted himself that in the opinion of the Chief Immigration Officer it is not in the public interest that he should continue to enjoy the privileges conferred by the certificate; or

(e) being the wife of the person to whom such certificate was granted at the time when the certificate was granted has subsequently—

(i) commenced to live apart from her husband under a decree of a competent court or under a deed of separation; or

(ii) ceased to be married to her husband by reason of dissolution or annulment of marriage.

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#### PART V.

##### ENTRY INTO THE TERRITORY.

Restriction on landing and embarking.

**20.** (1) Subject to the provisions of this Ordinance a person shall not land in the Territory from any place outside

the Territory or embark in the Territory for any destination outside the Territory—

(a) save with the leave of an immigration officer; and

(b) elsewhere than at an authorised port of entry or at such other place as an immigration officer may in any particular case allow.

(2) An immigration officer may on the examination of a person other than a person who falls within any of the categories enumerated in section 21 and who enters or seeks to enter the Territory—

(a) refuse him admission into the Territory; or

(b) admit him into the Territory subject to a condition restricting the period for which he may remain in the Territory with or without conditions for restricting his employment or occupation in the Territory.

(3) Any person landing or embarking in the Territory in contravention of this section shall be guilty of an offence and liable on summary conviction to a fine of one thousand dollars and to imprisonment for twelve months.

(4) The Chief Immigration Officer may by Order in writing direct the removal from the Territory of any person who has been convicted of an offence against subsection (3) and has been sentenced therefor to a term of imprisonment, and such person may, at any time before the expiration of his sentence, be placed on board any vessel about to leave the Territory and which is specified in the Order and shall be deemed to be in legal custody until the departure of such vessel.

(5) The master or captain of any vessel and the owner and any agent of the owner of any vessel from or in which a person lands or embarks in contravention of the provisions of this section shall be guilty of an offence and liable—

(a) on summary conviction to a fine of one thousand dollars and to imprisonment for twelve months; or

(b) on conviction in the High Court to a fine of two thousand dollars and to imprisonment for two years:

Provided that it shall be a good defence in proceedings against any such master, captain owner or agent, under this subsection for him to prove to the satisfaction of the court that

he did not know and had no means of knowing that such person had so landed or embarked.

(6) In any proceedings under this section evidence that any person found in the Territory is not deemed to belong to the Territory and that there is no record of his having had the leave of any immigration officer to land in the Territory shall be evidence of his having landed in the Territory in contravention of this section, until the contrary is shown to the satisfaction of the court.

(7) Notwithstanding anything contained in any other written law a prosecution for an offence against this section may be commenced at any time.

Persons entitled  
to land and  
embark.

**21.** (1) Notwithstanding any other provisions of this Ordinance, a person shall be entitled to land or embark in the Territory and shall be permitted by any immigration officer so to land or embark, if he satisfies the immigration officer that he comes within any of the following categories—

- (a) persons deemed to belong to the Territory;
- (b) persons who are entitled to be residents under section 18;
- (c) persons enjoying relevant diplomatic or consular or other similar privileges by virtue of any Act or Ordinance or in accordance with recognised international practice;
- (d) serving members of any of Her Majesty's Forces on duty in the Territory;
- (e) persons employed in the service of the Government of the Territory;
- (f) persons employed in the service of such Caribbean inter-regional organisations as the Minister may, by Notice in the Gazette designate;
- (g) persons employed in the service of any country in the Commonwealth engaged upon official duties in the Territory;
- (h) persons whom an immigration officer is authorised by the Governor to treat as entitled to land in the Territory; and
- (i) wife and children of any person coming within category (d), (e), (f) or (g) whether travelling with or separately from such person.

(2) The burden of proof that any person is a person to whom this section applies shall lie upon that person.

**22.** (1) Subject to subsection (2), section 20 shall not apply to any person who—

Crew members and persons in transit.

(a) being a member of the crew of a ship at a port in the Territory, lands, otherwise than for the purpose of being discharged or after being discharged, at any time while the ship remains at that port; or

(b) lands from an aircraft at an authorised port for the purpose only of embarking and leaving the Territory in an aircraft at that port and remains throughout the period between the landing and embarkation within such limits as may be approved for the purposes by an immigration officer.

(2) Notwithstanding anything contained in subsection (1), an immigration officer may at any time give notice to any person on board any vessel other than a person entitled to land in the Territory under section 21 prohibiting him from landing without the leave of an immigration officer and thereupon section 20 shall apply to such person.

**23.** (1) Subject to the other provisions of this Ordinance an immigration officer may grant leave to any person to land and remain in the Territory for such period as he may determine in accordance with subsection (2), upon being satisfied that that person—

Grant of leave to land.

(a) has in his possession either a ticket, or some other means of travelling to some other country which he will be able to enter, or a valid permit, not having been obtained by fraud or misrepresentation, issued to him under section 31 permitting him to remain in the Territory for the period specified therein;

(b) will not engage or seek to engage in any gainful occupation other than occupation which is specified in a valid permit, not having been obtained by a fraud or misrepresentation;

(c) is not likely to behave in a manner prejudicial to the peace, order and good government of the Territory;

(d) is not suffering from a mental disorder nor is mentally defective;

(e) is not suffering from any contagious or infectious disease which, in the opinion of a medical practitioner appointed under paragraph (e) of section 5(1) makes his presence in the Territory dangerous to the community;

(f) is not a person who is reasonably believed to have come to the Territory for any immoral purpose, or who is not believed to be a prostitute or to have come to the Territory for the purpose of prostitution;

(g) has not been convicted in any place of, or admits to having committed, an offence of a nature punishable in the Territory with imprisonment for a term of three years or more who by reason of such conviction is deemed by the Chief Immigration Officer to be undesirable;

(h) is not addicted to the use of any drug;

(i) has not been convicted of an offence under any written law relating to dangerous or narcotic drugs whether in the Territory or in any state or country outside the Territory;

(j) has not at any time advocated—

- (i) the overthrow by force or violence of the lawful Government of the Territory or of any other state or country or of all forms of law;
- (ii) the abolition of organised Government; or
- (iii) the assassination of any person or the unlawful destruction of property;

(k) has not been a member of or affiliated to any organisation which entertains or teaches any doctrine specified in sub-paragraphs (i) to (iii) of paragraph (j);

(l) is not a person whose name is for the time being entered in the stop list;

(m) is not a member of a class of persons declared by the Governor in Council, by Order, to be a prohibited class of persons for the purpose of this section;

(n) is not a person whose presence in the Territory would in the opinion of the Chief Immigration Officer and on the direction of the Minister be undesirable and not conducive to the public good;

(o) is not a person who is incapable of supporting himself and his dependants during such time as he may be permitted to remain in the Territory; and

(*p*) is not the dependant of a person who is precluded from being granted leave to land by reason of any of the provisions of this section.

(2) The period for which an immigration officer may grant to any person leave to remain in the Territory under subsection (1) shall be—

(*a*) where such person produces a permit issued to him under section 31 permitting him to remain in the Territory, the period specified in that permit;

(*b*) where such person does not produce to the immigration officer such a permit, such period not exceeding six months as the immigration officer may, subject to any directions of the Minister determine.

(3) When a person has been granted leave to land and remain in the Territory for a period under subsection (1) the Chief Immigration Officer may, for good cause, vary that period and any extension thereof shall be subject to the payment of the fee prescribed.

(4) Any person who, without lawful excuse, the proof of which shall be upon him, in the Territory harbours, maintains or employs a person who has landed in contravention of any of the foregoing provisions of this section, and whom he knows or has reasonable cause to believe to have so landed, shall be guilty of an offence.

**24.** Where any person is not granted leave to land in the Territory by an immigration officer under section 23 the Chief Immigration Officer may, in his discretion, notwithstanding any other provisions of this Ordinance, permit such person in writing to land and remain in the Territory for such period and subject to such conditions as may be prescribed or as the Chief Immigration Officer may deem fit to impose.

Special leave to land.

**25.** Where the Governor in Council is satisfied that any person who is not a person deemed to belong to the Territory and who is for the time being outside the Territory—

Stop List.

(*a*) is a person who has, while in the Territory conducted himself in a manner which is undesirable; or

(*b*) is a person whose landing in the Territory appears undesirable in view of information or advice received from any source which he considers reliable,

then and in either case the Governor may cause that person's name to be entered on a list to be called "the Stop List" to be maintained by the Chief Immigration Officer.

Removal of  
persons refused  
leave to land.

**26.** (1) Where leave to land has not been granted to a person under section 23 or 24 an immigration officer may, subject to subsection (2), give directions—

(a) to the master or captain of the vessel in which such person arrived in the Territory, requiring him to remove that person from the Territory in that vessel;

(b) to the owners or agents of such vessel requiring them to remove such person from the Territory in any vessel specified in the directions, being a vessel of which they are owners or agents;

(c) to such owners or agents requiring them to make arrangements for the removal of such person from the Territory in any vessel bound for a country specified in the directions being either—

(i) a country of which such person is a national or in which he embarked for the Territory; or

(ii) a country to which there is reason to believe that such person will be admitted,

and for securing him a passage to that country.

(2) No directions shall be given under this section in respect of any person after the expiration of six months from the date on which he last arrived in the Territory.

(3) A person in respect of whom directions are given under subsection (1) may be placed under the authority of an immigration officer on board any vessel in which he is to be removed in accordance with the directions.

(4) A person to whom leave to land is refused may be detained, under the authority of an immigration officer, pending the giving of directions in his case under subsection (1) and pending his removal in pursuance of directions so given; and where any such person is on board a vessel he may, under the like authority, be removed therefrom for such detention under this subsection.

Removal of  
persons landing  
unlawfully etc.

**27.** (1) If any person—

(a) is found in the Territory after landing in contravention of this Ordinance;

(b) has been permitted to land in the Territory from a vessel of which he was a member of the crew subject to a condition that he should leave the Territory by a specified vessel or within a specified period, but fails to comply with that condition or is reasonably suspected of intending so to fail; or

(c) has landed in the Territory from a vessel of which he was a member of the crew in accordance with section 22 without the leave of an immigration officer, but fails to leave with the vessel from the port where he has landed, or is reasonably suspected of intending so to fail, section 26 shall apply to him as if he had been refused leave to land by an immigration officer:

Provided that in respect of any person to whom paragraphs (b) or (c) apply, the period of six months specified in section 26(2) shall be extended to twelve months.

(2) If any person lands in the Territory from a vessel on which he was a stowaway, section 26 shall thereupon apply to him as if he had been refused leave to land by an immigration officer:

Provided that in any such case—

(a) section 26(2) shall not apply; and

(b) section 26(1)(c) shall be deemed to include a reference to the country in which that person stowed away.

28. In any case where a person lands from a vessel in contravention of any provisions of this Part then without prejudice to any other provisions of this Ordinance, the local representative of such vessel shall be financially responsible for any public charges reasonably incurred in respect of such person's maintenance, including any detention, while in the Territory and his subsequent repatriation, removal or deportation therefrom.

Financial responsibility for persons landing illegally.

PART VI.

RESIDENCE AND EMPLOYMENT IN THE TERRITORY.

29. (1) No person other than a person entitled to land in the Territory in accordance with section 21 shall remain in the Territory after the expiration of the period during which

Restrictions upon residence.

he is permitted to remain in the Territory by the immigration officer under section 23 unless such person is in the possession of a valid permit issued in accordance with section 31 permitting him to so remain in the Territory.

(2) Where any person ceases to be a person entitled to land in the Territory in accordance with section 21 this section shall apply to that person upon the expiration of such period of time as reasonably to allow for the departure of that person from the Territory as the Chief Immigration Officer may in his discretion permit.

(3) Any person who contravenes the provisions of this section shall be guilty of an offence.

Restrictions upon seeking to engage in gainful occupation.

**30.** (1) Subject to subsection (2), no person shall seek to engage himself in any gainful occupation in the Territory unless he is in possession of a valid permit issued in accordance with the provisions of section 31 permitting him to do so.

(2) The provisions of this section shall not apply to any person who comes within any of the categories set out in paragraphs (a), (c), (d), (e), (f) and (g) of section 21.

(3) Any person who seeks to engage in any gainful occupation in contravention of the provisions of this section shall be guilty of an offence.

Permission to reside or to seek to engage in gainful employment.

**31.** (1) Subject to the other provisions of this section, upon application being made in the prescribed form the Chief Immigration Officer may in accordance with the provisions of any regulations and of any directions of the Governor grant a permit in accordance with the provisions of this Ordinance and in the prescribed form to any person permitting such person—

(a) to remain in the Territory for the period specified in the permit otherwise than for the purpose of engaging in any gainful occupation; or

(b) to remain in the Territory for the period specified in the permit for the purpose of seeking to be engaged in gainful occupation specified in the permit and with the view of obtaining a valid permit to engage himself in such gainful occupation.

(2) Without prejudice to any other provisions of this Ordinance, any person applying for a permit under this section may be required by the Chief Immigration Officer—

(a) to furnish him with such evidence of good character in respect of himself and his dependants as the Minister may consider necessary;

(b) to furnish him with medical certificates with respect to himself and his dependants certified by medical authorities acceptable to the Minister and with such particulars as the Minister may consider necessary;

(c) to satisfy him that he is able to maintain himself and his dependants in the Territory;

(d) to provide—

(i) in the case of a person wishing to remain in the Territory for purposes other than engaging in gainful occupation, an undertaking, in writing, that he will not engage in any gainful occupation in the Territory; or

(ii) in the case of a person wishing to remain in the Territory for the purposes of engaging in any gainful occupation, full particulars of such occupation;

(e) to give a bond for such sum and with such sureties as the Minister may approve for securing payment of any public charges, including any cost of transporting the applicant and his dependants to a country outside the Territory willing to receive him, that may be incurred in respect of the applicant or his dependants:

Provided that the Minister shall cancel any such bond on the applicant subsequently acquiring a certificate under section 16 or 18 and may cancel any such bond at any time on being satisfied that the necessity for the bond no longer exists:

And provided further that in the case of a person who is to be employed in the Territory, the prospective employer shall be required to give bond in lieu of the person himself; and

(f) to furnish such particulars (whether of the same kind as those hereinbefore referred to or not) as the Minister may consider material to the consideration of any application.

(3) Notwithstanding the other provisions of this section, no permit under subsection (1) shall be granted to any person

if the Minister has notified the Chief Immigration Officer in writing that such a permit shall not be granted to such person.

Conditions of permits.

**32.** (1) Any permit granted under section 31—

(a) may be limited in duration to a period specified in the permit;

(b) may be granted subject to such conditions or restrictions, in addition to any conditions or restrictions which may be prescribed, as the Minister may in any case direct; and

(c) shall be subject to any special conditions or restrictions which the Minister may require the Chief Immigration Officer to impose in respect of any particular person;

(d) may be cancelled by the Chief Immigration Officer in the event of the Chief Immigration Officer being satisfied that the person to whom it is granted has failed to comply with any condition or restriction contained therein; and

(e) shall be cancelled by the Chief Immigration Officer forthwith upon a deportation order being made under section 40 in respect of the person to whom the permit is granted.

(2) Any condition or restriction imposed under paragraph (b) or (c) or subsection (1) shall be set out in the permit.

## PART VII.

### SUPPLEMENTARY PROVISIONS RELATING TO IMMIGRATION CONTROL.

Duty of local representative of vessel to give notice of arrival.

**33.** (1) It shall be the duty of the local representative of every vessel arriving in the Territory to give adequate and timely notification of the arrival of the vessel to the Chief Immigration Officer and, if required, to furnish such particulars as he may then have in his possession regarding the passengers and crew on board such vessel.

(2) Any person who fails to comply with any of the provisions of this section, or with any requirements duly given thereunder, shall be guilty of an offence.

**34.** (1) The master of every vessel arriving in the Territory, and the local representative of any such vessel shall, if so required by an immigration officer, as soon as practicable after the arrival of such vessel and before any passenger or member of the crew has landed in the Territory deliver to an immigration officer a list showing separately—

Inward passenger and crew manifests.

(a) the names and particulars of the passengers on board the vessel;

(b) the names of the passengers whose journey by that vessel is to be completed in the Territory;

(c) the names and particulars of any other person (including persons rescued at sea and stowaways) on board the vessel:

Provided that an immigration officer may allow any person on board the vessel to land, without prejudice to any other provision of this Ordinance, before such lists are duly delivered.

(2) The master of every vessel arriving in the Territory shall, if so required by an immigration officer answer truthfully all proper questions put to him by that officer relating to the passengers and members of the crew of the vessel for the purposes of this Ordinance.

(3) Any person who fails to comply with the provisions of this section shall be guilty of an offence.

**35.** (1) It shall not be lawful for the master or captain of any vessel to cause or allow any passenger or member of the crew or other person on board the vessel to land in the Territory before permission generally to land has been given by an immigration officer.

Control of landing from vessels.

(2) The master of any vessel who contravenes any of the provisions of this section shall be guilty of an offence:

Provided that it shall be a good defence for a person charged with an offence under this section to prove that any such landing took place in a case of emergency, and was, at the earliest time practicable notified to an immigration officer.

**36.** (1) Every passenger arriving in or departing from the Territory shall complete and deliver to the person prescribed a declaration in the prescribed form.

Declaration on disembarkation and embarkation.

(2) It shall be the duty of the owner of the vessel in or from which any passenger embarks or disembarks to provide

such passengers at the expense of such owner with the prescribed form.

(3) Any person who in completing the prescribed declaration knowingly makes any false statement or representation shall be guilty of an offence.

Duty of persons entering or departing to produce passport, etc.

**37.** (1) Every person intending to land in, or as the case may be, depart from the Territory shall if required to do so by an immigration officer produce for inspection any passport, visa, document evidencing nationality or identity or any document evidencing permission to enter any country, in his possession.

(2) Any person who fails to comply with any such requirement shall be guilty of an offence.

(3) If any person without lawful authority, alters any certificate or document issued or made under this Ordinance, or uses for the purpose of this Ordinance or has in his possession for such use any forged, altered or irregular certificate, passport, visa or other document he shall be guilty of an offence.

(4) It shall be lawful for the Governor in Council, by Order, to exempt any persons or class of persons either permanently or for a limited period from the requirement of being in possession of a passport or of such other documents as are mentioned in subsection (1).

Outward passenger and crew manifests.

**38.** (1) The local representative of every vessel departing from the Territory shall furnish to an immigration officer before the departure of the vessel, lists showing separately—

(a) the names and particulars of the passengers on board the vessel;

(b) the names and particulars of the members of the crew of the vessel; and

(c) the names and particulars of any other person on board the vessel.

(2) Any person who fails to comply with any requirement duly made under subsection (1) shall be guilty of an offence.

Distribution of copies of stop list etc., to shipping agents, etc.

**39.** It shall be lawful for the Chief Immigration Officer to cause copies of the stop list, or notification of the entry in or removal of any name from the stop list, to be given to the

representatives of ships or aircraft ordinarily calling at the Territory or to bona fide travel agencies.

### PART VIII.

#### DEPORTATION AND PROVISIONS RELATING TO THE REMOVAL OF PERSONS FROM THE TERRITORY.

**40.** (1) Subject to the provisions of sections 41 to 44 inclusive, if at any time after a person, other than a person deemed to belong to the Territory, has landed in the Territory, it shall come to the knowledge of the Governor that such person—

Procedure where deportation is desirable.

(a) has landed or remained in the Territory contrary to any provisions of this Ordinance;

(b) has been convicted of any offence against this Ordinance, or of any other offence within the Territory punishable with imprisonment for three months or more;

(c) is a person whose presence in the Territory would in the opinion of the Governor, acting after consultation with the Chief Immigration Officer, be undesirable and not conducive to the public good,

the Governor may make an order (hereinafter referred to as the "deportation order") requiring such person to leave the Territory within the time fixed by the deportation order and thereafter to remain out of the Territory.

(2) In the exercise of the powers conferred upon him by subsection (1), the Governor may act in his discretion in any matter where he deems it necessary to do so.

(3) Where a deportation order is made in respect of a person who immediately before the making thereof was lawfully within the Territory under this Ordinance, a copy of the order shall be served upon him by an immigration officer or by any police officer and he shall be entitled within the period of seven days next following the date of such service to appeal in writing to the Governor against the making of the order.

**41.** (1) The Governor may only make a deportation order in respect of a British subject—

Power of Governor to make deportation order in respect of British subject.

(a) who is a convicted person in respect of whom the court, certifying to the Governor that he has been convicted recommends that a deportation order should

be made in his case, either in addition to or in lieu of dealing with him in any other way in which the court had power to deal with him;

(b) who is an undesirable person; or

(c) who is a destitute person:

Provided that no person who is a British subject shall be deported under this section except in special or aggravated circumstances, if he has been continuously resident in the Territory for the immediately preceding period of ten years.

(2) Where any case in which a court of summary jurisdiction has made a recommendation for the making of a deportation order is brought by way of appeal before the Supreme Court and the Supreme Court certifies to the Governor that it does not concur in the recommendation, then such recommendation shall be of no effect, but without prejudice to the power of the Governor to make a deportation order under paragraph (b) or (c) of subsection (1).

Procedure with respect to making deportation order in respect of British subject.

**42.** Except in the case of a convicted person, no deportation order shall be made in respect of a British subject except where a Magistrate, nominated by the Governor has, in accordance with sections 43 and 44, made a report on the case and the Governor is satisfied, having regard to the findings of fact and any conclusions of law as stated in the report that any deportation order may lawfully be made.

Service of notice and arrest of British subject charged.

**43.** (1) The Governor shall cause a notice to be served upon a British subject in respect of whom it is proposed that a deportation order be made, (hereinafter in this section and in section 44 referred to as "the British subject charged") specifying with sufficient particulars to give him reasonable information as to the nature of the facts alleged against him, the grounds upon which it is alleged that an order may be made against him, and requiring him to show cause, before a Magistrate nominated by the Governor at time to be stated in the notice, why such order should not be made in respect of him.

(2) In any case where it is intended to take proceedings against any person under section 41 on the ground that he is an undesirable person, and it is represented on oath or affidavit sworn before any Magistrate that that person is an undesirable person, the Magistrate nominated as aforesaid may issue a warrant for his arrest; and if the notice mentioned

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in subsection (1) has not already been served upon him, it shall be so served within twenty-four hours of his apprehension.

**44.** (1) At the time appointed in the notice served under section 43 or at any adjournment of the hearing the Magistrate nominated as aforesaid shall take such evidence upon oath as is tendered in support of the charges, and the witnesses may be cross-examined by the British subject charged or by his counsel, and the person charged may, on his own behalf, call such witnesses and tender such other evidence as may be relevant upon the questions at issue; but no hearing under this subsection shall be deemed to be held in open court.

Powers of Magistrate nominated by the Governor in respect of British subject charged.

(2) The Magistrate after considering the evidence adduced before him and after making any further investigations which he may consider desirable, shall make a report to the Governor setting out his findings of fact and his conclusion on any questions of law involved, and, if he thinks fit, making a recommendation as to the issue in the case of any order under section 41.

**45.** (1) Subject to subsection (5) any person in whose case a deportation order has been made may be placed, under the authority of the Governor, on board any vessel which is about to leave the Territory and the master or captain of the vessel shall, if so required by an immigration officer, take such steps as may be necessary for preventing the person from landing from the vessel before it leaves the Territory, and may for that purpose detain the person in custody on board the vessel.

Removal of persons subject to deportation orders.

(2) The Governor or an immigration officer may give directions to the master or captain of any vessel which is about to leave the Territory, requiring him to afford to any person in whose case a deportation order has been made, and to his dependants, if any, a passage to any port specified in the directions, being a port at which the vessel is to call in the course of its voyage, and proper accommodation and maintenance during the passage.

(3) The Governor, may, if he thinks fit, apply any money or property belonging to any such person as aforesaid in payment of the whole or any part of the expenses of or incidental to the voyage from the Territory and the

maintenance until departure of the person and his dependants, if any.

(4) Subject to subsection (5), any person in whose case a deportation order has been made may be detained, under the authority of the Governor, until he is dealt with under subsection (1); and a person in whose case a recommendation for deportation is in force under section 41 shall, unless the court, in a case where the person is not sentenced to imprisonment, otherwise directs, be detained until the Governor makes a deportation order in his case or directs him to be released.

(5) A person in whose case a deportation order is made who is entitled in accordance with section 40(1) to appeal to the Governor against the making of the order, shall not be placed upon a vessel under subsection (1) or detained under subsection (4) until the expiration of the period of seven days from the date of service upon him of a copy of the order or, in the event of his making such an appeal, until the decision of the Governor thereon is known.

Lien on vessel  
landing  
passengers  
contrary to this  
Ordinance.

**46.** (1) If a passenger lands or attempts to land in the Territory, or does any act preparatory to landing in the Territory to the knowledge of the master or captain of a vessel by which such passenger arriving and landing is, or would be, in contravention of this Ordinance such vessel shall be subject to a lien in favour of Her Majesty for the sum of two thousand dollars in respect of each such passenger so landing, attempting to land or making preparation to land and the amount so charged may be sued for and recovered by the Chief Immigration Officer in any court of competent jurisdiction.

(2) Any immigration officer or any police officer, acting under instructions of the Financial Secretary shall detain, by force if necessary, any vessel charged with the payment of any sum under this section, until the hour of six o'clock in the afternoon of the third day following the landing of the passenger in respect of which the same is charged:

Provided that such detainer shall cease upon payment to the officer detaining such vessel, or the person placed by him in actual charge of such vessel, of all sums charged upon such vessel or upon the vessel being arrested under the process of any court of competent jurisdiction issued in any action for the recovery of the sums last aforesaid.

(3) For the purposes of any action for the recovery of any sums charged upon an aircraft under this section such aircraft shall be deemed to be a ship and the law relating to Admiralty actions *in rem* shall apply to such action accordingly.

(4) Where the sum charged upon a vessel under this section exceeds the value of such vessel it shall be lawful for the Supreme Court on the application of the Chief Immigration Officer to order the destruction of the vessel.

47. If a passenger lands in the Territory from any vessel contrary to this Ordinance, and such passenger is, on the complaint of the master or captain, apprehended and conveyed on board such vessel under the provisions of section 26 or 27 the lien arising under section 46 on the landing of such passenger shall cease to exist on his being so conveyed on board as aforesaid, but shall revive if such passenger again lands contrary in this Ordinance.

Lien to cease if passenger returned on board.

48. In the event of any vessel becoming subject to a lien in respect of any passenger under section 46, the Governor may, either before or after any suit has been commenced for the recovery of such amount remit the whole or such part thereof as he shall deem expedient, and order the release of such vessel on such terms and conditions as he shall think fit.

Power to Governor to remit lien.

## PART IX.

### REGULATIONS: PROCEDURE: REPEAL.

49. The Governor in Council may make regulations—

Power to make regulations.

(a) prescribing the circumstances in which a vessel is deemed to be arriving in or departing from the Territory;

(b) designating places in the Territory as ports of entry for the examination by immigration officers of persons seeking to enter or entering the Territory;

(c) requiring persons disembarking or embarking in the Territory or any class of such persons to produce to an immigration officer, if so required, landing or embarkation cards in such form as the Governor in Council may direct and requiring the owners or agents of vessels to supply those cards to such persons;

(d) prescribing the functions of immigration officers;

(e) prescribing the means to be taken of identifying persons suspected of being in the Territory contrary to this Ordinance or to any repealed Act or Ordinance relating to immigration;

(f) prescribing the forms to be used for the purposes of this Ordinance;

(g) authorising the payment of the fees for—

(i) the issue and renewal of passports; and

(ii) British visas to aliens for the purpose of visiting British Territory;

(h) prescribing the fees to be paid for—

(i) the issue of a certificate that a person belongs to the Territory and for a certificate of residence; and

(ii) the issue of any permit under this Ordinance;

(i) prescribing the fees to be paid in respect of any matter or thing prescribed under this Ordinance or any regulations;

(j) providing for the payment and recovery of any expenses incurred by the Government in connection with detention, maintenance, medical treatment and removal from the Territory of any person under this Ordinance;

(k) prohibiting or restricting any vessel or class of vessels from entering or leaving the Territory otherwise than at certain specified ports, imposing restrictions or conditions on any vessel or class of vessels entering any port within the Territory and requiring the master or captain of any vessel or such other person as may be specified in the regulations to undertake such obligations as may be deemed by the Governor in Council necessary or expedient for giving effect thereto;

(l) prescribing penalties, not exceeding the penalty specified in section 53 for any offence against any regulations;

(m) prescribing anything that is authorised or required to be prescribed by this Ordinance; and

(n) generally for the carrying out of the objects and purposes of this Ordinance.

**50.** If any question arises in any proceedings under this Ordinance or under any regulations or in reference to anything done or proposed to be done thereunder as to whether a vessel has come from a particular country or otherwise, the burden of proving that the vessel has not come from a particular country shall lie upon the person charged or, as the case may be, upon the person who, in those proceedings, is interested in proving that the vessel has not come from that particular country.

Burden of proof.

**51.** (1) Any person who—

Assisting.

(a) knowingly assists any person to land in the Territory;

(b) connives in the landing in the Territory of any person; or

(c) wilfully does any act preparatory to the landing in the Territory of any person,

where such landing is, or would be, from any vessel entering or leaving the Territory otherwise than in accordance with any regulations made under paragraph (b) of section 49 applying to such vessel, shall be guilty of an offence.

(2) Any person who commits an offence under this section or who contravenes any regulations shall be liable on summary conviction to a fine of three thousand dollars and to imprisonment for two years, and any vessel found in the Territory in contravention of any regulations shall be liable to forfeiture and shall be proceeded against and condemned in such manner as is prescribed by the Customs Ordinance:

Cap. 104.

Provided that any such vessel which is of or below one hundred net tons may be condemned by the Magistrate upon proof to his satisfaction that such vessel has been used in contravention of such regulations.

(3) In any proceedings under this section for the condemnation of a vessel found in the Territory in contravention of any regulations, the High Court, or Magistrate having jurisdiction therein may order the destruction of such vessel.

**52.** Where any officer of the Royal Navy or any customs officer or police officer has reasonable grounds for believing that any person on board any vessel which is in the territorial waters of the Territory is landing or preparing to land in the Territory in contravention of the provisions of this Ordinance,

Boarding of vessels.

he may board such vessel and exercise the powers conferred on an immigration officer under section 5.

General penalty.

**53.** Any person who commits or attempts to commit an offence under this Ordinance or any regulations made thereunder shall, except where any other penalty is provided, be liable on summary conviction to a fine of one thousand dollars and imprisonment for twelve months.

Power to prohibit entry of aliens.

**54.** Notwithstanding anything contained in this Ordinance or in any other law the Governor may, after consultation with the Minister, by Order prohibit the entry into the Territory of any alien or class of aliens.

Saving for existing rights.

**55.** Nothing in this Ordinance shall be construed to affect any existing rights acquired by any person before the date of the passing of this Ordinance by virtue of any provision in the Immigration and Passport Ordinance, 1969.

Repeal and transitional.

**56.** (1) The Immigration and Passport Ordinance, 1969 is repealed.

(2) Notwithstanding the repeal of the Immigration and Passport Ordinance, 1969 (hereinafter in this section referred to as "the repealed Ordinance")—

(a) any certificate of identity that a person belongs to the Territory and any certificate that a person is not a prohibited immigrant granted to any person under the repealed Ordinance and in force at the date of commencement of this Ordinance shall have effect as though it had been granted under the corresponding provisions of this Ordinance;

(b) any permit permitting any person to enter and remain in the Territory in force at the date of commencement of this Ordinance shall have effect as though it were a permit granted under section 31 of this Ordinance;

(c) any notice, form, order, rule, regulation or direction prescribed, made, issued or given under the repealed Ordinance shall continue in force as if it had been prescribed, made, issued or given under this Ordinance and may be repealed, revoked, varied or amended accordingly;

(d) the person who immediately before the date of the coming into operation of this Ordinance was holding

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the office of Chief Immigration Officer shall be deemed to have been duly appointed the Chief Immigration Officer under this Ordinance;

(e) the persons who immediately before the date of the coming into operation of this Ordinance were holding office as immigration officers shall be deemed to have been duly appointed to be immigration officers under this Ordinance; and

(f) any obligation whether financial or otherwise which, having accrued under the Immigration and Passport Ordinance, 1969 immediately before the coming into operation of this Ordinance, in connection with the removal from the Territory of any person who had landed illegally therein, shall continue in full force and effect as if the relevant material provisions of that Ordinance has not been repealed.

(3) Section 29 shall not apply in respect of any person who before the commencement of this Ordinance was permitted to land in the Territory as a bona fide visitor under the provisions of the repealed Ordinance until the expiry of such period as such person would have been entitled to remain in the Territory under the provision of the repealed Ordinance.

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**SOCIAL SECURITY ORDINANCE**

**ARRANGEMENT OF SECTIONS**

**SECTION**

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2. Interpretation

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4. Social Security Board.
5. Committees of the Board.
6. Remuneration of the Board and its Committees.
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8. Delegation by the Director.
9. Director's Deputy.
10. Staff of the Board.
11. Terms and conditions of employment with the Board.
12. Inspectors.
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14. Investment of moneys.
15. Temporary insufficiency of assets.
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SCHEDULE

VIRGIN ISLANDS

Chap. 266

Social Security

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(1<sup>ST</sup> July, 1980.)

17/1979

10/1981

7/1985

2/1990

1. This Ordinance may be cited as the Social Security Ordinance.

Short title.

2. (1) In this Ordinance-

Interpretation.

“appointed day” shall have the meaning ascribed to it in Section 48;

beneficiary” means a person entitled to benefit;

“benefit” means any benefit under this Ordinance;

“Board” means the Social Security Board established under section 4;

“claimant” means a person who has claimed benefit;

“contribution” means a contribution under this Ordinance;

“contributory period” means the prescribed period in respect of which the contribution is payable;

“contributory week” means a period of seven days commencing from midnight between Sunday and Monday;

“employee or employed person” means a person who is insured by virtue of subsection (2) (a) of section 18;

“gratuities” include service charges and tips payable to employees engaged in the catering trades;

“incapable of work” means incapable of work by reason of a specific disease or bodily or mental disablement or deemed in accordance with regulations to be so incapable;

“insurable employment” means subject to subsection (3) of section 18 any employment specified in subsection (2) of section 18;

“insured” means insured under this Ordinance;

“Investment Committee” means the Social Security Fund Investment Committee of the Board established by subsection (1) of section 13;

“Minister” means the Minister responsible for the subject of Social Security;

“wages” means the basic pay and overtime, but for the avoidance of doubt it is hereby declared to exclude pensions and gratuities.

(2) For the purposes of this Ordinance, a person shall be deemed to be over or under any age therein mentioned according to whether he has or has not attained that age and a person shall be deemed to be between the ages therein mentioned if he has attained the first-mentioned age but has not attained the second-mentioned age.

**PART I**

**ADMINISTRATION AND FINANCE**

**3.** (1) There is hereby established a fund to called the Social Security Fund, hereinafter called the Fund, into which shall be paid-

- (a) all contributions;
- (b) all rent, interest or investments, or other income derived from the assets of the Fund;
- (c) all sums recovered under this Ordinance as fines, fees, penalties or costs;
- (d) all sums properly accruing to the Fund under this Ordinance including the repayment of benefit; and
- (e) such other sums as may be provided by the Consolidated Fund for the purposes of the Ordinance or as may be received and accepted by the Board on behalf of the Fund.

(2) There shall be paid out of the Fund –

- (a) all benefits;
- (b) refunds of contributions; and

Social Security Fund.

- (c) all expenses properly incurred in the administration of this Ordinance (including the grant of special credits under section 21).

**4.** (1) There is hereby established a Board to be called the Social Security Board in which the Fund shall be vested and which shall subject to the provisions of this Ordinance, be responsible for administering the Fund, and the provisions of the Schedule shall apply in respect of the constituting of the Board and its proceedings.

Social Security Board.  
19/2005

(2) The Board shall be a body corporate with perpetual succession and a common seal, in its corporate name, be capable of suing and being sued and, subject to the provisions of this Ordinance, shall have power of purchasing or otherwise acquiring, holding, charging and alienating real or personal property and of doing or performing such acts as bodies corporate may by law do or perform.

(3) The Board shall have a Head Office in Road Town, Tortola and service on the Board of any notice, order or other document shall be executed by delivering the same or sending the same by post, addressed to the Director and of such other person as the Board may appoint for the purpose.

(4) The seal of the Board shall be kept in the custody of the Director and shall not be affixed to any instrument except by the authority of a resolution of the Board, and the sealing of any instrument shall be authenticated by the signature of the Director and of such other person as the Board may appoint for the purpose.

(5) The Board shall consider and advise upon all matters which may from time to time be referred to it by the Minister, and shall furnish to the Minister such information as he may reasonably require about the operation of the Ordinance.

(6) The Board shall render annual reports to the Minister by the 31<sup>st</sup> day of March each year and the Minister shall within thirty days after receiving any such report, lay a copy thereof before the Legislative Council.

(7) The Executive Council may, by Order published in the *Gazette* and in at least one newspaper published and circulating in the Territory, amend the Schedule and such Order shall be subject to a negative resolution to the Legislative Council.

**5.** (1) Subject to the provisions of this Ordinance the Board may appoint such committees of the Board as it may think fit:

Committees of the Board.

Provided that any such committee shall include not less than two members of the Board and may include persons who are not members of the Board.

(2) Subject to the provisions of this Ordinance, the Constitution and functions of a committee of the Board shall be determined by the Board.

**6.** There shall be paid out of the Fund-

Remuneration of the Board and its Committees.

- (a) to the Chairman, Deputy Chairman and each member of the Board in respect of his office as such, such remuneration and allowances as the Legislative Council may determine; and
- (b) to any person, not being a member of the Board, who serves on the Committee of the Board, such remuneration and allowances as the Legislative Council may determine upon a recommendation by the Board.

**7.** (1) The Executive Council shall appoint a fit and proper person to be the Director of the Board on such terms and conditions as are considered appropriate.

Director  
19/2005

(1A) For the purposes of subsection (1),

- (a) the Minister shall, before referring the matter of the appointment of the Director to the Executive Council, consult with the Board; and
- (b) the appointment of the Director shall be subject to a negative resolution of the Legislative Council.

(2) The Director shall subject to the provisions of this Ordinance, and any direction by the Minister, be charged with the administration of the staff of the Board and for the management of the Fund and in particular for -

- (a) the collection of contributions under this Ordinance;
- (b) the payment of benefit under this Ordinance, and of the expenditure necessary for the administration of the Fund; and
- (c) accounting for all moneys collected, paid and invested under this Ordinance.

**8.** (1) The Director, may in relation to any mater or class of matters, by writing under his hand delegate to an officer or employee of the Board any of his functions under the Ordinance, except this power of delegation, so that the delegated function may be

Delegation by  
the Director.

performed by such officer or employee with respect to the matter or class of matters specified in the instrument of delegation.

(2) Every delegation under this section shall be revocable at will, but any delegation shall not prevent the performing of any function by the Director.

**9.** (1) The Executive Council shall appoint a fit and proper person to be the Deputy Director of the Board on such terms and conditions as are considered appropriate.

Director's  
Deputy.

(1A) For the purposes of subsection (1),

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(a) the Minister shall, before referring the matter of the appointment of the Deputy Director to the Executive Council, consult with the Board; and

(b) the appointment of the Deputy Director shall be subject to a negative resolution of the Legislative Council.

(2) On the occurrence of a vacancy in the office of Director (whether caused by death, resignation or otherwise) and in the case of illness, absence or temporary incapacity of the Director from whatever cause arising, and so long as such vacancy, illness, absence or incapacity continues, the Deputy Director shall have and may exercise all the powers, duties and functions of the Director.

(3) The fact that the Deputy Director exercises any power, duty or function as aforesaid shall be sufficient evidence of his authority so to do.

**10.** The Board may from time to time appoint persons to be officers or employees of the Board.

Staff of the  
Board.

**11.** The terms and conditions of employment of officers and employees of the Board (other than those of the Director and the Deputy Director) shall be prescribed from time to time by the Board.

Terms and  
conditions of  
employment with  
the Board.

**12.** (1) The Board may designate such officers or employees in its service as it thinks fit to be inspectors for the purposes of this Ordinance.

Inspectors.

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(2) Every inspector shall be furnished with a certificate of his appointment and on applying for admission to any premises or place for the purposes of this Ordinance shall produce the certificate.

(3) The premises or places liable to inspection under this section shall include any premises or place where an inspector has reasonable cause to believe that any persons

are employed whether or not such premises or place is used exclusively for residential purposes.

(4) An inspector shall for the purposes of this Ordinance have power to enter at all reasonable times any premises or place liable to inspection under this Ordinance and there make any examination or inquiry necessary for the purposes of this Ordinance, and to require the production of any documents relating to contributions or liability to contribute to the Fund, for inspection by him on the said premises or place, and to copy such documents or make extracts therefrom.

(5) The occupier of any premises or place liable to inspection under this section, and any other person who is or has been employing any person, and the servants or agents or any such occupier or other person shall furnish to an inspector any such information and shall produce for his inspection all such documents as the inspector may reasonably require.

(6) Any person who without reasonable cause obstructs, impedes, molests or refuses admission to an inspector in the exercise of any of his powers under this section or refuses or neglects to furnish any information or produce any document when required to do so under this section shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding five hundred dollars.

**13.** (1) There is hereby established a committee to be called the Social Fund Investment Committee.

(2) The Investment Committee shall consist of –

- (a) the Chairman of the Board, who shall be the Chairman of the Committee;
- (b) one person nominated by the Minister of Finance;
- (c) a member of the Board nominated by the Director.

(3) The Investment Committee shall meet as often as necessary and may regulate the procedure of its meetings, and shall be able to act notwithstanding any vacancy among its members. Three members of the Committee including the Chairman, shall form a quorum.

(4) The Investment Committee shall, in addition, meet at such time or times as the Chairman or the Minister may request, to give consideration and advice on such matters relating to the operation of this Ordinance as the Minister may require.

(5) In the absence of the Director, the Deputy Director shall attend any meeting and in such case the Deputy Director shall be deemed to be a member of the Committee for the purpose of that meeting.

(6) The Investment Committee shall give general or give specific directions from time to time on the investment of moneys in the Fund which are surplus to current needs and the Director shall give the Investment Committee any information necessary for the discharging of its functions.

**14.** (1) Moneys in the Fund may, subject to the approval of the Legislative Council, may be lawfully expended by the Board in the purchase of land or building deemed by the Board to be necessary for the proper administration of this Ordinance.

Investment of moneys.

(2) The investment of moneys in the Fund not otherwise required shall, subject to any direction of the Board, be made by the Director in accordance with any directions of the Investment Committee.

(3) The Investment Committee shall submit a report of its work to the Board half-yearly and at such times as the Board directs.

(4) Without limiting or affecting the powers of the Director or of the Board, where an investment proposed to be made under this section is by way of loan to a statutory body –

- (a) The loan shall only be made after the Legislative Council has passed a resolution giving its approval for the making of the loan; and
- (b) The Government of the Territory shall be deemed to be the guarantor of every loan so made.

**15.** (1) Any temporary insufficiency in the assets of the Fund to meet the liabilities of the Fund shall be advanced out of the Consolidated Fund as soon as may be practicable.

Temporary insufficiency of assets.

(2) Subject to the provisions of this Ordinance, any sums advanced under subsection (1) shall be repaid to the Consolidated Fund.

**16.** (1) The Board shall cause to be kept proper books of accounts and other books and records in relation thereto, in which shall be recorded all financial transactions of the Fund.

Accounts and audit.

(2) The accounts of the Funds shall be prepared in such form as may be prescribed in the Financial regulations to be framed by the Minister and such Regulations shall provide for the form and conduct of the accounts of the Fund and, in particular, for

- (a) the establishment and maintenance of different branches of such accounts; and
- (b) the establishment and maintenance within the Fund of different reserves, for different purposes, and the Chief Auditor shall examine every document.

(3) The Board shall –

- (a) submit to the Minister every account certified by the appointed auditor in accordance with subsection (2), within one month of the date of such certificate; and
- (b) submit annually to the Minister a statement of the securities in which moneys forming part of the Fund are for the time being invested.

(4) The Minister shall within thirty days after receiving any account in accordance with subsection (3), lay a copy thereof before the Legislative Council.

**17.** (1) The Board shall with the assistance of an actuary approved by the Minister review the operation of this Ordinance, during the period ending with the 31<sup>st</sup> day of December, 1983 and thereafter during the period with the thirty-first day of December in every third year, and on each such review shall make a report to the Minister on the financial condition of the Fund and the adequacy or otherwise of contributions to support benefits, having regard to its other liabilities under this Ordinance:

Provided that the Minister may at any time direct that the period to be covered by any review and the report under this subsection shall be reduced and that the making of that and subsequent reviews shall be accelerated accordingly.

(2) The Minister shall, within thirty days after receiving any report in accordance with subsection (1) lay a copy thereof before the Legislative Council.

**PART II****INSSURED PERSONS AND CONTRIBUTIONS****INSURED PERSONS.**

**18.** (1) Subject to the provisions of this Ordinance-

Persons to be insured.

- (a) Every person who on or after the appointed day being over the age of fifteen years and under the age of sixty-five years, is gainfully occupied in an insurable employment shall be insured under this Ordinance; and
- (b) Any person who at the said date is, or who subsequently becomes insured under the Ordinance shall thereafter continue throughout his life to be so insured.

(2) Notwithstanding the provisions of subsection (1), any person employed by or under the crown being a person who is the substantive holder of a permanent and pensionable office shall be exempt from the requirement to be insured under this Ordinance in respect of the contingency in relation to which sickness benefit is provided under paragraph (a) of subsection (1) of section 25 and there shall not be payable to or in respect of any such person any benefit payable by virtue of the said paragraph.

(3) Notwithstanding anything to the contrary in any enactment where the employment of a person to whom subsection (2) applies is for any reason terminated and that person becomes otherwise employed he shall be deemed to have been insured in respect of the contingency in relation to which sickness benefit is payable under paragraph (a) of subsection (1) of section 25 during his employment as a person mentioned in subsection (2) of that section and the insurable earnings of such person during such employment shall be taken into account in computing his average insurable earnings for the purpose of sickness benefit.

(4) For the purposes of this Ordinance, insured persons shall be divided into the following two classes, namely –

- (a) employed persons, that is to say, persons gainfully occupied in employment in the British Virgin Islands, being employment under a contract of service;
- (b) self-employed persons, that is to say, persons gainfully occupied in employment in the British Virgin Islands who are not employed persons.

(5) Regulations may provide for modifying the classifications aforesaid in relation to cases where it appears to the Minister desirable by reason of the nature or circumstances of a person's employment or otherwise, and such regulations may, in particular, provide –

- (a) for treating as an employed contributor's employment –
  - (i) employment under a public or local authority constituted in the British Virgin Islands notwithstanding that it is not employment under a contract of service;
  - (ii) employment outside the British Virgin Islands in continuation of employment in the service of an employer liable to employer's contributions under this Ordinance;
- (b) for treating as not being an employed contributor's employment or for disregarding –
  - (i) employment in which is of a causal or subsidiary nature or in which the insured person is engaged only to an inconsiderable extent;
  - (ii) employment in the service, or for the purposes of the trade or business, or as a partner, of the insured's person husband or wife;
  - (iii) employment by a relative in the common home of the insured person and the employer;
- (c) for treating a person's employment as continuing during periods of holiday or incapacity for work and in such other circumstances as may be prescribed.
- (d) for treating as not being in insurable employment in the service of any international organization or country other than the British Virgin Islands, as may be prescribed.

(6) Insured persons shall be insured under this Ordinance in respect of the several contingencies in relation to which benefits are provided under subsection (1) of section 26 and there shall be payable to or in respect of any such person, in the prescribed circumstances, any benefit payable by virtue of the said subsection.

(7) Regulations may provide for the insurance of persons under fifteen years of age and for persons over sixty-five years of age in respect of any of the several contingencies in relation to which benefits are provided under this Ordinance.

**CONTRIBUTIONS**

**19.** (1) For the purposes of this Ordinance, contributions shall, subject to the provisions of this Ordinance, be payable by insured persons and by employers. Source of Funds.

(2) Regulations shall provide for fixing, from time to time, the rates of contribution to be paid by such different categories of insured persons and employers as may be prescribed.

**20.** (1) Except where regulations otherwise provide an employer liable to pay a contribution in respect of a person employed by him shall be liable to pay also of and to the exclusion of such person any contribution payable by such person for the same contributory period, and for purposes of this Ordinance contributions so paid by an employer shall be deemed to be contributions paid by such person. Contribution by employed persons and employers.

(2) Notwithstanding any contract to the contrary an employer shall not be entitled to deduct from the wages of a person employed by him or otherwise recover from such person the contribution of the employer in respect of such person.

(3) An employer shall be entitled, subject to and in accordance with regulations, to recover from the pecuniary remuneration of a person employed by him the amount of any contribution paid or to be paid by him on behalf of such person and, notwithstanding anything in any enactment, such regulations may authorize such recovery to be made by deduction from wages of such person.

**21.** Regulations may provide for exempting insured persons and their employers from liability to pay contributions for such periods as may be prescribed. Exemption from liability for and crediting of contributions.

**22.** Where an employed person is employed successively or concurrently in a contributory week or part of a contributory week by more than one employer, each employer shall be liable to pay to the Fund contributions with respect to the wages paid by each employer to that person. Employment by more than one employer.

**23.** Regulations may provide – Collection of contributions etc.

(a) for the registration of employed persons;

- (b) for the payment and collection of contributions;
- (c) for the maintenance by employers of records of the payment of contributions;
- (d) for treating, for the purpose of any right to benefit, contributions paid after the due dates as paid on such dates, or on such later dates as may be prescribed, or as not having been paid;
- (e) for treating, as paid for the purpose of any right to benefit, contributions payable by an employer on behalf of an insured person but not paid where the failure to pay is shown not to have been due to any negligence on the part of such person;
- (f) for treating contributions appropriate to the wrong category of person, or at the wrong rate, as paid on account of the contributions properly payable;
- (g) for the return of contributions paid in error; and
- (h) for any other matters incidental to the payment and collection of contributions under this Ordinance.

**24.** (1) Any insured person who is not liable to pay contributions shall be entitled on making application to the Director within such time and in such manner as may be prescribed to receive a certificate of voluntary insurance if he satisfied the prescribed conditions.

(2) An insured person holding a certificate of voluntary insurance may pay within such time and in such manner as may be prescribed, the contributions at the prescribed rate for any contributory period for which he is not liable to pay a contribution as an insured person, and regulations may prescribe the circumstances in which such a person may cease to be entitled to contribute in default of payment of contributions within the prescribed time.

**PART III**

**BENEFITS**

25. (1) Benefits payable under this Ordinance shall be of the following kinds, namely –
- |  |                          |
|--|--------------------------|
|  | Description of benefits. |
| <ul style="list-style-type: none"> <li>(a) sickness benefit, that is to say, periodical payments to an insured person who is rendered incapable of work other wise than as a result of injury;</li> <li>(b) maternity benefit, that is to say, a payment of periodical payments to an insured woman or the wife of an insured man, in the case of her confinement;</li> <li>(c) invalidity benefit, that is to say, a payment of periodical payments to an insured person who is rendered permanently incapable of work otherwise than as a result of employment injury;</li> <li>(d) survivor’s benefit, that is to say, a payment or periodical payments made inspect of an insured person who dies otherwise than as a result of an employment injury;</li> <li>(e) funeral grant, that is to say, a payment on the death of an insured person, or the spouse of an insured person;</li> <li>(f) age benefit, that is to say, a payment of periodical payments to an insured person who has reached sixty-five years of age;</li> <li>(g) employment injury benefits, that is to say, a payment of periodical payments to an insured person in respect of an injury or a prescribed disease arising out of or in the course of employment.</li> </ul> | 19/2005                  |
| <p>(2) Employment injury benefits payable under this Ordinance are as follows-</p> <ul style="list-style-type: none"> <li>(a) injury benefit, that is to say, in addition to such free medical care and attention as may be prescribed, a payment of periodical payments to an employed person who suffers personal injury which is caused by an accident arising out of and in the course of insurable employment or develops any prescribed disease being a disease due to the nature of such employment;</li> </ul>   | 1/10/93                  |

- (b) disablement benefit, that is to say, in addition to such free medical care and attention as may be prescribed, a payment or periodical payments to an employed person who as a result of an injury or disease as is referred to in paragraph (a) suffers loss of faculty;
- (c) medical expenses, that is to say, payment of medical expenses in respect of an employed person who suffered personal injury or disease as is referred to in paragraph (a);
- (d) death benefit, that is to say, a payment of periodical payments of benefits in respect of an employed person who dies as a result of such injury as is referred to in paragraph (a);
- (e) funeral benefit; that is to say, payment on the death of an employed person, who dies as a result of such injury or disease as is referred to in paragraph (a).

(3) Employment injury benefits shall not be payable in respect of an accident happening or prescribed disease developing, while the insured person is outside the territory.

(4) From and after the employment injury date when regulations relating to employment injury benefits under subsection (2) come into operation an insured person who suffers any personal injury or develops any such disease as entitles him to employment injury benefit shall not in relation to such injury or disease be regarded as a workman for the purposes of the Workmen's Compensation Ordinance.

**26. (1) Regulations shall provide for –**

- (a) the rates or amounts of benefits and the variation of such rates or amounts in different or special circumstances;
- (b) the conditions subject to which and the periods for which benefit may be granted;
- (c) the date from which benefit is provided.

(2) Regulations made under subsection (1) shall include provisions that where it is a condition of title to benefit that a person is the wife, husband, widow or widower of an insured person, the Director may treat -

- (a) a single woman as if in law, she was his wife; or
- (b) a single man or widower who was living with a single woman or widow as if in law, he was never her husband.

Rate of and conditions for benefit

(3) Where the question of marriage or re-marriage or the date of the marriage or re-marriage arises in regard to title to benefit, the Director shall in the absence of the subsistence of a lawful marriage decide whether or not the person concerned should be treated as if he were married or had re-married as the case may be, and if so from what date; and in determining the question, the Director shall have regard to the provisions of subsection (2).

(4) The determination of the Director under subsection (2) or (3) shall, unless the context otherwise requires, have the effect of extending, as regards title to benefit, the meaning of the word ‘marriage’ to include the cohabitation of a single man or widower with a single woman or widow as aforesaid and the words ‘wife’, husband, ‘widow’, ‘widower’ and ‘spouse’ shall be construed accordingly.

**27.** (1) It shall be a condition of a person’s right to a benefit –

Time and manner of making claims.

- (a) that within the prescribed time, he makes a claim therefore to the Director on the form provided by the Director for the purpose or in such other manner as the Director may accept in the circumstances of the case; and
- (b) that he produces such certificates, documents, information and evidence for the purpose of determining the right to benefit as the Director may require, and for that purpose attends at such office or place as the Director may appoint.

(2) Regulations may require employers to maintain such records, to make such reports and to furnish such information as may be prescribed for the purpose of establishing any person’s title to benefit.

**28.** Regulations may provide –

Time and manner of paying benefit; disqualifications; adjustments or extinguishment of benefit; persons unable to act; deceased persons.

- (a) for disqualifying a person for the receipt of any benefit if he fails to make a claim therefore within the prescribed time:

Provided that any such regulation shall provide for extending the time within which the claim is to be made in the cases where good cause is shown for the delay;

- (b) for the prevention of the receipt of two benefits and the adjustment of benefits in special circumstances;
- (c) as to the time and manner of payment of benefit and the information to be furnished by any person when applying for payment;

- (d) for adjusting the commencement and termination of benefit, or changes in the rate of benefit, so that except in the case of sickness benefit, payments shall not be made in respect of any period shorter than a contributory week or at different rates for different parts of a contributory week;
- (e) for extinguishing the right to payment of any sum by way of benefit if payment is not obtained within a prescribed period;
- (f) for disqualifying a person for receiving sickness benefit, or such other benefit as may be prescribed for such period as may be prescribed if that person –
  - (i) has become incapable of work through his own misconduct;
  - (ii) fails without good cause to attend for or submit to such medical examination or treatment as may be required in accordance with the regulations; or
  - (iii) does any work as an employed or self-employed person.
- (g) for suspending payment of benefit to or in respect of any person during any period when he –
  - (i) is absent from the British Virgin Islands; or
  - (ii) is undergoing imprisonment or detention in legal custody.

And for specifying the circumstances and manner in which the whole or any part of the benefit may instead of being suspended be made during any such period to any prescribed person nominated by the beneficiary, or for the maintenance of any prescribed person who the Director is satisfied is a dependant of the beneficiary;

- (h) for enabling a person to be appointed to exercise on behalf of any person who may be or become unable for the time being to act, any right or power which that other person may be entitled to exercise under this Ordinance and for authorizing a person so appointed to receive and deal with any sum payable by way of benefit to that other person;
- (i) in connection with the death of any person for enabling a claim for benefit to be made or proceeded with in his name, for authorizing payment to or among persons claiming as his personal representatives,

legatees, next of kin, creditors or otherwise, and for dispensing with strict proof of title of persons so claiming; and

(j) for such other matters as may be necessary for the proper administration of benefits, including the obligations of claimants, beneficiaries, and employers.

**29.** (1) Regulations may provide for the appointment of medical officers or medical referees or other professional persons and for the establishment of medical boards for the purposes of this Ordinance.

Appointment and remuneration of medical officers or referees.

(2) There shall be paid out of the Fund to a medical officer or medical referee or professional person appointed under such regulation, and to a member of a medical board so established, such salary or other remuneration as the Board with the prior approval of the Governor in Council may determine and such expenses incurred in connection with the work of such medical officer, medical referee or member or professional person as may be so determined.

**30.** (1) If it is found that any person by reason of the non-disclosure or misrepresentation by him of a material fact (whether such non-disclosure or misrepresentation was or was not fraudulent) has received any sum by way of benefit, he shall be liable to repay the sum so received by him.

Repayment of benefit improperly received.

(2) Where any person is liable to repay any sum received by him by way of benefit, that sum may be recovered without prejudice to any other remedy by means of deductions from any payment of benefit to which he thereafter becomes entitled.

**31.** Every assignment of or charge on benefit, and every agreement to assign or charge benefit shall be void, and on the bankruptcy of a beneficiary the benefit shall not pass to any trustee or other person acting on behalf of creditors.

Benefits to be alienable.

**PART IV**

**ADJUDICATION AND LEGAL PROCEEDINGS**

**32.** (1) Regulations may provide for the determination by the Board, by the Director, or by a person or tribunal appointed or constituted in accordance with the regulations of any question arising under or in connection with benefit, and subject to the provisions of the regulations, the decision in accordance therewith of any such question shall be final.

Determination of claims and questions.

(2) Without prejudice to the generality of subsection (1), regulations made thereunder may in relation to the determination of questions in accordance with regulations include provision –

- (a) as to the procedure to be followed, the form of any document, the evidence to be required, and the circumstances in which the official record or certificate is to be sufficient or conclusive evidence;
- (b) as to the time to be allowed for making any claim or appeal, for raising any question with a view to the review of any decision, or for producing any evidence.
- (c) for summoning persons to attend and give evidence or produce documents for authorizing the administration of oaths and witnesses;
- (d) as to the representation of one person at the hearing of a case by another person whether having professional qualifications or not,

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and except in so far as it may be applied by such regulations the Arbitration Ordinance shall not apply to any proceedings under this section.

(3) Notwithstanding anything in any enactment, the decision of the High Court in a reference or appeal shall be final, and the Court may order the Board to pay costs of any person whether or not the decision is in favour of the Board and whether or not the Board appears on the reference or appeal.

Interim  
payments, arrears  
and payments.

**33.** (1) Regulations may provide as respects matters arising –

- (a) pending the determination under this Ordinance (whether in the first instance or on appeal or review) of any claim for benefit or of any question affecting the right of any person to benefit or to the receipt thereof; or
- (b) out of the revision or appeal or review of any decision of any such claim or question.

(2) Without prejudice to the generality of subsection (1), regulations thereunder may include provision -

- (a) for the suspension of benefit where it appears to the Director that there is or may be a question whether the conditions for the receipt thereof are or were fulfilled or whether the award ought to be revisited;

- (b) as to the date from which any decision or review is to have effect;
- (c) for treating any benefit paid to any person which it is subsequently decided was not payable, or as paid on account of any other benefit which it is decided was payable to him, or for the repayment of any such benefit;
- (d) for treating benefit paid to a person in respect of a child as properly payable for any period notwithstanding that by reason of a subsequent decision another person is entitled to benefit in respect of that child for that period; and for reducing or withholding accordingly, any arrears payable for that period by virtue of that subsequent decision.

**34.** There shall be paid out of the Fund to any person appointed under regulations made under subsection (1) of section 32 to a member of a tribunal constituted under such regulations such salary or other remuneration as the Board with the approval of the Governor in Council may determine and such expenses in connection with the work of such person or member as may be so determined.

Remuneration of persons and tribunal appointed under section 32.

**35.** (1) Any person who fails to pay at or within the time prescribed for the purpose, any contribution which he is liable under this Ordinance to pay, shall for each such failure be liable on summary conviction to a fine not exceeding five hundred dollars and in default of payment of such fine, to imprisonment for a term not exceeding three months.

Offences and penalties.

19/2005

(2) An employer who deducts or attempts to deduct or otherwise recovers or attempts to recover the whole or any part of the contributions of the employer in respect of any person from the wages or other remuneration of such person, shall be liable on summary conviction to a fine not exceeding five hundred dollars and in default of payment of such fine to imprisonment not exceeding three months.

(3) Any person who for the purpose of obtaining any benefit or other payment under this Ordinance, whether for himself or for some other person, or for any other purpose connected with this Ordinance –

- (a) knowingly makes any false statement or false representation; or
- (b) produces or furnishes, causes or knowingly allows to be produced or furnished, any document or information which he knows to be false in material particular,

shall be liable on summary conviction to a fine not exceeding five hundred dollars or imprisonment for a term not exceeding three months.

**35A.** (1) Where a body corporate has failed to deduct, withhold, remit or pay an amount as required by this Ordinance and regulations made thereunder, every Director and manager of such body corporate at the time the body corporate was required to deduct, withhold, remit or pay moneys, is jointly and severally liable together with the body corporate to pay that amount and interest and penalties relating thereto.

(2) No director or manager shall be liable for a failure under subsection (1) when he exercised a degree of care, diligence and skill to prevent the failure that a reasonably prudent person would have exercised in comparable circumstances.

(3) In determining whether a director or manager exercised the degree of care, diligence and skill to prevent the failure referred to in subsection (1), the court shall take into account all the circumstances of the case but shall not make a finding that the director or manager exercised the degree of care, diligence and skill to prevent the failure referred to in subsection (1) unless the court is satisfied that the director or manager had regard to the interests of the employees of the body corporate.

(4) No action or proceedings to recover any amount payable by a director or manager of a body corporate shall be commenced more than three years after the director or manager has ceased to be a director or manager of that body corporate.

(5) Where a director or manager pays an amount in respect of any liability of the body corporate that is proved in liquidation, dissolution or bankruptcy proceedings, he is entitled to any preference the Social Security Fund could have been entitled to and such amount not been so paid.

(6) For the purposes of this section, the reference to director or manager shall be construed to mean the director or manager who has responsibility for the administration or operation of the body corporate.

**36.** (1) Proceedings for an offence under this Ordinance shall not be instituted except by or with the consent of the Board or by an officer of the Board authorized in that behalf by specific or general directions of the Board.

(2) Any such officer although not a barrister or a solicitor may prosecute or conduct before a court of summary jurisdiction any such proceedings as aforesaid.

(3) Notwithstanding any provisions in any enactment fixing the period within such summary proceedings may be commenced, proceedings for an offence under this Ordinance may be commenced at any time within six years after evidence sufficient in the opinion of the Board to justify a prosecution for the offence comes to its knowledge

General provisions as to prosecutions.

1/1/93

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and for the purpose of this subsection a certificate purporting to be signed on behalf of the Board as to the date on which such evidence came to its knowledge shall be conclusive evidence thereof.

(4) In any proceedings for an offence under this Ordinance the wife or husband of the accused shall be competent to give evidence against the accused:

Provided that a wife or husband shall not be compelled to give evidence to disclose any communication made to her or him during the marriage with the accused.

(5) Where an offence under this Ordinance which has been committed by a body corporate is proved to have been committed with the consent or connivance of or to be attributable to any negligence on the part of any directors, manager, secretary or other officer of the body corporate, they as well as that body shall be deemed to be guilty of that offence and shall be liable to be proceeded against and penalized.

**37.** (1) In any case where a person has been convicted of the offence under subsection (1) of section 35 of failing to pay a contribution he shall be liable to pay to the Fund a sum equal to the amount which he failed to pay.

Recovery of contributions on prosecution.

(2) On any such conviction as is mentioned in subsection (1) above, if notice of intention to do so has been served with the summons or warrant, evidence may be given of the failure on the part of the person concerned to pay other contributions during the two years preceding the date of the offence, and on proof of such failure the persons concerned shall be liable to pay to the Fund a sum equal to the total of all the contributions which he is so proved to have failed to pay.

(3) Where any person is charged with an offence as is mentioned in subsection (1) or (2) and a probation order is made in respect of such offence the forgoing provisions of this section shall apply as if the making of the order were a conviction.

(4) Any sum ordered to be paid out of the Fund under this section shall be recoverable as a penalty.

(5) Any sum paid by an employer under this section shall be treated as a payment in satisfaction of the unpaid contributions and any part of such which represents employee's contribution shall not be recoverable by the employer from the insured person.

(6) If an employer being a corporate body fails to pay to the Fund any sum which the employer has been ordered to pay under this section such sum or part thereof as remains unpaid shall be a debt due to the Fund jointly and severally from any directors of the body corporate who knew or reasonably be expected to have known of the failure to pay the contribution in question.

(7) Nothing in this section shall be construed as preventing the Board from recovering any sums due to the Fund by means of civil proceedings.

**38.** (1) All sums due to the Fund under this Ordinance shall be recoverable as debts due to the Board and, without prejudice to any remedy may be recoverable as a civil debt:

Provided that any sum due by way of contributions shall for such date as may be prescribed, bear interest at the rate of ten per cent per annum or such other rate as may be prescribed.

(2) Proceedings for the summary recovery of sums due to the Fund may, notwithstanding anything in any enactment to the contrary, be brought at any time from the time when the matter complained of arose.

(3) Proceedings for the summary recovery as civil debts of sums due to the Fund may be instituted by an Officer of the Board authorized in that behalf by special or general directions of the Board and any such officer may, although not a barrister or a solicitor conduct such proceedings.

**38A.** (1) An officer or agent of the board authorized in that behalf (hereinafter referred to as “the authorized officer”) may make an application to the court for an order to seize goods and chattels of the defendant in execution of a judgment debt where such judgment debt has remained unpaid despite a court order to that effect.

(2) The Court on the application of the authorized officer shall cause to be issued an order of attachment and sale whereby the authorized officer shall be empowered to levy or cause to be levied by distress and sale of goods and chattels, wherever they may be found within the Territory, the money payable under the judgment and the costs of the execution.

(4) Where a Court has made an order for payment of any sum of money by installments, no order of execution of the judgment shall be issued until after the default in payment of some installments according to the order.

(5) In or upon every order of execution against the property of any person, the court shall specify the sum of money and costs adjudged, and the fees of the execution of the order.

(6) Every authorized officer executing any order of execution issued from a court against the property of chattels of any person may by virtue thereof seize \_

(a) any of the goods and chattels of that person, except the wearing apparel and bedding of that person or his family and the tools and implements of

his trade, to the value, which shall to that extent be protected from seizure;  
and

(b) any money, bank notes, bills of exchange, promissory notes, bonds, specialties or securities for money belonging to that person.

(7) Goods seized in execution under process of a court shall thereof be safeguard in such manners as the court directs.

(8) The authorized officer shall hold any bills of exchange, promissory bonds, specialties or other securities for money seized in execution under an order of a court as security of the amount directed to be levied by the execution, or for so much thereof as has not been otherwise levied or raised for the benefit of the Board, and the authorized officer may sue in the name of the defendant, or in the name of any person in whose name the defendant might have sued, for the recovery of the sum secured or made payable thereby, when the time of payment thereof arrives.

(9) If any person rescues or attempts to rescue any goods seized in execution under an order of the court or in any other way resists or obstructs the execution of an order for the enforcement of a judgment of a court, he shall be liable, either on an order made in that behalf by the court from which the order of execution issues, or on summary conviction, to a fine not exceeding one thousand dollars or to a term of imprisonment not exceeding three months.

(10) The provisions of Part XI of the Magistrate's Code of Procedure shall apply with the necessary modification in respect of an order made under this section save that for purposes of this section the word "constable" in that Part shall be read as if it were a reference to the words "authorized officer" in this section.

**39.** (1) Where an employer has failed or neglected to pay any contribution which he is liable to pay in respect of or on behalf of an insured person, and by reason of such failure or neglect such person or any other person becomes disentitled to any benefit on a lower scale, the Director may, on being satisfied that the contributions should have been paid by the employer, pay to the person or the other person benefit at the rate to which he would have been entitled if the failure or neglect had not occurred and the Board shall be entitled to recover from the employer summarily as a civil debt a sum equal to the amount of the benefit so paid or the contributions not paid whichever be the greater.

Proceedings for benefits lost by employer default.

(2) Proceedings may be taken under this section notwithstanding that proceedings have been taken under any other provision of this Ordinance in respect of the same failure or neglect.

(3) Proceedings under this section may, notwithstanding any enactment to the contract, be brought at any time within one year after the date on which the person concerned, would, but for the employer's failure or neglect have been entitled to receive the benefit in question.

## PART V

### MISCELLANEOUS

Crown Servants.

**40.** This Ordinance shall apply to persons employed by or under the Crown in like manner as if the Crown were a private person, with such modifications as may be made therein by regulations for the purpose of adapting the provisions of this Ordinance to the case of such persons:

Provided that the provisions of this Ordinance shall not affect adversely any vested rights of an employee under any pension or superannuation scheme in existence before the coming into operation of this Ordinance.

Persons employed aboard ships, vessels or aircraft.

**41.** (1) Without prejudice to the generality of any other power to make regulations the Minister may make regulations modifying in such manner as he thinks proper the provisions of this Ordinance in relation to persons who are or have not been employed on board any ship, vessel, or aircraft.

(2) Regulations made under subsection (1) may in particular provide –

- (a) for the insurance under this Ordinance of persons who are or have been employed on or after the appointed day on board ships, vessels, or aircraft notwithstanding they do not fulfill the conditions of section 18;
- (b) for excepting for insurance under this Ordinance or from liability to pay contributions, any persons employed as aforesaid who neither are domiciled nor have a place of residence in the Territory;
- (c) for the taking of evidence for the purpose of any claim for benefit in any place outside the Territory;
- (d) for enabling persons on board ships, vessels, or aircraft to authorize the payment of the whole or any part of their dependants as may be prescribed;
- (e) for withholding any benefit which may be payable to a mariner for any period while the owner of his ship or vessel is under a statutory obligation to pay him wages.

**42.** For the purposes of giving effect to any agreement with the Government of any other part of the Commonwealth or the Government of any other country, being an agreement which provides reciprocity in matters of Social Security, it shall be lawful for

Reciprocal agreements with other countries.

the Minister by order, to modify or adapt the provisions of this Ordinance in their application to cases affected by the agreement.

**43.** (1) Stamp duty shall not be chargeable upon any draft or order or receipt given in respect of any benefit or upon any receipt given in respect of any other payment out of the Fund under subsection (2) of section 3 of this Ordinance or upon any receipt given by an officer or employee of the Board for or in respect of any sum payable to the Fund.

Exemption from stamp duty.

(2) Nothing in subsections (1) shall be deemed to exempt any person from liability to pay stamp duty on any power of attorney or on any documents other than those mentioned in subsection (1) which is otherwise liable to duty under the Stamp Duty Act.

Cap. 212 .

**44.** (1) The Minister may make regulations as are required by this Ordinance to be made.

Power to make regulations.

(2) Such regulations may modify or affect the operation of any provision of this Ordinance as he may consider necessary or desirable generally for giving effect to the principles of this Ordinance.

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(3) Notwithstanding anything to the contrary in any other law, where no penalty is specified for any offence under this Ordinance or regulations made thereunder, regulations may provide a penalty for one hundred dollars for each offence being a contravention of or failure to comply with any regulation, or where the offence consists of continuing thereof, five hundred dollars together with a further twenty-five dollars for each day on which it so continues.

(4) Any power conferred by this Ordinance to make regulations may be exercised –

- (a) either in relation to all cases to which the power extends or in relation to all such cases subject to specified exceptions or in relation to any specified cases or class of cases;
- (b) so as to make as represents the cases in relation to which it is exercised –
  - (i) the full provision for all cases to which the power extends or any less provision;

- (ii) the same provision for all cases to which the power is exercised, or different provision for different cases, or different provision as respects the same case for different purposes of this Ordinance;
  
- (iii) any such provision either unconditionally or subject to any specified condition.

(5) Without prejudice to any specific provision of this Ordinance any regulation may contain such incidental or supplementary provisions as appear to the Minister to be expedient for the purposes of the regulations.

**45.** (1) All regulations shall be laid before the Legislative Council as soon as may be after they are made and if within a period of thirty days beginning with the day on which such regulations are so laid the Legislative Council resolves that the regulations be annulled they shall thereupon cease to have effect but without prejudice to anything previously done thereunder or to the making of new regulations.

(2) In reckoning any period of thirty days specified in subsection (1) no account shall be taken of any time during which the Legislative Council is dissolved or prorogued or during which the Legislative Council is adjourned for more than fourteen days.

**46.** (1) Nothing in this Ordinance shall be deemed to prevent an employer from operating any private schemes providing, for any person who is or has been employed by him, benefits of any kind whether similar to benefits under this Ordinance or greater.

(2) Where any such employer desires to modify any such scheme in operation before the coming into effect of this Ordinance such modification shall have prior approval of the Minister.

**47.** (1) In any case where –

- (a) any warrant of distress of executed against the property of any employer and the property is seized or sold in pursuance of the execution; or
  
- (b) on the application of a secured creditor the property of an employer is sold, the proceeds of the sale of the property shall not be distributed to any person entitled thereto until the Court ordering the sale has made provision for the payment of any amounts due in respect of contributions payable by the employer.

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- (2) For the purposes of this section, the expression “employer” includes any company in liquidation under the provisions of the Bankruptcy Act. Cap. 8.
- (3) Notwithstanding anything contained in any other law, contributions made under this Ordinance by employers shall be regarded as a deduction allowed under Section 11 of the Income Tax Ordinance. 10/1981.  
Cap. 206.
- 48.** (1) In this Ordinance the expression “the appointed day” means subject to the following provisions of this section, such day as the Minister may by Order published in the Gazette appoint, and different days may be appointed for different provisions of this Ordinance. Appointed Day.
- (2) Any Order made under subsection (1) may contain such incidental or supplementary provisions as appear to the Minister to be necessary or expeditious for the orderly implementation of the provisions and purposes of this Ordinance.
- 49.** For the purposes of this Ordinance, an accident arising in the course of an insured’s person employment shall be deemed in the absence of evidence to the contrary to have arisen out of that employment. Presumption as to accident in certain cases.
- 50.** (1) An accident shall be deemed to arise out of or in the course of an insured person’s employment notwithstanding that he is at the time of the accident acting in contravention of any statutory, or other regulations applicable to his employment, or of any orders given by or on behalf of his employer, or that he is acting without instructions from his employer, if – Accidents happening while acting in breach of regulations etc.
- (a) the accident would have been deemed to have arisen had the act not been done as aforesaid without instructions from his employer, as the case may be; and
- (b) the act is done for the purpose of and in connection with the employer’s trade or business..
- 51.** (1) An accident happening while an insured person is, with the express or implied permission of his employer, traveling as a passenger by any vehicle to or from his place of work shall, notwithstanding that he is under no obligation to his employer to travel by that vehicle, be deemed to arise out of and in the course of the employment, if at that time of the accident, the vehicle is being operated by or on behalf of his employer or by some other person, firm or company who is providing the service in pursuance of arrangements made with the employer and is otherwise not being operated in its ordinary course or as a public transport service. Accidents while travelling in employer’s transport.
- (2) In this section reference to a vehicle includes a ship, aircraft or other vessel.

Accidents happening while meeting emergency situations.

**52.** An accident happening to an insured person in or about any premises at which he is for the time being employed for the purpose of his employer's trade or business shall be deemed to have arisen out of and in the course of his employment if it happened while he was taking steps, on an actual or supposed emergency at those premises, to rescue, succour, or to protect persons who, are, thought to be or may possibly be, injured or imperiled, or to avert, or to minimize serious damage to property.

Industrial disease and injuries not caused by accident.

**53.** (1) A person under this Ordinance, is insured against personal injury caused by accident arising out of and in the course of his employment shall be deemed to be insured also against any prescribed disease or injury being a disease or injury due to the nature of the employment and which developed on after the appointed day.

(2) A disease may be prescribed as liable for employment injury benefit in relation to any insured person, if the Director is satisfied that –

- (a) it ought to be treated, having regard to its cause and incidence and any other relevant considerations, as a risk of their occupation and not as a risk common to all persons; and
- (b) it is such that, in absence of special circumstances, the attribution of particular cases can be established with reasonable certainty to the nature of employment.

Regulations relating to disease and injuries, medical officers and boards.

**54.** Regulations may provide for-

- (a) determining the time at which a person is to be treated for the purposes of this Ordinance as having developed any prescribed disease or injury and the circumstances in which any such disease or injury is, where the person in question has previously suffered therefrom, to be treated as having been developed or received afresh;
- (b) for presuming any prescribed disease or injury-
  - (i) to be due, unless the contrary is proved, to the nature of a person's employment where he was employed in any prescribed occupation at the time when, or within a prescribed period or for a prescribed length of time, whether continuous or not, before he developed the disease or injury;
  - (ii) not to be due to a person's employment unless he was employed in some prescribed occupation at the time when, or within a prescribed length of time, whether continuous or not, before he developed the disease or injury.

- (c) the establishment of special medical boards and the appointment of medical officers for the purposes of this Ordinance.
- (d) Such other matters as may appear to the Minister to be incidental to or consequential on provisions included in the regulations by virtue of the foregoing provisions of this section.

**55.** No suit or prosecution shall be instituted against the Director or against any member of the Board for any act which in good faith is done or purported to be done by such Director, member or officer under this Ordinance or on the direction of the Board.

Protection for action taken under the Ordinance.

**56.** In all actions brought under this Ordinance where it is alleged that any person is an employer it will be sufficient for the Director or the Board to allege that any person who pays contributions or is otherwise liable to pay contributions is an employer within the meaning of the Ordinance and the onus of proof shall be on that person to prove that he is not such an employer.

Onus on employer to prove he is not employer.

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**SCHEDULE.**S.4.  
19/2005**Constitution and Proceedings of the Social Security Board.**

1. The Board shall consist of seven persons appointed by the Minister of whom-
  - (a) one shall be the Director, or in his absence his Deputy;
  - (b) two shall represent Government;
  - (c) two shall represent employers; and
  - (d) two shall represent employed persons:

Provided that members of the Legislative Council shall not be eligible for appointment to the Board.

2. The members representing employers shall be appointed after consultation with such associations or employers, or such persons or bodies, as appear to the Minister likely to produce representation for employers generally throughout the Territory.
3. The members representing employed persons shall be appointed after consultation with such persons or bodies, as appear to the Minister to be representative of employees throughout the Territory.
4. (1) The Minister shall with the concurrence of the Leader of the Opposition designate two representative members of the Board to be Chairman and Deputy Chairman.
  - (2) Where, within a period of twenty-one days after the Minister notifies the Leader of the Opposition in writing of a proposal for the appointment of a Chairman or Deputy Chairman, an agreement on the appointment is not reached, the Minister shall refer the matter to the Executive Council whose decision shall be final.
5. The representative members of the Board shall hold office for such period not exceeding three years as may be determined by the Minister. Any member of the Board shall be eligible for re-appointment.

6. A member of the Board may at any time, by notice in writing addressed to the Minister, resign his office; and if a member becomes, in the opinion of the Minister, unfit to continue in office or incapable of performing his duties, the Minister shall in such manner as he thinks fit declare the office of the member vacant.
  7. The quorum for any meeting of the Board shall be three including the Chairman or Deputy Chairman, one of whom shall preside at all meetings; the Director or Deputy Director shall be present and the Board may act notwithstanding any vacancy in its membership.
  8. A substitute member may be appointed by the Minister after consultation with the appropriate body, for any one meeting which a member is unable to attend.
  9. The decision of the Board shall be a majority of votes and in the event of an equality of votes the Chairman presiding at the meeting shall have a casting vote.
  10. Minutes of each meeting shall be kept in a proper form by such officer of the Board as the Board may appoint for the purpose, and shall be confirmed by the Board at its next meeting and signed by the Chairman or Deputy Chairman as the case may be.
  11. The Board may invite one or more persons to attend any particular meeting of the Board for the purpose of advising or assisting the Board, but no such invited person shall have any right to vote.
  12. If any member of the Board or other person present at a meeting of the Board is directly or indirectly interested in any contract or proposed contract or other matter, he shall, at the meeting and as soon as is practicable after the commencement of the meeting disclose the fact of his interest and shall not take part in the discussion, consideration or voting on such contract or other matter.
  13. Subject to the provisions of this Ordinance, the Board shall have power to regulate its own proceedings.
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# **THE INTERNATIONAL BUSINESS COMPANIES Act, 1984 (AS AMENDED)**

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**PART I  
SHORT TITLE AND INTERPRETATION**

**Short Title.**

1. This act may be cited as the International Business Companies Act, 1984.

**Interpretation.**

2.(1) In this Act

"Articles" means the Articles of Association of a company incorporated under this Act;

"authorized capital" of a company means the sum of the aggregate par value of all shares with par value which the company is authorized by its Memorandum to issue plus the amount, if any, stated in its Memorandum as authorized capital to be represented by shares without par value which the company is authorized by its Memorandum to issue;

"capital" of a company means the sum of the aggregate par value of all outstanding shares with par value of the company and shares with par value held by the company as treasury shares plus

- (a) the aggregate of the amounts designated as capital of all outstanding shares without par value of the company and shares without par value held by the company as treasury shares, and
- (b) the amounts as are from time to time transferred from surplus to capital by a resolution of directors;

"Companies Act" means the Companies Act of the British Virgin Islands;

"continued" means continued within the context of Part VIII;

"court" means the Supreme Court or a Judge thereof;

"licence fee payment date" means the date on which the company licence fee is paid pursuant to the provisions of section 105;

"licence fee final payment date" means 30th April or 31st October in any year;

"member" means a person who holds shares in a company;

"Memorandum" means the Memorandum of Association of a company incorporated under this Act;

"person" includes a trust, the estate of a deceased individual, a partnership, or an unincorporated association of persons;

"person resident in the British Virgin Islands" means a person who ordinarily resides within the British Virgin Islands or carries on business from an office or other fixed place of business within the British Virgin Islands but does not include a company incorporated under this Act;

"Register" means the Register of International Business Companies maintained by the Registrar in accordance with subsection (1) of section 14;

"registered agent" means the person who is at any particular time performing the functions of registered agent of a company incorporated under this Act pursuant to subsection (1) of section 39;

"Registrar" means the Registrar of Companies;

"securities" means shares and debt obligations of every kind, and options, warrants and rights to acquire shares or debt obligations;

"surplus" in relation to a company, means the excess, if any, at the time of the determination, of the total assets of the company over the sum of its total liabilities, as shown in the books of account, plus its capital;

"treasury shares" means shares of a company that were previously issued but were repurchased, redeemed or otherwise acquired by the company and not cancelled.

- (2) A reference to money in this Act is a reference to the currency of the United States of America.
- (3) A company that is incorporated under the Companies Act or under the laws of a jurisdiction outside the British Virgin Islands shall be a company incorporated under this Act if it is continued as a company incorporated under this Act in accordance with Part VIII and references in this Act to a "company incorporated under this Act" shall be construed accordingly.
- (4) A reference in this Act to voting in relation to shares shall be construed as a reference to voting by members holding the shares except that it is the votes allocated to the shares that shall be counted and not the number of members who actually voted and a reference to shares being present at a meeting shall be given a corresponding construction.
- (5) Unless otherwise defined in the Articles of a company incorporated under this Act, the expression "resolution of directors" means
  - (a) a resolution approved at a duly constituted meeting of directors or of a committee of directors of a company, by affirmative vote of a simple majority or such larger majority as may be specified in the Articles, of the directors present at the meeting who voted and did not abstain; or
  - (b) a resolution consented to in writing by an absolute majority, or such larger majority as may be specified in the Articles, of all the directors or of all the members of the committee, as the case may be; but, where a director is given more than one vote in any circumstances, he shall in the circumstances be counted for the purposes of establishing majorities by the number of votes he casts.
- (6) Unless otherwise defined in the Articles of a company incorporated under this Act, the expression "resolution of members" means
  - (a) a resolution approved at a duly constituted meeting of the members of a company by the affirmative vote of
    - (i) a simple majority, or such larger majority as may be specified in the Articles, of the votes of the shares that were present at the meeting and entitled to vote thereon and were voted and did not abstain, or
    - (ii) a simple majority, or such larger majority as may be specified in the Articles of the votes of each class or series of shares which were present at the meeting and entitled to vote thereon as a class or series and were voted and not abstained and of a simple majority, or such larger majority as may be specified in the Articles, of the

- votes of the remaining shares entitled to vote thereon that were present at the meeting and were voted and not abstained; or
- (b) a resolution consented to in writing by
- (i) an absolute majority, or such larger majority as may be specified in the Articles, of the votes of shares entitled to vote thereon, or
  - (ii) an absolute majority, or such larger majority as may be specified in the Articles, of the votes of series of shares entitled to vote thereon as a class or series and of an absolute majority, or such larger majority as may be specified in the Articles, of the votes of the remaining shares entitled to vote thereon.

## PART II CONSTITUTION OF COMPANIES

3. Subject to the requirements of this Act, the registered agent named in the Memorandum may, by subscribing to a Memorandum and to Articles, incorporate a company under this Act.

4. No company shall be incorporated under this Act unless immediately upon its incorporation the company is an International Business Company.

- 5.(1) For purposes of this Act, an International Business Company is a company that does not
- (a) carry on business with persons resident in the British Virgin Islands;
  - (b) own an interest in real property situate in the British Virgin Islands, other than a lease referred to in paragraph (e) of subsection (2);
  - (c) carry on banking or trust business, unless it is licensed under the Banks and Trust Companies Act, 1990;
  - (d) carry on business as an insurance or reinsurance company, insurance agent or insurance broker, unless it is licensed under an enactment authorizing it to carry on that business;
  - (e) carry on the business of company management unless it is licensed under the Company Management Act, 1990; or
  - (f) carry on the business of providing the registered office or the registered agent for companies incorporated in the British Virgin Islands.
- (2) For purposes of paragraph (a) of subsection (1), an International Business Company shall not be treated as carrying on business with persons resident in the British Virgin Islands by reason only that
- (a) it makes or maintains deposits with a person carrying on banking business within the British Virgin Islands;
  - (b) it makes or maintains professional contact with solicitors, barristers, accountants, bookkeepers, trust companies, administration companies, investment advisers or other similar persons carrying on business within the British Virgin Islands;
  - (c) it prepares or maintains books and records within the British Virgin Islands;
  - (d) it holds, within the British Virgin Islands, meetings of its directors or members;
  - (e) it holds a lease of property for use as an office from which to communicate with members or where books and records of the company are prepared or maintained.
  - (f) it holds shares, debt obligations or other securities in a company incorporated under this Act or under the Companies Act; or
  - (g) shares, debt obligations or other securities in the company are owned by any person resident in the British Virgin Islands or by any company incorporated under this Act or under the Companies Act.
- 6.(1) Without affecting the operation of section 99, if a company is incorporated under this Act without having satisfied the requirements prescribed for an International Business

Company under section 5, or if having satisfied the requirements it subsequently ceases to satisfy the requirements for a continuous period of more than 30 days, the company shall upon expiration of that period notify the Registrar of that fact.

- (2) A company that willfully contravenes subsection (1) is liable to a penalty of \$100.00 for each day or part thereof during which the contravention continues, and a director, who knowingly permits the contravention is liable to a like penalty.

7. Subject to section 74, no member, director, officer, agent or liquidator of a company incorporated under this Act is liable for any debt, obligation or default of the company, unless specifically provided in this Act or in any other law for the time being in force in the British Virgin Islands, and except in so far as he may be liable for his own conduct or acts.

8. A company may be incorporated under this Act for any object or purpose not prohibited under this Act or under any other law for the time being in force in the British Virgin Islands.

9.(1) Subject to any limitations or provisions to the contrary in its Memorandum or Articles, this Act or any other law for the time being in force in the British Virgin Islands, a company incorporated under this Act has the power, irrespective of corporate benefit, to perform all acts and engage in all activities necessary or conducive to the conduct, promotion or attainment of the objects or purposes of the company, including the power to do the following:

- (a) issue registered shares or shares issued to bearer or both;
- (b) issue the following:
  - (I) voting shares,
  - (ii) non-voting shares,
  - (iii) shares that may have more or less than one vote per share,
  - (iv) shares that may be voted only on certain matters or only upon the occurrence of certain events, and
  - (v) shares that may be voted only when held by persons who meet specified requirements;
- (c) issue common shares, preferred shares, limited shares or redeemable shares;
- (d) issue shares that entitle participation only in certain assets;
- (e) issue options, warrants or rights, or instruments of a similar nature, to acquire any securities of the company;
- (f) issue securities that, at the option of the holder thereof or of the company or upon the happening of a specified event, are convertible into, or exchangeable for, other securities in the company or any property then or to be owned by the company;
- (g) purchase, redeem, or otherwise acquire and hold its own shares;
- (h) guarantee a liability or obligation of any person and to secure any of its obligations by mortgage, pledge or other charge, of any of its assets for that purpose; and
- (i) protect the assets of the company for the benefit of the company, its creditors and its members, and at the discretion of the directors, for any person having a direct or indirect interest in the company; and
- (j) issue shares in any one or more currencies.

- (2) For purposes of paragraph (i) of subsection (1), notwithstanding any other provision of this Act or of any other law for the time being in force in the British Virgin Islands or any rule of law to the contrary, the directors may cause the company to transfer any of its assets in trust to one or more trustees, to any company, association, partnership, foundation or similar entity; and, with respect to the transfer, the directors may provide that the company, its creditors, its members or any person having a direct or indirect interest in the company, or any of them, may be the

beneficiaries, creditors, members, certificate holders, partners or holders of any other similar interest.

- (3) The rights or interests of any existing or subsequent creditor of the company in any assets of the company are not affected by any transfer under subsection (2), and those rights or interests may be pleaded against any transferee in any such transfer.

10.(1) No act of a company incorporated under this Act and no transfer of real or personal property by or to a company so incorporated is invalid by reason only of the fact that the company was without capacity or power to perform the act, or to transfer or receive the property, but the lack of capacity or power may be pleaded in the following cases:

- (a) in proceedings by a member against the company to prohibit the performance of any act or the transfer of real or personal property by or to the company; or
- (b) in proceedings by the company, whether acting directly or through a receiver, trustee, or other legal representative, or through members in a derivative action, against the incumbent or former directors of the company for loss or damage due to their unauthorized act.

- (2) For purposes of paragraph (a) of subsection (1), the court may set aside and prohibit the performance of a contract if

- (a) the unauthorized act or transfer sought to be set aside or prohibited is being, or is to be, performed or made under any contract to which the company is a party;
- (b) all the parties to the contract are parties to the proceedings; and
- (c) it appears fair and reasonable to set aside or prohibit the performance of the contract;

and in so doing the court may, in applying this subsection, award to the company or to the other parties to the contract such compensation as may be reasonable except that in determining the amount of compensation the court shall not take into account anticipated profits to be derived from the performance of the contract.

11.(1) The word "Limited", "Corporation", "Incorporated", "Societe Anonyme" or "Sociedad Anonima" or the abbreviation "Ltd.", "Corp.", "Inc." or "S.A." must be part of the name of every company incorporated under this Act, but a company may use and be legally designated by either the full or the abbreviated form.

- (2) No company shall be incorporated under this Act under a name that

- (a) is identical with that under which a company in existence is already incorporated under this Act or registered under the Companies Act or so nearly resembles the name as to be calculated to deceive, except where the company in existence gives its consent; or
- (b) contains the words "Assurance", "Bank", "Building Society", "Chamber of Commerce", "Chartered", "Cooperative", "Imperial", "Insurance", "Municipal", "Royal", "Trust Company", "Trustee Company", or a word conveying a similar meaning, or any other word that, in the opinion of the Registrar, suggests or is calculated to suggest
  - (I) the patronage of Her Majesty or that of a member of the Royal Family,
  - (ii) a connection with Her Majesty's Government or a department thereof, or
  - (iii) a connection with a municipality or other local authority or with a society or body incorporated by Royal Charter;
 except with the approval of the Registrar in writing.
- (c) is indecent, offensive, or, in the opinion of the Registrar, objectionable.

- (3) A company may amend its Memorandum to change its name.

- (4) If a company is incorporated under a name that

- (a) is identical with a name under which a company in existence was incorporated under this Act or registered under the Companies Act, or
  - (b) so nearly resembles the name as to be calculated to deceive;
- the Registrar may, without the consent of the company in existence, give notice to the last registered company to change its name and if it fails to do so within 60 days from the date of the notice, the Registrar must amend the Memorandum of the company to change its name to such name as the Registrar deems appropriate, and the Registrar must publish notice of the change in the Gazette.
- (5) Subject to subsections (2) and (4), where a company changes its name, the Registrar must enter the new name on the Register in place of the former name, and must issue a certificate of incorporation indicating the change of name.
  - (6) A change of name does not affect any rights or obligations of a company, or render defective any legal proceedings by or against a company, and all legal proceedings that have been commenced against a company by its former name may be continued against it by its new name.
  - (7) Subject to subsection (2) the Registrar may, upon a request made by any person, reserve for 90 days a name for future adoption by a company under this Act.

12.(1) The Memorandum must include

- (a) the name of the company;
- (b) the address within the British Virgin Islands of the registered office of the company;
- (c) the name and address within the British Virgin Islands of the registered agent of the company;
- (d) the objects or purposes for which the company is to be incorporated;
- (e) the currency in which shares in the company shall be issued;
- (f) a statement of the authorized capital of the company setting forth the aggregate of the par value of all shares with par value that the company is authorized to issue and the amount, if any, to be represented by shares without par value that the company is authorized to issue;
- (g) a statement of the number of classes and series of shares, the number of shares of each such class and series and the par value of shares with par value and that shares may be without par value, if that is the case;
- (h) a statement of the designations, powers, preferences and rights, and the qualifications, limitations, or restrictions of each class and series of shares that the company is authorized to issue, unless the directors are to be authorized to fix any such designations, powers, preferences, rights, qualifications, limitations and restrictions, and in that case, an express grant of such authority as may be desired to grant to the directors to fix by a resolution any such designations, powers, preferences, rights, qualifications, limitations and restrictions that have not been fixed by the Memorandum;
- (i) a statement of the number of shares to be issued as registered shares and the number of shares to be issued as shares issued to bearer, unless the directors are authorized to determine at their discretion whether shares are to be issued as registered shares or to bearer, and in that case an express grant of such authority as may be desired must be given to empower the directors to issue shares as registered shares or to bearer as they may determine by resolution of directors;
- (j) whether registered shares may be exchanged for shares issued to bearer and whether shares issued to bearer may be exchanged for registered shares;
- (k) if shares issued to bearer are authorized to be issued, the manner in which a required notice to members is to be given to the holders of shares issued to bearer; and

- (1) a statement that the company may not carry on the activities set forth in subsection (1) of section 5 which statement shall set forth verbatim the activities described in that subsection, unless it is licensed to carry out any of the activities referred to in that subsection; and
  - (2) For purposes of paragraph (d) of subsection (1), if the Memorandum contains a statement either alone or with other objects or purposes that the object or purpose of the company is to engage in any act or activity that is not prohibited under any law for the time being in force in the British Virgin Islands, the effect of that statement is to make all acts and activities that are not illegal part of the objects or purposes of the company, subject to any limitations in the Memorandum.
  - (3) The Memorandum must be subscribed by the registered agent named in the Memorandum in the presence of another person who must sign his name as a witness.
  - (4) The Memorandum, when registered, binds the company and its members from time to time to the same extent as if each member had subscribed his name and affixed his seal thereto and as if there were contained in the Memorandum, on the part of himself, his heirs, executors and administrators, a covenant to observe the provisions of the Memorandum, subject to this Act.
- 13.(1)The Memorandum, when submitted for registration, must be accompanied by Articles prescribing regulations for the company.
- (2) The Articles must be subscribed by the registered agent named in the Memorandum in the presence of another person who must sign his name as a witness.
  - (3) The Articles, when registered, bind the company and its members from time to time to the same extent as if each member had subscribed his name and affixed his seal thereto and as if there were contained in the Articles, on the part of himself, his heirs, executors and administrators, a covenant to observe the provisions of the Articles, subject to this Act.
- 14.(1)The Registrar shall not register the Memorandum or the Articles delivered to him unless he is satisfied that all requirements of this Act in respect of registration have been complied with and
- (a) a solicitor engaged in the formation of the company; or
  - (b) the registered agent named in the Memorandum of the company to be registered agent, certifies in writing that the requirements of this Act in respect of registration have been complied with and the written certification delivered to the Registrar is sufficient evidence of compliance.
- (2) Subject to subsection (1), the Registrar shall retain and register the Memorandum and Articles submitted to him in a Register to be maintained by him to be known as the Register of International Business Companies.
  - (3) Upon the registration of the Memorandum and the Articles, the Registrar shall issue a certificate of incorporation under his hand and seal certifying that the company is incorporated.
- 15.(1)Upon the issue by the Registrar of a certificate of incorporation of a company, the company is, from the date shown on the certificate of incorporation, a body corporate under the name contained in the Memorandum with the full capacity of an individual who is sui juris.
- (2) A certificate of incorporation of a company incorporated under this Act issued by the Registrar is prima facie evidence of compliance with all requirements of this Act in respect of incorporation.

16. (1) Subject to any limitation or provisions to the contrary in its Memorandum or Articles, a company incorporated under this Act may amend its Memorandum or Articles by a resolution of members or, where permitted by its Memorandum or Articles or by this Act, by a resolution of directors.
- (2) A company that amends its Memorandum or Articles must submit to the Registrar an extract of the resolution of members or the resolution of directors amending the Memorandum or Articles, as the case may be, certified as a true copy of the resolution amending the Memorandum or Articles by
- (a) the solicitor engaged in advising the company; or
  - (b) the registered agent named in the Memorandum of the company,
- and the Registrar must retain and register the certified copy of the extract of the resolution.
- (3) An amendment to the Memorandum or Articles has effect from the time the amendment is registered by the Registrar.
- (4) A company that wilfully contravenes subsection (2) is liable to a penalty of \$50.00 for each day or part thereof during which the contravention continues, and a director who knowingly permits the contravention is liable to a like penalty.

17.A copy of the Memorandum and a copy of the Articles must be given to any member who requests a copy on payment by the member of such amount as the directors may determine to be reasonably necessary to defray the costs of preparing and furnishing them.

### **PART III**

#### **CAPITAL AND DIVIDENDS**

17A. Subject to any limitations or provisions to the contrary in its Memorandum or Articles, the unissued shares and treasury shares of a company incorporated under this Act shall be at the disposal of the directors who may, without limiting or affecting any rights previously conferred on the holders of any existing shares or class or series of shares, offer, allot, grant options over or otherwise dispose of shares to such persons, at such times and upon such terms as the company may, by resolution of directors, determine.

18. No share in a company incorporated under this Act may be issued until the consideration in respect of the share is fully paid, and when issued the share is for all purposes fully paid and non-assessable save that a share issued for a promissory note or other written obligation for payment of a debt may be issued subject to forfeiture in the manner prescribed in section 19A.

19. Subject to any limitations or provisions to the contrary in the Memorandum or Articles, each share in a company incorporated under this Act shall be issued for money, services rendered, personal property (including other shares, debt obligations or other securities in the company), an estate in real property, a promissory note or other binding obligation to contribute money or property, or any combination thereof.

19A.(1) The Memorandum or Articles, or agreement for the subscription of shares, of a company incorporated under this Act may contain provisions for the forfeiture of shares for which payment is not made pursuant to a promissory note or other written binding obligation for payment of a debt.

(2) Any provision in the Memorandum or Articles, or in an agreement for the subscription of shares of a company incorporated under this Act providing for the forfeiture of shares shall

contain a requirement that written notice specifying a date for payment to be made be served on the member who defaults in making payment pursuant to a promissory note or other written binding obligation to pay a debt.

- (3) The written notice referred to in subsection (2) shall name a further date not earlier than the expiration of 14 days from the date of service of the notice on or before which the payment required by the notice is to be made and shall contain a statement that in the event of non-payment at or before the time named in the notice the shares, or any of them, in respect of which payment is not made will be liable to be forfeited.
- (4) Where a notice has been issued under this section and the requirements of the notice have not been complied with, the directors may, at any time before tender of payment, by resolution of directors forfeit and cancel the shares to which the notice relates.
- (5) The company is under no obligation to refund any moneys to the member whose shares have been cancelled pursuant to subsection (4) and that member shall be discharged from any further obligation to the company.

20.(1) Subject to any limitations or provisions to the contrary in the Memorandum or Articles, shares in a company incorporated under this Act may be Issued for such amount as may be determined from time to time by the directors, except that in the case of shares with par value, the amount shall not be less than the par value; and, in the absence of fraud, the decision of the directors as to the value of the consideration received by the company in respect of the issue is conclusive, unless a question of law is involved.

(2) A share issued by a company incorporated under this Act upon conversion of, or in exchange for, another share or a debt obligation or other security in the company, shall be treated for all purposes as having been issued for money equal to the consideration received or deemed to have been received by the company in respect of the other share, debt obligation or security.

(3) R E P E A L E D.

21. Subject to any limitations or provisions to the contrary in its Memorandum or Articles, a company incorporated under this Act may issue fractions of a share and unless and to the extent otherwise provided in the Memorandum or Articles, a fractional share has the corresponding fractional liabilities, limitations, preferences, privileges, qualifications, restrictions, rights and other attributes of a whole share of the same class or series of shares.

21A.(1) The authorized capital, if any, of a company incorporated under this Act may be stated in more than one currency in which case the par value of the shares, if any, shall be expressed in the same currencies.

(2) The Registrar may issue guidelines with respect to the calculation of fees payable pursuant to section 104 for companies with an authorized capital stated in a currency other than United States dollars.

22.(1) Upon the issue by a company incorporated under this Act of a share with par value, the consideration in respect of the share constitutes capital to the extent of the par value and the excess constitutes surplus.

(2) Subject to any limitations or provisions to the contrary in the Memorandum or Articles, upon the issue by a company incorporated under this Act of a share without par value, the consideration in

respect of the share constitutes capital to the extent designated by the directors and the excess constitutes surplus, except that the directors must designate as capital an amount of the consideration that is at least equal to the amount that the share is entitled to as a preference, if any, in the assets of the company upon liquidation of the company.

- (3) Upon the disposition by a company incorporated under this Act of a treasury share, the consideration in respect of the share is added to surplus.

23.(1) A share issued as a dividend by a company incorporated under this Act shall be treated for all purposes as having been issued for money equal to the surplus that is transferred to capital upon the issue of the share.

- (2) In the case of a dividend of authorized but unissued shares with par value, an amount equal to the aggregate par value of the shares shall be transferred from surplus to capital at the time of the distribution.
- (3) In the case of a dividend of authorized but unissued shares without par value, the amount designated by the directors shall be transferred from surplus to capital at the time of the distribution, except that the directors must designate as capital an amount that is at least equal to the amount that the shares are entitled to as a preference, if any, in the assets of the company upon liquidation of the company.

- (4) A division of the issued and outstanding shares of a class or series of shares into a larger number of shares of the same class or series having a proportionally smaller par value does not constitute a dividend of shares.

24.(1) Subject to any limitations or provisions to the contrary in its Memorandum or Articles, a company incorporated under this Act may amend its Memorandum to increase or reduce its authorized capital, and in connection therewith, the company may

- (a) increase or reduce the number of shares which the company may issue;
- (b) increase or reduce the par value of any of its shares; or
- (c) effect any combination under paragraphs (a) and (b).

- (2) Where a company reduces its authorized capital under subsection (1), then, for purposes of computing the capital of the company, any capital that immediately before the reduction was represented by shares but immediately following the reduction is no longer represented by shares shall be deemed to be capital transferred from surplus to capital.

- (3) A company shall, in writing, inform the Registrar of any increase or decrease of its authorized capital.

25.(1) A company incorporated under this Act may amend its Memorandum

- (a) to divide the shares, including issued shares, of a class or series into a larger number of shares of the same class or series; or
- (b) to combine the shares, including issued shares, of a class or series into a smaller number of shares of the same class or series.

- (2) Where shares are divided or combined under subsection (1), the aggregate par value of the new shares must be equal to the aggregate par value of the original shares.

26. Shares of a company incorporated under this Act are personal property and are not of the nature of real property.

- 27.(1) A company incorporated under this Act must state in its Articles whether or not certificates in respect of its shares shall be issued.
- (2) If a company incorporated under this Act issues certificates in respect of its shares, the certificates
- (a) must be signed by two directors or two officers of the company, or by one director and one officer; or
  - (b) must be under the common seal of the company, with or without the signature of any director or officer of the company; and the Articles may provide for the signatures or common seal to be facsimiles.
- (3) A certificate issued in accordance with subsection (2) specifying a share held by a member of the company is prima facie evidence of the title of the member to the share specified therein.
- 28.(1) A company incorporated under this Act shall cause to be kept one or more registers to be known as share registers containing
- (a) the names and addresses of the persons who hold registered shares in the company;
  - (b) the number of each class and series of registered shares held by each person;
  - (c) the date on which the name of each person was entered in the share register;
  - (d) the date on which any person ceased to be a member;
  - (e) in the case of shares issued to bearer, the total number of each class and series of shares issued to bearer; and
  - (f) with respect to each certificate for shares issued to bearer,
    - (I) the identifying number of the certificate;
    - (ii) the number of each class or series of shares issued to bearer specified therein; and
    - (iii) the date of issue of the certificate; but the company may delete from the register information relating to persons who are no longer members or information relating to shares issued to bearer that have been cancelled.
- (2) The share register may be in any such form as the directors may approve but if it is in magnetic, electronic or other data storage form, the company must be able to produce legible evidence of its contents.
- (3) R E P E A L E D.
- (4) A copy of the share register, commencing from the date of registration of the company, shall be kept at the registered office of the company referred to in section 38.
- (5) The share register is prima facie evidence of any matters directed or authorized by this Act to be contained therein.
- (6) A company that wilfully contravenes this section is liable to a penalty of \$25.00 for each day or part thereof during which the contravention continues, and a director who knowingly permits the contravention is liable to a like penalty.
29. (1) If (a) information that is required to be entered in the share register under Section 28 is omitted therefrom or inaccurately entered therein; or
- (b) there is unreasonable delay in entering the information in the share register, a member of the company, or any person who is aggrieved by the omission, inaccuracy or delay, may apply to the court for an order that the share register be rectified, and the court may either grant or refuse the application, with or without costs to be paid by the applicant,

or order the rectification of the share register, and may direct the company to pay all costs of the application and any damages the applicant may have sustained.

- (2) The court may, in any proceedings under subsection (1), determine any question relating to the right of a person who is a party to the proceedings to have his name entered or omitted from the share register, whether the question arises between
- (a) two or more members or alleged members; or
  - (b) between members or alleged members and the company;
- and generally the court may in the proceedings determine any question that may be necessary or expedient to be determined for the rectification of the share register.
- 30.(1) Subject to any limitations or provisions to the contrary in the Memorandum or Articles, registered shares of a company incorporated under this Act may be transferred by a written instrument of transfer signed by the transferor and containing the name and address of the transferee.
- (2) In the absence of a written instrument of transfer mentioned in subsection (1), the directors may accept such evidence of a transfer of shares as they consider appropriate.
- (3) A company shall not be required to treat a transferee of a registered share in the company as a member until the transferee's name has been entered in the share register.
- (4) Subject to any limitations or provisions to the contrary in its Memorandum or Articles, a company incorporated under this Act must, on the application of the transferor or transferee of a registered share in the company, enter in its share register the name of the transferee of the share.
- (5) A transfer of registered shares of a deceased, incompetent or bankrupt member of a company incorporated under this Act made by his personal representative, guardian or trustee, as the case may be, or a transfer of registered shares owned by a person as a result of a transfer from a member by operation of law, is of the same validity as if the personal representative, guardian, trustee or transferee had been the registered holder of the shares at the time of the execution of the instrument of transfer.
- (6) For the purposes of subsection (5), what amounts to incompetence on the part of a person is a matter to be determined by the court after having regard to all the relevant evidence and the circumstances of the case.
31. A share issued to bearer is transferable by delivery of the certificate relating to the share.
- 32.(1) Where a governmental authority, whether it is legally constituted or not, in any jurisdiction outside the British Virgin Islands
- (a) by or in connection with a nationalization, expropriation, confiscation, coercion, force or duress, or similar action; or
  - (b) by or in connection with the imposition of any confiscatory tax, assessment, or other governmental charge, takes or seizes any shares or other interests in a company incorporated under this Act, the company itself or a person holding shares or any other interest in the company, including an interest as a creditor, may apply to the court for an order that the company disregard the taking or seizure and continue to treat the person who would have held shares or any other interest in the company but for the taking or seizure of the shares or other interest as continuing to hold the shares or other interest.

- (2) Without affecting subsection (1), where a person whose shares or other interests have been taken or seized as referred to in subsection (1) is other than a natural person, the person making the application under subsection (1), or the company itself, may apply to the court for an additional order for the company to treat the persons believed by the company to have held the direct or indirect beneficial interests in the share or other interests in the company as the holder of those shares or other interests.
- (3) The court may, upon application made to it under subsection (1) or (2),
- (a) grant such relief as it considers equitable and proper; and
  - (b) order that any shares of or other interests in the company vest in such trustees as the court may appoint upon such trusts and for such purposes as the court determines.
- 33.(1) Subject to any limitations or provisions to the contrary in its Memorandum or Articles, a company incorporated under this Act may purchase, redeem or otherwise acquire and hold its own shares but only out of surplus or in exchange for newly issued shares of equal value.
- (1A) Subject to subsection (1), a company incorporated under this Act may not purchase, redeem or otherwise acquire its own shares without the consent of the member whose shares are to be purchased, redeemed or otherwise acquired, unless the company is permitted to purchase, redeem or otherwise acquire the shares without that consent by virtue of
- (a) the provisions of the Memorandum or Articles of the company;
  - (b) the designations, powers, preferences, rights, qualifications, limitations and restrictions with which the shares were issued; or
  - (c) the subscription agreement for the issue of the shares.
- (2) No purchase, redemption or other acquisition permitted under subsection (1) shall be made unless the directors determine that immediately after the purchase, redemption or other acquisition
- (a) the company will be able to satisfy its liabilities as they become due in the ordinary course of its business; and
  - (b) the realizable value of the assets of the company will not be less than the sum of its total liabilities, other than deferred taxes, as shown in the books of account, and its capital; and, in the absence of fraud, the decision of the directors as to the realizable value of the assets of the company is conclusive, unless a question of law is involved.
- (3) A determination by the directors under subsection (2) is not required where shares are purchased, redeemed or otherwise acquired,
- (a) pursuant to a right of a member to have his shares redeemed or to have his shares exchanged for money or other property of the company;
  - (b) by virtue of a transfer of capital pursuant to paragraph (b) (iii) of section 35(1);
  - (c) by virtue of the provisions of section 83; and
  - (d) pursuant to an order of the court.
- (4) Subject to any limitations or provisions to the contrary in the Memorandum or Articles, shares that a company purchases, redeems or otherwise acquires may be cancelled or held as treasury shares unless the shares are purchased, redeemed or otherwise acquired by virtue of a reduction in capital in a manner that would be a contravention of the requirements of section 35(3), in which case they shall be cancelled but they shall be available for reissue; and upon the cancellation of a share, the amount included as capital of the company with respect to that share shall be deducted from the capital of the company.

- (5) A company incorporated under this Act may purchase, redeem or otherwise acquire the shares of the company at a price lower than fair value if permitted by, and then only in accordance with, the terms of
- (a) its Memorandum or Articles; or
  - (b) a written agreement for the subscription for the shares to be purchased, redeemed or otherwise acquired.
34. Where shares in a company incorporated under this Act
- (a) are held by the company as treasury shares; or
  - (b) are held by another company of which the first company holds, directly or indirectly, shares having more than 50 per cent of the votes in the election of directors of the other company,
- the shares of the first company are not entitled to vote or to have dividends paid thereon and shall not be treated as outstanding for any purpose under this Act except for purposes of determining the capital of the first Company.
- 35.(1) Subject to any limitations or provisions to the contrary in the Memorandum or Articles and subject to subsections (3) and (4), the capital of a company incorporated under this Act may, by a resolution of members or by a resolution of directors be
- (a) increased by transferring an amount out of the surplus of the company to capital; or
  - (b) reduced by transferring an amount out of capital of the company to surplus.
- (2) R E P E A L E D.
- (3) No reduction of capital shall be effected that reduces the capital of the company to an amount that is less than the sum of
- (a) the aggregate par value of
    - (i) all outstanding shares with par value, and
    - (ii) all shares with par value held by the company as treasury shares; and
  - (b) the aggregate of the amounts designated as capital of
    - (i) all outstanding shares without par value, and
    - (ii) all shares without par value held by the company as treasury shares that are entitled to a preference, if any, in the assets of the company upon liquidation of the company.
- (4) No reduction of capital shall be effected under subsection (1) unless the directors determine that immediately after the reduction
- (a) the company will be able to satisfy its liabilities as they become due in the ordinary course of its business; and
  - (b) the realizable value of the assets of the company will not be less than its total liabilities, other than deferred taxes, as shown in the books of account, and its remaining capital; and, in the absence of fraud, the decision of the directors as to the realizable value of the assets of the company is conclusive, unless a question of law is involved.
36. (1) Subject to any limitations or provisions to the contrary in its Memorandum or Articles, a company incorporated under this Act may, by a resolution of directors, declare and pay dividends in money, shares or other property.
- (2) Dividends shall only be declared and paid out of surplus.
  - (3) No dividend shall be declared and paid unless the directors determine that immediately after the payment of the dividend

- (a) the company will be able to satisfy its liabilities as they become due in the ordinary course of its business; and
- (b) the realizable value of the assets of the company will not be less than the sum of its total liabilities, other than deferred taxes, as shown in the books of account, and its capital; and, in the absence of fraud, the decision of the directors as to the realizable value of the assets of the company is conclusive, unless a question of law is involved.

37. Subject to any limitations or provisions to the contrary in its Memorandum or Articles, a company incorporated under this Act may, by a resolution of directors, include in the computation of surplus for any purpose under this Act the net unrealized appreciation of the assets of the company, and, in the absence of fraud, the decision of the directors as to the value of the assets is conclusive, unless a question of law is involved.

37A.(1) A mortgage or charge of shares of a company incorporated under this Act must be in writing signed by, or with the authority of, the holder of the bearer share or the registered holder of the registered share to which the mortgage or charge relates.

- (2) In the case of a bearer share, a mortgage or charge thereof is not valid and enforceable unless the certificate for the share to be mortgaged or charged is deposited with the mortgagee or chargee but the deposit of the certificate with the mortgagee or chargee shall not constitute a transfer of the bearer share, title to which shall only pass upon due compliance with the provisions of law governing realization of the security by the mortgagee or chargee.
- (3) A mortgage or charge of shares of a company incorporated under this Act need not be in any specific form but it must clearly indicate
  - (a) the intention to create a mortgage or charge; and
  - (b) the amount secured by the mortgage or charge or how that amount is to be calculated.
- (4) A mortgage or charge of shares of a company incorporated under this Act may be governed by the law of a jurisdiction other than the British Virgin Islands, but if a law other than the law of the British Virgin Islands is specified as the governing law
  - (a) the mortgage or charge must be in compliance with the requirements of its governing law in order for the mortgage or charge to be valid and binding on the company; and
  - (b) the remedies available to a mortgagee or chargee shall be governed by the governing law and the instrument creating the mortgage or charge save that the rights between the mortgagor or mortgagee as a member of the company and the company shall continue to be governed by the Memorandum and the Articles of the company and this Act.
- (5) If no law is specified to govern a mortgage or charge of shares of a company incorporated under this Act, the instrument creating the mortgage or charge shall be governed by the laws of the British Virgin Islands and, in the case of a default by the mortgagor or chargor on the terms of the mortgage, the mortgagee or chargee is entitled to the following remedies:
  - (a) subject to any limitations or provisions to the contrary in the instrument creating the mortgage or charge, the right to sell the shares; and
  - (b) the right to appoint a receiver who, subject to any limitations or provisions to the contrary in the instrument creating the mortgage or charge, may
    - (I) vote the shares,
    - (ii) receive dividends and other payments in respect of the shares, and
    - (iii) exercise other rights and powers of the mortgagor or chargor in respect of the shares, until such time as the mortgage or charge is discharged.

- (6) Subsection (5) also applies to a mortgage or charge of shares of a company incorporated under this Act where the law of the British Virgin Islands is specified as the governing law.
- (7) Subject to any provisions to the contrary in the instrument of mortgage or charge of shares of a company incorporated under this Act, all amounts that accrue from the enforcement of the mortgage or charge shall be applied in the following manner:
- (a) firstly, in meeting the costs incurred in enforcing the mortgage or charge;
  - (b) secondly, in discharging the sums secured by the mortgage or charge; and
  - (c) thirdly, in paying any balance due to the mortgagor or chargor.
- (8) The remedies referred to in subsection (5) are not exercisable until
- (a) a default has occurred and has continued for a period of not less than 30 days, or such shorter period as may be specified in the instrument creating the mortgage or charge; and
  - (b) the default has not been rectified within 14 days from service of the notice specifying the default and requiring rectification thereof.
- (9) In the case of the mortgage or charge of registered shares there may be entered in the share register of the company
- (a) a statement that the shares are mortgaged or charged;
  - (b) the name of the mortgagee or chargee; and
  - (c) the date on which the statement and name are entered in the share register.

#### **PART IV REGISTERED OFFICE AND AGENT**

38. A company incorporated under this Act shall at all times have a registered office in the British Virgin Islands, and the registered office must be an office maintained in the British Virgin Islands by the company or its registered agent.

39.(1) A company incorporated under this Act shall at all times have a registered agent in the British Virgin Islands.

(2) No person shall be a registered agent unless he has been licensed as a registered agent under the Company Management Act or under the Banks and Trust Companies Act.

#### **40. R E P E A L E D.**

40A.(1) The Registrar shall maintain a register of licensed registered agents in which the following details shall be recorded:

- (a) the name of the registered agent;
- (b) the address of the registered agent;
- (c) the names of the individuals authorized to sign on behalf of any firm or corporation that is a registered agent;
- (d) the date when the first licence to act as a registered agent was issued pursuant to the Company Management Act, 1990 or the Banks and Trust Companies Act, 1990; and
- (e) in a case where a registered agent ceases to be a registered agent,
  - (i) the date on which the registered agent ceased to be licensed, and
  - (ii) whether the cessation was due to failure to renew his licence, death or liquidation or revocation under the Company Management Act or under the Banks and Trust Companies Act.

- (2) The Registrar shall, during the month of February in each year, publish in the Gazette, a list of registered agents as appeared on the register of licensed registered agents on 31st January in that year.
- (3) Any change in the details kept by the Registrar in the register of registered agents pursuant to subsection (1) shall be notified immediately by the registered agent to the Registrar, and, upon payment of such fee as may be prescribed by the Governor in Council, the Registrar shall record the change in the register of registered agents.
- (4) Where the registered agent of a company desires to cease to act as registered agent and the registered agent is unable to reach an agreement with the company for which he is registered agent concerning his replacement, the following provisions apply:
- (a) the registered agent shall give not less than 90 days written notice to any director or officer of the company of which he is the registered agent at the director's or officer's last known address, or if the registered agent is not aware of the identity of any director or officer then the person from whom the registered agent last received instructions concerning the company, specifying the wish of the registered agent to resign as registered agent and shall together with the notice provide a list of all registered agents in the British Virgin Islands with their names and addresses;
  - (b) the registered agent shall submit to the Registrar a copy of the notice and list of registered agents referred to in paragraph (a);
  - (c) if, at the time of expiry of the notice, the company has not adopted a resolution to amend its Memorandum to change its registered agent, the registered agent shall inform the Registrar in writing that the company has not changed its registered agent whereupon the Registrar shall publish a notice in the Gazette that the name of the company will be struck off the Register, unless the company, within 30 days from the date of the publication of the notice in the Gazette, registers with the Registrar a copy of a resolution amending its Memorandum to change its registered agent; and
  - (d) if a company fails within 30 days from the date of the publication of the notice referred to in paragraph (c) to register with the Registrar a copy of a resolution amending its Memorandum to change its registered agent, the Registrar shall strike the name of the company off the Register and shall publish in the Gazette a notice that the name of the company has been struck off the Register.
- (5) Where the licence of a registered agent has been revoked under the Company Management Act, 1990 or the Banks and Trust Companies Act, 1990, or if a registered agent dies or fails to renew his licence the Inspector of Company Managers or the Inspector of Banks and Trust Companies, as the case may be, shall, for the purpose of changing the registered agent of the company, communicate with each company for which the person whose licence has been revoked or who has died or has failed to renew his licence is the registered agent and the provisions of subsection (4) have effect mutatis mutandis for the purpose of providing the procedures for changing the registered agent.
- (6) A company that has been struck off the Register under this section remains liable for all claims, debts, liabilities and obligations of the company, and the striking-off does not affect the liability of any of its members, directors, officers or agents.

41. A company that wilfully contravenes sections 38 or 39 is liable to a penalty of \$25.00 for each day or part thereof during which the contravention continues, and a director who knowingly permits the contravention is liable to a like penalty.

**PART V**  
**DIRECTORS, OFFICERS, AGENTS AND LIQUIDATORS**

42. Subject to any limitations or provisions to the contrary in its Memorandum or Articles, the business and affairs of a company incorporated under this Act shall be managed by a board of directors that consists of one or more persons who shall be individuals or companies.

43.(1) The first directors of a company incorporated under this Act shall be elected by the subscribers to the Memorandum; and thereafter, the directors shall be elected by the members for such term as the members may determine and where permitted by the Memorandum or Articles of a company incorporated under this Act, the directors may also elect directors for such term as the directors may determine.

(2) Each director holds office until his successor takes office or until his earlier death, resignation or removal.

(3) Subject to any limitations or provisions to the contrary in the Memorandum or Articles

(a) a director may be removed from office by a resolution of members or by a resolution of directors; and

(b) a director may resign his office by giving written notice of his resignation to the company and the resignation has effect from the date the notice is received by the company or from such later date as may be specified in the notice.

(4) Subject to any limitations or provision to the contrary in the Memorandum or Articles, a vacancy in the board of directors may be filled by a resolution of members or of a majority of the remaining directors.

43A.(1) A company incorporated under this Act may keep a register to be known as a register of directors containing

(a) the names and addresses of the persons who are directors of the company;

(b) the date on which each person whose name is entered in the register was appointed as a director of the company; and

(c) the date on which each person named as a director ceased to be a director of the company.

(2) The register of directors may be in such form as the directors approve, but if it is in magnetic, electronic or other data storage form, the company must be able to produce legible evidence of its contents.

(3) A copy of the register of directors, commencing from the date of the registration of the company, shall be kept at the registered office of the company referred to in section 38.

(4) The register of directors is prima facie evidence of any matters directed or authorized by this Act to be contained therein.

44. The number of directors shall be fixed by the Articles and, subject to any limitations or provisions to the contrary in the Memorandum or Articles, the Articles may be amended to change the number of directors.

45. The directors have all the powers of the company that are not reserved to the members under this Act or in the Memorandum or Articles.

46. Subject to any limitations or provisions to the contrary in the Memorandum or Articles, the directors may, by a resolution of directors, fix the emoluments of directors in respect of services to be rendered in any capacity to the company.

47.(1) The directors may, by a resolution of directors, designate one or more committees, each consisting of one or more directors.

(2) Subject to any limitations or provisions to the contrary in the Memorandum or Articles, each committee has such powers and authority of the directors, including the power and authority to affix the common seal of the company, as are set forth in the resolution of directors establishing the committee, except that no committee has any power or authority with respect to the matters requiring a resolution of directors under sections 43 and 53.

48.(1) Subject to any limitations or provisions to the contrary in the Memorandum or Articles, the directors of a company incorporated under this Act may meet at such times and in such manner and places within or outside the British Virgin Islands as the directors may determine to be necessary or desirable.

(2) A director shall be deemed to be present at a meeting of directors if

- (a) he participates by telephone or other electronic means; and
- (b) all directors participating in the meeting are able to hear each other.

49.(1) Subject to a requirement in the Memorandum or Articles to give longer notice, a director shall be given not less than 3 days notice of meetings of directors.

(2) Notwithstanding subsection (1), subject to any limitations or provisions to the contrary in the Memorandum or Articles, a meeting of directors held in contravention of that subsection is valid if all of the directors, or such majority thereof as may be specified in the Memorandum or Articles entitled to vote at the meeting, have waived the notice of the meeting; and, for this purpose, the presence of a director at the meeting shall be deemed to constitute waiver on his part.

(3) The inadvertent failure to give notice of a meeting to a director, or the fact that a director has not received the notice, does not invalidate the meeting.

50. The quorum for a meeting of directors is that fixed by the Memorandum or Articles; but, where no quorum is so fixed, a meeting of directors is properly constituted for all purposes if at the commencement of the meeting one half of the total number of directors are present in person or by alternate.

51. Subject to any limitations or provisions to the contrary in the Memorandum or Articles, an action that may be taken by the directors or a committee of directors at a meeting may also be taken by a resolution of directors or a committee of directors consented to in writing or by telex, telegram, cable or other written electronic communication, without the need for any notice.

52.(1) Subject to any limitations or provisions to the contrary in the Memorandum or Articles, a director may by a written instrument appoint a written instrument appoint an alternate who need not be a director.

(2) An alternate for a director appointed under subsection (1) is entitled to attend meetings in the absence of the director who appointed him and to vote or consent in the place of the director.

53.(1)The directors may, by a resolution of directors, appoint any person, including a person who is a director, to be an officer or agent of the company.

- (2) Subject to any limitations or provisions to the contrary in the Memorandum or Articles, each officer or agent has such powers and authority of the directors, including the power and authority to affix the common seal of the company, as are set forth in the Articles or in the resolution of directors appointing the officer or agent, except that no officer or agent has any power or authority with respect to the matters requiring a resolution of directors under this Act.
- (3) The resolution of directors appointing any person to be an agent of the company may authorize the agent to appoint one or more substitutes or delegates to exercise some or all of the powers conferred on the agent by the company.

54.(1)Every director, officer, agent and liquidator of a company incorporated under this Act, in performing his functions, shall act honestly and in good faith with a view to the best interests of the company and exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances.

- (2) No provision in the Memorandum or Articles of a company incorporated under this Act or in any agreement entered into by the company relieves a director, officer, agent or liquidator of the company from the duty to act in accordance with the Memorandum or Articles or from any personal liability arising from his management of the business and affairs of the company.

55.Every director, officer, agent and liquidator of a company incorporated under this Act, in performing his functions, is entitled to rely upon the share register kept under section 28, the books of accounts and records and the minutes and copies of consents to resolutions kept under section 66 and any report made to the company by any other director, officer, agent or liquidator or by any person selected by the company to make the report.

56.(1)Subject to any limitations or provisions to the contrary in the Memorandum or Articles, no agreement or transaction between

- (a) a company incorporated under this Act; and
  - (b) one or more of its directors or liquidators, or any person in which any director or liquidator has a financial interest or to whom any director or liquidator is related, including as a director or liquidator of that other person, is void or voidable for this reason only or by reason only that the director or liquidator is present at the meeting of directors or liquidators, or at the meeting of the committee of directors or liquidators, that approves the agreement or transaction or that the vote or consent of the director or liquidator is counted for that purpose.
- (2) Subject to any limitations or provisions to the contrary in the Memorandum or Articles, an agreement or transaction referred to in subsection (1) is valid if
- (a) the material facts of the interest of each director or liquidator in the agreement or transaction and his interest in or relationship to any other party to the agreement or transaction are disclosed in good faith or are known by the other directors or liquidators; and
  - (b) the agreement or transaction is approved or ratified by a resolution of directors or liquidators that has been approved
    - (i) without counting the vote or consent of any interested director or liquidator, or
    - (ii) by the unanimous vote or consent of all disinterested directors or liquidators if the votes or consents of all disinterested directors or liquidators is insufficient to approve a resolution of directors or liquidators.

- (3) Subject to any limitations or provisions to the contrary in the Memorandum or Articles, an agreement or transaction referred to in subsection (1) is valid if
- (a) the material facts of the interest of each director or liquidator in the agreement or transaction and his interest in or relationship to any other party to the agreement or transaction are disclosed in good faith or are known by the members entitled to vote at a meeting of members; and
  - (b) the agreement or transaction is approved or ratified by a resolution of members.
- (3A) subject to any limitations or provisions to the contrary in the Memorandum or Articles, an agreement or transaction referred to in subsection (1) is valid unless it is shown that at the time the agreement or transaction was authorized, approved or ratified by resolution of directors or by resolution of members the agreement or transaction was unfairly prejudicial to one or more members of the company or to the creditors of the company except that no person who voted in favour of the resolution authorizing, approving or ratifying the agreement or transaction shall be capable subsequently of impugning or objecting to the agreement or transaction.
- (4) Subject to any limitations or provisions to the contrary in the Memorandum or Articles, a director or liquidator who has an interest in any particular business to be considered at a meeting of directors, liquidators or members may be counted for purposes of determining whether the meeting is duly constituted in accordance with section 50 or otherwise.
- 57.(1) Subject to subsection (2) and any limitations in its Memorandum or Articles, a company incorporated under this Act may indemnify against all expenses, including legal fees, and against all judgments, fines, and amounts paid in settlement and reasonably incurred in connection with legal, administrative or investigative proceedings any person who
- (a) is or was a party or is threatened to be made a party to any threatened, pending or completed proceedings, whether civil, criminal, administrative or investigative, by reason of the fact that the person is or was a director, an officer or a liquidator of the company; or
  - (b) is or was, at the request of the company, serving as a director, officer or liquidator of, or in any other capacity is or was acting for, another company or a partnership, joint venture, trust or other enterprise.
- (2) Subsection (1) only applies to a person referred to in that subsection if the person acted honestly and in good faith with a view to the best interests of the company and, in the case of criminal proceedings, the person had no reasonable cause to believe that his conduct was unlawful.
- (3) The decision of the directors as to whether the person acted honestly and in good faith and with a view to the best interests of the company and as to whether the person had no reasonable cause to believe that his conduct was unlawful is in the absence of fraud, sufficient for the purposes of this section, unless a question of law is involved.
- (4) The termination of any proceedings by any judgment, order, settlement, conviction or the entering of a nolle prosequi does not, by itself, create a presumption that the person did not act honestly and in good faith and with a view to the best interests of the company or that the person had reasonable cause to believe that his conduct was unlawful.
- (5) If a person referred to in subsection (1) has been successful in defence of any proceedings referred to in subsection (1), the person is entitled to be indemnified against all expenses, including legal fees, and against all judgments, fines and amounts paid in settlement and reasonably incurred by the person in connection with the proceedings.
- 58.A company incorporated under this Act may purchase and maintain insurance in relation to any person who is or was a director, an officer or a liquidator of the company, or who at the request of

the company is or was serving as a director, an officer or a liquidator of, or in any other capacity is or was acting for, another company or a partnership, joint venture, trust or other enterprise, against any liability asserted against the person and incurred by the person in that capacity, whether or not the company has or would have had the power to indemnify the person against the liability under subsection (1) of section 57.

**PART VI**  
**PROTECTION OF MEMBERS AND CREDITORS**

- 59.(1) Subject to any limitations or provisions to the contrary in the Memorandum or Articles, the directors of a company incorporated under this Act may convene meetings of the members of the company at such times and in such manner and places within or outside the British Virgin Islands as the directors consider necessary or desirable.
- (2) Subject to a provision in the Memorandum or Articles for a lesser percentage, upon the written request of members holding more than 50 per cent of the votes of the outstanding voting shares in the company, the directors shall convene a meeting of members.
- (3) Subject to any limitations or provisions to the contrary in the Memorandum or Articles, a member shall be deemed to be present at a meeting of members if
- (a) he participates by telephone or other electronic means; and
  - (b) all members participating in the meeting are able to hear each other.
- (4) A member may be represented at a meeting of members by a proxy who may speak and vote on behalf of the member.
- (5) The following apply in respect of joint ownership of shares;
- (a) if 2 or more persons hold shares jointly each of them may be present in person or by proxy at a meeting of members and may speak as a member;
  - (b) if only one of them is present in person or by proxy, he may vote on behalf of all of them; and
  - (c) if 2 or more are present in person or by proxy, they must vote as one.
60. (1) Subject to a requirement in the Memorandum or Articles to give longer notice, the directors shall not give less than 7 days notice of meetings of members to those persons whose names on the date the notice is given appear as members in the share register referred to in section 28 and are entitled to vote at the meeting;
- (2) Notwithstanding subsection (1), and subject to any limitations or provisions to the contrary in the Memorandum or Articles, a meeting of members held in contravention of the requirement to give notice is valid if members holding a 90 per cent majority, or such lesser majority as may be specified in the Memorandum of Articles, of
- (a) the total number of shares entitled to vote on all the matters to be considered at the meeting; or
  - (b) the votes of each class or series of shares where members are entitled to vote thereon as a class or series together with an absolute majority of the remaining votes, have waived notice of the meeting; and, for this purpose, the presence of a member at the meeting shall be deemed to constitute waiver on his part.
- (3) The inadvertent failure of the directors to give notice of a meeting to a member, or the fact that a member has not received the notice, does not invalidate the meeting.

61. The quorum for meeting of members for purposes of a resolution of members is that fixed by the Memorandum or Articles; but, where no quorum is so fixed, a meeting of members is properly constituted for all purposes if at the commencement of the meeting there are present in person or by proxy one-half of the votes of the shares of each class or series of shares entitled to vote as a class or series thereon and the same proportion of the votes of the remaining shares entitled to vote thereon.

62.(1) Except as otherwise provided in the Memorandum or Articles, all shares vote as one class and each whole share has one vote.

(2) The directors of a company incorporated under this Act may fix the date notice is given of a meeting as the record date for determining those shares that are entitled to vote at the meeting.

62A.(1) One or more members of a company incorporated under this Act may by agreement in writing deposit bearer shares with, or transfer registered shares to, any person authorized to act as trustee for the purpose of vesting in such person, who may be designated voting trustee, the right to vote thereon and the following provisions shall apply:

- (a) the period of time for which the trustee may vote shall not exceed 10 years;
- (b) subject to paragraph (a), the agreement may contain any other provisions not inconsistent with the purpose of the agreement;
- (c) a copy of the agreement shall be filed at the registered office of the company and shall be open to the inspection of members of the company
  - (i) in the case of any beneficiary of the trust under the agreement, daily during business hours, and
  - (ii) in the case of members of the company, subject to the provisions of section 67;
- (d) where certificates for registered shares have been issued for shares that are to be transferred to a trustee pursuant to this section, new certificates shall be issued to the voting trustee to represent the shares so transferred and the certificates formerly representing the shares that have been transferred shall be surrendered and cancelled;
- (e) where a certificate is issued to a voting trustee, an endorsement shall be made on the certificate that the shares represented thereby in the case of registered shares and the certificates in case of bearer shares are held by the person named therein pursuant to an agreement;
- (f) there shall be noted in the share register of the company against the record of the shares held by the trustee the fact that such an agreement exists;
- (g) the voting trustee may vote the shares so issued or transferred during the period specified in the agreement;
- (h) shares registered in the name of the voting trustee may be voted either in person or by proxy and, in voting the shares, the voting trustee shall not incur any liability as member or trustee, except in so far as he may be liable for his own conduct or acts;
- (i) where two or more persons are designated as voting trustees and the right and method of voting any shares registered in their names at any meeting of members or on any resolution of members are not fixed by the agreement appointing the trustees, the right to vote shall be determined by a majority of the trustees, or if they are equally divided as to the right and manner of voting the shares in any particular case, the votes of the shares in such case shall be divided equally among the trustees;
- (j) at any time within 2 years prior to the time of expiration of any voting trust agreement as originally fixed or as last extended as provided in this subsection, one or more beneficiaries of the trust under the voting trust agreement may, by written agreement and with the written consent of the voting trustee, extend the duration of the voting trust agreement for an additional period not exceeding 10 years from the expiration date of the trust as originally fixed or as last extended; and

- (k) the voting trustee shall, prior to the time of expiration of a voting trust agreement, as originally fixed or as previously extended, as the case may be, file at the registered office of the company a copy of the extension agreement and of his consent thereto, and thereupon the duration of the voting trust agreement shall be extended for the period fixed in the extension agreement, but no extension agreement shall affect the rights or obligations of persons not parties thereto.
- (2) Two or more members of a company incorporated under this Act may by agreement in writing provide that in exercising any voting rights the shares held by them shall be voted
- (a) as provided by the agreement;
  - (b) as the parties may agree; or
  - (c) as determined in accordance with such procedure as they may agree upon.
- (3) No agreement made pursuant to subsection (2) shall be effective for a period of more than 10 years from the date it is made, but at any time within the 2 years immediately preceding the date of the expiration of the agreement the parties may extend its duration for an additional period, not exceeding 10 years at any one time, as they may desire.
- (4) The validity of any voting trust or other voting agreement is not affected during a period of 10 years from the date when it was created or last extended by reason only of the fact that under its terms, it will or may last beyond a period of 10 years.
- (5) This section shall be deemed not to invalidate any voting or other agreement among members or any irrevocable proxy that is not otherwise illegal.
63. Subject to any limitations or provisions to the contrary in the Memorandum or Articles, an action that may be taken by members at a meeting of members may also be taken by a resolution of members consented to in writing or by telex, telegram, cable or other written electronic communication, without the need for any notice.
64. (1) Any notice, information or written statement required under this Act to be by a company incorporated under this Act to members must be served
- (a) in the case of members holding registered shares,
    - (i) in the manner prescribed in the Memorandum or Articles, as the case may be, or
    - (ii) in the absence of a provision in the Memorandum or Articles, by personal service or by mail addressed to each member at the address shown in the share register; and
  - (b) in the case of members holding shares issued to bearer, in the absence of a provision in the Memorandum or Articles, or if the notice, information or written statement can no longer be served as specified in the Memorandum and Articles, if the notice, information or written statement is published in a newspaper circulated in the British Virgin Islands and a newspaper in the place where the company has its principal office.
- (2) Subject to a requirement in the Memorandum or Articles to give a specific length of notice, the directors must give sufficient notice of meetings of members to members holding shares issued to bearer to allow a reasonable opportunity for them to take action in order to secure or exercise the right or privilege, other than the right or privilege to vote, that is the subject of the notice.
- (3) For purposes of subsection (2), what amounts to sufficient notice is a matter of fact to be determined after having regard to all the circumstances.
- 65.(1) Any summons, notice, order, document, process, information or written statement to be served on a company incorporated under this Act may be served by leaving it, or by sending it, by

registered mail, addressed to the company, at its registered office, or by leaving it with, or by sending it by registered mail to, the registered agent of the company.

- (2) Service of any summons, notice, order, document, process, information or written statement to be served on a company incorporated under this Act may be proved by showing that the summons, notice, order, document, process, information or written statement
    - (a) was mailed in such time as to admit its being delivered in the normal course of delivery, within the period prescribed for service; and
    - (b) was correctly addressed and the postage was prepaid.
- 66.(1) A company incorporated under this Act shall keep such accounts and records as the directors consider necessary or desirable in order to reflect the financial position of the company.
- (2) A company incorporated under this Act shall keep
    - (a) minutes of all meetings of
      - (i) directors,
      - (ii) members,
      - (iii) committees of directors,
      - (iv) committees of officers, and
      - (v) committees of members; and
    - (b) copies of all resolutions consented to by
      - (i) directors,
      - (ii) members,
      - (iii) committees of directors,
      - (iv) committees of officers, and
      - (v) committees of members.
  - (3) The books, records and minutes required by this section shall be kept at the registered office of the company or at such other place as the directors determine.
  - (3A) A company incorporated under this Act shall have a common seal and an imprint thereof shall be kept at the registered office of the Company.
  - (4) A company that wilfully contravenes this section is liable to a penalty of \$25.00 for each day or part thereof during which the contravention continues, and a director who knowingly permits the contravention is liable to a like penalty.
- 67.(1) A member of a company incorporated under this Act may, in person or by attorney and in furtherance of a proper purpose, request in writing specifying the purpose to inspect during normal business hours the share register of the company or the books, records, minutes and consents kept by the company and to make copies or extracts therefrom.
- (2) For purposes of subsection (1), a proper purpose is a purpose reasonably related to the member's interest as a member.
  - (3) If a request under subsection (1) is submitted by an attorney for a member, the request must be accompanied by a power of attorney authorizing the attorney to act for the member.
  - (4) If the company, by a resolution of directors, determines that it is not in the best interest of the company or of any other member of the company to comply with a request under subsection (1), the company may refuse the request.

- (5) Upon refusal by the company of a request under subsection (1), the member may before the expiration of a period of 90 days of his receiving notice of the refusal, apply to the court for an order to allow the inspection.
- 68.(1) Contracts may be entered into on behalf of a company incorporated over this Act as follows:
- (a) a contract that, if entered into between individuals, is required by law to be in writing and under seal, may be entered into by or on behalf of the company in writing under the common seal of the company, and may, in the same manner, be varied or discharged;
  - (b) a contract that, if entered into between individuals is required by law to be in writing and signed by the parties, may be entered into by or on behalf of the company in writing and signed by a person acting under the express or implied authority of the company, and may, in the same manner, be varied or discharged; and
  - (c) a contract that, if entered into between individuals, is valid although entered into orally, and not reduced to writing, may be entered into orally by or on behalf of the company by a person acting under the express or implied authority of the company, and may, in the same manner, be varied or discharged.
- (2) A contract entered into in accordance with this section is valid and is binding on the company and its successors and all other parties to the contract.
- (3) Without affecting paragraph (a) of subsection (1), a contract, agreement or other instrument executed by or on behalf of a company by a director or an authorized officer or agent of the company is not invalid by reason only of the fact that the common seal of the company is not affixed to the contract, agreement or instrument.
69. (1) A person who enters into a written contract in the name of or on behalf of a company incorporated under this Act before the company comes into existence, is personally bound by the contract and is entitled to the benefits of the contract, except where
- (a) the contract specifically provides otherwise; or
  - (b) subject to any provisions of the contract to the contrary, the company adopts the contract under subsection (2).
- (2) Within a reasonable time after a company incorporated under this Act comes into existence, the company may, by any action or conduct signifying its intention to be bound thereby, adopt a written contract entered into in its name or on its behalf before it came into existence.
- (3) When a company adopts a contract under subsection (2),
- (a) the company is bound by, and entitled to the benefits of, the contract as if the company had been in existence at the date of the contract and had been a party to it; and
  - (b) subject to any provisions of the contract to the contrary, the person who acted in the name of or on behalf of the company ceases to be bound by or entitled to the benefits of the contract.
- 70.(1) If any contract, agreement, deed or other instrument relating to the payment of a claim or the delivering or transferring of property, whether real or personal, wherever situate, is entered into by a company incorporated under this Act and the contract, agreement, deed or other instrument designates a payee or beneficiary to receive the payment or property
- (a) upon the death of a person making the designation;
  - (b) upon the death of another person; or
  - (c) upon the happening of any other event specified in the contract, agreement, deed or other instrument, then, any such payment, delivery or transfer, the rights of any payee or

beneficiary, and the ownership of any property received, are not impaired or defeated by any law or rule of law governing the transfer of property by will, gift or intestacy.

- (2) Subsection (1) applies to a contract, agreement, deed or other instrument referred to in that subsection notwithstanding anything to the contrary in the law of any other jurisdiction, including the law of any jurisdiction where the person making the designation referred to in subsection (1) resides or is domiciled, and notwithstanding that
- (a) the designation is revocable or subject to change; or
  - (b) the claim or property
    - (i) is not yet payable or transferable, as the case may be, at the time the designation is made, or
    - (ii) is subject to withdrawal, collection or assignment by the person making the designation.

70A.(1) A company incorporated under this Act may create a mortgage, charge or other encumbrance over any of its assets situate in any part of the world in accordance with the law of any jurisdiction of the company's choice and the mortgage, charge or other encumbrance shall be binding on the company to the extent, and in accordance with, the requirements, of the chosen law.

- (2) A company incorporated under this Act may maintain at its registered office a register of mortgages, charges and other encumbrances in which there shall be entered particulars regarding each mortgage, charge and other encumbrances as follows:
- (a) the sum secured;
  - (b) the assets secured;
  - (c) the name and address of the mortgagee, chargee or other encumbrancer;
  - (d) the date of creation of the mortgage, charge or other encumbrance; and
  - (e) the date on which the particulars specified in paragraphs (a) to (d) in respect of the mortgage, charge or other encumbrance are entered in the register.
- (3) In the event that an application is made to a court in the British Virgin Islands to enforce any mortgage, charge or other encumbrance created by a company incorporated under this Act and there are assets of the company which are subject to two or more mortgages, charges or other encumbrances, then, notwithstanding the provisions of any other law, priorities shall be determined in accordance with the dates of entry in the register of mortgages and charges; and, unregistered mortgages, and other encumbrances created after 1st January, 1991 shall rank after registered mortgages, charges and other encumbrances, but unregistered mortgages, charges and other encumbrances created prior to 1st January 1991 shall have priority over mortgages, charges and other encumbrances registered pursuant to this provision and shall rank in order of their creation.

71. A promissory note of exchange shall be deemed to have been made, accepted or endorsed by a company incorporated under this Act if it is made, accepted or endorsed in the name of the company

- (a) by or on behalf or on account of the company; or
- (b) by a person acting under the express or implied authority of the company; and if so endorsed, the person signing the endorsement is not liable thereon.

72.(1) A company incorporated under this Act may, by an instrument in writing, whether or not under its common seal, authorize a person, either generally or in respect of any specified matters, as its agent to act on behalf of the company and to execute contracts, agreements, deeds and other instruments on behalf of the company.

(2) A contract, agreement, deed or other instrument executed on behalf of the company by an agent appointed under subsection (1), whether or not under his seal, is binding on the company and has the same effect as if it were under the common seal of the company.

73.(1) A document requiring authentication or attestation by a company incorporated under this Act may be signed by a director, a secretary or by an authorized officer or agent of the company, and need not be under its common seal.

(2) If the signature of any director, officer or agent authenticating or attesting any document is verified in writing by the registered agent of a company the company is bound by the document.

74. If at any time there is no member of a company incorporated under this Act, any person doing business in the name of or on behalf of the company is personally liable for the payment of all debts of the company contracted during the time and the person may be sued therefore without joinder in the proceedings of any other person.

**PART VII  
MERGER, CONSOLIDATION, SALE OF ASSETS, FORCED REDEMPTIONS,  
ARRANGEMENTS AND DISSENTERS.**

75. In this Part,

"consolidated company" means the new company that results from the consolidation of 2 or more constituent companies;

"consolidation" means the uniting of 2 or more constituent companies into a new company;

"constituent company" means an existing company that is participating in a merger or consolidation with one or more other existing companies;

"merger" means the merging of 2 or more constituent companies into one of the constituent companies;

"parent company" means a company that owns at least 90 per cent of the outstanding shares of each class and series of shares in another company;

"subsidiary company" means a company at least 90 per cent of whose outstanding shares of each class and series of shares are owned by another company;

"surviving company" means the constituent company into which one or more other constituent companies are merged.

76.(1) Two or more companies incorporated under this Act may merge or consolidate in accordance with subsections (3) to (5).

(2) One or more companies incorporated under this Act may merge or consolidate with one or more companies incorporated under the Companies Act in accordance with subsections (3) to (5), if the surviving company or the consolidated company will satisfy the requirements prescribed for an International Business Company under section 5.

- (3) The directors of each constituent company that proposes to participate in a merger or consolidation must approve a written plan of merger or consolidation containing, as the case requires,
- (a) the name of each constituent company and the name of the surviving company or the consolidated company;
  - (b) in respect to each constituent company,
    - (i) the designation and number of outstanding shares of each class and series of shares, specifying each such class and series entitled to vote on the merger or consolidation, and
    - (ii) a specification of each such class and series, if any, entitled to vote as a class or series;
  - (c) the terms and conditions of the proposed merger or consolidation, including the manner and basis of converting shares in each constituent company into shares, debt obligations or other securities in the surviving company or consolidated company, or money or other property, or a combination thereof;
  - (d) in respect of a merger, a statement of any amendment to the Memorandum or Articles of the surviving company to be brought about by the merger; and
  - (e) in respect of a consolidation, everything required to be included in the Memorandum and Articles for a company incorporated under this Act, except statements as to facts not available at the time the plan of consolidation is approved by the directors.
- (4) Some or all shares of the same class or series of shares in each constituent company may be converted into a particular or mixed kind of property and other shares of the class or series, or all shares of other classes or series of shares, may be converted into other property.
- (5) The following apply in respect of a merger or consolidation under this section:
- (a) the plan of merger or consolidation must be authorized by a resolution of members and the outstanding shares of a class or series of shares are entitled to vote on the merger or consolidation as a class or series if the Memorandum or Articles so provide or if the plan of merger or consolidation contains any provisions that, if contained in a proposed amendment to the Memorandum or Articles, would entitle the class or series to vote on the proposed amendment as a class or series;
  - (b) if a meeting of members is to be held, notice of the meeting, accompanied by a copy of the plan of merger or consolidation, must be given to each member, whether or not entitled to vote on the merger or consolidation;
  - (c) if it is proposed to obtain the written consent of members, a copy of the plan of merger or consolidation must be given to each member, whether or not entitled to consent to the plan of merger or consolidation;
  - (d) after approval of the plan of merger or consolidation by the directors and members of each constituent company, articles of merger or consolidation must be executed by each company and must contain
    - (i) the plan of merger or consolidation and, in the case of a consolidation, any statement required to be included in the Memorandum and Articles for a company incorporated under this Act;
    - (ii) the date on which the Memorandum and Articles of each constituent company were registered by the Registrar;
    - (iii) the manner in which the merger or consolidation was authorized with respect to each constituent company;
  - (e) the articles of merger or consolidation must be submitted to the Registrar who must retain and register them in the Register; and

- (f) upon the registration of the articles of merger or consolidation, the Registrar shall issue a certificate under his hand and seal certifying that the articles of merger or consolidation have been registered.
- (6) A certificate of merger or consolidation issued by the Registrar is prima facie evidence of compliance with all requirements of this Act in respect of the merger or consolidation.
- 77.(1) A parent company incorporated under this Act may merge with one or more subsidiary companies incorporated under this Act or under the Companies Act, without the authorization of the members of any company, in accordance with subsections (2) to (6), if the surviving company is a company incorporated under this Act and will satisfy the requirements prescribed for an International Business Company under section 5.
- (2) The directors of the parent company must approve a written plan of merger containing
- (a) the name of each constituent company and the name of the surviving company;
  - (b) in respect to each constituent company,
    - (i) the designation and number of outstanding shares of each class and series of shares, and
    - (ii) the number of shares of each class and series of shares in each subsidiary company owned by the parent company; and
  - (c) the terms and conditions of the proposed merger, including the manner and basis of converting shares in each company to be merged into shares, debt obligations or other securities in the surviving company, or money or other property, or a combination thereof.
- (3) Some or all shares of the same class or series of shares in each company to be merged may be converted into property of a particular or mixed kind and other shares of the class or series, or all shares of other classes or series of shares, may be converted into other property; but, if the parent company is not the surviving company, shares of each class and series of shares in the parent company may only be converted into similar shares of the surviving company.
- (4) A copy of the plan of merger or an outline thereof must be given to every member of each subsidiary company to be merged unless the giving of that copy or outline has been waived by that member.
- (5) Articles of merger must be executed by the parent company and must contain
- (a) the plan of merger;
  - (b) the date on which the Memorandum and Articles of each constituent company were registered by the Registrar; and
  - (c) if the parent company does not own all shares in each subsidiary company to be merged, the date on which a copy of the plan of merger or an outline thereof was made available to the members of each subsidiary company.
- (6) The articles of merger must be submitted to the Registrar who must retain and register them in the Register.
- (7) Upon the registration of the articles of merger, the Registrar shall issue a certificate under his hand and seal certifying that the articles of merger have been registered.
- (8) A certificate of merger issued by the Registrar is prima facie evidence of compliance with all requirements of this Act in respect of the merger.

78.(1) A merger or consolidation is effective on the date the articles of merger or consolidation are registered by the Registrar or on such date subsequent thereto, not exceeding 30 days, as is stated in the articles of merger or consolidation.

- (2) As soon as a merger or consolidation becomes effective
- (a) the surviving company or the consolidated company in so far as is consistent with its Memorandum and Articles, as amended or established by the articles of merger or consolidation, has all rights, privileges, immunities, powers, objects and purposes of each of the constituent companies;
  - (b) in the case of a merger, the Memorandum and Articles of the surviving company are automatically amended to the extent, if any, that changes in its Memorandum and Articles are contained in the articles of merger;
  - (c) in the case of a consolidation, the statements contained in the articles of consolidation that are required or authorized to be contained in the Memorandum and Articles of a company incorporated under this Act, are the Memorandum and Articles of the consolidated company;
  - (d) property of every description, including choses in action and the business of each of the constituent companies, immediately vests in the surviving company or the consolidated company; and
  - (e) the surviving company or the consolidated company is liable for all claims, debts, liabilities and obligations of each of the constituent companies.
- (3) Where a merger or consolidation occurs
- (a) no conviction, judgment, ruling, order, claim, debt, liability or obligation due or to become due, and no cause existing, against a constituent company or against any member, director, officer or agent thereof, is released or impaired by the merger or consolidation; and
  - (b) no proceedings, whether civil or criminal, pending at the time of a merger or consolidation by or against a constituent company, or against any member, director, officer or agent thereof, are abated or discontinued by the merger or consolidation, but
    - (i) the proceedings may be enforced, prosecuted, settled or compromised by or against the surviving company or the consolidated company or against the member, director, officer or agent thereof, as the case may be, or
    - (ii) the surviving company or the consolidated company may be substituted in the proceedings for a constituent company.
- (4) The Registrar shall strike off the Register
- (a) a constituent company that is not the surviving company in a merger; or
  - (b) a constituent company that participates in a consolidation.

79.(1) One or more companies incorporated under this Act may merge or consolidate with one or more companies incorporated under the laws of jurisdictions outside the British Virgin Islands in accordance with subsections (2) to (4), including where one of the constituent companies is a parent company and the other constituent companies are subsidiary companies, if the merger or consolidation is permitted by the laws of the jurisdictions in which the companies incorporated outside the British Virgin Islands are incorporated.

- (2) The following apply in respect of a merger or consolidation under this section:
- (a) a company incorporated under this Act shall comply with the provisions of this Act with respect to the merger or consolidation, as the case may be, of companies incorporated under this Act and a company incorporated under the laws of a jurisdiction outside the British Virgin Islands shall comply with the laws of that jurisdiction; and

- (b) if the surviving company or the consolidated company is to be incorporated under the laws of a jurisdiction outside the British Virgin Islands, it must submit to the Registrar
- (i) an agreement that a service of process may be effected on it in the British Virgin Islands in respect of proceedings for the enforcement of any claim, debt, liability or obligation of a constituent company incorporated under this Act or in respect of proceedings for the enforcement of the rights of a dissenting member of a constituent company incorporated under this Act against the surviving company or the consolidated company;
  - (ii) an irrevocable appointment of the Registrar as its agent to accept service of process in proceedings referred to in subparagraph (i);
  - (iii) an agreement that it will promptly pay to the dissenting members of a constituent company incorporated under this Act the amount, if any, to which they are entitled under this Act with respect to the rights of dissenting members; and
  - (iv) a certificate of merger or consolidation issued by the appropriate authority of the foreign jurisdiction where it is incorporated; or, if no certificate of merger is issued by the appropriate authority of the foreign jurisdiction, then, such evidence of the merger or consolidation as the Registrar considers acceptable.
- (3) The effect under this section of a merger or consolidation is the same as in the case of a merger or consolidation under Section 76 if the surviving company or the consolidated company is incorporated under this Act, but if the surviving company or the consolidated company is incorporated under the laws of a jurisdiction outside the British Virgin Islands, the effect of the merger or consolidation is the same as in the case of a merger or consolidation under section 76 except in so far as the laws of the other jurisdiction otherwise provide.
- (4) If the surviving company or the consolidated company is incorporated under this Act, the merger or consolidation is effective on the date the articles of merger or consolidation are registered by the Registrar or on such date subsequent thereto, not exceeding 30 days, as is stated in the articles of merger or consolidation; but if the surviving company or the consolidated company is incorporated under the laws of a jurisdiction outside the British Virgin Islands, the merger or consolidation is effective as provided by the laws of that other jurisdiction.

80. Subject to any limitations or provisions to the contrary in its Memorandum or Articles, any sale, transfer, lease, exchange or other disposition other than a mortgage, charge or other encumbrance or the enforcement thereof of more than 50 per cent of the assets of a company incorporated under this Act, other than a transfer pursuant to the power described in subsection (2) of section 9, if not made in the usual or regular course of the business carried on by the company, shall be made as follows:

- (a) the proposed sale, transfer, lease, exchange or other disposition must be approved by the directors;
- (b) upon approval of the proposed sale, transfer, lease, exchange or other disposition, the directors must submit the proposal to the members for it to be authorized by a resolution of members;
- (c) if a meeting of members is to be held, notice of the meeting, accompanied by an outline of the proposal, must be given to each member, whether or not he is entitled to vote on the sale, transfer, lease, exchange or other disposition; and
- (d) if it is proposed to obtain the written consent of members, an outline of the proposal must be given to each member, whether or not he is entitled to consent to the sale, transfer, lease, exchange or other disposition.

- 81.(1) Subject to any limitations or provisions to the contrary in the Memorandum or Articles,
- (a) members holding 90 per cent of the votes of the outstanding shares entitled to vote; and
  - (b) members holding 90 per cent of the votes of the outstanding shares of each class and series of shares entitled to vote as a class or series, on a merger or consolidation under section

76, may give a written instruction to a company incorporated under this Act directing the company to redeem the shares held by the remaining members.

- (2) Upon receipt of the written instruction referred to in subsection (1), the company shall redeem the shares specified in the written instruction irrespective of whether or not the shares are by their terms redeemable.
- (3) The company must give written notice to each member whose shares are to be redeemed stating the redemption price and the manner in which the redemption is to be effected.

82.(1) In this section, "arrangement" means

- (a) an amendment to the Memorandum or Articles;
  - (b) a reorganization or reconstruction of a company incorporated under this Act;
  - (c) a merger or consolidation of one or more companies incorporated under this Act with one or more other companies, if the surviving company or the consolidated company is a company incorporated under this Act;
  - (d) a separation of two or more businesses carried on by a company incorporated under this Act;
  - (e) any sale, transfer, exchange or other disposition of any part of the property, assets or business of a company incorporated under this Act to any person in exchange for shares, debt obligations or other securities of that other person, or money or other property, or a combination thereof;
  - (f) any sale, transfer, exchange or other disposition of shares, debt obligations or other securities in a company incorporated under this Act held by the holders thereof for shares, debt obligations or other securities in the company or money or other property, or a combination thereof;
  - (g) a winding-up and dissolution of a company incorporated under this Act; and
  - (h) any combination of any of the things specified in paragraphs (a) to (g).
- (2) If the directors of a company incorporated under this Act determine that it is in the best interests of the company or the creditors or members thereof, the directors of the company may, by a resolution of directors, approve a plan of arrangement that contains the details of the proposed arrangement, even though the proposed arrangement may be authorized or permitted by any other provision of this Act or otherwise permitted.
  - (3) Upon approval of the plan of arrangement by the directors, the company must make application to the court for approval of the proposed arrangement.
  - (4) The court may, upon an application made to it under subsection (3), make an interim or final order that is not subject to an appeal unless a question of law is involved and in which case notice of appeal must be given within the period of 20 days immediately following the date of the order, and in making the order the court may
    - (a) determine what notice, if any, of the proposed arrangement is to be given to any person;
    - (b) determine whether approval of the proposed arrangement by any person should be obtained and the manner of obtaining the approval;
    - (c) determine whether any holder of shares, debt obligations or other securities in the company may dissent from the proposed arrangement and receive payment of the fair value of his shares, debt obligations or other securities under section 83;
    - (d) conduct a hearing and permit any interested person to appear; and
    - (e) approve or reject the plan of arrangement as proposed or with such amendments as it may direct.

- (5) Where the court makes an order approving a plan of arrangement, the directors of the company, if they are still desirous of executing the plan, shall confirm the plan of arrangement as approved by the court whether or not the court has directed any amendments to be made thereto.
- (6) The directors of the company, upon confirming the plan of arrangement, shall
- (a) give notice to the persons to whom the order of the court requires notice to be given; and
  - (b) submit the plan of arrangement to those persons for such approval, if any, as the order of the court requires.
- (7) After the plan of arrangement has been approved by those persons by whom the order of the court may require approval, articles of arrangement must be executed by the company and must contain
- (a) the plan of arrangement;
  - (b) the order of the court approving the plan of arrangement; and
  - (c) the manner in which the plan of arrangement was approved, if approval was required by the order of the court.
- (8) The articles of arrangement must be submitted to the Registrar who must retain and register them in the Register.
- (9) Upon the registration of the articles of arrangement, the Registrar shall issue a certificate under his hand and seal certifying that the articles of arrangement have been registered.
- (10) A certificate of arrangement issued by the Registrar is prima facie evidence of compliance with all requirements of this Act in respect of the arrangement.
- (11) An arrangement is effective on the date the articles of arrangement are registered by the Registrar or on such date subsequent thereto, not exceeding 30 days, as is stated in the articles of arrangement.
- 83.(1) A member of a company incorporated under this Act is entitled to payment of the fair value of his shares upon dissenting from
- (a) a merger, if the company is a constituent company, unless the company is the surviving company and the member continues to hold the same or similar shares;
  - (b) a consolidation, if the company is a constituent company;
  - (c) any sale, transfer, lease, exchange or other disposition of more than 50 per cent of the assets or business of the company, if not made in the usual or regular course of the business carried on by the company, but not including
    - (i) a disposition pursuant to an order of the court having jurisdiction in the matter;
    - (ii) a disposition for money on terms requiring all or substantially all net proceeds to be distributed to the members in accordance with their respective interests within one year after the date of disposition; or
    - (iii) a transfer pursuant to the power described in subsection (2) of section 9;
  - (d) a redemption of his shares by the company pursuant to section 81; and
  - (e) an arrangement, if permitted by the court.
- (2) A member who desires to exercise his entitlement under subsection (1) must give to the company, before the meeting of members at which the action is submitted to a vote, or at the meeting but before the vote, written objection to the action; but an objection is not required from a member to whom the company did not give notice of the meeting in accordance with this Act or where the proposed action is authorized by written consent of members without a meeting.

- (3) An objection under subsection (2) must include a statement that the member proposes to demand payment for his shares if the action is taken.
- (4) Within 20 days immediately following the date on which the vote of members authorizing the action is taken, or the date on which written consent of members without a meeting is obtained, the company must give written notice of the authorization or consent to each member who gave written objection or from whom written objection was not required, except those members who voted for, or consented to in writing, the proposed action.
- (5) A member to whom the company was required to give notice who elects to dissent must, within 20 days immediately following the date on which the notice referred to in subsection (4) is given, give to the company a written notice of his decision to elect to dissent, stating
  - (a) his name and address;
  - (b) the number and classes or series of shares in respect of which he dissents; and
  - (c) a demand for payment of the fair value of his shares; and a member who elects to dissent from a merger under section 77 must give to the company a written notice of his decision to elect to dissent within 20 days immediately following the date on which the copy of the plan of merger or an outline thereof is given to him in accordance with section 77.
- (6) A member who dissents must do so in respect of all shares that he holds in the company.
- (7) Upon the giving of a notice of election to dissent, the member to whom the notice relates ceases to have any of the rights of a member except the right to be paid the fair value of his shares.
- (8) Within 7 days immediately following the date of the expiration of the period within which members may give their notices of election to dissent, or within 7 days immediately following the date on which the proposed action is put into effect, whichever is later, the company or, in the case of a merger or consolidation, the surviving company or the consolidated company, must make a written offer to each dissenting member to purchase his shares at a specified price that the company determines to be their fair value; and if, within 30 days immediately following the date on which the offer is made, the company making the offer and the dissenting member agree upon the price to be paid for his shares, the company shall pay to the member the amount in money upon the surrender of the certificates representing his shares.
- (9) If the company and a dissenting member fail, within the period of 30 days referred to in subsection (8), to agree on the price to be paid for the shares owned by the member, within 20 days immediately following the date on which the period of 30 days expires, the following shall apply:
  - (a) the company and the dissenting member shall each designate an appraiser;
  - (b) the 2 designated appraisers together shall designate a third appraiser;
  - (c) the 3 appraisers shall fix the fair value of the shares owned by the dissenting member as of the close of business on the day prior to the date on which the vote of members authorizing the action was taken or the date on which written consent of members without a meeting was obtained, excluding any appreciation or depreciation directly or indirectly induced by the action or its proposal, and that value is binding on the company and the dissenting member for all purposes; and
  - (d) the company shall pay to the member the amount in money upon the surrender by him of the certificates representing his shares.
- (10) Shares acquired by the company pursuant to subsection (8) or (9) shall be cancelled but if the shares are shares of a surviving company, they shall be available for reissue.

- (11) The enforcement by a member of his entitlement under this section excludes the enforcement by the member of a right to which he might otherwise be entitled by virtue of his holding shares, except that this section does not exclude the right of the member to institute proceedings to obtain relief on the ground that the action is illegal.
- (12) Only subsections (1) and (8) to (11) shall apply in the case of a redemption of shares by a company pursuant to the provisions of section 81 and in such case the written offer to be made to the dissenting member pursuant to subsection (8) shall be made within 7 days immediately following the direction given to a company pursuant to section 81 to redeem its shares.

## PART VIII CONTINUATION

84.(1) A company incorporated under the Companies Act or incorporated under the laws of a jurisdiction outside the British Virgin Islands may, if it will satisfy the requirements prescribed for an International Business Company under section 5, continue as a company incorporated under this Act as follows:

- (a) articles of continuation, written in the English language or if written in a language other than the English language, accompanied by a certified translation into the English language, must be approved
    - (i) by a majority of the directors or the other persons who are charged with exercising the powers of the company, or
    - (ii) in such other manner as may be established by the company for exercising the powers of the company;
  - (b) the articles of continuation must contain
    - (i) the name of the company and the name under which it is being continued,
    - (ii) the jurisdiction under which it is incorporated,
    - (iii) the date on which it was incorporated,
    - (iv) the information required to be included in a Memorandum under subsection (1) of section 12, and
    - (v) the amendments to its Memorandum and Articles, or their equivalent, that are to be effective upon the registration of the articles of continuation;
  - (c) the articles of continuation, accompanied by a copy of the Memorandum and Articles of the company, or their equivalent, written in the English language or if written in a language other than the English language, accompanied by a certified translation into the English language, and, in the case of a foreign company, evidence satisfactory to the Registrar that the company is in good standing, must be submitted to the Registrar who must retain and register them in the Register; and
  - (d) upon the registration of the articles of continuation, the Registrar shall issue a certificate of continuation under his hand and seal certifying that the company is incorporated under this Act.
- (2) A company incorporated under the laws of a jurisdiction outside the British Virgin Islands is entitled to continue as a company incorporated under this Act notwithstanding any provision to the contrary in the laws of the jurisdiction under which it is incorporated.
- (3) Notwithstanding any provisions of the Companies Act, a company incorporated under that Act may, by resolution of the directors, continue the incorporation of the company under this Act.
- (4) Where a company incorporated under the Companies Act has continued its incorporation under this Act, the Registrar shall strike the name of the company off the Register maintained under that Act and publish notice of the striking-off in the Gazette.

85.(1) A company incorporated under the laws of a jurisdiction outside the British Virgin Islands that is permitted under section 84 to continue as a company incorporated under this Act, may, after complying with paragraphs (a) and (b) of subsection (1) of section 84, submit to the Registrar the following documents:

- (a) articles of continuation, accompanied by a copy of its Memorandum and Articles, or their equivalent, written in the English language, or if written in a language other than the English language accompanied by a certified translation into the English language; and
  - (b) a written authorization designating one or more persons who may give notice to the Registrar, by telex, telegram, cable or by registered mail, that the articles of continuation should become effective.
- (2) The Registrar shall not, prior to the receipt of the notice referred to in subsection (1), permit any person to inspect the documents referred to in subsection (1) and shall not divulge any information in respect thereof.
- (3) Upon receipt of the notice referred to in subsection (1), the Registrar shall
- (a) register the documents referred to in subsection (1) in the Register; and
  - (b) issue a certificate of continuation under his hand and seal certifying that the company is incorporated under this Act.
- (4) For purposes of subsection (3), the Registrar may rely on a notice referred to in subsection (1) sent, or purported to be sent, by a person named in the written authorization.
- (5) Prior to the registration of the documents referred to in subsection (1), a company may rescind the written authorization referred to in subsection (1) by delivering to the Registrar a written notice of rescission.
- (6) If the Registrar does not receive a notice referred to in subsection (1) from a person named in the written authorization within one year immediately following the date on which the documents referred to in subsection (1) were submitted to the Registrar, the articles of continuation are rescinded.
- (7) A company entitled to submit to the Registrar the documents referred to in subsection (1) may authorize the Registrar to accept as resubmitted the documents referred to in that subsection, before or after the documents previously submitted referred to in subsection (1) have been rescinded.

86. A Certificate of continuation issued by the Registrar under paragraph (d) of subsection (1) of section 84 or under subsection (3) of section 85 is prima facie evidence of compliance with all requirements of this Act in respect of continuation.

87.(1) From the time of the issue by the Registrar of a certificate of continuation under paragraph (d) of subsection (1) of section 84 or under subsection (3) of section 85

- (a) the company to which the certificate relates
  - (i) continues to be a body corporate, incorporated under this Act, under the name designated in the Articles of continuation,
  - (ii) is capable of exercising all powers of a company incorporated under this Act, and
  - (iii) is no longer to be treated as a company incorporated under the Companies Act or a company incorporated under the laws of a jurisdiction outside the British Virgin Islands;
- (b) the Memorandum and Articles of the company, or their equivalent, as amended by the articles of continuation, are the Memorandum and Articles of the company;

- (c) property of every description, including choses in action and the business of the company, continue to be vested in the company; and
  - (d) the company continues to be liable for all of its claims, debts, liabilities and obligations.
- (2) Where a company is continued under this Act
- (a) no conviction, judgment, ruling, order, claim, debt, liability or obligation due or to become due, and no cause existing, against the company or against any member, director, officer or agent thereof, is released or impaired by its continuation as a company under this Act; and
  - (b) no proceedings, whether civil or criminal, pending at the time of the issue by the Registrar of a certificate of continuation under paragraph (d) of subsection (1) of section 84 or under subsection (3) of section 85 by or against the company, or against any member, director, officer or agent thereof, are abated or discontinued by its continuation as a company under this Act, but the proceedings may be enforced, prosecuted, settled or compromised by or against the company or against the member, director, officer or agent thereof, as the case may be.
- (3) All shares in the company that were outstanding prior to the issue by the Registrar of a certificate of continuation under paragraph (d) of subsection (1) of section 84 or under subsection (3) of section 85 in respect to the company shall be deemed to have been issued in conformity with this Act, but a share that at the time of the issue of the certificate of continuation was not fully paid shall be paid up no later than one year immediately following the date of the issue of the certificate of continuation and until the share is paid up, the member holding the share remains liable for the amount unpaid on the share.
- (4) If at the time of the issue by the Registrar of a certificate of continuation under paragraph (d) of subsection (1) of section 84 or under subsection (3) of section 85 in respect to the company any provisions of the Memorandum and Articles of the company do not in any respect accord with this Act
- (a) the provisions of the Memorandum and Articles continue to govern the company until the provisions are amended to accord with this Act or for a period of 2 years immediately following the date of the issue of the certificate of continuation, whichever is the sooner;
  - (b) any provisions of the Memorandum and Articles of the company that are in any respect in conflict with this Act cease to govern the company when the provisions are amended to accord with this Act or after the expiration of a period of 2 years after the date of the issue of the certificate of continuation, whichever is the sooner; and
  - (c) the company shall make such amendments to its Memorandum and Articles as may be necessary to accord with this Act within a period that is not later than 2 years immediately following the date of the issue of the certificate of continuation.
- 88.(1) Subject to any limitations or provisions to the contrary in its Memorandum or Articles, a company incorporated under this Act and for which the Registrar would issue a certificate of good standing pursuant to subsection (1) of section 114, may, by a resolution of directors or by a resolution of members, continue as a company incorporated under the laws of a jurisdiction outside the British Virgin Islands in the manner provided under those laws.
- (2) A company incorporated under this Act that continues as a company incorporated under the laws of a jurisdiction outside the British Virgin Islands does not cease to be a company incorporated under this Act unless the laws of the jurisdiction outside the British Virgin Islands permit the continuation and the company has complied with those laws.

- (2A) The registered agent of a company incorporated under this Act that continues as a company incorporated under the laws of a jurisdiction outside the British Virgin Islands may within 30 days of the continuation of the company under the laws of the foreign jurisdiction submit to the Registrar an affidavit to the effect that the company has continued its incorporation under the laws of the named foreign jurisdiction and the Registrar shall retain and register the affidavit.
- (2B) Upon registration of the affidavit referred to in subsection (2A) the Registrar shall
- (a) strike the name of the company off the Register;
  - (b) issue a certificate of discontinuance; and
  - (c) publish the striking off in the Gazette.
- (3) Where a company incorporated under this Act is continued under the laws of a jurisdiction outside the British Virgin Islands
- (a) the company continues to be liable for all of its claims, debts, liabilities and obligations that existed prior to its continuation as a company under the laws of the jurisdiction outside the British Virgin Islands;
  - (b) no conviction, judgment, ruling, order, claim, debt, liability or obligation due or to become due, and no cause existing, against the company or against any member, director, officer or agent thereof, is released or impaired by its continuation as a company under the laws of the jurisdiction outside the British Virgin Islands;
  - (c) no proceedings, whether civil or criminal, pending by or against the company, or against any member, director, officer or agent thereof, are abated or discontinued by its continuation as a company under the laws of the jurisdiction outside the British Virgin Islands, but the proceedings may be enforced, prosecuted, settled or compromised by or against the company or against the member, director, officer or agent thereof, as the case may be; and
  - (d) service of process may continue to be effected on the registered agent of the company in the British Virgin Islands in respect of any claim, debt, liability or obligation of the company during its existence as a company incorporated under this Act.

## **PART IX WINDING-UP, DISSOLUTION AND STRIKING-OFF**

89. A company incorporated under this Act shall commence to wind up and dissolve by a resolution of directors upon expiration of such time as may be prescribed by its Memorandum or Articles for its existence or upon the happening of an event which has been specified in the Memorandum or Articles as an event that shall terminate the existence of the company.

90.(1) A company incorporated under this Act that has never issued shares may voluntarily commence to wind up and dissolve by a resolution of directors.

(2) Subject to any limitations or provisions to the contrary in its Memorandum or Articles, a company incorporated under this Act that has previously issued shares may voluntarily commence to wind up and dissolve by a resolution of members or by a resolution of directors.

91. Upon the commencement of a winding-up and dissolution required under section 89 or permitted under section 90, the directors may only

- (a) authorize a liquidator, by a resolution of directors, to carry on the business of the company if the liquidator determines that to do so would be necessary or in the best interests of the creditors or members of the company; and

- (b) determine to rescind the articles of dissolution as permitted under paragraph (a) of subsection (1) of section 95.

92.(1) A liquidator shall, upon his appointment in accordance with this Part, and upon the commencement of a winding-up and dissolution, proceed

- (a) to identify all assets of the company;
- (b) to identify all creditors of and claimants against the company;
- (c) to pay or provide for the payment of, or to discharge, all claims, debts, liabilities and obligations of the company;
- (d) to distribute any surplus assets of the company to the members in accordance with the Memorandum and Articles;
- (e) to prepare or cause to be prepared a statement of account in respect of the actions and transactions of the liquidator; and
- (f) to send a copy of the statement of account to all members if so required by the plan of dissolution required by section 94.

- (2) A transfer, including a prior transfer, described in subsection (2) of section 9 of all or substantially all of the assets of a company incorporated under this Act for the benefit of the creditors and members of the company, is sufficient to satisfy the requirements of paragraphs (c) and (d) of subsection (1).

93. In order to perform the duties imposed on him under section 92, a liquidator has all powers of the company that are not reserved to the members under this Act or in the Memorandum or Articles, including, but not limited to, the power

- (a) to take custody of the assets of the company and, in connection therewith, to register any property of the company in the name of the liquidator or that of his nominee;
- (b) to sell any assets of the company at public auction or by private sale without any notice;
- (c) to collect the debts and assets due or belonging to the company;
- (d) to borrow money from any person for any purpose that will facilitate the winding-up and dissolution of the company and to pledge or mortgage any property of the company as security for any such borrowing;
- (e) to negotiate, compromise and settle any claim, debt, liability or obligation of the company;
- (f) to prosecute and defend, in the name of the company or in the name of the liquidator or otherwise, any action or other legal proceedings;
- (g) to retain solicitors, accountants and other advisers and appoint agents;
- (h) to carry on the business of the company, if the liquidator has received authorization to do so in the plan of liquidation or by a resolution of directors permitted under section 91, as the liquidator may determine to be necessary or to be in the best interests of the creditors or members of the company;
- (i) to execute any contract, agreement or other instrument in the name of the company or in the name of the liquidator; and
- (j) to make any distribution in money or in other property or partly in each, and if in other property, to allot the property, or an undivided interest therein, in equal or unequal proportions.

- (2) Notwithstanding paragraph (h) of subsection (1), a liquidator shall not, without the permission of the court, carry on for a period in excess of 2 years the business of a company that is being wound up and dissolved under this Act.

94.(1) The directors of a company required under section 89 or proposing under section 90 to wind up and dissolve the company must approve a plan of dissolution containing

- (a) a statement of the reason for the winding-up and dissolving;

- (b) a statement that the company is, and will continue to be, able to discharge or pay or provide for the payment of all claims, debts, liabilities and obligations in full;
  - (c) a statement that the winding-up will commence on the date when articles of dissolution are submitted to the Registrar or on such date subsequent thereto, not exceeding 30 days, as is stated in the articles of dissolution;
  - (d) a statement of the estimated time required to wind up and dissolve the company;
  - (e) a statement as to whether the liquidator is authorized to carry on the business of the company if the liquidator determines that to do so would be necessary or in the best interests of the creditors or members of the company;
  - (f) a statement of the name and address of each person to be appointed a liquidator and the remuneration proposed to be paid to each liquidator; and
  - (g) a statement as to whether the liquidator is required to send to all members a statement of account prepared or caused to be prepared by the liquidator in respect of his actions or transactions.
- (2) If a winding-up and dissolution is being effected in a case where subsection (2) of section 90 is applicable,
- (a) the plan of dissolution must be authorized by a resolution of members, and the holders of the outstanding shares of a class or series of shares are entitled to vote on the plan of dissolution as a class or series only if the Memorandum or Articles so provide;
  - (b) if a meeting of members is to be held, notice of the meeting, accompanied by a copy of the plan of dissolution, must be given to each member, whether or not entitled to vote on the plan of dissolution; and
  - (c) if it is proposed to obtain the written consent of members, a copy of the plan of dissolution must be given to each member, whether or not entitled to consent to the plan of dissolution.
- (3) After approval of the plan of dissolution by the directors, and if required, by the members in accordance with subsection (2), articles of dissolution must be executed by the company and must contain
- (a) the plan of dissolution; and
  - (b) the manner in which the plan of dissolution was authorized.
- (4) Articles of dissolution must be submitted to the Registrar who must retain and register them in the Register and within 30 days immediately following the date on which the articles of dissolution are submitted to the Registrar, the company must cause to be published, in the Gazette, in a publication of general circulation in the British Virgin Islands and in a publication of general circulation in the country or place where the company has its principal office, a notice stating
- (a) that the company is in dissolution;
  - (b) the date of commencement of the dissolution; and
  - (c) the names and addresses of the liquidators.
- (5) A winding-up and dissolution commences on the date the articles of dissolution are registered by the Registrar or on such date subsequent thereto, not exceeding 30 days, as is stated in the articles of dissolution.
- (6) A liquidator shall, upon completion of a winding-up and dissolution, submit to the Registrar a statement that the winding-up and dissolution has been completed and upon receiving the notice, the Registrar shall
- (a) strike the company off the Register; and

- (b) issue a certificate of dissolution under his hand and seal certifying that the company has been dissolved.
- (7) Where the Registrar issues a certificate of dissolution under his hand and seal certifying that the company has been dissolved
- (a) the certificate is prima facie evidence of compliance with all requirements of this Act in respect of dissolution; and
  - (b) the dissolution of the company is effective from the date of the issue of the certificate.
- (8) Immediately following the issue by the Registrar of a certificate of dissolution under subsection (6), the liquidator shall cause to be published in the Gazette, a notice that the company has been dissolved and has been struck off the Register.
- (9) A company that wilfully contravenes subsection (4) is liable to a penalty of \$50.00 for every day or part thereof during which the contravention continues, and a director or liquidator who knowingly permits the contravention is liable to a like penalty.
- 95.(1) In the case of a winding-up and dissolution permitted under section 90, a company may, prior to submitting to the Registrar a notice specified in subsection (4) of section 94, rescind the articles of dissolution by
- (a) a resolution of directors in the case of a winding-up and dissolution under subsection (1) of section 90; or
  - (b) a resolution of members in the case of a winding-up and dissolution under subsection (2) of section 90.
- (2) A copy of a resolution referred to in subsection (1) must be submitted to the Registrar who must retain and register it in the Register.
- (3) Within 30 days immediately following the date on which the resolution referred to in subsection (1) has been submitted to the Registrar, the company must cause a notice stating that the company has rescinded its intention to wind up and dissolve to be published in the Gazette, in a publication of general circulation in the British Virgin Islands and in a publication of general circulation in the country or place where the company has its principal office.
- 96.(1) Where
- (a) the directors or, as the case may be, the members of a company that is required under section 89 or permitted under section 90 to wind up and dissolve, at the time of the passing of the resolution to wind up and dissolve the company, have reason to believe that the company will not be able to pay or provide for the payment of or discharge all claims, debts, liabilities and obligations of the company in full; or
  - (b) the liquidator after his appointment has reason so to believe, then, the directors, the members or the liquidator, as the case may be, shall immediately give notice of the fact to the Registrar.
- (2) Where a notice has been given to the Registrar under subsection (1), all winding-up and dissolution proceedings after the notice has been given shall be in accordance with the provisions of the Companies Act relating to winding up and dissolution and those provisions shall apply mutatis mutandis to the winding-up and dissolution of the company.
- 97.(1) Notwithstanding the provisions of this Act relating to winding-up and dissolution, a company incorporated under this Act may be wound up by the court under any of the circumstances, in so far as they are applicable to a company incorporated under this Act, in which a company

incorporated under the Companies Act may be wound up by the court and, in that case, the provisions of the Companies Act relating to winding-up and dissolution apply mutatis mutandis to the winding-up and dissolution of the company.

- (2) Any person who, pursuant to the provisions of subsection (1), files, or causes to be filed, a petition for the winding up of a company incorporated under this Act, shall forthwith serve on the Registrar a notice that the petition has been filed, and the Registrar must retain and register the notice.
98. (1) The provisions of the Companies Act regarding receivers and managers govern mutatis mutandis the appointment, duties and powers and liabilities of receivers and managers of the assets of any company incorporated under this Act.
- (2) This section comes into operation on such date as the Governor may appoint by proclamation published in the Gazette.
- 99.(1) Notwithstanding section 6, where the Registrar has reasonable cause to believe that a company incorporated under this Act no longer satisfies the requirements prescribed for an International Business Company under section 5, the Registrar must serve on the company a notice that the name of the company may be struck off the Register if the company no longer satisfies those requirements.
- (2) If the Registrar does not receive a reply within 30 days immediately following the date of the service of the notice referred to in subsection (1), he must serve on the company another notice that the name of the company may be struck off the Register if a reply to the notice is not received within 30 days immediately following the date thereof and that a notice of the contemplated striking-off will be published in the Gazette.
- (3) If the Registrar
- (a) receives from the company a notice stating that the company no longer satisfies the requirements prescribed for an International Business Company under section 5, in reply to a notice served on the company under subsection (1) or (2); or
  - (b) does not receive a reply to a notice served on the company under subsection (2) as required by that subsection, he must publish a notice in the Gazette that the name of the company will be struck off the Register unless the company or another person satisfies the Registrar that the name of the company should not be struck off.
- (4) At the expiration of a period of 90 days immediately following the date of the publication of the notice under subsection (3), the Registrar shall strike the name of the company off the Register, unless the company or any other person satisfies the Registrar that the name of the company should not be struck-off, and the Registrar must publish notice of the striking-off in the Gazette.
- (5) If a company fails to pay the increased licence fee due under subsection (3) of section 105 on or before the expiration period of a period of 2 months from the time specified in subsection (1) or (2), as the case may be, of section 105, the Registrar shall within 2 months from the expiration of the said period of 2 months send to the registered agent of the company a written notice that the name of the company will be struck off the Register if the licence fee specified in subsection (4) of section 105 is not paid on or before the next licence fee final payment date.
- (6) If a company fails to pay the increased fee stated in the notice referred to in subsection (5) at or before the next licence fee final payment date, the Registrar shall strike the name of the company off the Register on the date immediately following the next licence fee final payment date.

- (7) Within one month following each licence fee final payment date, the Registrar shall send to the registered agent of each company the name of which has been struck off the Register notice of striking off.
- (8) Within two months following each licence fee final payment date the Registrar shall publish in the Gazette the names of all companies struck off the Register on the date immediately following the licence fee final payment date.
- (9) A company the name of which has been struck off the Register under this section remains liable for all claims, debts, liabilities and obligations of the company, and the striking-off does not affect the liability of any of its members, directors, officers or agents.
- (10) The striking off of a company shall not be affected by any failure on the part of the Registrar to serve a notice on the registered agent or to publish a notice in the **Gazette**.
- (11) Subsections (5) to (8) do not apply to a company in the process of being wound up and dissolved.

100.(1) If the name of a company has been struck off the Register under subsection name of the company, or a creditor, member or liquidator thereof, may apply to the court to have the name of the company restored to the Register.

- (2) If upon an application under subsection (1) the court is satisfied that
  - (a) at the time the name of the company was struck off the Register, the company did satisfy the requirements prescribed for an International Business Company under section 5, and
  - (b) it would be fair and reasonable for the name of the company to be restored to the Register, the court may order the name of the company to be restored to the Register upon payment to the Registrar of all fees due under Section 104 and all licence fees due under section 105 without any increase for late payment, and upon restoration of the name of the company to the Register, the name of the company is deemed never to have been struck off the Register.
- (3) If the name of a company has been struck off the Register under subsection (6) of section 99, the company, or a creditor, member or liquidator thereof, may, within 10 years immediately following the date of the striking off, apply to the Registrar to have the name of the company restored to the Register, and upon payment of
  - (a) all fees due under section 104;
  - (b) the increased licence fee due under subsection (3) of section 105; and
  - (c) the increased licence fee due under subsection (3) of section 105 for each year during which the name of the company remains struck off the Register,
 the Registrar shall restore the name of the company to the Register and upon restoration of the name of the company to the Register, the name of the company is deemed never to have been struck off the Register.
- (3A) If the name of a company has been struck off the Register under subsection (5) or subsection (6) of section 40A, the company, or a creditor, member or liquidator thereof, may apply to the Registrar to have the name of the company restored to the Register.
- (3B) If upon an application under subsection (3A) the Registrar is satisfied that
  - (a) a licensed person has agreed to act as registered agent of the company; and
  - (b) it would be fair and reasonable for the name of the company to be restored to the Register,

the Registrar may restore the name of the company to the Register upon satisfaction of the conditions set forth in subsection (3C) and upon restoration of the name of the company to the Register, the name of the company is deemed never to have been struck off the Register.

- (3C) The conditions referred to in subsection (3B) are as follows:
- (a) the submission to the Registrar by the applicant for the restoration of a copy of the resolution amending the Memorandum of the company to change the registered agent; and
  - (b) payment to the Registrar by the applicant for the restoration of:
    - (i) all fees due under section 104, and
    - (ii) all licence fees due under section 105 without increase for late payment.
- (4) For purposes of this Part, the appointment of an official receiver under section 102 operates as an order to restore the name of the company to the Register.

- 101.(1) Where the name of a company has been struck off the Register, the company, and the directors, members, liquidators and receivers thereof, may not legally
- (a) commence legal proceedings, carry on any business or in any way deal with the assets of the company;
  - (b) defend any legal proceedings, make any claim or claim any right for, or in the name of, the company; or
  - (c) act in any way with respect to the affairs of the company.
- (2) Notwithstanding subsection (1), where the name of the company has been struck off the Register, the company, or a director, member, liquidator or receiver thereof, may
- (a) make application for restoration of the name of the company to the Register;
  - (b) continue to defend proceedings that were commenced against the company prior to the date of the striking-off; and
  - (c) continue to carry on legal proceedings that were instituted on behalf of the company prior to the date of striking-off.
- (3) The fact that the name of a company is struck off the Register does not prevent
- (a) the company from incurring liabilities;
  - (b) any creditor from making a claim against the company and pursuing the claim through to judgment or execution; or
  - (c) the appointment by the court of an official liquidator for the company under section 102.

102. The court may appoint a person to be the official liquidator in respect of a company the name of which has been struck off the Register.

- 103.(1) If the name of a company has been struck off the Register under section 99 and remains struck off continuously for a period of 10 years, the company shall be deemed to have been dissolved, but the Registrar may, if he determines that it is in the best interests of the Crown to do so, apply to the court on or before the expiration of the period of 10 years to have the company put into liquidation and a person appointed by the court shall be the official liquidator thereof.
- (2) The duties of an official liquidator in respect of a company in liquidation pursuant to subsection (1) are limited to
- (a) identifying and taking possession of all assets of the company;

- (b) calling for claims by advertisement in the Gazette and in such other manner as he deems appropriate, requiring all claims to be submitted to him within a period of not less than 90 days immediately following the date of the advertisement; and
  - (c) applying those assets that he recovers in the following order of priority:
    - (i) in satisfaction of all outstanding fees, licence fees and penalties due to the Registrar, and
    - (ii) in satisfaction pari passu of all other claims admitted by the official liquidator.
- (3) In order to perform the duties with which he is charged under subsection (2), the official liquidator may exercise such powers as the court may as it considers reasonable confer on him.
  - (4) The official liquidator may require such proof as he considers necessary to substantiate any claim submitted to him and he may admit, reject or settle claims on the basis of the evidence submitted to him.
  - (5) When the official liquidator has completed his duties, he shall submit a written report of his conduct of the liquidation proceedings to the Registrar and, upon receipt of the report by the Registrar, all assets of the company, wherever situate, that are not disposed of, vest in the Crown and the company is dissolved.
  - (6) The official liquidator is entitled to such remuneration out of the assets of the company for his services as the court approves, but if the company is unable to discharge all of its claims, debts, liabilities and obligations, payment of the official liquidator's remuneration shall be a charge on the Consolidated Fund.
  - (7) No liability attaches to an official liquidator.
    - (a) to account to creditors of the company who have not submitted claims within the time allowed by him; or
    - (b) for any failure to locate any assets of the company.

## **PART X FEES AND PENALTIES**

104. There shall be paid to the Registrar fees as follows:

- (a) \$300.00 upon the registration by the Registrar of a company incorporated under this Act the authorized capital of which does not exceed \$50,000.00 and all the shares of which have a par value;
- (b) \$1,000.00 upon the registration by the Registrar of a company incorporated under this Act the authorized capital of which exceeds \$50,000.00;
- (c) upon registration by the Registrar of a copy of a resolution of members or a resolution of directors amending the Memorandum or Articles of a company incorporated under this Act,
  - (I) \$25.00 if the registration is within 30 days immediately following the passing of the resolution authorizing the amendment,
  - (ii) \$50.00 if the registration is within 60 days immediately following the passing of the resolution authorizing the amendment,
  - (iii) \$75.00 if the registration is within 90 days immediately following the passing of the resolution authorizing the amendment, and
  - (iv) \$100.00 if the registration is later than 90 days following the passing of the resolution authorizing the amendment;
- (d) \$500.00 upon the registration by the Registrar of articles of merger or consolidation, but \$700.00 in the case of articles of merger or consolidation that also constitute the Memorandum

- of a company the authorized capital of which exceed \$50,000.00 or that amend the Memorandum of a surviving company to increase the authorized capital from \$50,000.00 or less to more than \$50,000.00;
- (e) \$500.00 upon the registration by the Registrar of articles of arrangement, but \$700.00 in the case of articles of arrangement that also constitute the Memorandum of a company the authorized capital of which exceeds \$50,000.00 or that amend the Memorandum of a company to increase the authorized capital from \$50,000.00 or less to more than \$50,000.00;
  - (f) \$250.00 upon the submission to the Registrar of articles of continuation for a company incorporated under the Companies Act the authorized capital of which does not exceed \$50,000.00, and, in addition, in the case of a company that continues its incorporation under this Act before 30th April in any year, such sum as would have been payable by that company under the Companies Act if that company had not so continued its incorporation under this Act;
  - (g) \$1,000.00 upon the submission to the Registrar of articles of continuation for a company incorporated under the Companies Act the authorized capital of which exceeds \$50,000.00, and, in addition, in the case of a company that continues its incorporation under this Act before 30th April in any year, such sum as would have been payable by that company under the Companies Act if that company had not so continued its incorporation under this Act;
  - (h) \$500.00 upon the submission to the Registrar of articles of continuation for a company not incorporated under the Companies Act the authorized capital of which does not exceed \$50,000.00;
  - (i) \$1,000.00 upon the submission to the Registrar of articles of continuation for a company not incorporated under the Companies Act the authorized capital of which exceeds \$50,000.00;
  - (j) \$100.00 upon the registration by the Registrar of articles of dissolution;
  - (k) \$100.00 upon the registration by the Registrar of a resolution rescinding articles of dissolution;
  - (l) \$25.00 upon the issue by the Register of a duplicate, or certified copy of a certificate of incorporation, merger, consolidation, arrangement, continuation, dissolution, discontinuance or good standing;
  - (m) \$15.00 upon the issue by the Register of a copy or extract, whether or not certified, of a document or a part of a document, other than a certificate of incorporation, merger, consolidation, arrangement, continuation, dissolution or good standing;
  - (n) \$10.00 for an inspection of the documents kept by the Registrar pursuant to this Act;
  - (o) Upon restoration by the Registrar to the Register of a company incorporated under this Act, the name of which was struck off the Register,
    - (i) \$300.00 if the restoration is applied for within 6 months immediately following the striking of the name off the Register; or
    - (ii) \$600.00 if the restoration is applied for more than 6 months immediately following the striking of the name off the register;
  - (p) \$25.00 for the reservation of a name as provided for in subsection (7) of section 11;
  - (q) \$10.00 for an inspection of each entry in the Register of International Business Companies;
  - (r) \$500.00 upon submission to the Registrar of documents referred to in subsection (1) of section 85;
  - (s) \$100.00 upon resubmission to the Registrar of the documents referred to in subsection (7) of section 85;
  - (t) \$350.00 upon the registration by the Registrar of a company incorporated under this Act
    - (i) if the authorized capital of the company does not exceed \$50,000.00 and some or all of its shares have no par value, or
    - (ii) the company has no authorized capital and all of its shares have no par value;
  - (u) \$25.00 upon the registration by the Registrar of a notice of increase or decrease of authorized capital of a company incorporated under this Act, but \$700.00 in the case of a notice of increase of authorized capital from \$50,000.00 or less to more than \$50,000.00;

- (v) \$50.00 upon initial registration by the Registrar of a copy of a share register, a register of directors or a register of mortgages;
- (w) \$50.00 upon registration by the Registrar of a copy of a share register, a register of directors or a register of mortgages and charges showing changes from the last copy of the particular register a copy of which was last registered by the Registrar;
- (x) \$50.00 upon registration by the Registrar of a notice that a company has elected to cease to register a copy of a share register, a register of directors or a register of mortgages and charges showing changes from the copy of the particular register a copy of which was last registered with the Registrar;
- (y) \$100.00 upon the registration by the Registrar of an affidavit attesting to a company incorporated under this Act continuing its incorporation under the laws of another jurisdiction; and
- (z) \$50.00 upon registration by the Registrar of any documents referred to in section 111B.

105.(1) A company that is incorporated in the first six months of a year shall on or before 31st May in the following year and in each succeeding year pay to the Registrar a licence fee as follows:

- (a) \$300.00 if on the licence fee payment date its authorized capital does not exceed \$50,000.00 and all its shares have par value;
- (b) \$1,000.00 if on the licence fee payment date its authorized capital exceeds \$50,000.00; and
- (c) \$350.00 if on the licence fee payment date -
  - (i) its authorized capital does not exceed \$50,000.00 and some or all of its shares have no par value, or
  - (ii) it has no authorized capital and all its shares have no par value.

(2) A company that is incorporated in the second six months of a year shall on or before 30th November in the following year and in each succeeding year pay to the Registrar a licence fee as follows:

- (a) \$300.00 if on the licence fee payment date its authorized capital does not exceed \$50,000.00 and all its shares have par value;
- (b) \$1,000.00 if on the licence fee payment date its authorized capital exceeds \$50,000.00; and
- (c) \$350.00 if on the licence fee payment date -
  - (i) its authorized capital does not exceed \$50,000.00 and some or all of its shares have no par value, or
  - (ii) it has no authorized capital and all its shares have no par value.

(3) If a company fails to pay the amount due as the licence fee under subsection (1) or (2), as the case may be, by the time specified therein, then the licence fee increases by 10 per cent of that amount.

(4) If a company fails to pay the amount due as an increased licence fee under subsection (3) at or before the expiration of a period of 2 months from the time specified in subsection (1) or (2), as the case may be, then the licence fee increases by 50 per cent of that amount.

(5) This section does not apply to a company in the process of being wound up and dissolved.

The new section 105 comes into operation on 1st January, 1992.

106. Any penalty incurred under this Act shall be paid to the Registrar.

107. Any fee, licence fee or penalty payable under this Act that remains unpaid for 30 days immediately following the date on which demand for payment is made by the Registrar is recoverable at the instance of the Attorney General before a magistrate in civil proceedings as a debt due to the Crown notwithstanding the amount sought to be recovered.
108. A company incorporated under this Act continues to be liable for all fees, licence fees and penalties payable under this Act notwithstanding that the name of the company has been struck off the Register and all those fees, licence fees and penalties have priority to all other claims against the assets of the company.
109. All fees, licence fees and penalties paid under this Act shall be paid by the Registrar into the Consolidated Fund.
- 110.(1) The Registrar may refuse to take any action required of him under this Act for which a fee is prescribed until all fees have been paid.
- (2) The Registrar may refuse to continue under this Act a company incorporated under the Companies Act until all fees prescribed as payable by the Company under the Companies Act have been paid.

## **PART XI**

### **INCOME TAXES, STAMP DUTIES AND REGISTRATION OF DOCUMENTS**

- 111.(1) Notwithstanding any provision of the Income Tax Act,
- (a) a company incorporated under this Act;
  - (b) all dividends, interest, rents, royalties, compensations and other amounts paid by the company to persons who are not persons resident in the British Virgin Islands; and
  - (c) capital gains realized with respect to any shares, debt obligations or other securities of a company incorporated under this Act by persons who are not persons resident in the British Virgin Islands,
- are exempt from all provisions of the Income Tax Act.
- (2) No estate, inheritance, succession or gift tax, rate, duty, levy or other charge is payable by persons who are not persons resident in the British Virgin Islands with respect to any shares, debt obligations or other securities of a company incorporated under this Act.
- (3) Notwithstanding any provision of the Stamp Act,
- (a) all instruments relating to transfers of property to or by a company incorporated under this Act;
  - (b) all instruments relating to transactions in respect of the shares, debt obligations or other securities of a company incorporated under this Act; and
  - (c) all instruments relating to other transactions relating to the business of a company incorporated under this Act, are exempt from the payment of stamp duty.
- (4) Notwithstanding any provisions of the Registration and Records Act, all deeds and other instruments relating to
- (a) transfers of property to or by a company incorporated under this Act;
  - (b) transactions in respect of the shares, debt obligations or other securities of a company incorporated under this Act; and
  - (c) other transactions relating to the business of a company incorporated under this Act, are exempt from the provisions of that Act.

- 111A.(1) A company incorporated under this Act may elect to submit for registration by the Registrar any of the following registers:
- (a) its share register;
  - (b) its register of directors; or
  - (c) its register of mortgages and charges.
- (2) A company that has elected to submit for registration a copy of a register shall, until it otherwise notifies the Registrar pursuant to subsection (3), submit for registration any changes in a register by submitting for registration a copy of the register containing the changes.
- (3) A company that submits for registration a copy of a register with the Registrar may elect to cease registration of changes in the register by so informing the Registrar in writing.
- (4) If a company elects to submit for registration any register pursuant to subsection (1), then, until such time as the company informs the Registrar pursuant to subsection (3) that it elects to cease to register changes in any register, the company is bound by the contents of each copy register submitted to the Registrar.
- 111B.A company incorporated under this Act may submit to the Registrar for registration
- (a) any document or copy of a document creating a mortgage, charge or other encumbrance over some or all its assets;
  - (b) any document or copy of a document amending any document referred to in paragraph (2); and
  - (c) any document releasing or discharging a mortgage, charge or other encumbrance over any or all its assets, and the Registrar must retain and register the document or, as the case may be, the copy thereof.

## PART XII MISCELLANEOUS

- 112.(1) The Governor in Council may make regulations with respect to the duties to be performed by the Registrar under this Act and in so doing may prescribe the place where the office for the registration of International Business Companies is located.
- (2) Without limiting or affecting subsection (1), the Governor in Council may make regulations with respect to the conduct, duties and responsibilities of registered agents.
- 113.Any certificate or other document required to be issued by the Registrar under this Act shall be in such form as the Governor in Council may approve.
- 114.(1) The Registrar shall, upon request by any person, issue a certificate of good standing under his hand and seal certifying that a company incorporated under this Act is of good standing if the Registrar is satisfied that
- (a) the name of the company is on the Register; and
  - (b) the company has paid all fees, licence fees and penalties due and payable.
- (2) The Certificate of good standing issued under subsection (1) must contain a statement as to whether
- (a) the company has submitted to the Registrar articles of merger or consolidation that have not yet become effective;

- (b) the company has submitted to the Registrar articles of arrangement that have not yet become effective;
  - (c) the company is in the process of being wound up and dissolved; or
  - (d) any proceedings to strike the name of the company off the Register have been instituted.
115. (1) Except as provided in subsection (2) of section 85, a person may
- (a) inspect the documents kept by the Registrar pursuant to this Act; and
  - (b) require a certificate of incorporation, merger, consolidation, arrangement, continuation, dissolution or good standing of a company incorporated under this Act, or a copy or an extract of any document or any part of a document of which he has custody, to be certified by the Registrar; and a certificate of incorporation, merger, consolidation, arrangement, continuation, dissolution or good standing or a certified copy or extract is prima facie evidence of the matters contained therein.

- (2) A document or a copy or an extract of any document or any part of a document certified by the Registrar under subsection (1) is admissible in evidence in any proceedings as if it were the original document.

116. For purposes of determining matters relating to title and jurisdiction but not for purposes of taxation, the situs of the ownership of shares, debt obligations or other securities of a company incorporated under this Act is in the British Virgin Islands.

117.(1) A company incorporated under this Act may, without the necessity of joining any other party, apply to the court, by summons supported by an affidavit, for a declaration on any question of interpretation of this Act or of the Memorandum or Articles of the company.

- (2) A person acting on a declaration made by the court as a result of an application under subsection (1) shall be deemed, in so far as regards the discharge of any fiduciary or professional duty, to have properly discharged his duties in the subject matter of the application.

118. A judge of the Supreme Court may exercise in Chambers any jurisdiction that is vested in the court by this Act and in exercise of that jurisdiction, the judge may award costs as may be just.

119. This act, except for section 98, comes into operation on such day as the Governor appoints by proclamation published in the Gazette.

Short title of Ordinance/Act	Extent of Amendment
Interpretation Act, 1985, (continued)	<p>"non-belonger" means a person who is not a belonger;</p> <p>"resident" means a person who holds a current and valid certificate of residence under section 18 (1) of the Immigration and Passport Ordinance or any enactment amending or replacing the same, or any person whose name is endorsed upon a certificate of residence under the provisions of section 18 (2) of the said Ordinance;</p> <p>"Territory" means the Virgin Islands."</p> <p>9. Subsection (2) of section 48 is amended by deleting paragraph (b) thereof and substituting therefor the following paragraph:—</p> <p>"(b) by the Governor in Council, may be signified under the hand of the Clerk of the Executive Council".</p>

**CHAPTER 136.**

**INTERPRETATION.**

(1st December, 1985)

15/1985  
7/1992

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| <p><b>1.</b> This Act may be cited as the Interpretation Act.</p> <p><b>2.</b> For the purposes of this Act, the expression—</p> <p>"Act" means any Act or Ordinance of the Legislature of the Virgin Islands passed on or before the commencement of this Act;</p> <p>"enactment" means an Act or a statutory instrument or any provision in an Act or statutory instrument;</p> <p>"instrument" includes a proclamation, order or warrant (other than an order made or a warrant issued by a court), notice, scheme, rule, regulation or by-law;</p> <p>"private Act" means an Act for the purpose of affecting or benefiting some particular person passed in accordance with any standing orders of the Legislative Council for the time being in force in that behalf;</p> <p>"statutory instrument" means an instrument made under an Act;</p> <p>"statutory document" means any document, other than a statutory instrument or an order of a court, issued under an Act;</p> <p>"Territory" means the Virgin Islands.</p> <p><b>3.</b> (1) Every provision of this Act extends and applies—</p> <p>(a) to every enactment whether passed or made before or after the commencement of this Act; and</p> <p>(b) to every public document made or issued before or after the commencement of this Act,</p> <p>unless a contrary intention appears in this Act, the enactment or the public document.</p> | <p>Short title.</p> <p>Meaning of certain expressions used in this Act.</p> <p>Application.</p> |
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(2) The provisions of this Act apply to this Act as they apply to an enactment passed after the commencement of this Act and references in this Act to an enactment so passed shall be construed accordingly.

Rules not inconsistent not excluded.

4. Nothing in this Act shall be construed as excluding the application to an enactment of a rule of construction applicable thereto and not inconsistent with this Act.

Styles of statutes.

5. All statutes of the Territory shall be styled Acts.

Enacting and other clauses and words of enactment.

6. (1) The words of enactment shall follow the preamble (if any) and the several clauses within the body of the statute shall follow in a concise and enunciative form.

(2) Subject to the Constitution, in every Bill presented to the Governor for assent, the words of enactment shall be as follows—

"Enacted by the Legislature of the Virgin Islands as follows:"

Acts to be deemed public.

7. Every Act shall be a public Act.

Private Acts.

8. A provision in a private Act shall not affect rights of a person otherwise than as therein mentioned or referred to.

Enactments to apply to the whole Territory.

9. Every enactment shall, unless the contrary intention appears, apply to the whole Territory.

Crown.

10. (1) A reference in an enactment to the Sovereign or to the Crown shall be construed in either case as a reference both to the Sovereign for the time being and as a reference to the Crown in right of its government of the Territory.

(2) In any enactment, the expression "Her Majesty" includes Her Majesty the Queen, Her heirs and successors.

(3) An enactment shall not bind or in any manner whatsoever affect the Crown or the rights and prerogatives of the Crown unless it is expressly stated therein that the Crown is bound thereby.

(4) This Act is binding on the Crown.

(5) Every private Act shall be construed as containing a saving for the rights of the Crown.

Substantive enactments.

11. Every provision of an enactment has effect as a substantive enactment without introductory words.

Preamble, marginal notes and headings.

12. (1) The preamble to an enactment shall be construed as a part of the enactment and intended to assist in explaining the purport and object of the enactment.

(2) Marginal notes and headings in an enactment and references to other enactments in the margin or at the end of an enactment shall not be construed as part of the enactment and shall be deemed to have been inserted for convenience of reference only.

References in enactments.

13. (1) A reference in an enactment to any other enactment shall be construed as a reference to that other enactment as for the time being amended by or under any other enactment, including the enactment in which the reference is made.

(2) A reference in an enactment to any statute passed by the United Kingdom Parliament, or to any instrument made under any such statute, shall be construed as a reference to that statute or instrument as it applies for the time being in the Territory; and any such statute or instrument shall be read with such formal alterations as to names, localities, courts, officers, persons, moneys, penalties and otherwise as may be necessary to make such statute or instrument applicable to the circumstances.

(3) Where in any enactment reference is made to a provision of a United Kingdom Act and that provision is subsequently repealed and re-enacted without substantial modification such reference shall, if the context requires, be construed as a reference to the provision as so re-enacted.

(4) A reference in an enactment by number or letter to a Part, section, subsection, paragraph, sub-paragraph, or other division of another enactment or of a United Kingdom Act shall be construed as a reference to such Part, section, subsection, paragraph, sub-paragraph or other division of such other enactment or Act as printed by authority of law.

(5) A reference in an enactment by number or letter to two or more Parts, divisions, sections, subsections, paragraphs, sub-paragraphs, schedules, instruments or forms shall be construed as including the number or letter first mentioned and the number or letter last mentioned.

(6) Where in an enactment reference is made to a Part, division, section, schedule or form without anything in the context to indicate that a reference to a Part, division, section, schedule or form of some other enactment is intended, the reference shall be construed as a reference to a Part, division, section, schedule or form of the enactment in which the reference is made.

(7) Where in a section of an enactment reference is made to a subsection, paragraph, sub-paragraph or other division without anything in the context to indicate that a reference to a subsection, paragraph, sub-paragraph or other division of some other section or provision is intended, the reference shall be construed as a reference to a subsection, paragraph, sub-paragraph or other division of the section in which the reference is made.

(8) Where in a schedule or Part of a schedule to an enactment reference is made to a paragraph, sub-paragraph or other division without anything in the context to indicate that a reference to a paragraph, sub-paragraph or other division of some other enactment or division is intended, the reference shall be construed as a reference to the paragraph, sub-paragraph or other division of the schedule or the Part of the schedule in which the reference is made.

(9) Where in an enactment reference is made to a statutory instrument or statutory document, without anything in the context to indicate that a reference to a statutory instrument or statutory document made under some other enactment is intended, the reference shall be construed as a reference to a statutory instrument or statutory document, as the case may be, made under the enactment in which the reference is made.

(10) A reference in an enactment to any power exercisable, or to any statutory instrument or statutory document made or issued or act or thing done, under any enactment or any United Kingdom Act shall include a reference to a power exercisable, a statutory instrument or statutory document made or issued or act or thing done, by virtue of that enactment or Act or of any statutory instrument or statutory document made or issued under or by virtue of that enactment or Act.

(11) The expression "herein" where used in a section or other division of an enactment passed or made after the

commencement of this Act relates to the whole enactment and not to that section or division only.

14. (1) An Act may be amended, altered or repealed in the same session of the Legislative Council.

Amending provisions.  
7/1992.

(2) An amending enactment shall, so far as consistent with the tenor thereof, operate and be construed as part of any enactment which it amends and, without limiting or affecting subsection (1) of section 13 shall, as from the date on which it comes into operation, have effect accordingly for the purpose of the construction and operation of any other enactment which refers to, or is incorporated with, the enactment which it amends.

15. (1) Subject to the Constitution, the date on which an Act becomes law is the date on which the Governor signs it in token of his assent thereto in Her Majesty's name and on Her Majesty's behalf and in this Act the expression "Governor's Assent" means such assent as aforesaid.

Date of passing  
etc. of  
enactments.

(2) Subject to the Constitution, the Governor's Assent and the day, month and year thereof shall be inscribed on every Act immediately above the year and number of the Act; and such inscription shall be taken to be part of the Act.

(3) The date of the making of every statutory instrument is the date therein expressed as the date of the execution thereof, but where the instrument is made by two or more authorities jointly and is therein expressed to have been executed by those authorities on different dates, the date of the making thereof shall be the last date so expressed.

(4) Where a statutory instrument made or to be made after the commencement of this Act by an authority requires the concurrence or approval of any other authority, that concurrence or approval shall be formally inscribed on the instrument either—

- (a) on or before the date of the making thereof; or
- (b) if the other authority has before that date indicated an intention to concur in or approve of the making of the instrument, within one month after such making.

Coming into force of enactments. 7/1992.

**16.** (1) Where an enactment or any part thereof is expressed to come into force or operation on a particular day (whether that day is before or after the date of the passing of such enactment, or where the enactment is a statutory instrument, of the making thereof, and whether such day is named in the enactment or is to be appointed or fixed or ascertained in any other manner) the enactment shall be construed as coming into force immediately on the expiration of the day before that particular day.

(2) Where an Act provides that—

(a) it is to come into force or operation on a day or date to be fixed by the Governor by proclamation or by a Minister by notice;

(b) or that it is not to come into force or operation until a day or date to be so fixed,

any such proclamation or notice may apply to the whole or to any provision or provisions of the Act and may be issued at different times in respect of any such provision or provisions.

Expiration of enactments.

**17.** (1) Where an enactment is expressed to expire, lapse or otherwise cease to have effect on a particular day, the enactment shall, except as provided by subsection (2), be construed as ceasing to have effect immediately on the expiration of that day.

(2) Where a Bill is introduced into any session of the Legislative Council for the continuance of any Act limited to expire in that session and that Act expires before the Bill, having passed the Legislative Council, receives in that session the Governor's Assent and is published in the Gazette, then, subject to subsection (3), that Act shall be deemed to have continued as fully and effectively in operation as if the Bill had received the Governor's Assent and been published in the Gazette before that Act expired.

(3) Subsection (2) does not operate so as to render any person liable under any Act that has expired to any penalty or forfeiture by reason of any act done by him before the date on which the Bill for the continuance of that Act, having passed the Legislative Council, receives the Governor's Assent and is published in the Gazette.

Exercise of powers before commencement of enactment.

**18.** Where an enactment that has not come into force immediately on the passing or making thereof confers power—

- (a) to make appointments;
- (b) to hold elections;
- (c) to make statutory instruments or to issue statutory documents;
- (d) to publish documents or to give any notices;
- (e) to prescribe forms;
- (f) to give directions; or
- (g) to do any other act or thing,

that power may, for the purpose of making the enactment effective upon its commencement, be exercised at any time after the passing or making thereof, but, except in so far as may be necessary or expedient for that purpose, any statutory instrument or statutory document made under that power shall not have effect before the commencement of the enactment conferring the power.

Statutory powers and duties generally.

**19.** (1) Where an enactment confers a power or imposes a duty, the power may be exercised and the duty shall be performed from time to time, as occasion requires.

(2) Where an enactment confers a power to make any statutory instrument, the power shall be construed as including power, exercisable in the like manner and subject to the like consents and conditions, if any, to amend, alter, rescind, or revoke that statutory instrument and to make other statutory instruments in lieu thereof; but this subsection shall not apply to an order that is not made by a rule-making authority in the exercise of a statutory power which is of a legislative character.

(3) Where an enactment empowers any person or authority to do any act or thing, all such powers shall be deemed to be also given as are reasonably necessary to enable that person or authority to do that act or thing or acts or things that are incidental to the doing thereof.

(4) Where an enactment authorises or requires an act or thing to be done collectively by more than two persons, a majority of those persons may do that act or thing, unless any quorum fixed by that or any other enactment has not been formed.

(5) Any power conferred by an enactment to make a statutory instrument or issue a statutory document may be exercised—

- (a) either in relation to all cases to which the power extends, or in relation to all those cases subject to specified exceptions, or in relation to any specified cases or classes of case; and
- (b) so as to make, as respects the cases in relation to which it is exercised—
- (i) the full provision to which the power extends or any less provision (whether by way of exception or otherwise);
  - (ii) the same provision for all cases in relation to which the power is exercised, or different provision for different cases or classes of case, or different provision as respects the same case or class for different purposes of the enactment; or
  - (iii) any such provision either unconditionally or subject to any specified condition.
- (6) Where an enactment confers upon any person or authority power to make a statutory instrument, the statutory instrument so made shall be construed subject to the enactment under which it was made and so as not to exceed the power of that person or authority, to the intent that where any statutory instrument would, but for this subsection, have been construed as being in excess of the power conferred upon that person or authority, the statutory instrument shall nevertheless be valid to the extent to which it is not in excess of that power.
- (7) Where an enactment confers upon any person or authority power to make a statutory instrument, any act done under a statutory instrument so made shall be deemed to have been done under that enactment.
- (8) Notwithstanding that a statutory instrument or a statutory document is expressed or purports to be made or issued by a person or authority under a specific enactment, it shall be deemed also to be made or issued under all powers thereunto enabling that person or authority.
- (9) Where an enactment confers powers upon any person or authority power to make a statutory instrument for any general purposes and also for any special purposes incidental thereto, the enumeration of the special purposes shall not be construed as derogating from the generality of the power conferred with respect to the general purposes.

(10) Where an enactment confers a power to make a statutory instrument—

- (a) there may be annexed to a contravention of that statutory instrument a punishment by way of a fine not exceeding five hundred dollars or imprisonment for a term not exceeding six months or both;
- (b) a breach of any of the provisions of that statutory instrument is an offence; and
- (c) an offence against that statutory instrument is punishable on summary conviction.

**20.** (1) Subject to the Constitution, words in an enactment that authorise the appointment of a person to any office shall be deemed also to confer on the authority in whom the power is vested—

- (a) power, at the discretion of the authority, to remove or suspend or otherwise discipline him; and
- (b) power, exercisable in the like manner and subject to the like consent and conditions, if any, applicable on his appointment—
  - (i) to reappoint or reinstate him;
  - (ii) to appoint another person in his stead or to act in his stead and to provide for the remuneration of the person so appointed;
  - (iii) to fix or vary his remuneration, to withhold his remuneration in whole or in part during any period of suspension from office, and to terminate his remuneration to his removal from office;

but, where the power of appointment is exercisable only upon the recommendation or subject to the approval, consent or concurrence of some other authority or person, the power of removal shall be exercised only upon the recommendation or subject to the approval, consent or concurrence of that other authority or person.

(2) In an enactment a reference, without qualification, to the holder of any office includes a reference to any person for the time being holding that office, and, in particular—

- (a) words in an enactment directing or empowering the holder of an office to do any act or thing, or otherwise applying to him by the name of his office, shall apply to

his deputy, to his successor in office and to their deputies, and

(b) where an enactment confers a power or imposes a duty on the holder of an office, as such, the power may be exercised and the duty shall be performed by the person for the time being charged with the execution of the powers and duties of the office.

(3) When the Governor considers it necessary to change the title of any public office, he shall cause a notice to that effect to be published in the Gazette setting out the former title and the substituted title of such office, and declaring that such change of title shall take effect, or shall be deemed to have taken effect, from a date specified in such notice; and with effect from such date a reference to the former title in any enactment and in any document made or issued under such enactment shall be construed as a reference to the substituted title.

(4) Where by or under any enactment any functions are conferred upon a public officer, the Governor may direct that, if by reason of absence or incapacity through illness or any other cause that officer is during any period unable to perform those functions, such functions shall be performed by a public officer or person designated by the Governor; and during any such period the public officer or person so designated shall perform those functions, subject to such conditions, exceptions and qualifications as the Governor may direct.

(5) Notwithstanding anything in any enactment where the substantive holder of a public office (in this section referred to as "the retiring officer") is on leave of absence pending relinquishment of that office, another person may be appointed substantively to that office; and a person so appointed may perform all the functions of that office to the exclusion of the retiring officer, and without prejudice to any rights or privileges of the retiring officer, is entitled to all rights and privileges (including those relating to emoluments and pensions) appertaining to the office.

Effect of words  
of incorporation.

21. (1) Where an Act contains words establishing, or providing for the establishment of, a body corporate and applying this section to that body those words operate—

- (a) to vest in that body when established—  
(i) the power to sue in its corporate name;

(ii) the power to enter into contracts in its corporate name, and to do so that, in relation to third parties, the body shall be deemed to have the same power to make contracts as an individual who is *sui juris* has;

(iii) the right to have a common seal and to alter or change that seal at pleasure;

(iv) the right to acquire and hold any real or personal property for purposes for which the corporation is constituted and to dispose of or charge that property at pleasure;

(v) the right to regulate its own procedure and business; and

(vi) the right to employ such staff as may be found necessary for the performance of its functions;

(b) to make that body liable to be sued in its corporate name;

(c) to require that judicial notice shall be taken of the common seal of that body, and that every document purporting to be a document sealed by that body and to be attested in accordance with any enactment applicable to the attestation of documents so sealed shall, unless the contrary is proved, be received in evidence and be deemed to be such a document without further proof;

(d) to vest in a majority of the members of that body the power, subject to any quorum fixed by the enactment under which it is established or by any relevant standing orders, to bind other members thereof; and

(e) to exempt from personal liability for the debts, obligations or acts of that body, such members thereof as do not contravene the provisions of the Act under which the body is established.

(2) Without limiting or affecting subsection (1) of section 3, the application of this section to a body corporate does not—

(a) prevent additional powers being conferred by any enactment on that body; or

(b) prevent the powers conferred by virtue of such application being limited by any enactment; or

(c) prejudice or affect any liability of any member of that body to be surcharged with the payment of any

amount which may be disallowed in the accounts of that body by an auditor acting in pursuance of any enactment.

Offences and penalties.

**22.** (1) Where any act or omission constitutes an offence under two or more than two enactments or under an enactment and at common law, the offender shall be liable to be prosecuted and punished under either or any of those enactments or at common law, but shall not be liable to be punished twice for the same offence.

(2) Where an offence has been committed by a body corporate the liability of whose members is limited, then, notwithstanding and without affecting the liability of that body, any person who at the time of the commission of the offence was a director, general manager, secretary or other like officer of that body or was purporting to act in any such capacity—

(a) is, subject to subsection (3), liable to be prosecuted as if he had personally committed that offence; and

(b) is liable to the like conviction and punishment as if he had personally been guilty of that offence, if on prosecution it is proved to the satisfaction of the court that he consented to, or connived at, or did not exercise all such reasonable diligence as he ought in the circumstances to have exercised to prevent the offence, having regard to the nature of his functions in that capacity and to all the circumstances.

(3) A person shall not be charged under subsection (2) except upon the direction of the Attorney General.

(4) An enactment creating criminal liability for an act or omission which, apart from that enactment, would give rise to civil liability does not operate to affect the civil liability; but this subsection shall not be construed as excluding the application of any rule of law that restricts the right to take civil proceedings in respect of an act or omission that constitutes a felony.

(5) Where an enactment provides a punishment for an offence against the enactment, the offence shall be punishable by a punishment not exceeding that so provided.

(6) Where at the end of a section of any enactment a fine, penalty or term of imprisonment is set out, any contravention of that section shall be an offence against the enactment and

shall be punishable by a fine, penalty or term of imprisonment not exceeding that so set out.

(7) Where an enactment passed or made after the commencement of this Act creates an offence the enactment shall operate to provide also that an attempt to commit that offence is an offence under the enactment and punishable as if the offence itself had been committed.

(8) Any enactment under which imprisonment may be awarded shall be construed as providing that any person imprisoned thereunder shall work at such labour as the officer in charge of the prison may direct.

(9) Where under any enactment any animal or thing is or is ordered by a competent authority to be confiscated or forfeited, it shall be deemed to be forfeited to the Crown for the purposes of the Territory.

(10) Where under any enactment any animal or thing ordered or deemed to be forfeited to the Crown is required to be sold, the net proceeds of the sale shall be paid into and form part of the Consolidated Fund.

(11) Nothing in subsection (9) or subsection (10) affects any enactment under which the whole or any part of any fine, penalty or forfeit or the proceeds of any forfeit is recoverable by any person or may be granted by any authority to any person.

(12) Any fine or pecuniary penalty imposed by or under an enactment shall be payable into the Consolidated Fund.

(13) Where in an enactment an offence is declared to be punishable on summary conviction the procedure in respect of the trial and punishment of the offence and the recovery of the penalty, and all matters incidental to or arising in connection with the trial and punishment of the offence and the recovery of the penalty, shall be in accordance with the Magistrate's Code of Procedure Act.

Cap. 44.

Rules of procedure of courts and tribunals.

**23.** (1) Where an enactment confers any jurisdiction on a court or other tribunal or extends or varies any such jurisdiction, the authority having for the time being power to make rules or orders regulating the practice and procedure of that court or tribunal may make such rules or orders (including rules or orders regulating costs, fees, witnesses' expenses and other expenses) as appear to the authority to be necessary for regulating the practice and procedure of that

court or tribunal in the exercise of the jurisdiction so conferred, extended or varied, and it is not necessary for any other enactment to confer power on the authority to make any rules or orders for those purposes.

(2) An authority empowered to make rules or orders regulating the practice and procedure of any court or tribunal may not in the exercise of that power make, without the concurrence of the Minister responsible for Finance, an order—

(a) that directs money to be paid out of or in aid of the Consolidated Fund; or

(b) that prescribes or alters court fees;

but the validity of any rule or order made by such an authority shall not in any proceedings in any court or tribunal be impugned either by the court or tribunal or by any party to the proceedings on the ground only that concurrence has not been given or is not expressed to have been given.

(3) All rules or orders made under any enactment and regulating the practice or procedure, or costs, fees or expenses, of any court or tribunal and in force at the commencement of this Act shall be deemed to have been made in contemplation of this section and may be varied or revoked accordingly.

Appellate  
courts—powers.  
7/1992.

**24.** (1) Where an enactment provides that an appeal against a decision or determination of any court, tribunal, authority or person (in this section called “the original tribunal”) may be brought to any court, that court (in this section called “the appellate court”) may, for all purposes of and incidental to hearing or determining the appeal, exercise all the powers, authority and jurisdiction of the original tribunal and, in addition, may—

(a) confirm, reverse or vary the decision or determination of the original tribunal;

(b) remit the appeal or any matter arising thereon to the original tribunal with such declarations or directions as the appellate court may think proper;

(c) make such order as to costs and expenses as the appellate court may think proper; and

(i) the original tribunal shall have regard to all the declarations and obey all the directions, if any, that the appellate court gives pursuant to paragraph (b); and

(ii) orders made by the appellate court have the like effect and may be enforced in like manner as orders made by the original tribunal.

(2) Without affecting subsection (1), an appeal court upon an appeal from a decision of another court in a civil or criminal matter may direct that matter to be retried.

**25.** (1) Where an enactment authorises or requires a document to be served by post or by mail, whether the word “serve” or any of the words “give”, “deliver” or “send” or any other word is used, service of the document may be effected by prepaying, registering and posting an envelope addressed to the person on whom the document is to be served at his usual or last known place of abode or business and containing the document; and, unless the contrary is proved, the document shall be deemed to have been served at the time when the envelope would have been delivered in the ordinary course of post.

(2) Where an enactment authorises or requires a document to be served on any person without directing it to be served in a particular manner, service of that document may be effected either—

(a) by personal service;

(b) by post in accordance with subsection (1); or

(c) by leaving it for him with some adult person at his usual or last known place of abode or business.

(3) In the case of a corporate body or of any association of persons (whether incorporated or not) service of a document may be effected by delivering it to the secretary or clerk of the body or association at the registered or principal office of the body or association or serving it by post on the secretary or clerk at the office.

(4) If it is not practicable after reasonable enquiry to ascertain the name or address of an owner, a lessee, or an occupier of premises on whom a document ought to be served, the document may be served by—

(a) addressing it to him by the description of “owner” or “lessee” or “occupier” of the premises (naming them) to which the document relates and delivering it to some person on the premises; or

Service of  
documents.

(b) if there is no person on the premises to whom it can be delivered by affixing it, or a copy of it, to some conspicuous part of the premises.

## Forms.

**26.** Where a form is prescribed or specified by any enactment, deviations therefrom not materially affecting the substance nor calculated to mislead shall not invalidate the form used.

## Oaths, affirmations and declarations.

**27.** (1) Where any enactment authorises or requires evidence to be taken on oath, or authorises or directs an oath to be made, taken or administered, the oath may be administered, and a certificate or acknowledgement of its having been made, taken or administered may be given, by any person authorised by the enactment to take the evidence, or by a judge of any court, or a magistrate, or a notary public, or a commissioner for oaths or justice of the peace having authority or jurisdiction in the place where the oath is administered.

(2) In every enactment the words "oath" and "affidavit" shall, as respects persons for the time being allowed by law to affirm or declare instead of swearing, include affirmation and declaration.

(3) A reference in an enactment to a statutory declaration shall be construed—

(a) if made in the Territory, as a reference to a declaration made—

(i) by virtue of any enactment in force relating to statutory declarations, or

(ii) under the Evidence Act;

(b) if made in any part of the Commonwealth outside the Territory, as a reference to a declaration made before a justice of the peace, notary public or other person having authority therein under any law for the time being in force to take or receive a declaration; or

(c) if made in any other place, as a reference to a declaration made before any person having authority, under any United Kingdom Act for the time being in force, to take or receive a declaration.

(4) A power conferred by an enactment upon a justice of the peace to administer any oath or affirmation, or to take any

affidavit or declaration may be exercised by a notary public or a commissioner for oaths.

**28.** (1) Where in an enactment it is declared that the whole or part of any enactment is to cease to have effect, that enactment shall be deemed to have been repealed to the extent to which it is so declared to cease to have effect.

(2) Subsection (1) shall not be taken to affect the operation of any declaration in an enactment that the whole or a part of any enactment is repealed.

**29.** (1) Where an enactment repeals or revokes an enactment, the repeal or revocation shall not, except as in this section otherwise provided—

(a) revive any enactment or thing not in force or existing at the time at which the repeal or revocation takes effect;

(b) affect the previous operation of the enactment so repealed or revoked, or anything duly done or suffered thereunder;

(c) affect any right, privilege, obligation or liability acquired, accrued or incurred under the enactment so repealed or revoked;

(d) affect any offence committed against the enactment so repealed or revoked, or any penalty or forfeiture of punishment incurred in respect thereof; or

(e) affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid, and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such penalty, forfeiture or punishment may be imposed, as if the enactment had not been repealed or revoked.

(2) Nothing in subsection (1) shall be taken to authorise the continuance in force after the repeal or revocation of an enactment or of any instrument made under that provision.

(3) Where at any time an enactment expires, lapses or otherwise ceases to have effect, this section applies as if that enactment has then been repealed or revoked.

(4) The inclusion in the repealing provisions of any enactment of any express saving with respect to the repeals

Cessation of enactments.

Repeal.

affected thereby shall not be taken to affect the operation of this section with respect to the effect of those repeals.

Substituting  
enactment.

**30.** (1) Where an enactment repeals or revokes and re-enacts, with or without modification, any enactment, a reference in any other enactment or statutory document to the enactment so repealed or revoked shall, without affecting the operation of subsections (2) and (3), be construed as a reference to the enactment as re-enacted.

(2) Where an enactment repeals or revokes any enactment (in this subsection and in subsection (3) called "the old enactment") and substitutes another enactment therefor by way of amendment, revision or consolidation—

(a) all officers and persons acting under the old enactment continue to act as if appointed under the enactment so substituted;

(b) every bond and security given by a person appointed under the old enactment remains in force and all premises, books, papers and things used or made under the old enactment continue to be used as theretofore so far as is consistent with the enactment so substituted;

(c) all proceedings taken under the old enactment shall be prosecuted and continued under and in conformity with the enactment so substituted, so far as consistently may be;

(d) in the recovery of enforcement of penalties and forfeitures incurred and in the enforcement of rights, existing or accruing under the old enactment or in any other proceedings under the old enactment, the procedure established by the enactment so substituted shall be followed so far as is consistent with the enactment so substituted; and

(e) where any penalty, forfeiture or punishment is reduced or mitigated by any of the provisions of the enactment so substituted, the penalty, forfeiture or punishment, if imposed or awarded after the repeal or revocation, shall be reduced or mitigated accordingly.

(3) Without affecting subsection (2), where an enactment repeals or revokes an enactment and substitutes another enactment therefor by way of amendment, revision or consolidation—

(a) all statutory instruments or statutory documents made, issued, confirmed or granted under the old enactment and all decisions, authorisations, directions, consents, applications, requests or things made, issued, given or done thereunder shall, in so far as they are in force at the commencement of the enactment so substituted, and are not inconsistent therewith, have the like effect and the like proceedings may be had thereon and in respect thereof as if they had been made, issued, confirmed or granted or made, issued, given or done under the corresponding provision of the enactment so substituted; and

(b) any reference to the old enactment in any unrepealed or unrepealed enactment shall, in relation to any subsequent transaction, matter or thing, be construed as a reference to so much of the enactment so substituted as relates to the same subject-matter as the old enactment; and, if nothing in the enactment so substituted relates to the same subject-matter, the old enactment shall stand good, and be read and construed as unrepealed or unrepealed in so far, and in so far only, as is necessary to support, maintain or give effect to such unrepealed or unrepealed enactment.

**31.** Every enactment shall be construed as always speaking and anything expressed in the present tense shall be applied to the circumstances as they occur, so that effect may be given to each enactment according to its true spirit, intent and meaning.

Enactment  
always speaking.

**32.** Where an enactment confers power to make any statutory instrument or issue any statutory document, then, unless a contrary intention appears—

Expressions in  
statutory  
instrument have  
same meaning as  
in enactment.

(a) expressions used in the statutory instrument or statutory document have the same respective meaning as in the enactment; and

(b) the expression "the Act" if used in the statutory instrument or statutory document shall be construed as referring to the Act under which the instrument is made or the document issued, as the case may be.

**33.** (1) Definitions or rules of interpretation contained in an enactment apply to the construction of the provisions of the enactment which contain those definitions or rules of

Interpretation  
provisions in  
enactments.

interpretation, as well as to the other provisions of the enactment.

(2) An interpretation section or provision contained in an enactment shall be read and construed as being applicable only if a contrary intention does not appear in the enactment.

**34.** Where a word is defined in an enactment, other parts of speech and grammatical variations of that word and cognate expressions have corresponding meanings in that enactment.

Corresponding meaning of parts of speech.

**35.** In an enactment, a name commonly applied to any country, place, Government department, body, corporation, society, Minister, officer, functionary, person, party, statutory provision, or other thing whatsoever, means the country, place, Government department, body, corporation, society, Minister, officer, functionary, person, party, statutory provision or thing to which the name is commonly applied, or is commonly applied in the Territory, whether or not the name is the formal or unabbreviated designation thereof.

Names commonly used.

**36.** (1) Words in an enactment importing (whether in relation to an offence or otherwise) persons or male or female persons shall include male and female persons, corporations (whether aggregate or sole) and unincorporated bodies of persons.

Gender and number.

(2) In an enactment—

(a) words in the singular include the plural; and  
(b) words in the plural includes the singular.

(3) Without affecting subsections (1) and (2), a reference in an enactment to a party aggrieved shall include a reference to a body corporate in every case where such a body is a party aggrieved.

**37.** (1) In any enactment, the word "shall" shall be construed as imperative and the word "may" as permissive empowering.

Shall, may, now, next, heretofore, hereafter.

(2) The expression "now", "next", "heretofore" or "hereafter" shall be construed as referring to the time when the enactment containing the expression came into force.

Distances.

**38.** In the measurement of any distance for the purposes of any enactment, that distance shall be measured in a straight line on a horizontal plane.

**39.** (1) In an enactment, words relating to time and reference to a point of time shall be construed as relating or referring to standard time.

Time.

(2) In an enactment, the expression "standard time" shall be construed as meaning—

(a) the mean time of Longitude 60° W. that is to say, as being exactly four hours later than Greenwich mean time; or

(b) such other time as the Governor may by proclamation declare to be the standard time for the Territory.

(3) Where in an enactment a period of time is expressed to begin on, or to be reckoned from a particular day, that day shall not be included in the period.

(4) Subject to subsection (6), where in an enactment a period of time is expressed to end on, or to be reckoned to a particular day, that day shall be included in the period.

(5) Where the time limited by an enactment for the doing of anything expires or falls upon a Sunday or public holiday, the time shall extend to and the thing may be done on the first following day that is not a Sunday or public holiday.

(6) Where a period of time prescribed by an enactment for the doing of anything does not exceed six days, Sundays and public holidays shall not be included in the computation of the period.

(7) Where by an enactment a period of time is expressed as "clear days" or is qualified by the term "at least", both the first day and the last day shall be excluded from the computation of the period.

(8) In an enactment—

(a) a reference to midnight, in relation to any particular day, shall be construed as a reference to the point of time at which that day ends;

(b) a reference to a week-day shall be construed as a reference to a day that is not a Sunday;

- (c) a reference to a month shall be construed as a reference to a calendar month;
- (d) a reference, without qualification, to a year shall be construed as a reference to a period of twelve months;
- (e) a reference to a financial year shall be construed as a reference to a period of twelve months ending at midnight on the thirty-first day of December.
- (9) In an enactment, the expression "public holiday" means any day that under the provisions of any enactment or other law for the time being in force is or is declared to be or is proclaimed as a public holiday.
- (10) An enactment requiring or authorising the doing of anything but not prescribing or limiting the period within which that thing is to or may be done shall be construed as requiring or, as the case may be, authorising that thing to be done with all convenient speed and not otherwise.
- (11) Subsections (1) and (2) have effect in relation to deeds and other legal instruments as they do in respect of enactments.

Statutory boards,  
etc.

**40.** (1) This section has effect in relation to any statutory board.

(2) Subject to any relevant enactment respecting a quorum, the functions of a statutory board shall not be affected by any vacancy in the membership thereof.

(3) Power conferred by or under any enactment upon any authority or person to appoint all the members of a statutory board includes power—

- (a) to appoint the chairman thereof from time to time as occasion requires; and
- (b) to appoint individual persons as alternative members thereof;

and any alternative member so appointed may act as a member of the statutory board only when the member to whom he is alternative is, for any reason, unable to perform his functions as such member; and an alternative member when so acting shall have and perform all the functions of the member in whose place he so acts.

(4) Any authority or person empowered by or under any enactment to appoint or designate a person either to be a member of a statutory board or to perform any other functions may—

- (a) appoint or designate a person by name; or
- (b) direct the person for the time being holding such office as is specified in the direction to be such member or to perform such other functions;
- and it shall be the duty of any person or officer so appointed, designated or directed to perform such respective functions accordingly.

**41.** (1) In an enactment, the expression—

Definitions for  
legislative  
purposes.  
7/1992.

"Deputy Speaker" means the Deputy Speaker of the Legislative Council elected as such under the Constitution;

"Legislative Council" means the Legislative Council of the Territory;

"session" in relation to the Legislative Council means the sittings of the Legislative Council commencing when it first met after the Constitution came into force or after the prorogation or dissolution of the Legislative Council at any time and terminating when the Legislative Council is prorogued or is dissolved without having been prorogued;

"sitting" in relation to the Legislative Council means a period during which the Legislative Council is sitting continuously without adjournment and includes any period during which the Council is in committee;

"Speaker" means the Speaker of the Legislative Council elected as such under the Constitution.

(2) In any enactment passed or made after the commencement of this Act, the expression "statutory period" in relation to any statutory instrument means a period of forty days or such other period as may be prescribed by the enactment for the purposes of subsection (6).

(3) Where any Act passed after the commencement of this Act provides that a statutory instrument made thereunder—

(a) is to be laid before the Legislative Council; and  
 (b) may or is to be annulled if the Legislative Council by resolution so determines within the period referred to in subsection (2),  
 the provisions of the Act have effect and shall be deemed always to have had effect as if in the reckoning of the period only such time as the Legislative Council is dissolved or prorogued shall not be taken into account.

(4) A reference in any enactment passed or made after the commencement of this Act, to the laying of any statutory instrument or statutory document or any report, account or other document before the Legislative Council, shall be construed as a reference to the taking, during the existence of the Legislative Council, of such action as—

(a) by or under any Standing Order, Sessional Order or other direction of the Legislative Council before which the instrument or document is to be laid, for the time being in force, is directed to constitute the laying of such an instrument or document before that Council; or  
 (b) is accepted by virtue of the practice of the Legislative Council for the time being as constituting the laying, notwithstanding that the action so directed or accepted consists wholly or partly of action capable of being taken otherwise than at or during the time of sitting of that Council.

(5) The expression "subject to affirmative resolution" when used in relation to any statutory instruments or statutory documents means that those instruments or documents shall not come into operation unless and until affirmed by a resolution of the Legislative Council.

(6) The expression "subject to negative resolution" when used in relation to any statutory instruments or statutory documents means that those instruments or documents shall, as soon as may be after they are made, be laid before the Legislative Council, and if the Legislative Council within the statutory period next after the instrument or document has been so laid, resolves that the instrument or document shall be annulled, the instrument or document shall be void as from the date of the resolution, but without affecting the validity of anything done thereunder or to the making of a new instrument or document.

42. In an enactment, the expression—

"bailiff" means the bailiff of the Supreme Court;

"Chief Justice" means the Chief Justice of the Supreme Court;

"committed for trial" means committed by a court, judge, magistrate, justice or other authority having power to commit a person in custody with a view to his trial before a judge and a jury, and includes committed on bail upon a recognisance to appear and stand trial before a judge and jury;

"court" means any court of the Territory of competent jurisdiction;

"Court of Appeal" means the Court of Appeal established by the Supreme Court Order, 1967 and upon which among other things, jurisdiction is conferred by the West Indies Associated States Supreme Court (Virgin Islands) Ordinance;

"court of summary jurisdiction" means a magistrate exercising statutory summary jurisdiction;

"High Court" means the High Court of Justice established by the Supreme Court Order, 1967, and upon which among other things, jurisdiction is conferred by the West Indies Associated States Supreme Court (Virgin Islands) Ordinance;

"Judge" means the Chief Justice or any other Judge of the Supreme Court;

"justice" means a Justice of the Peace;

"magistrate" means a magistrate appointed under the Magistrate's Code of Procedure Act and includes an additional magistrate;

"magistrate's court" means a magistrate's court established under the Magistrate's Code of Procedure Act; "printed by authority of law" means printed by the Government Printer or by other lawful authority;

"rules of court" when used in relation to any court means rules made by the authority having for the time being power to make rules regulating the practice and procedure of that court;

Definitions for judicial purposes. 7/1992.

S.I. 1967 No. 223  
U.K.

Cap. 80.

Cap. 44.

"summary conviction" means conviction in respect of a summary offence;

"summary offence" means an offence triable otherwise than on indictment;

"Supreme Court" means the Eastern Caribbean Supreme Court established by the Supreme Court Order, 1967.

S.I. 1967 No. 223  
U.K.

Definitions for  
official purposes.  
7/1992.

amended by  
16/2000

"action"

"Master" (of ECSC)

"originating  
writ"

"plaintiff"

Cap. 173.

"writ of summons"

43. In an enactment, the expression—

"appointed day" for the purposes of any provision of the enactment means such day as the Governor or a Minister may, by proclamation or notice published in the Official Gazette, appoint;

"Associated States" means those territories which have assumed and which maintain a status of association with the United Kingdom in accordance with the West Indies Act, 1967, of the United Kingdom;

"Attorney General" means the person for the time being holding or acting in that post;

"belonger" means a person claimed to belong to the Territory under section 2 (2) of the Constitution;

"Chief Auditor" means the Chief Auditor appointed under section 3 (1) of the Audit Ordinance;

"British possession" means any British colony or Protectorate or protected State, or any Territory administered by Her Majesty's Government in the United Kingdom or by the Government of any part of Her Majesty's dominions under the trusteeship system of the United Nations and, in any enactment passed or made before the commencement of the Statute of Westminster, 1931, includes Canada, Australia and New Zealand;

"Chief Minister" means the Chief Minister appointed under section 15 of the Constitution;

"colony" where the context so permits, includes a British Protectorate or protected State and any Territory administered as aforesaid under the trusteeship system of the United Nations;

"Commonwealth Country" means the United Kingdom, Association of Eastern Caribbean States and Colonies and any country that is an independent sovereign member of the Commonwealth;

"Consolidated Fund" means the Consolidated Fund established by section 59 of the Constitution;

"Constitution" means the Virgin Islands (Constitution) Order, 1976 or any Order in Council amending or replacing the same;

S.I. 1976 No. 223  
U.K.

"Crown Agents" means all or any of the persons designated Crown Agents in the United Kingdom for Overseas Governments and Administrations;

"Deputy Governor" means the Deputy Governor of the Territory appointed under section 4 (1) of the Constitution;

"Dominion" means Canada, Australia and New Zealand;

"Eastern Caribbean" means Antigua, St. Christopher-Nevis, Anguilla, Montserrat, Dominica, St. Lucia, St. Vincent, Grenada, Barbados, Trinidad and Tobago and Guyana and the dependencies of any of them;

"Executive Council" means the Executive Council established by section 14 of the Constitution;

"Financial Secretary" means the public officer for the time being holding or acting in that post;

"Gazette" or "Official Gazette" means the Official Gazette published by order of the Government and includes supplements thereto and any Gazette Extraordinary so published;

"Government" means the Government of the Territory;

"Government Notice" means any announcement whether or not of a legislative character published in the Gazette by or with the authority of the Government;

"Government Printer" includes any printer purporting to be the printer authorised to print enactments and other documents of the Government;

"Governor" means the Governor of the Territory appointed under section 3 of the Constitution and

includes any person performing the functions of the office of Governor under section 3 or 6 of the Constitution;

"Governor in Council" means the Governor acting with the advice of the Executive Council of the Territory save as is otherwise provided under the Constitution;

"Judicial and Legal Services Commission" means the Judicial and Legal Services Commission established by section 54 of the Constitution;

"judicial oaths" means the judicial oaths set out in the First Schedule to the Supreme Court Order, 1967;

"Leader of the Opposition" means the Leader of the Opposition appointed under section 33 of the Constitution;

"Minister" means the Chief Minister or other Minister for the time being having responsibility for the subject-matter of the enactment in respect of which that expression is used;

"non-belonger" means a person who is not a belonger;

"oath of allegiance" means the oath of allegiance set out in the Schedule to the Constitution and includes the affirmation of allegiance set out therein;

"oath for due execution of office" means the oath for due execution of office set out in the Schedule to the Constitution and includes the affirmation for due execution of office set out therein;

"Police Force" means the Royal Virgin Islands Police Force constituted and maintained under the provisions of the Police Act or any Act replacing the same;

"prescribed" means prescribed in or under the enactment in which that expression occurs;

"prescribed by the Legislative Council" means prescribed by or under an Act;

"proclamation" means a proclamation made by the Governor under the Public Seal;

"public office" has the meaning assigned to it by section 2 (1) of the Constitution;

Cap. 165.

"public officer" has the meaning assigned to it by section 2 (1) of the Constitution;

"Public Seal" means the public seal of the Territory;

"public service" has the meaning assigned to it by section 2 (1) of the Constitution;

"Public Service Commission" means the Public Service Commission established by section 51 of the Constitution;

"Public Treasury" or "Treasury" means the Treasury of the Territory;

"Registration Office" means the Registration Office of the Territory;

"resident" means a person who holds a current and valid certificate of residence under section 18 (1) of the Immigration and Passport Ordinance or any enactment amending or replacing the same, or a person whose name is endorsed upon a certificate of residence under section 18 (2) of the said Ordinance;

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"statutory board" means any board, commission, committee, council or other like body established by or under an enactment;

"subsidiary legislation" means any regulation, rule, by-law, proclamation, order in Council, order, direction, notice, form, or other instrument made under any law or other lawful authority and having legislative effect;

"Teaching Service Commission" means the Teaching Service Commission established under section 54A of the Constitution;

"Territory" means the Virgin Islands;

"United Kingdom" means the United Kingdom of Great Britain and Northern Ireland.

44. (1) In any enactment passed or made after the commencement of this Act, the expression "land" includes—

- (a) messuages, tenements and hereditaments, corporeal, or incorporeal of every kind and description;
- (b) houses and other buildings of any tenure; and

References relating to land.

- (c) any estate, right, title or interest in, or to over land.
- (2) In any enactment passed or made after the commencement of any enactment providing for the registration of title to land in the Territory, the expression—
- (a) "registered land" means land the title to which is registered under the provisions of that enactment; and
- (b) "unregistered land" means land the title to which is not so registered.
- (3) Where an enactment provides that a person may dispose of land, that person may deal with the land in and of the following ways—
- (a) sell it;
- (b) lease or let it;
- (c) exchange it by giving or receiving money for equality of exchange;
- (d) if it is a leasehold, surrender it;
- (e) grant a licence to use it for any purpose or for such purposes as may be specified in the licence; or
- (f) grant by way of sale, lease, letting or licence any easement, profit or right in respect of it.

Miscellaneous definitions.

**45.** (1) In an enactment, the expression—

- "act" where used in reference to an offence or civil wrong includes a series of acts, and words so used that refer to acts done extend also to omissions;
- "coin" means any coin legally current in the Territory;
- "commencement" when used with reference to any enactment means the time at which that enactment comes into operation;
- "common law" means the common law of England;
- "Commonwealth citizen" means a person who under the British Nationality Act, 1981 or any Act amending or replacing the same has the status of a Commonwealth citizen;
- "constable" means a member of the Police Force as defined in the Police Act or in any Act amending or

replacing the same and includes a special constable as defined therein;

"consul" or "consular officer" includes consul-general, consul, vice-consul, consular agent, and any person authorised to discharge the duties of consul-general, consul or vice-consul;

"contravention" in relation to any enactment, includes a failure to comply with the enactment;

"Parliament of the United Kingdom" includes the Parliament of England and the Parliament of Great Britain;

"printed" has the meaning assigned to "writing" and "written" in this subsection;

"public place" includes any public highway, street, road, thoroughfare, square, court, alley, lane, bridleway, footway, parade, plaza, passage or open place used or frequented by the public or to which the public have or are permitted to have access;

"rules" includes regulations, by-laws and orders;

"Secretary of State" means one of Her Majesty's Principal Secretaries of State for the time being;

"service by post" means service in accordance with subsection (1) of section 25;

"signature" and "signed" includes and apply to the making of a mark;

"street" or "road" includes any public highway, street, road, thoroughfare, square, court, alley, lane, bridleway, footway, parade, plaza, passage or open place used or frequented by the public or to which the public have or are permitted to have access;

"United Kingdom Act" means an Act of the United Kingdom Parliament;

"United Kingdom Parliament" means the Parliament of the United Kingdom;

"will" includes codicil;

"writing", "written" or any term of like import includes words typewritten, printed, painted, engraved,

lithographed, photographed or reproduced by any mode of representing or producing words in a visible form.

(2) In an enactment passed or made after the commencement of this Act, the expression—

“access” includes ingress, egress, and regress;

“arbitrator”, when used in relation to any matter referred to arbitration under and in accordance with the provisions of the Arbitration Ordinance, includes an umpire appointed under those provisions;

“assets” includes property or rights of any kind;

“barrister-at-law” means any person admitted or entitled to practise in the Territory as a barrister-at-law in accordance with the West Indies Associated States Supreme Court (Virgin Islands) Ordinance;

“costs” includes fees, charges, disbursements, expenses or remuneration;

“fault” means wrongful act or default;

“functions” includes jurisdiction, powers and duties;

“goods” means all kinds of movable property, including animals;

“individual” means a natural person and does not include a corporation;

“movable property” means property of every description (including growing crops) except immovable property;

“perform” in relation to functions, includes exercise;

“sale” and “sell” includes exchange or barter;

“solicitor” means any person admitted or entitled to practise in the Territory as a solicitor in accordance with the West Indies Associated States Supreme Court (Virgin Islands) Ordinance;

“statute of limitation” means any enactment in force in the Territory prescribing a period within which such enactment relates is required to be brought, but shall not include an enactment prescribing a period within which any criminal proceedings (including

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amended by  
16/2000  
Legal Practitioner  
includes a barrister-  
at-law or a  
solicitor.

proceedings to recover any penalty imposed as a punishment for a criminal offence) are to be brought;

“surety” means sufficient surety;

“vessel” or “ship” means any ship, boat, lighter or other floating craft used or capable of being used for transport by water;

“words” when used in an amending enactment includes figures, punctuation marks and typographical, monetary, mathematical and scientific symbols.

(3) A reference in an enactment to money is a reference to the currency that is legal in the Territory.

46. (1) Where by or under any enactment any function is conferred on the Governor other than—

Delegation of function of Governor.

(a) a function in relation to the hearing of any appeal;

(b) the making of any subsidiary legislation;

(c) a function conferred by the Constitution; or

(d) a function conferred by the Emergency Powers (Disasters) Ordinance,

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the Governor may by instrument in writing delegate the performance of those functions to any person either by name or as the holder for the time being of such office as is specified in the instrument subject to such conditions, exceptions and qualifications (if any) as are so specified; and, as from the date of the instrument or a date thereby specified, that person or officer shall perform those functions accordingly.

(2) A delegation of a function by the Governor shall be construed as a reservation to the Governor of the right to perform the function himself in any case that he thinks fit.

47. (1) Any delegation made under section 46 shall forthwith be published in the Gazette.

Publication and revocation of delegation under section 46.

(2) Any delegation made under section 46 may be revoked or varied by the like instrument and any such revocation or variation shall forthwith be published in the Gazette.

Signification of instruments.

**48.** (1) Every proclamation, warrant or other instrument issued under the Public Seal shall be signified under the hand of the Governor.

(2) Subject to subsection (1), a statutory instrument made under any enactment—

(a) by the Governor, may be signified under the hand of the Governor himself or that of such officer or person as the Governor may by instrument in writing, either generally or specifically, appoint;

(b) by the Governor in Council, may be signified under the hand of the Clerk of the Executive Council.

7/1992.

Judicial notice.

**49.** Judicial notice shall be taken of—

(a) all Acts and subsidiary legislation;

(b) the signatures of the Governor, Ministers of Government, Judges, Magistrates and of the Registrar of the High Court; and

(c) the Public Seal.

Citation of Acts.

**50.** (1) Any Act may be cited by reference to the calendar year in which it was passed and its sequence number in that year.

(2) Without affecting subsection (1), any enactment may be cited in any manner in which it could have been cited before the commencement of this Act.

(3) In an enactment every description of or citation from any other enactment or from any document shall be construed as including the word, subsection, section, or other portion mentioned or referred to as forming the beginning or as forming the end of the portion comprised in the description or citation or as being the point from which or to which such portion extends.

Citation of revised Acts.

**51.** An Act contained in any revised edition of the laws of the Territory issued under any Act providing for the revised edition of such laws may be cited by its short title or by its Chapter number in the revised edition printed by authority of law.

Printing and distribution.

**52.** (1) The enactments shall be printed, published and distributed by or under the authority of the Government Printer.

(2) The Clerk of the Legislative Council shall furnish to the Government Printer a certified copy of every Act as soon as it has received the Royal Assent.

(3) Every copy of an enactment printed by the Government Printer shall be evidence of that enactment and its contents and every copy purporting to have been printed by the Government Printer shall be deemed to have been so printed unless the contrary is shown.

**53.** (1) This Act and all enactments passed after the commencement of the Act shall be of record in the custody of the Clerk of the Legislative Council.

Recording of Acts of certification.

(2) Where the Clerk of the Legislative Council is required to certify a copy of an Act for any purpose, he shall insert at the foot of each copy required to be certified a written certificate duly signed and authenticated by him to the effect that such copy is a true copy.

(3) Copies of Acts duly certified under subsection (2) shall be held to be duplicate originals and shall be evidence of the Acts and of their contents as if printed by authority of law.

**CHAPTER 165.**

**POLICE.**

(1st August, 1986.)

12/1986

1. This Act may be cited as the Police Act.

Short title.

**PART I.**

**PRELIMINARY.**

2. (1) In this Act—

Interpretation.

“arms” means firearms as defined in the Firearms Ordinance;

“Association” means the Police Welfare Association referred to in section 68(1);

“Auxiliary Force” means the Virgin Islands Auxiliary Police Force established by section 79;

“branch” means a section of the Force;

“Chief Auditor” means the Chief Auditor appointed under the Audit Ordinance;

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“Commissioner” means the Commissioner of Police appointed under section 11(1);

“constable” means a member of the Force below the rank of Sergeant and includes a Police Constable on probation or agreement;

“Deputy Commissioner” means any Deputy Commissioner of Police appointed under section 11(1);

“division” means a police division or subdivision into which the Territory may be divided by the Commissioner for Police administration and operational purposes;

“Force” means the Royal Virgin Islands Police Force established in the Territory and continued by this Act;

“Gazetted Police Officer” means the Commissioner and any Deputy Commissioner of Police and any Superintendent of Police;

“Inspector” means any Chief Inspector of Police and Inspector of Police;

“medical board” means a board of registered medical practitioners appointed by the Governor under section 76;

“Reward Fund” means the Police Reward Fund maintained pursuant to section 45;

“subordinate police officer” means any Station Sergeant or Sergeant;

“Superintendent” includes any Superintendent of Police and any Assistant Superintendent of Police;

“Welfare Fund” means the Police Welfare Fund established by section 70.

(2) Any authority conferred on the Governor under this Act shall be construed as meaning the Governor acting in his discretion.

## PART II.

### CONSTITUTION, APPOINTMENT, ENLISTMENT AND RESIGNATION.

Existing Police Force.

**3.** (1) The Royal Virgin Islands Police Force established in the Territory and in respect of which provision was made under the Police Act 1951 shall continue to be maintained under this Act and shall continue to be designated the Royal Virgin Islands Police Force.

(2) A member of the Force who—

(a) at the date of the commencement of this Act has been a member of the Force prior to that date shall be deemed to have been serving under this Act;

(b) re-enters the Force after the commencement of this Act shall be deemed for pensionable purposes, to have performed his previous service under this Act.

**4.** (1) The objects of the Force are—

Objects of the Force.

- (a) the maintenance of law and order;
- (b) the preservation of peace;
- (c) the defence of the Territory from external aggression or threat thereof;
- (d) the protection of life and property;
- (e) the prevention and detection of crime; and
- (f) the enforcement of all laws that it is required to enforce.

(2) In the performance of the functions specified in subsection (1), a member of the Force may be issued with and may carry and use for lawful purposes such arms and ammunition as the Commissioner or, in his absence, a Deputy Commissioner may authorise.

**5.** The Force comprises a Commissioner and such number of Deputy Commissioners, Superintendents, Inspectors, subordinate police officers and constables as the Governor may determine.

Composition of the Force.

**6.** (1) The Commissioner is charged with the command, superintendence, direction and control of the Force and is answerable directly to the Governor for—

Functions of the Commissioner.

- (a) the efficient administration of the Force; and
- (b) the proper expenditure of all public moneys appropriated for the service thereof.

(2) Subject to any general or specific direction of the Governor the Commissioner may, in performing his functions—

- (a) make standing and routine orders for the general administration of the Force as he considers necessary; and
- (b) delegate any of these functions to a Gazetted Police Officer.

**7.** The function of a Deputy Commissioner is to act as assistant to the Commissioner in the performance of his functions and for that purpose, may—

Functions of Deputy Commissioners.

- (a) when authorised by the Commissioner; or
- (b) if authorised by the Governor, in the temporary absence or incapacity of the Commissioner,

do or perform or order to be done or performed any act or thing that may be lawfully done or performed or ordered to be done or performed by the Commissioner.

Functions of members of the Force other than the Commissioner and Deputy Commissioners.

**8.** All members of the Force other than the Commissioner and Deputy Commissioner shall be stationed in such branches or such divisions as the Commissioner may direct and shall perform such duties as are required by this Act to be performed or as the Commissioner may determine.

Gazetted Officer to be Justices of the Peace.

**9.** Every Gazetted Police Officer is, *ex officio*, a Justice of the Peace of the Territory in addition to the functions assigned to him by this Act as a member of the Force; but he shall not act judicially except in so far as he is permitted to do by this Act.

Uniform and accoutrements.

**10.** (1) Members of the Force shall wear such uniform as the Governor may direct and any such uniform and any arms or accoutrements supplied therewith shall remain the property of the Crown.

(2) Every member of the Force shall upon ceasing to be a member of the Force, deliver to the Gazetted Police Officer, Inspector or subordinate police officer under whose immediate command he was at the time of ceasing to be a member of the Force, every article that was supplied to him for the execution of his duty.

(3) The next of kin, executor or other personal representative of a member of the Force who dies in service shall deliver up to the Commissioner or to a member of the Force nominated by the Commissioner all articles of uniform, equipment and accoutrements that at the time of death were in the possession of the deceased member of the Force.

(4) Any member of the Force and any next of kin, executor or other personal representative, as the case may be, who contravenes subsection (2) or (3) is guilty of an offence and is liable on summary conviction to a fine of three hundred dollars or to imprisonment for a term of six months; and a Magistrate may issue a warrant for—

(a) the seizure of any article that is not delivered up, as required by subsection (3) wherever the article may be found; and

(b) the arrest of the person in whose possession it is and is unable to account satisfactorily for his possession thereof.

(5) A person, not being a member of the Force, who—

(a) has in his possession an article referred to in subsection (3) that was supplied to a member of the Force for the execution of his duty; and

(b) is unable to account satisfactorily for his possession thereof,

is guilty of an offence and may be arrested without warrant by any member of the Force and is liable on summary conviction to a fine of two hundred dollars or to imprisonment for a term of four months.

**11.** (1) The Commissioner, Deputy Commissioners and Gazetted Police Officers shall be appointed by the Governor.

Appointment.

(2) Appointments to any rank below the rank of Gazetted Police Officer may be made by the Commissioner acting with the approval of the Governor; but the Governor may in writing delegate to the Commissioner the power to make the appointments.

**12.** (1) A constable shall be appointed on probation during the first three years of his service in the Force and may, on the conclusion of the probationary period to the satisfaction of the Commissioner, be confirmed in his appointment by the Governor acting on the advice of the Commissioner.

Probationary appointment and termination of service.

(2) The service of a constable on probation may be dispensed with by the Commissioner with the approval of the Governor at any time during the period of probation if the constable is not suitable to perform the duties of his office or if he is not likely to become an efficient and well-conducted member of the Force.

(3) A constable whose service is dispensed with is entitled to service on him either of a notice of one month of termination of his services or pay for one month in lieu of the notice.

(4) The Governor may in writing delegate to the Commissioner the powers conferred on the Governor under this section.

Oaths.  
Schedule.

**13.** Every person, on his first appointment to the Force, shall make before a Magistrate or a Justice of the Peace, the oath or affirmation set forth in paragraph 1 of the Schedule before he begins to perform any of his functions.

Certificate of  
identity.

**14.** The Commissioner shall issue to each member of the Force, at the time of his first appointment, a certificate of identity in a form approved by the Governor and signed by the Commissioner.

Resignation.

**15.** (1) Subject to subsection (2), a member of the Force may resign his office at any time by giving in writing to the Governor submitted through the Commissioner notice of not less than one month of his intention to do so or upon payment of one month's salary in lieu of notice.

(2) The Governor may waive the need for notice or shorten the length of notice as may be reasonable in any particular case.

(3) Subject to this section, a member of the Force who has resigned from the Force may be reappointed to the Force if he was a member of the Force for a period of at least five years immediately preceding the date of his resignation and not more than five years have elapsed before the date of his application for reappointment.

(4) Subsection (3) does not apply if—

(a) the resignation was due to the misconduct of the applicant for reappointment or was due to any act involving moral turpitude on his part; or

(b) during the period of five years immediately preceding the application for reappointment, the applicant for reappointment has engaged in an activity that is contrary to the best interests of the Force.

(5) Where a person is reappointed to the Force under this section, any period of service in the Force or in the service of the Territory in a civil capacity prior to his reappointment shall, notwithstanding the break in service, be taken into account in computing any pension payable to him.

**16.** (1) An Inspector, subordinate police officer or a constable may, on the recommendation of the Commissioner, be discharged from the Force if the Inspector, subordinate police officer or constable—

Discharge.

(a) has had a punishment imposed on him under section 37;

(b) has been pronounced by a medical board to be physically or mentally unfit for further service;

(c) has been found to be no longer efficient in the discharge of his duties; or

(d) has so conducted himself (or it has been found) that his retention in the Force would be contrary to the public interest.

**17.** No member of the Force shall—

Police officers not to engage in other employment or political activities.

(a) except with the written authority of the Commissioner, take up or engage in any employment, trade, business or office outside of the scope of his duties under this Act; or

(b) except with the written authority of the Governor, engage in a political campaign, or—

(i) take part in the activities or business of a political party or political organisation, or

(ii) become a member or an official of, or adviser to, any political party,

whether or not he is paid for his services to that party and whether or not that party operates in the Territory; or

(c) engage in any other activity that is likely—

(i) to interfere with his impartial discharge of his duty, or

(ii) to be a source of conflict with his duties.

**18.** Every member of the Force has all the rights, powers, authorities, privileges, and immunities conferred on a member of the Force by any law that is now in force in the Territory and likewise in respect of any law that comes into operation in the Territory, upon the coming into operation of that law.

Status of member of the Force.

**19.** Every member of the Force has all the rights, powers, authorities, privileges, and immunities, and is liable to all the duties and responsibilities, that any constable duly appointed now has or is subject or liable to, or may subsequently have or

Every member of the Force to be a constable.

be subject or liable to, either at common law or by virtue of any law that now is or may subsequently be in force in the Territory upon the coming into force of that law.

General power of  
police officers.

**20.** Where, by any law, powers are conferred on a member of the Force of a certain rank, those powers may be lawfully exercised by members of the Force of higher rank.

### PART III.

#### GENERAL DUTIES OF THE FORCE.

Duties of the  
Force.

**21.** The general duties of every member of the Force are—

(a) to preserve the peace, prevent and detect crimes and other breaches of the law;

(b) to serve and execute at any time (including Sundays) all process that they may be directed by any court of criminal jurisdiction or by any Magistrate or Coroner, or by any Justice of the Peace in any criminal matter, to serve or execute;

(c) to summon before a Magistrate and to prosecute—

(i) persons found committing any offence, or

(ii) persons whom he reasonably suspects of having committed an offence or may be charged with having committed any offence;

(d) to apprehend and bring before a Magistrate—

(i) persons found committing any offence that renders them liable to arrest without warrant, or

(ii) persons whom he reasonably suspects of having committed any such offence or may be charged with having committed any such offence;

(e) to stop, search and detain—

(i) any aircraft, vessel, boat, vehicle, cart or carriage in or on which he suspects that any stolen, or unlawfully obtained or any smuggled goods may be found, and

(ii) any person whom he reasonably suspects of having or conveying in any manner, anything

stolen or unlawfully obtained or any smuggled goods;

(f) to apprehend smugglers or others found committing offences against the revenue laws, and to seize all goods liable to seizure for any breach of the revenue laws and otherwise to aid in the detection of such offences and give such assistance as may be necessary to the officers of the revenue in all departments;

(g) to keep order in and within the precincts and in the vicinity of the Legislative Council and of all courts during all sittings thereof;

(h) to repress internal disturbance;

(i) to defend the Territory against external aggression or the threat thereof when called out to do so; and

(j) generally to do and perform all the duties that relate to the office of a constable.

**22.** (1) Any member of the Force may arrest without a warrant—

Powers to arrest without a warrant.

(a) any person who commits in his presence an offence punishable either upon indictment or upon summary conviction;

(b) any person whom he suspects upon reasonable grounds of having committed or of being about to commit an offence punishable on indictment;

(c) any person whom another person charges with having committed an offence punishable upon indictment;

(d) any person who assaults or obstructs a police officer in the execution of his duty or has escaped or who attempts to escape from lawful custody;

(e) any person who commits a breach of the peace in his presence or whom he reasonably believes may commit a breach of the peace;

(f) any person—

(i) in whose possession anything that may reasonably be suspected to be stolen property is found, or

(ii) who may reasonably be suspected of having committed an offence with reference to that thing;

(g) any person whom he finds lying or loitering in any highway, yard or other place between the hours of eight o'clock in the evening and five o'clock in the morning and not giving a satisfactory account of himself;

(h) any person whom he finds in any highway, yard or other place between the hours of eight o'clock in the evening and five o'clock in the morning and suspects upon reasonable grounds of having committed or being about to commit an offence punishable on indictment;

(i) any person found between the hours of eight o'clock in the evening and five o'clock in the morning having in his possession without lawful excuse any implement of housebreaking within the context of section 30 of the Larceny Act.

Cap. 39.

(2) Without limiting or affecting the powers conferred on a member of the Force by subsection (1), a member of the Force and any person he called to his assistance may arrest without warrant any person who within view of the member of the Force contravenes any law and—

(a) his name and address are unknown to the member of the Force and cannot be ascertained by him; or

(b) gives a name or address that the member of the Force has reason to believe is false.

Execution of warrants of arrest.

**23.** A warrant issued by a Magistrate for the apprehension of any person charged with any offence may be executed by any member of the Force at any time notwithstanding that the warrant is not in his possession at the time; but the warrant shall, on demand by the person apprehended, be shown to him as soon as practicable after his arrest.

Police station to be place of detention.

**24.** (1) Every police station and police post is a place of detention for a temporary confinement of persons charged with offences and those persons may be received and detained according to law.

(2) There shall be provided in every police station and police post cells or other accommodation for the secure confinement of persons referred to in subsection (1).

**25.** (1) Where a person is in the custody of a member of the Force without a warrant issued by the Court that a member of the Force may, subject to section 26, allow the person in custody bail by recognisance for his appearance before a Magistrate at a specified time and place and shall record the detail in a book to be known as the Police Bail Book which may be produced in evidence in any judicial proceedings relating to any matter recorded therein.

Person in custody without a warrant.

(2) Where a person who has been allowed bail under subsection (1)—

(a) fails to appear at the specified time and place and the Magistrate does not think fit to enlarge the recognisance; or

(b) the Magistrate having enlarged the recognisance, the person fails to appear at the time then appointed,

the Magistrate may cause a record of the recognisance to be drawn up and dealt with in accordance with section 197 of the Magistrate's Code of Procedure Act.

Cap. 44.

**26.** (1) When any person is apprehended without warrant after the hour of eight o'clock in the evening and before the hour of five o'clock in the morning, that person shall be taken to a police station, and the member of the Force in charge of the police station may allow bail by recognisance, with security, for the appearance of the person before the Court on a day mentioned in the recognisance to be dealt with according to law.

Persons apprehended after 8 o'clock in the evening.

(2) Any person referred to in subsection (1) who refuses or is unable to give security for his appearance as required by that subsection shall, as soon as is practicable after his apprehension, be brought before the Court to be dealt with according to law, except that, where the time is prescribed by law for taking such a person before the Court, the person must be taken before a Court within the prescribed time.

No bail to be granted in cases of certain offences.

**27.** Nothing contained in section 25 or 26 authorises a member of the Force to allow bail to a person charged with an offence the penalty for which is life imprisonment or a more severe penalty

Refusal of bail.

**28.** Where a member of the Force declines or refuses to allow bail to a person in his custody the member of the Force shall, as soon as is practicable, take or cause the person to be taken before the Court for the purpose of having him dealt with according to law.

Power to make measurements, photographs.

**29.** (1) A Gazetted Police Officer or any member of the Force of or below the rank of Inspector may request a person charged with an offence to submit to the taking and recording, for the purpose of identification, of his measurements, photograph and fingerprint impressions if he suspects that that person, from the nature or character of the offence with which he is charged (being a felony or misdemeanour) has been previously convicted or has been engaged in crime or that his measurements and photograph and fingerprint impressions (or any of them) are required in the interests of justice.

(2) Where a person referred to in subsection (1) refuses to submit to the taking of his measurements, photograph or fingerprint impressions he may be taken before a Magistrate and if the Magistrate is satisfied that the request to submit to the taking and recording thereof is reasonable, he may make such order with respect to the taking of the measurements, fingerprint impressions or the photograph as he considers justifiable.

(3) Where—

(a) measurements, fingerprint impressions or the photograph are taken of a person who has not previously been convicted of any criminal offence; and

(b) that person is subsequently discharged or acquitted by a court,

all records that relate to the measurements, fingerprint impressions and the photograph shall, upon the discharge or acquittal of the person, be destroyed in the presence of a Gazetted Police Officer or Inspector or handed over to the person from whom they were taken.

**30. Where—**

Right of police  
officer to  
prosecute.

(a) a member of the Force lays an information or makes a complaint against any person before a Magistrate; or

(b) a person alleged to have committed an offence is apprehended and brought before a Magistrate,

any other member of the Force has the same privileges as to addressing the Magistrate who is trying or inquiring into the information, complaint or charge, as the case may be, and examining the witnesses giving evidence as has the member of the Force in whose name the information, complaint or charge is laid, made, or brought.

**31. (1)** Notwithstanding any other law for the time being in force, a member of the Force may, if he considers it necessary to do so for the maintenance and preservation of law and order or for the prevention or detection of crime, erect or place or cause to be erected or placed, barriers in or across any public road or street or in any public place in such manner as he thinks fit, except that any such barrier shall be adequately illuminated to indicate the presence of the barrier on the road during the hours of darkness.

Road barriers.

(2) Any member of the Force, in uniform, may take all reasonable steps to prevent any vehicle being driven past a barrier erected or placed across a public road or street or in any public place under subsection (1) and a driver of a vehicle who fails to comply with a direction given by a member of the Force in uniform requiring him to stop the vehicle before reaching at or beyond any such barrier is guilty of an offence and is liable on summary conviction to a fine of seven hundred and fifty dollars or to imprisonment for a term of twelve months.

(3) No liability attaches to a member of the Force for—

(a) any loss or damage that happens to a vehicle; or

(b) any injury sustained by the driver or any other occupant of a vehicle,

as a result of the driver of the vehicle failing to comply with a direction given by a member of the Force acting under subsection (2).

Duty to keep  
order in public  
road.

**32.** (1) Notwithstanding the provisions of any other law for the time being in force in the Territory members of the Force may, in uniform—

(a) regulate and control traffic on public roads or in public places;

(b) direct all or any particular kind of traffic where it is in the public interest to do so;

(c) keep order on public roads, streets and thoroughfares and at landing places and places of public resort or to which the public have access; and

(d) prevent or cause the removal of, any obstruction pedestrian or vehicular traffic on any public road, street, throughfare or landing place.

(2) Any person who fails to comply with a direction given by a member of the Force in the execution of his duty under any of the provisions of this section is guilty of an offence and is liable on summary conviction to a fine of two hundred and fifty dollars or to imprisonment for a term of three months and the member of the Force may, at the time of the obstruction, remove it or cause it to be removed to such place as he may designate.

#### PART IV.

##### DISCIPLINE.

Desertion.

**33.** A member of the Force who without reasonable excuse is absent without leave from duty for a continuous period of not less than twenty-eight days shall be deemed, until the contrary is proved, to have deserted the Force and is guilty of an offence and is liable on summary conviction to a fine of five hundred dollars or to imprisonment for a term of six months.

Punishment for  
serious offences.

**34.** (1) Any member of the Force who—

(a) begins, excites, causes, raises, abets, countenances or joins in any mutiny or sedition amongst other members of the Force;

(b) does not attempt to suppress any mutiny or sedition that he knows of within the Force;

(c) conspires with any other member of the Force or with any other person to cause any mutiny or sedition;

(d) having knowledge of any actual or planned mutiny does not without delay give information thereof to his superiors within the Force;

(e) strikes or offers violence of any description to a member of the Force; or

(f) wilfully permits the escape of any person detained in lawful custody,

is guilty of an offence.

(2) A member of the Force who is at an unlawful assembly or a riot and does not do everything within his power to suppress it is guilty of an offence and is liable on summary conviction to a fine of five hundred dollars or to imprisonment for a term of six months.

(3) A member of the Force who—

(a) causes or attempts to cause or does any act calculated to cause disaffection amongst other members of the Force;

(b) induces or attempts to induce or does any act calculated to induce a member of the Force to withhold his services or to commit breach of discipline; or

(c) aids or incites a member of the Force or any other person to assault or resist a member of the Force in the execution of his duty,

is guilty of an offence.

(4) a person guilty of an offence under subsections (1) and (3) is liable—

(a) on conviction on indictment to imprisonment for a term of three years; or

(b) on summary conviction to a fine of five hundred dollars or to imprisonment for a term of six months.

**35.** (1) The Commissioner may interdict from duty any Inspector or member of the Force of lower rank who is alleged to have committed an offence—

Interdiction and pay etc.

(a) pending investigation or inquiry into or the trial of, any offence or pending the determination of any appeal;

(b) pending—

- (i) investigation or inquiry into or the hearing of a charge relating to an offence against any of the disciplinary regulations made under this Act, or
- (ii) the final determination of any charge made in respect of any offence against those regulations.

(2) An Inspector or a member of the Force of lower rank interdicted from duty under either paragraph (a) or (b) of subsection (1) shall, during the period of interdiction, be placed on half pay if he is a bachelor, or three-quarters pay if he is married.

(3) If proceedings referred to in subsection (1) against an Inspector or a member of the Force of lower rank do not result in his dismissal from the Force then he is entitled, on cessation of his interdiction, to the full amount of pay withheld from him, except that if he is—

(a) convicted of an offence, whether upon summary conviction or upon indictment; or

(b) found guilty of an offence at the conclusion of disciplinary proceedings,

and is not dismissed from the Force, then, he is not entitled to receive any pay so withheld.

(4) Any Inspector or a member of the Force of lower rank interdicted under this section does not, by reason only of the interdiction, cease to be a member of the Force, but—

(a) the powers, privileges and benefits vested on him by virtue of his office are in abeyance during the period of interdiction; and

(b) the Inspector or member of the Force of lower rank remains subject to the same responsibilities, discipline and penalties and to the same authority as if he had not been indicted.

Dismissal or  
reduction.

**36.** (1) The Governor may order the dismissal or discharge from the Force or reduction in rank of any Inspector who has been convicted of a criminal offence or found guilty of a breach of a disciplinary regulation unless the Inspector has successfully appealed against the conviction or the finding of his guilt.

(2) The Governor may order the dismissal or discharge from the Force or as the case may be, reduction in rank of any subordinate police officer or member of the Force of lower

rank who has been convicted of a criminal offence or found guilty of a breach of a disciplinary regulation made under this Act unless such person has successfully appealed against the conviction or the finding of his guilt.

(3) Dismissal or reduction in rank under subsection (1) or (2) may be ordered in addition to any punishment that may be imposed on conviction whether or not, in the case of a dismissal, a recommendation to that effect has been made.

**[ 37 ]** (1) Any offence against the regulations that relates to the discipline of the Force may be inquired into and dealt with—

Hearing and determination of charge and complaint.

(a) in the case of an Inspector or subordinate police officer, by a Gazetted Police Officer; and

(b) in the case of a constable, by an Inspector,

if the Gazetted Police Officer or Inspector, as the case may be, inquiring into the offence is not the complainant or a witness in the matter.

(2) A Gazetted Police Officer may impose on an Inspector or on a subordinate police officer, found guilty of an offence against the disciplinary regulations, any of the following punishments—

(a) a reprimand or severe reprimand;

(b) a fine not exceeding seventy-five dollars;

(c) loss of seniority; or

(d) in addition to the punishments specified in paragraph (a), (b) and (c), issue a general warning of dismissal, to be effective for a period not exceeding twelve months.

(3) An Inspector may impose on a constable, found guilty of an offence against the disciplinary regulations, any one or more of the following punishments—

(a) reprimand or severe reprimand;

(b) fine not exceeding fifty dollars; or

(c) loss of seniority,

with or without a recommendation to the Commissioner that in addition to the punishments specified in paragraphs (a) and (b) that either a general warning of dismissal or specific warning of dismissal, to be effective for a period not exceeding twelve months, be issued to the offender.

(4) If a Gazetted Police Officer or an Inspector, after inquiring into an offence against the disciplinary regulations, finds that an offence had been committed but considers that—

(a) the punishment is inadequate that he is authorised to impose under the particular circumstances; and

(b) the nature of the disciplinary offence merits a heavier punishment, he shall remit the matter to the Commissioner for imposition of punishment.

(5) The Commissioner may, where a case has been remitted to him under subsection (4) impose any one or more of the punishments under subsection (2) or (3) and in addition thereto—

(a) recommend reduction in rank, loss of seniority, or dismissal or discharge from the Force, as the case may be, in the case of a subordinate police officer or constable; or

(b) recommend the reduction in rank, loss of seniority, discharge or dismissal from the Force in the case of an Inspector.

(6) No member of the Force shall be found guilty of a disciplinary offence unless the charge had been read and inquired into in his presence and he has been given sufficient opportunity to make his defence thereto.

(7) A member of the Force upon whom a punishment is imposed from which he is entitled to appeal to the Governor or to the Commissioner under section 39 shall, at the time when the punishment is imposed, be informed of his right of appeal.

(8) A Gazetted Police Officer or Inspector has the same powers in respect of securing and compelling the attendance of witnesses and their examination upon oath and otherwise as are conferred upon a Magistrate under the Magistrate's Code of Procedure Act.

(9) Any person who, on the hearing of a disciplinary charge, gives false evidence on oath is guilty of the offence of perjury.

Cap. 44.

Review by  
Commissioner.

**38.** (1) The Commissioner may review any disciplinary proceedings conducted under this Act other than proceedings scheduled by himself.

(2) Where a member of the Force is found guilty of an offence against discipline under this Act a complete record of the proceedings shall be sent to the Commissioner who must examine it and, if he considers that the proceedings ought to be reviewed, may—

- (a) quash the findings;
- (b) quash the findings and find the accused guilty of another offence; or
- (c) with or without altering the findings—
  - (i) reduce or increase the punishment, or
  - (ii) with or without reducing or increasing the punishment alter the nature of it.

(3) Notwithstanding subsection (2), the Commissioner shall not—

- (a) impose a punishment that the officer who conducted the proceedings was not empowered to impose; or
- (b) increase punishment without giving the person to be punished an opportunity of making representations in writing within seven days from the date of the notification of the intention of the Commissioner to increase the punishment.

**39.** (1) A subordinate police officer or a member of the Force of lower rank in respect of whom the Commissioner has decided to recommend—

- (a) reduction in rank or loss of seniority;
- (b) discharge; or
- (c) dismissal,

may, within seven days from the date on which the decision has been communicated to him, appeal in writing to the Governor against the finding that resulted in the decision or against the decision only or both; and the Governor may confirm or set aside the finding or confirm, set aside or vary the decision and the decision of the Governor is final.

(2) A member of the Force upon whom a Gazetted Police Officer has imposed a punishment or any constable upon whom an Inspector has imposed a punishment may, within seven days from the date on which the punishment has been communicated to him, appeal to the Commissioner.

Appeals.

(3) The Commissioner, in determining an appeal under subsection (2), has the powers of review contained in section 38 and a person who has appealed to the Commissioner and is aggrieved by the decision of the Commissioner may, within seven days from the date on which the decision of the Commissioner has been made known to him, appeal to the Governor.

(4) The Governor upon hearing an appeal may—

(a) allow the appeal;

(b) dismiss the appeal; or

(c) vary the punishment by substituting some other punishment which the Gazetted Police Officer or Inspector may have imposed.

(5) Every appeal under this section shall be in writing and the decision of the Governor is final.

Admonishment.

**40.** (1) Nothing in this Act shall be construed to prevent the Commissioner, a Gazetted Police Officer or an Inspector from admonishing or cautioning, a member of the Force of a lower rank than himself regarding the misconduct, inefficiency, neglect of duty or any other act of indiscipline of that member of the Force without the institution of proceedings.

(2) Where a member of the Force has been admonished or cautioned under subsection (1), a record shall be made of the admonishment or caution and shall be signed by the person who administered the caution and countersigned by the member of the Force admonished or cautioned.

Fines  
recoverable from  
pay.

**41.** (1) Fines imposed under this Act on a member of the Force for offences against discipline may be enforced by deducting them, either in whole or by monthly deductions, from any money due to him; but in no case shall a single deduction exceed one-third of his salary due to him in any one month.

(2) Where more than one deduction is liable to be made upon the same member of the Force, the enforcement of an order for deduction made later in date shall, if necessary, be postponed until the earlier orders for deduction have been satisfied.

**42.** A member of the Force who loses or causes damage to any arms, equipment, uniform or other accoutrements or property supplied to him or committed to his charge, in the execution of his duty may, in addition to or in lieu of any other punishment, be ordered to make good either partially or wholly the amount of the loss or damage and the amount may, subject to the limitations set out in section 41 (2), be recovered by deductions from moneys due to him.

Loss or damage to arms and equipment.

**43.** Nothing in this Part shall be construed as a substitute for the arrest and prosecution of a member of the Force who has committed an offence punishable on summary conviction or on indictment.

Arrest of members of the Force.

## PART V.

### PAY, ALLOWANCES AND OTHER FINANCIAL PROVISIONS.

**44.** Every member of the Force is entitled to such pay and allowances as may from time to time be voted for the purpose by the Legislative Council.

Pay and allowances.

**45.** (1) There shall be maintained a fund to be known as the Police Reward Fund, in this Act referred to as the Reward Fund, into which shall be paid—

Reward Fund.

(a) all fines imposed on members of the Force as a result of disciplinary proceedings; and

(b) subject to subsection (3), all costs and damages awarded to a member of the Force acting as a prosecutor in a summary criminal trial.

(2) The moneys comprising the Reward Fund shall be applied towards the payment of such rewards, gratuities or bounties or for such other purposes as the Commissioner may direct.

(3) Where, by any law in force in the Territory—

(a) it is provided that any part or share of any seizure or forfeiture or proceeds thereof is or may be awarded to any person or prosecutor, informer or otherwise; and

(b) in pursuance thereof any such part or share is awarded to a member of the Force,

that member of the Force is entitled to have it for his personal use and benefit.

Investment of  
Reward Fund.

**46.** (1) The Governor may direct the Commissioner to invest any moneys belonging to the Reward Fund, or any portion thereof, in any loan or public security under any law in force in the Territory or in any bank; and the principal and interest on every such investment may be applied in like manner and for the like purposes as the Reward Fund.

(2) The Commissioner shall keep an account of the receipts and disbursements of the Reward Fund, which shall be subject to audit by the Chief Auditor.

## PART VI.

### RETIREMENT, PENSIONS AND GRATUITIES.

Definition for  
purpose of Part  
VI.

**47.** For the purposes of this Part "pay" in relation to a member of the Force, includes his salary, good conduct pay and detective and rent allowances (inclusive of the estimated value of free quarters).

Pensions to be  
charged on  
revenue of  
Territory.

**48.** There shall be charged on and paid out of the Consolidated Fund all such amounts as are granted by way of pension, gratuity or other allowance in accordance with the provisions of this Part to persons who have been members of the Force.

Grant of  
pensions.

**49.** (1) Subject to the provisions of this Part, the Governor may grant to every member of the Force on his retirement from the Force, if he has served in the Force for a period of ten years or more, a pension at the rate of seventeen-sixtieths of his pay with an addition of one-sixtieth in respect of each complete year of such service in excess of ten years.

(2) A pension granted by virtue of subsection (1) to a person eligible therefor shall not exceed two-thirds of his average pay during the period of three years immediately preceding his retirement.

Pay to be taken  
for computation  
of pension etc.

**50.** (1) For the purposes of computing the amount payable as pension to a member of the Force the following principles shall be followed, as the case requires—

(a) in the case of a member of the Force who has held the same rank for a period of three years immediately preceding the date of his retirement, the pension payable

to him shall be based on the full annual pay to which he was entitled at that date in respect of that rank;

(b) in the case of a member of the Force who, at any time during the period of three years immediately preceding the date of his retirement, had been transferred from one rank to another but whose pay has been changed by reasons of the transfer, the pension payable to him shall be based on the full annual pay to which he was entitled in respect of the rank held by him at the date of his retirement; and

(c) in any case not provided for in paragraph (a) or (b), the pension payable to a member of the Force upon his retirement from the Force shall be based on one-third of the aggregate pay enjoyed by him in respect of his service during the three years of his service immediately preceding the date of his retirement.

(2) Notwithstanding paragraph (c) of subsection (1)—

(a) if one-third of the aggregate pay referred to in that paragraph is less than the highest annual pay to which the member of the Force was entitled at the date of any transfer within the period of three years immediately preceding his retirement, then his pension shall be based on his highest annual pay;

(b) if one-third of the aggregate pay referred to in that paragraph is less than the annual pay to which he was entitled at the date of his retirement had he—

(i) continued to hold the rank from which he was transferred, and

(ii) received all increments that, in the opinion of the Governor, might have been granted to him,

then, the pension payable to him shall be based on the annual pay to which he was entitled at the date of his retirement.

(3) For the purposes of calculating pay for the computation of pensions under this section, a member of the Force shall be deemed to have been on duty on full pay throughout the period of three years immediately preceding the date of his retirement but if one-third of the aggregate pay referred to in that paragraph is less than the pay to which he was entitled at the date of his retirement, had he—

(a) continued to hold the rank from which he was transferred, and

(b) received all increments that, in the opinion of the Governor, might have been granted to him, then, the pension payable to him shall be based on the annual pay to which he was entitled at the date of his retirement.

Increase in pension in special circumstances.

**51.** A member of the Force who has completed more than ten years' service but less than twenty years' service and retires from the Force on the findings of a medical board as provided in subsection (1) of section 52 may be granted a pension based on twenty years' service.

Circumstances in which pension may not be granted.

**52.** (1) Subject to subsection (2), no pension shall be granted—

(a) to an Inspector who—

(i) has not been in the service of the Force for a continuous period of at least twenty-five years, or

(ii) has not attained the age of fifty-five years, except in a special case where his retirement from the Force on or after attaining the age of fifty years is permitted by the Governor in accordance with section 66(3); or

(b) to a subordinate police officer or constable who—

(i) has not been in the service of the Force for a continuous period of at least twenty-five years, or

(ii) has not attained the age of fifty years,

unless the Governor is satisfied by the findings of a medical board that the Inspector, subordinate police officer or constable is incapacitated by some infirmity of mind or body for further service in the Force and that the infirmity is likely to be permanent.

(2) Where a member of the Force—

(a) is required to retire in accordance with the provisions of section 54; or

(b) has been discharged in accordance with the provisions of section 16,

and a pension, gratuity or other allowance cannot otherwise be granted to him under the provisions of this Part, the Governor may, in his discretion, grant him a pension, gratuity

or other allowance not exceeding that for which he would have been eligible if he had been permitted to retire from the service of the Force on the findings of a medical board.

**53.** The Governor may grant to any member of the Force a gratuity at the rate of half a month's pay for each complete six months of service if the member of the Force has reached the age of retirement without having completed ten years' service.

Gratuity where length of service does not qualify for pension.

**54.** Where the Governor considers on the recommendations of the Commissioner that it is desirable in the public interest that any Inspector, subordinate police officer or constable should be required to retire from the Force, he shall call for a full report from the Commissioner concerning the Inspector, subordinate police officer or constable and if after—

Compulsory retirement.

(a) considering the report; and

(b) giving the Inspector, subordinate police officer or constable an opportunity of submitting a reply to the grounds upon which his retirement is contemplated,

he is satisfied, having regard to the conditions of the Force, the usefulness of the officer thereto and all the other circumstances of the case, that it is desirable in the public interest that the Inspector, subordinate police officer or constable retire from the service of the Force, he may require the Inspector, subordinate police officer or constable to retire on such date as the Governor may specify.

**55.** (1) This section applies to an Inspector, a subordinate police officer or a constable who, while he is in the service of the Force—

Retirement.

(a) is permanently injured in the actual discharge of his duty by some injury specifically attributable to the nature of his duty or any accident whilst on duty which is not wholly or mainly due to, or seriously aggravated by, his own serious and culpable negligence or misconduct; or

(b) contracts a disease to which he is specifically exposed by the nature of his duty, not being a disease wholly or mainly due to, or seriously aggravated by, his own serious and culpable negligence or misconduct.

(2) In this section, unless the contrary intention appears, reference to an Inspector, a subordinate police officer or a constable being injured and to the date on which an injury is sustained shall respectively be construed as including references to an Inspector, a subordinate police officer or a constable who has contracted a disease as is mentioned in subsection (1) and references to the date on which the disease is contracted, as the case may be.

(3) Where an Inspector, a subordinate police officer or a constable to whom this section applies is the holder of a pensionable office in which he is confirmed—

(a) he may, if—

- (i) his retirement is necessitated or materially accelerated by his injury, and
- (ii) he has been in the service of the Force for a period of less than ten years,

be granted, in lieu of any gratuity under section 53, a pension under section 49 except that the words “for a period of ten years or more” appearing in section 49 shall be disregarded; and

(b) he may be granted on his retirement an additional pension at the annual rate of the proportion of his actual pay at the date of his injury appropriate in his case if his capacity to contribute to his support is reduced, as follows—

- (i) slightly impaired, forty four-hundred-and-eightieths of a month’s pay,
- (ii) impaired, eighty four-hundred-and-eightieths of a month’s pay,
- (iii) materially impaired, one hundred and twenty four-hundred-and-eightieths of a month’s pay,
- (iv) totally destroyed, one hundred and sixty four-hundred-and-eightieths of a month’s pay,

except that the amount of the additional pension may be reduced to such an extent as the Governor considers reasonable where the injury is not a cause or the sole cause of retirement.

(4) If, at the time of assessing the amounts of any additional pension or pension to be granted under paragraph (b) of subsection (3) to any Inspector, subordinate police officer or constable to whom this section applies, there is doubt

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as to the degree of permanent impairment of his capacity to contribute to his support, he may be granted a provisional award which shall be reviewed when the degree of his permanent impairment is ascertained.

(5) Subsection (1) applies in respect of—

(a) an Inspector, a subordinate police officer or a constable who is proceeding by a route approved by the Governor to or from the Territory at the commencement or termination of his service in the Territory or at the commencement or termination of a period of leave therefrom, and

(i) is permanently injured as the result of damage to any vessel, aircraft or vehicle in which he is travelling, and

(ii) the Governor is satisfied that the damage is attributable to circumstances arising out of any war in which Her Majesty may be engaged; and

(b) an Inspector, a subordinate police officer or a constable who is—

(i) permanently injured while travelling in pursuance of official instructions, and

(ii) the injury is not wholly or mainly due to, or seriously aggravated by, his own serious and culpable negligence or misconduct.

(6) In a case where subsection (5) applies, the rates of pension prescribed in subsection (3) shall be sixty four-hundred-and-eightieths, one hundred and twenty four-hundred-and-eightieths, one hundred and eighty four-hundred-and-eightieths and two hundred and forty four-hundred-and-eightieths, respectively.

(7) Where the Governor is satisfied that damages have been or will be recovered by an Inspector, a subordinate police officer or a constable in respect of an injury for which an additional pension or pension may be granted under paragraph (b) of subsection (3), the Governor may take the damages into account against such additional pension or pension in such manner and to such extent as he considers reasonable and may withhold or reduce the additional pension accordingly.

(8) For the purpose of subsection (7), an Inspector, subordinate police officer or constable shall be deemed to

recover damages whether they are paid in pursuance of a judgment or an order of the Court or by way of settlement or compromise of his claim and whether or not proceedings are instituted to enforce that claim.

(9) If any Inspector, subordinate police officer or constable—

(a) is injured in the actual discharge of his duty and the injury is not wholly or mainly due to, or seriously aggravated by, his own serious and culpable negligence or misconduct; or

(b) contracts a disease to which he is specifically exposed by the nature of his duty, not being a disease wholly or mainly due to, or seriously aggravated by, his own serious and culpable negligence or misconduct,

and the effects of either the injury or disease do not necessitate retirement not materially accelerate his retirement then the Inspector, subordinate police officer or constable may be granted compensation by way of an *ex gratia* payment as recommended to the Governor by a panel of two assessors appointed by him at the time for the purpose of assessment.

Reduced  
pension and  
gratuity.

**56.** (1) Every Inspector, subordinate police officer or constable who becomes eligible for a pension under the provisions of this Part may, at his option, be paid on his retirement a reduced pension and gratuity in lieu of a pension for which he may be eligible under this Part.

(2) An option referred to in subsection (1) is exercisable not later than the day immediately preceding the date of retirement of the Inspector, subordinate police officer or constable; but the Governor may, in a reasonable case allow an Inspector, a subordinate police officer or constable to exercise the option at any time between the date of retirement and the date of award of pension.

(3) Where an Inspector, a subordinate police officer or a constable has exercised an option referred to in subsection (1), his decision made as a result of the exercise of the option is irrevocable after the date of his retirement.

(4) Where an Inspector, a subordinate police officer or a constable who has not exercised an option referred to in subsection (1) dies after the date of retirement but before a pension has been awarded under this Part, the Governor may grant a gratuity and a reduced pension as provided in

subsection (1) as if the Inspector, subordinate police officer or constable had exercised the option before his death.

(5) The date of the exercise of the option by an Inspector, a subordinate police officer or a constable is the date of the receipt by the Commissioner of a written notification thereof signed by the person exercising the option.

**57.** A reduced pension is a pension equal to three-fourths of the pension that would be payable under this Part including any payments granted under section 55 and a gratuity is the amount that one-fourth of the pension payable under this Part, including the payments referred to in this section, when multiplied by twelve and one-half, represents.

Meaning of reduced pension or gratuity.

**58.** (1) Subject to the provisions of section 60, where an Inspector, a subordinate police officer or a constable dies while in the service of the Force, the Governor may grant to his legal personal representative a gratuity of an amount not exceeding either three times his annual pay or his commuted pension gratuity, if any, whichever is the greater.

Gratuity where Inspector, subordinate police officer or constable dies in the service of the Force or after his retirement.

(2) For the purposes of this section—

(a) “annual pay” means the pay that would be taken for the purpose of computing any pension or gratuity granted to an Inspector, a subordinate police officer or a constable if he had retired from the Force at the date of his death on the findings of a medical board as provided in subsection (1) of section 52; and

(b) “commuted pension gratuity” means the gratuity, if any, that might have been granted to an Inspector, subordinate police officer or constable under section 52, if—

- (i) his service had been wholly in the Territory,
- (ii) he had retired from the Force at the date of his death on the findings of a medical board as provided in subsection (1) of section 52, and
- (iii) he had elected to receive a reduced pension and gratuity.

(3) Where an Inspector, a subordinate police officer or a constable to whom a gratuity or other allowance has been granted under this Part dies after retirement from the Force, and the amounts paid or payable to him at his death on account of any pension, gratuity or other allowance in respect of his

service in the Force are less than the amount of his annual pay at the date of his retirement, the Governor may grant to his legal personal representative a gratuity equal to the deficiency.

Gratuity where death due to injuries received or disease contracted in the discharge of duty.

**59.** Where an Inspector, a subordinate police officer or a constable, while he is in the service of the Force, dies—

(a) in the actual discharge of his duty from some injury specifically attributable to the nature of his duty or any accident while on duty; or

(b) as a result of contracting a disease to which he is specifically exposed by the nature of his duty,

which injury or disease is not wholly or mainly due to, or seriously aggravated by, his own serious or culpable negligence or misconduct and death occurs within seven years from the date of the injury or the contracting of the disease, the Governor may grant to the legal personal representative of the Inspector, subordinate police officer or constable either a gratuity or an amount not exceeding his pay for ten years or a gratuity under the provisions of section 58, whichever is the greater.

Pension to dependants where Inspector, subordinate police officer or constable dies as a result of injuries received or disease contracted in the discharge of his duties.

**60.** (1) Where an Inspector, a subordinate police officer or a constable, while he is in the service of the Force dies, either in the actual discharge of his duty from some injury specifically attributable to the nature of his duty or any accident while on duty; or as a result of contracting a disease to which he is specifically exposed by the nature of his duty; which injury or disease is not wholly or mainly due to, or seriously aggravated by, his own serious or culpable negligence or misconduct and death occurs within seven years from the date of the injury or the contracting of the disease, the Governor may grant, in addition to a grant, if any, made to his legal personal representative under section 58 or section 59, a pension as follows—

(a) if the Inspector, subordinate police officer or constable, leaves a widow but no issue, a pension to her while she remains unmarried at a rate not exceeding one-half of his pay at the date of his death or his full pension entitlement before commutation, whichever is the greater;

(b) if the Inspector, subordinate police officer or constable leaves a widow to whom a pension is granted under paragraph (a) and children, a pension of an amount not exceeding one-eighth of the pension

specified in that paragraph, in respect of each child, until he attains the age of eighteen years;

(c) if the Inspector, subordinate police officer or constable leaves children but no widow, or if no pension is granted to his widow, a pension equal to double the amount specified in paragraph (b) in respect of each child until he attains the age of eighteen years;

(d) if the Inspector, subordinate police officer or constable leaves children and a widow to whom a pension is granted under paragraph (a) and the widow subsequently dies, a pension equal to double the amount specified in paragraph (b) in respect of each child as from the date of the death of the widow until the child attains the age of eighteen years;

(e) if the Inspector, subordinate police officer or constable does not leave a widow, or if no pension is granted to his widow, and if his mother is wholly or mainly dependent on him for her support, a pension to his mother of an amount not exceeding the pension that might have been granted to his widow, while his mother is without adequate means of support;

(f) if the Inspector, subordinate police officer or constable does not leave a widow or mother, or if no pension is granted to his widow or mother and if his father is wholly or mainly dependent on him for his support, a pension to the father of an amount not exceeding the pension that might have been granted to his widow, while his father is without adequate means of support;

(g) if the Inspector, subordinate police officer or constable does not leave any children who may be eligible for pension under the provisions of this section, but leaves a brother or sister who is wholly or mainly dependent on him for support, a pension to any such brother or sister of an amount not exceeding the pension that might have been granted under paragraphs (b) and (c) until he or she attains the age of eighteen years while the brother or sister is without adequate means of support.

(2) Notwithstanding subsection (1)—

(a) if in the opinion of the Governor there are compassionate grounds for so doing, he may grant to a child of any Inspector, subordinate police officer or constable being a child who at the date of the death in

service of the Inspector, subordinate police officer or constable was wholly or mainly dependent on him for support and had attained the age of eighteen years, a pension for such period as the Governor may determine, of an amount not exceeding the pension that may be granted under paragraph (b) of subsection (1);

(b) where any Inspector, subordinate police officer or constable dies in service and leaves a child who was incapacitated at the time of the Inspector's, subordinate police officer's or constable's death the Governor may, notwithstanding any pension that may have been granted under paragraph (b) or paragraph (c) of subsection (1), grant an additional pension in respect of the incapacitated child after he has attained the age of eighteen years and for so long as his incapacity continues, of an amount not exceeding one-half of the pension that may have been granted;

(c) no pension is payable under this subsection at any time in respect of more than six children exclusive of incapacitated children;

(d) in the case of a pension granted under paragraph (e) of subsection (1), if the mother is a widow at the time of the grant of the pension and subsequently re-marries, any pension that is being paid to her ceases as from the date of re-marriage; and if it appears to the Governor at any time that a mother who is in receipt of a pension under subsection (1) is adequately provided with other means of support, the pension shall cease as from such date as the Governor may determine;

(e) a pension granted to a female child under this section ceases upon the marriage of the child.

(3) An Inspector, a subordinate police officer or a constable shall be deemed to have died in circumstances described in subsection (1) if—

(a) he is proceeding by a route approved by the Governor to or from the Territory or from one island in the Territory to another, at the commencement or termination of his service in the Territory or of a period of leave therefrom and dies as the result of—

(i) damage to any vessel, aircraft or vehicle in which he is travelling, or

- (ii) any act of violence directed against the vessel, aircraft or vehicle,

and the Governor is satisfied that the damage or act is attributable to circumstances arising out of war in which Her Majesty may be engaged;

(b) he dies as a result of an injury received while travelling by air in pursuance of official instructions and the injury is not wholly or mainly due to, or seriously aggravated by, his own serious and culpable negligence or misconduct;

except that in a case mentioned in paragraph (a) or (b) the rates of pension prescribed in paragraphs (a) and (b) of subsection (1) shall be fifteen-sixtieths and one-sixth, respectively.

(4) Where the Governor is satisfied that damages have been recovered in respect of a death in respect of which an additional pension or a pension may be granted under subsection (1) the Governor may take those damages into account against the additional pension or pension in such manner and to such extent as he thinks fit and may withhold or reduce the additional pension or pension accordingly.

(5) For the purposes of subsection (1) any Inspector, subordinate police officer or constable shall be deemed to recover damages whether they are paid in pursuance of a judgment or an order of a Court or by way of settlement or compromise of his claim and whether or not proceedings are instituted to enforce that claim.

(6) For the purposes of this section—

(a) “brother” and “sister” means brother and sister of the whole blood,

(b) “child” includes—

(i) a posthumous child;

(ii) a step-child;

(iii) an illegitimate child if the Inspector, subordinate police officer or constable is the mother and the child was conceived before the date of the injury or contracting of the disease, as the case may be, and is wholly or mainly dependent upon the Inspector, subordinate police officer or constable for support; and

(iv) an adopted child adopted in a manner recognised by law, before the date of the injury or the contracting of the disease, as the case may be, and is dependent upon the Inspector, subordinate police officer or constable for support;

(c) "incapacitated", in relation to a child, means incapable by reason of some specific bodily or mental disability of earning his own living; and a child who is, in any event, too young to earn his own living shall be treated as incapacitated for the purposes of this section if it appears that, by reason of any specific bodily or mental disability, he will be incapable of earning his own living when he attains the age at which he would otherwise be capable of so doing; and

(d) "mother" and "father" include, in relation to a person, his stepmother, or stepfather and a person by whom he has been lawfully adopted.

Pension not of right.

**61.** No Inspector, subordinate police officer or constable has an absolute right to compensation for past service or to any pension, gratuity or other allowance under this Part.

Pension not to be assignable.

**62.** No pension granted under this Part is assignable, transferable or liable to be attached, sequestered, or levied upon for or in respect of any debt or claim whatsoever.

Pension to cease on conviction.

**63.** (1) If any Inspector, subordinate police officer or constable to whom a pension has been granted under this Part is convicted before a court in the Commonwealth of any offence for which he is sentenced to death or a term of imprisonment with hard labour exceeding twelve months his pension ceases if he does not within two months from the date of the conviction receive Her Majesty's free pardon, or the equivalent thereof.

(2) The Governor may restore the pension of an Inspector or of a subordinate police officer or constable who after conviction has received Her Majesty's free pardon or its equivalent at any time, if the Inspector, subordinate police officer or constable is resident in the Territory.

Pension to cease on bankruptcy.

**64.** The pension of an Inspector, a subordinate police officer or a constable ceases upon his becoming a bankrupt

but if the pensioner is resident in the Territory, the Governor may during the remainder of the pensioner's life or during such shorter period either continuous or discontinuous, as the Governor thinks fit, pay all or any part of the pension, to which the pensioner would have been entitled by way of pension had he not become bankrupt, to or towards the maintenance and person support or benefit of all or any of the following persons, namely, the pensioner, his wife, and any children of his in such proportions and manner as the Governor considers proper.

**65.** If any Inspector, subordinate police officer or constable to whom a pension has been granted under this Part is appointed to any office in the Public Service or is re-appointed to the Force, the payment of his pension may if the Governor thinks fit, be suspended during the period of his re-employment.

Suspension of pension on re-employment.

**66.** (1) Every Inspector, subordinate police officer and constable may be required by the Governor to retire from the Force after he has served twenty-five years or more in the Force.

Retirement from the Force.

(2) Every subordinate police officer and constable may be required by the Governor to retire from the Force on or after attaining the age of fifty years.

(3) The Governor may, on recommendation by the Commissioner, permit an Inspector to retire on or after attaining the age of fifty years.

(4) Every Inspector, subordinate police officer and constable shall be required to retire from the Force on his attaining the age of fifty-five years.

**67.** This Part applies to every Inspector, subordinate police officer and constable who is serving in the Force at the commencement of this Act and is subsequently appointed to or promoted in, the service of the Force.

Application of Part VI.

## PART VII.

### WELFARE.

**68.** (1) For the purpose of enabling Inspectors, subordinate police officers and constables of the Force to consider and bring to the notice of the Commissioner and the Governor matters affecting their general welfare and

Police Welfare Association.

efficiency, there shall be continued under this Act the established organisation known as the Police Welfare Association which shall act through Boards and a Central Committee as provided by rules made under section 69.

(2) No representation shall be made by the Association in relation to any question of discipline, promotion, transfer or leave unless some question of principle is involved.

(3) The Association shall continue to be entirely independent of and unassociated with any body outside the Force.

Police  
Association Rules.

**69.** The Governor may make rules for the constitution and governance of the Association.

Establishment  
and  
administration of  
Police Welfare  
Fund.

**70.** (1) There is established a fund to be known as the Police Welfare Fund, in this Part referred to as the "Welfare Fund".

(2) The Welfare Fund comprises—

(a) the proceeds of all property sold in accordance with paragraphs (a) and (c) of subsection (3) of section 78, after deduction of expenses incurred under that subsection;

(b) all moneys referred to in paragraph (b) of subsection (3) of section 78, after the requirements of that paragraph have been complied with; and

(c) such contributions to the Welfare Fund as the Commissioner considers acceptable for payment into the Welfare Fund.

(3) The Welfare Fund shall be administered by the Commissioner and withdrawals therefrom may only be made on authorisation given by him in writing for the following purposes—

(a) the granting of assistance to wives or families of deceased Inspectors, subordinate police officers and constables;

(b) the providing of suitable comforts to Inspectors, subordinate police officers and constables, who are detained in a hospital for treatment; and

(c) the providing of assistance in any case that the Commissioner considers reasonable for the welfare of an Inspector, a subordinate police officer or constable.

(4) For the purposes of this section, the Commissioner may promote fund raising activities to raise money for payment into the Welfare Fund.

**71.** The Commissioner may direct the investment of any moneys belonging to the Welfare Fund or any portion thereof by way of a loan or public security under any enactment or by way of deposit in any locally registered bank; and the principal and interest of every such investment may be applied in like manner and for like purposes as the Welfare Fund is by this Act applicable.

Investment of  
Welfare Fund.

## PART VIII.

### PROHIBITED ASSOCIATIONS.

**72.** (1) No member of the Force shall be or become a member of—

Members of the  
Force not to join  
prohibited  
association.

(a) any trade union as defined by the Trade Unions Act, whether or not the trade union is registered or incorporated; or

(b) a prohibited association within the meaning of subsection (3).

(2) A member of the Force who becomes a member of a trade union or prohibited association, is guilty of an offence and is liable on summary conviction to a fine of five hundred dollars in addition to dismissal from the Force.

(3) For the purposes of this section "prohibited association" means—

(a) any league or association or body of persons, whether registered or not, that has for its object, or one of its objects, the promotion of feelings of ill-will and hostility between different classes or races;

(b) any other association, society or club, any of the objects of which are calculated to be subversive of good discipline on the part of a member of the Force, and which the Commissioner, with the approval of the Governor, declares to be a prohibited association.

Prohibition of members of the Force receiving benefits from prohibited associations.

**73.** No member of the Force shall—

(a) receive any financial or other benefit from a prohibited association;

(b) contribute financially or otherwise to a prohibited association; or

(c) knowingly, be a party to any matter prohibited under paragraph (a) or (b).

## PART IX.

### GENERAL ADMINISTRATION.

Canteens.

**74.** (1) There may be established, with the approval of the Commissioner, police canteens in the Territory at which the keepers thereof may sell intoxicating liquor by retail to members of the Force.

(2) The Commissioner may make rules in regard to the hours during which police canteens shall be kept open on each day for the proper management and control thereof.

Hospital treatment and medical attention at Government expense.

**75.** (1) All members of the Force are entitled to hospital treatment and medical and surgical attention—

(a) within the Territory, if the treatment is immediately available in the Territory;

(b) outside the Territory, if the treatment is not immediately available in the Territory;

and the cost of the treatment and attention is a charge on the Consolidated Fund.

(2) If a member of the Force is incapacitated for duty by his own misconduct the Governor may order that he forfeit the whole or any part of his pay for the period during which he is so incapacitated.

(3) Where any Inspector, subordinate police officer or constable dies while he is in the service of the Force the Governor may order that his funeral expenses be charged on and paid out of the Consolidated Fund.

Examination by medical board.

**76.** The Governor may appoint a medical board consisting of one or more medical practitioners to examine any Inspector, subordinate police officer or constable who the

Governor considers to be incapacitated for further performance of police duties.

**77.** The Governor may discharge from the Force any Inspector, subordinate police officer or constable who is certified by a medical board appointed under section 76 to be incapacitated and unfit for further service by reason of any infirmity of mind or body that is likely to be permanent.

Discharge on medical grounds.

**78.** (1) Where property has come into the possession of the Force in connection with a criminal charge or under section 30 of the Pawnbrokers Act, a Magistrate may, on application by a member of the Force or by a claimant of the property, make an order for the delivery of the property to the person appearing to the Magistrate to be the owner thereof, or if the owner cannot be ascertained, make such order with respect to the property as the Magistrate considers just.

Unclaimed property.

Cap. 296.

(2) The making of an order by a Magistrate under this section does not affect the right of any person to take legal proceedings against any person in possession of the property in question for the recovery of the property.

(3) All property that has come into the possession of the Force under the circumstances mentioned in subsection (1) and all property that has otherwise come into possession of the Force in respect of which the owner has not been ascertained and no order of a court has been made with respect thereto shall be dealt with as follows—

(a) if the property is of a perishable nature, or its custody involves unreasonable expense or inconvenience, it may be sold as soon as convenient after it has come into the possession of the Force;

(b) if the property consists of money, then, after it has remained in the possession of the Force for a period of three months it shall be dealt with in all respects as is provided in this section with regard to the proceeds of sales; and

(c) if the property comprises property not described in paragraph (a) or (b), it may be sold by public auction after it has remained in the possession of the Force for three months and has been advertised for a period of fourteen days or, if the Commissioner approves, it may be

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appropriated for use by the Force in the execution of its duties if the nature of the property so permits.

(4) The proceeds of all sales under this section shall, after deduction of expenses incurred as a result of custody and the sale thereof, be received by the member of the Force in charge of each sale and paid or transmitted to a member of the Force appointed by the Commissioner who shall deposit them to the credit of the Police Welfare Fund.

(5) Notwithstanding subsection (4), property found by any person other than a member of the Force the disposal of which property has not been provided for by any law and has not been claimed by its true owner, may be delivered to the finder on his claiming the property but delivery to the finder shall not be made until the property has remained in the possession of the Force for a period of three months.

(6) In the event of property referred to in subsection (5) being of a nature that necessitates the immediate sale thereof, the proceeds of sale—

(a) shall be paid or transmitted to a member of the Force appointed by the Commissioner who shall deposit the proceeds to the credit of the Police Welfare Fund; and

(b) may, on the expiration of a period of three months from the date of sale, after deduction of the expenses of sale, be transferred to the finder on his claiming them, if they have not been claimed by the true owner.

(7) In all cases in which property deposited with the Force, or the proceeds of the sale thereof are delivered to the finder, the finder may be required to execute a bond of indemnity to the Force in respect of delivery; but if the finder cannot be located or does not claim the property, before the expiration of a period of three months following the date on which the property came into the custody of the Force, the property may be disposed of as set forth in subsection (3).

(8) Subject to any other law for the time being in force, in all cases where property that has been deposited with the Force cannot be dealt with in accordance with subsections (2) to (6), the property may be destroyed by the Force on the order of the Commissioner in each case if it is not claimed after the expiration of a period of three months.

## PART X.

## VIRGIN ISLANDS AUXILIARY POLICE FORCE.

**79.** (1) There is established an auxiliary force to be known as the Virgin Islands Auxiliary Police Force. Establishment of Auxiliary Force.

- (2) The Auxiliary Force consists of such persons who—
- (a) are over eighteen and under fifty-five years of age;
  - (b) are of good character; and
  - (c) reside in the Territory,

as the Commissioner may, in the public interest and with the approval of the Governor, appoint.

(3) The Commissioner has the command, control and direction of the Auxiliary Force but may delegate such powers as he considers fit to a member of the Force appointed by him as Commandant thereof.

(4) An appointment made under subsection (3) shall be for such period of time as may be determined by the Commissioner with the approval of the Governor, unless the person appointed earlier resigns his office.

**80.** Every member of the Auxiliary Force has all the powers, authorities and immunities and shall perform all the duties and is subject to all the responsibilities that a member of the Force has and performs and to which a member of the Force is subject, as the case requires. General functions etc. of Auxiliary Force.

**81.** (1) Every member of the Auxiliary Force shall, on being appointed, make before a Gazetted Police Officer the oath or affirmation set forth in paragraph 2 of the Schedule. Oath of office etc. Schedule.

(2) A certificate of identity signed by the Commissioner in a form approved by him shall be issued to every member of the Auxiliary Force upon his appointment and the certificate is sufficient evidence of the appointment.

**82.** (1) The Commissioner may, with the approval of the Governor, provide for the issue of such uniform, equipment and accoutrements for the use of members of the Auxiliary Force as he considers necessary for the proper discharge of their duties; and the uniform, equipment and accoutrements shall be returned to the Commissioner at such time and place as he may direct. Uniform and equipment.

(2) The cost of providing uniform for the members of the Auxiliary Force shall be charged on and paid out of the Consolidated Fund.

Remuneration of  
Auxiliary Force.

**83.** (1) Members of the Auxiliary Force are entitled to such remuneration for actual hours of duty at such rate as may be prescribed; and, on the recommendation of the Commissioner, may be paid an annual bounty not exceeding the prescribed amount.

(2) Any payment made to a member of the Auxiliary Force by way of remuneration or bounty under subsection (1) shall be charged on and paid out of the Consolidated Fund.

Gratuities to  
Auxiliary Force.

**84.** (1) Where a member of the Auxiliary Force is injured or killed or dies as a result of injuries received in the performance of his functions and in a manner not attributable to his own serious and culpable negligence or misconduct, the Governor may grant to the member of the Auxiliary Force or his legal personal representative, as the case may be, such gratuity as he considers reasonable.

(2) Any payment made by way of a gratuity under subsection (1) shall be charged on and paid out of the Consolidated Fund.

(3) A member of the Auxiliary Force is not, in respect of his appointment as such, a workman for the purpose of the Workmen's Compensation Ordinance.

Cap. 302.

Offences by  
Auxiliary Force.

**85.** A member of the Auxiliary Force who, without reasonable cause, refuses or neglects to discharge any duty of his office when required or called upon to do so is guilty of an offence and is liable on summary conviction to a fine of two hundred dollars.

Termination of  
appointment.

**86.** (1) A member of the Auxiliary Force may resign his appointment at any time by giving notice of not less than one month in writing to the Commissioner but the requirement for a period of notice to be given may be waived at the discretion of the Commissioner.

(2) The Commissioner may with the approval of the Governor, terminate the appointment of a member of the Auxiliary Force whose service is no longer required; in which event, he shall give notice thereof in writing to the member of the Auxiliary Force.

(3) Every member of the Auxiliary Force shall, within one week of his resignation or of receipt of the notice of termination of his appointment under subsection (2), deliver up to the Commissioner his certificate of identity and any items of uniform, equipment and accoutrements that were supplied to him.

(4) A member of the Auxiliary Force to whom subsection (3) applies who fails without good cause to comply with the provisions of that subsection is guilty of an offence and is liable on summary conviction to a fine of two hundred dollars or to imprisonment for a term of six months.

**87.** A member of the Auxiliary Force who commits any offence punishable on summary conviction or on indictment may be arrested and dealt with according to law.

Arrest of  
member of  
Auxiliary Force.

## PART XI.

### MISCELLANEOUS.

**88.** (1) On application made by any person, the Commissioner may at his discretion, approve the allocation of any member of the Force, who is off duty to perform a special police service—

Special police  
services and fees  
chargeable.

(a) in, upon or about any place, premises, business or vessel;

(b) in connection with private functions or entertainments; or

(c) in connection with any sporting event in enclosed grounds or premises,

at a date and time specified by the applicant.

(2) The applicant shall pay to the Commissioner for a service specified in subsection (1) such fee as may be prescribed.

(3) All fees received by the Commissioner pursuant to this section shall be disbursed by him to the member of the Force who performed the service.

(4) A special police service may be performed only by a member of the Force who is off duty but the member, while performing the service, shall wear normal Police uniform and accoutrements.

(5) The Commissioner may approve the allocation to escort duties of a member of the Force who is on duty on the application of any person for escort service.

(6) An applicant for escort service shall pay to the Commissioner such fee for the service as may be prescribed and the fee shall be paid by the Commissioner into the Police Welfare Fund.

Offences of giving false information or making false report.

**89.** (1) Any person who gives false information to a member of the Force or Auxiliary Force with intent to defeat or delay the ends of justice, or to mislead any member of the Force or Auxiliary Force, or cause a waste of the time and energies of the Force or Auxiliary Force, is guilty of an offence and is liable on summary conviction to a fine of five hundred dollars or to imprisonment for a term of six months or both.

(2) Any person who knowingly makes or causes to be made to any member of the Force or Auxiliary Force a false report of the commission of any offence is guilty of an offence and is liable on summary conviction to a fine of five hundred dollars or to imprisonment for a term of six months or both.

Disorderly conduct in police station etc.

**90.** Any person who, in any police station, police post or cell or in any of the premises of a police station, post, quarters or barracks, behaves in a disorderly, indecent or insulting manner is guilty of an offence and is liable on summary conviction to a fine of two hundred dollars or to imprisonment for a term of one month.

General offences.

**91.** (1) Any person who—

(a) assaults, resists, hinders, or obstructs a member of the Force or Auxiliary Force in the execution of his duty;

(b) incites any person to assault or obstructs a member of the Force or Auxiliary Force in the execution of his duty;

(c) fails to comply with an order given by a member of the Force or Auxiliary Force in the execution of his duty;

(d) uses any indecent or insulting language or abusive language to a member of the Force or Auxiliary Force in the execution of his duty; or

(e) by the offer of any gratuity, bribe or other inducement prevents or attempts to prevent a member of the Force or Auxiliary Force from duly exercising his duty, is guilty of an offence and is liable on summary conviction to a fine of five hundred dollars or to imprisonment for a term of six months.

(2) Any member of the Force or Auxiliary Force who accepts any offer made under paragraph (e) of subsection (1) or knowingly permits his spouse or child to accept such an offer is guilty of an offence and is liable on summary conviction to a fine of five hundred dollars or to imprisonment for a term of six months.

(3) On the trial of any charge of any offence under paragraph (e) of subsection (1) if the other facts constituting the offence are established, it is not necessary to prove guilty knowledge or intention but the onus of disproving it rests on the defendant.

(4) A person who commits an offence under this section may be arrested without a warrant by any member of the Force or Auxiliary Force.

(5) Any person accused of having committed any of the offences set out in this Act, may, notwithstanding any other law to the contrary, be prosecuted before a Magistrate in the manner prescribed in the Magistrate's Code of Procedure Act, and shall upon conviction be liable to the punishments respectively prescribed in this Act, for such offences.

Cap. 44.

**92.** (1) Any person not being a member of the Force or the Auxiliary Force who—

Personation of members of the Force.

- (a) puts on or assumes either in whole or in part—
  - (i) the dress, name, designation, description or certificate of identity of any member of the Force or Auxiliary Force;
  - (ii) any dress, name, designation, or certification of identity resembling or intended to resemble the dress, name, designation or certificate of identity of any member of the Force or Auxiliary Force; or
- (b) in any way whatsoever—

- (i) pretends to be a member of the Force or Auxiliary Force for the purposes of obtaining admission into any house or premises or place;
- (ii) does or promises to do any act or thing that he would not be entitled to do of his own authority; or
- (iii) causes any other person to do or promise to do any act or thing that that person would not be entitled to do or promise to do of his own authority,

is guilty of an offence and is liable on summary conviction to a fine of five hundred dollars or to imprisonment for a term of six months.

(2) Paragraph (a) of subsection (1) does not apply to a person wearing the dress of a member of the Force or Auxiliary in the course of a stage play or other entertainment.

Right to enter and break into premises in case of fire etc.

**93.** A member of the Force may, without the consent of the owner or occupier, enter and if necessary break into—

- (a) any building that is, or that he reasonably suspects to be, on fire;
- (b) any building or land adjoining or near to such a building;
- (c) any building threatened with damage by flood water or sea water or other hazard of nature,

and may do all such acts and things as he may deem necessary for extinguishing a fire in any such building or for protecting it or rescuing any person or property therein from fire, flood water, sea water or other hazard of nature.

Immunity of member of Force acting under authority of warrant.

**94.** No liability attaches to any member of the Force for any act performed by him in obedience to any warrant issued by a Magistrate whether or not—

- (a) the warrant was defective; or
- (b) the Magistrate had no jurisdiction to issue the warrant.

Satisfaction of civil judgment.

**95.** (1) No execution shall be issued on any judgment obtained in a civil Court against a member of the Force but a certificate setting forth the full particulars of the judgment and the nature of the action in which the judgment was obtained, shall be forwarded to the Commissioner by the Registrar or

Magistrate, as the case may be, and the Commissioner shall give directions as to the manner in which the judgment shall be satisfied by the member of the Force.

(2) The Commissioner may, pursuant to directions given by him under subsection (1), cause the amount of the judgment, including costs, to be deducted from the pay of the member of the Force and shall pay the amounts so deducted to the Registrar or Magistrate, as the case may be, to be applied in satisfaction of the judgment.

**96.** The Governor may make regulations—

Regulations.

(a) relating to the description of arms, ammunition, accoutrements, badges of rank, uniform and necessaries to be supplied to members of the Force;

(b) respecting the scale of and conditions subject to which pay and allowances may be paid to members of the Force and the Auxiliary Force;

(c) respecting the scale of and conditions subject to which leave and vacation or repatriation passages may be allowed to and provided for members of the Force or widows and dependants of deceased members of the Force;

(d) generally, for the good discipline and management of the Force and for all such matters as may be deemed expedient for rendering the Force efficient in the discharge of its duties; and

(e) prescribing anything that is by this Act authorised or required to be prescribed.

**97.** (1) The Local Constables Act 1921, and the Police Act 1951, are repealed.

Repeals and savings.

(2) Notwithstanding subsection (1), all appointments made and things done under the Local Constables Act shall be deemed to have been made or done under this Act and all surviving Local Constables may assume the title of Honorary Local Constable and continue to receive the retainer fee previously paid under the repealed Act as though it had not been repealed until such time as they reach the age of retirement previously prescribed under the repealed Act.

(3) All appointments made and things done under the Police Act, 1951 shall be deemed to have been made or done under this Act and any serving Special Constable may elect to

be appointed as a member of the Auxiliary Force without any break in his service; but in no case shall he be placed in a position less favourable than that which he enjoyed at the commencement of this Act.

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SCHEDULE

Ss. 13 and 81

**1.** *Form of Oath to be taken by Members of the Police Force*

I, A.B. do swear/affirm that I will well and truly serve Our Sovereign Lady the Queen, Her Heirs and Successors as a member of the Police Force in the Territory of the Virgin Islands without favour or affection, malice or ill-will; and that I will cause Her Majesty's peace to be preserved, and will prevent to the utmost of my power, offences against the same; and that, during any time that I do or may hereafter hold any appointment in the Police Force I will to the best of my knowledge and skill discharge all the duties thereof faithfully according to law.

**2.** *Form of Oath to be taken by Members of the Auxiliary Force*

I ..... do swear/affirm that I will well and truly serve Our Sovereign Lady the Queen, Her Heirs and Successors in the Office of a member of the Auxiliary Force in the Territory of the Virgin Islands, without favour or affection, malice or ill-will and that I will cause Her Majesty's peace to be preserved and will prevent to the utmost of my power, offences against the same.

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S.I. 23/1990

**CHAPTER 165****POLICE ACT**

THE POLICE REGULATIONS MADE JULY 25, 1990 UNDER SECTION 96  
OF THE POLICE ACT.

*(1st August, 1986)***PART I****PRELIMINARY**

1. These Regulations may be cited as the Police Regulations. Short title.
2. These Regulations shall not apply to Gazetted Police Officers except as provided in Regulations 10, 17, 29, 31 and 32 but shall apply to all non-gazetted ranks. Application.
3. In these Regulations - Interpretation.
  - "the Act" means the Police Act;
  - "Inspector" and "Subordinate Police Officer" have respectively the same meanings as are ascribed to them under the Act.

**PART II****OFFENCES AND DISCIPLINE**

4. Offences may be of two kinds, namely - Kinds of offences and by whom triable.
  - (a) offences created by the Act; and
  - (b) disciplinary offences created by these Regulations.
5. The offences created by the Act are to be found in sections 33 and 34 and relate to desertion, mutinous or seditious conduct by a police officer and causing disaffection in the Force. These offences are triable by a court and the method of trial of such offences and the punishments which may be imposed therefor are such as are prescribed by the said sections. Offences created by the Act.

Disciplinary  
offences.

**6.** Disciplinary offences created by these Regulations are -

- (a) discreditable conduct which is committed where a member of the Police Force acts in a disorderly manner or any manner prejudicial to discipline or reasonably likely to bring discredit on the reputation of the Force;
- (b) misconduct towards a member of the Police Force which is committed where -
  - (i) the conduct of a member of the Police Force towards another member is oppressive or abusive, or
  - (ii) a member of the Police Force assaults another member;
- (c) disobedience to orders which is committed where a member of the Police Force without good and sufficient cause, disobeys or neglects to carry out any lawful order, written or otherwise;
- (d) neglect of duty, which is committed where a member of the Police Force, without good and sufficient cause -
  - (i) neglects or omits to attend to carry out with due promptitude and diligence anything which it is his duty as a member of the Police Force to attend to or carry out, or
  - (ii) fails to work his beat in accordance with orders, or leaves the place of duty to which he has been ordered, or having left his place of duty for an authorised purpose fails to return thereto without undue delay, or
  - (iii) is absent without leave from, or is late for, any duty, or
  - (iv) fails properly to account for, or to make a prompt and true return of any money or property received by him in the course of his duty;
- (e) false<sup>not in an evasive way</sup>hood or prevarication which is committed where a member of the Police Force -
  - (i) knowingly or through neglect makes any false, misleading or inaccurate oral or written

- 
- statement or entry in any record or document made, kept or required for police purposes, or
- (ii) either wilfully and without proper authority or through lack of due care destroys or mutilates any record or document made, kept or required for police purposes, or
  - (iii) without good and sufficient cause alters or erases or adds to any entry in such a record or document, or
  - (iv) has knowingly or through neglect made any false, misleading or inaccurate statement in connection with his appointment to the Police Force;
- (f) improper disclosure of information which is committed where a member of the Police Force -
- (i) without proper authority communicates to any person, any information which he has in his possession as a member of the Police Force, or
  - (ii) makes any anonymous communication to any member of the Police Force, or
  - (iii) without proper authority, makes representations to any member of the Legislative Council with regard to any matter concerning the Force, or
  - (iv) canvasses any member of the Legislative Council with regard to any such matter;
- (g) corrupt or improper practice which is committed where a member of the Police Force -
- (i) in his capacity as a member of the Force and without the consent of the Commissioner of Police, directly or indirectly solicits or accepts any gratuity, present or subscription, or
  - (ii) places himself under a pecuniary obligation to any person in such a manner as might affect him properly carrying out his duties as a member of the Force, or
  - (iii) improperly uses, or attempts so to use, his position as a member of the Force for his private advantage, or
  - (iv) in his capacity as a member of the Force and without the consent of the Commissioner of Police, writes, signs or gives a testimonial of character or other recommendation with the object of obtaining employment for any person or of supporting an application for the grant of a license of any kind;

(h) abuse of authority which is committed where a member of the Police Force treats any person with whom he may be brought into contact in the execution of his duty in an oppressive manner and, without prejudice to the foregoing, in particular where -

(i) without good and sufficient cause conducts a search, or requires a person to submit to any test or procedure, or makes an arrest; or

(ii) uses any unnecessary violence towards any prisoner or any other person with whom he may be brought into contact in the execution of his duty or improperly threatens any such person with violence; or

# (iii) is abusive or uncivil to any member of the public;

(i) racially discriminatory behaviour which is committed where a member of the Police Force -

(i) while on duty, on the grounds of another person's colour, race, nationality or ethnic or national origins, acts towards that other person in any such way as is mentioned in paragraph (h) (abuse of authority); or

(ii) in any other way, on any of those grounds, treats improperly a person with whom he may be brought into contact while on duty;

(j) neglect of health which is committed where a member of the Police Force, without good and sufficient cause, neglects to carry out any instructions of a medical officer appointed by the police authority or, while absent from duty on account of sickness, commits any act or adopts any conduct calculated to retard his return to duty;

(k) improper dress or untidiness which is committed where without good and sufficient cause a member of the Police Force while on duty, or while off duty but wearing uniform in a public place, is improperly dressed or is untidy in his appearance;

# (l) damage to police property which is committed where a member of the Police Force -

(i) wilfully or through lack of due care causes any waste, loss or damage to any police property, or

(ii) fails to report as soon as is reasonably practicable any loss of or damage to any such property issued to him, or used by him, or entrusted to his care;

- (m) drunkenness, which is committed where a member of the Police Force renders himself unfit through drink or drugs for duties which he is or will be required to perform or which he may reasonably foresee having to perform;
- (n) drinking on duty or soliciting drink which is committed where a member of the Police Force, while on duty -
- (i) without proper authority, drinks, or receives from any other person, any intoxicating liquor, or
  - (ii) demands, or endeavours to persuade any other person to give him, or to purchase or obtain for him, any intoxicating liquor;
- (o) entering licensed premises which is committed where a member of the Police Force -
- (i) while on duty, or
  - (ii) while off duty but wearing uniform, without good and sufficient cause, enters any premises in respect of which a license or permit has been granted in pursuance of the law relating to liquor licensing or betting and gaming or regulating places of entertainment;
- (p) criminal conduct which is committed where a member of the Police Force has been found guilty by a court of law of a criminal offence;
- (q) being an accessory to a disciplinary offence which is committed where a member of the Police Force incites, connives at or is knowingly an accessory to any offence against discipline.

**7.** A charge or complaint in respect of any of the offences specified in regulation 6 shall be heard and determined in compliance with the provisions of sections 37 and 38 of the Act.

Trial and determination of disciplinary offences.

**8.** On the hearing of any charge or complaint involving any of the disciplinary offences mentioned in regulation 6, if the accused officer so desires, he may be permitted to

Representation.

have another serving member of the Force, selected by himself, who is of the same rank as, or higher rank than, himself, to assist him in representing his case.

Appeals.

**9.** Any Inspector, Subordinate Police Officer or Constable who is dissatisfied with a decision on any of the disciplinary offences mentioned in regulation 6 with which he is charged may appeal therefrom in the manner provided by section 39 of the Act.

### PART III

#### PAY AND ALLOWANCES

Rate of pay.

**10.** The rate of pay of all ranks of the Force shall be the rate of pay approved by the Governor from time to time and provided in the Annual Estimates of the Territory.

Increments.

**11.** (1) When an Inspector, Subordinate Police Officer or Constable is on an incremental scale of pay, the officer in charge of the division or department shall, one month before the annual increment becomes due for payment, consider whether he or she can sign a certificate to the effect that the Inspector, Subordinate Police Officer or Constable has served with efficiency, diligence and fidelity during the past year.

(2) If the officer in charge of the Division or Department is able to recommend the grant of the increment to such Inspector, Subordinate Police Officer or Constable, he shall sign the certificate to this effect and submit it to the Commissioner of Police for approval.

(3) When the certificate is signed and approved, the original certificate shall be attached to the next pay voucher or which pay is authorised and shall constitute authority for the payment of the increment and the duplicate shall be retained by the Commissioner of Police for attachment to the record of the Inspector, Subordinate Police Officer or Constable.

(4) If for any reason the officer in charge of the Division or Department is unable to recommend the grant of the increment to such Inspector, Subordinate Police Officer or Constable, he shall so inform the Commissioner of Police, giving detailed reasons and submitting his recommendations

as to whether the increment due should be suspended, deferred or stopped.

(5) Subject to paragraph (6) if the Commissioner of Police, after hearing any representations from such Inspector, Subordinate Police Officer or Constable approves the recommendation of the officer in charge of the Division or Department, that the increment be suspended, deferred or stopped, the increment shall be suspended, deferred or stopped for such period as the Commissioner of Police may decide and the Inspector, Subordinate Police Officer or Constable shall be informed of the decision and the reason for it.

(6) Any Inspector, Subordinate Police Officer or Constable who is dissatisfied with any decision given in his case in this paragraph shall have the right of appeal to the Governor, as if his case came within the provisions of subsection (3) of section 39 of the Act.

**12.** Subordinate Police Officers and Constables whose conduct has been satisfactory and who have not been punished for any offence involving a fine exceeding twenty dollars, or reduction in rank or who have not been reprimanded on two or more occasions or warned for dismissal in any one year may be eligible to receive Good Conduct Pay according to the rates as may be approved in writing by the Governor, from time to time:

Good conduct pay.

Provided that if any Subordinate Police Officer or Constable in receipt of Good Conduct Pay is fined in excess of twenty dollars or reduced in rank or reprimanded on two or more occasions or warned for dismissal in any year he shall not become eligible for any increase in the rate of Good Conduct Pay until a period of three years has elapsed from the date of the fine or reduction in rank or last reprimand or warning for dismissal.

**13.** Subordinate Police Officers and Constables appointed as the "Police Officer in Charge" to the stations specified below shall be eligible to receive Charge Pay -

Charge pay.

Station Sergeant	Road Town
Station Sergeant	West End
Station Sergeant	East End
Sergeant	Virgin Gorda

Constable Jost Van Dyke

Constable Anegada.

Detective allowance.

**14.** Inspectors, Subordinate Police Officers and Constables who are appointed to duties as detectives in the Criminal Investigation Department, Drug Unit, or Special Branch shall be eligible to receive a detective allowance.

Plain clothes allowance.

**15.** Inspectors, Subordinate Police Officers and Constables who are appointed to duties as detectives in the Criminal Investigation Department, Drug Unit, or Special Branch shall be eligible to receive a plain clothes allowance.

Transfer allowance.

**16.** Inspectors, Subordinate Police Officers and Constables according to marital status who are permanently posted and not merely on temporary attachment from one Police Station to another in the Territory shall be eligible to receive a transfer allowance.

Rent allowance.

**17.** (1) Gazetted Officers, Inspectors, Subordinate Police Officers and Constables who are not occupying official quarters shall be eligible for a rent allowance.

(2) Unmarried Gazetted Officers, Inspectors, Subordinate Police Officers and Constables shall be eligible to receive one half of the rent allowance of that of a married officer of equivalent rank.

Technician allowance.

**18.** Subordinate Police Officers and Constables appointed to the duties specified below shall be entitled to receive a Technician's allowance -

- (a) Police Vehicle Mechanic
- (b) Fingerprint Officer
- (c) Photographers
- (d) Marine Section Officer.

Special duty allowance.

**19.** Inspectors, Subordinate Police Officers and Constables selected for the Special Duty Unit shall be entitled to receive a special duty allowance.

Linguist allowance.

**20.** Inspectors, Subordinate Police Officers and Constables who are fluent in speaking, writing and reading a

foreign language listed below to the satisfaction of the Commissioner of Police shall be eligible to receive a linguist allowance -

- (a) Spanish
- (b) French including Creole
- (c) German.

**21.** Inspectors, Subordinate Police Officers and Constables who are posted to an Island within the Territory other than the one in which they ordinarily reside shall be eligible to receive an out island allowance.

Out island allowance.

**22.** Inspectors, Subordinate Police Officers and Constables who in the course of their duty incur expenditure for subsistence and refreshments shall be reimbursed at such rates and on such conditions as currently are laid down in General Orders for the Public Service.

Subsistence and refreshment allowance.

**23.** A person who has requested and received special police services as authorised by section 88 of the Act shall pay such fees, as may be approved in writing by the Governor, from time to time.

Fees for special police service.

#### PART IV

#### LEAVE AND LEAVE PASSAGES

**24.** (1) An Inspector, Subordinate Police Officer or Constable shall be eligible for annual leave at the following rates calculated in working days -

Annual leave.

Inspector	30 working days;
Station Sergeants	25 working days;
Sergeants	25 working days;
Constables	20 working days:

Provided that annual leave shall only be granted when the exigencies of the service permit.

(2) An Inspector, Subordinate Police Officer or Constable who is recalled to duty before the annual leave granted to him has expired or who cannot be granted the full amount of annual leave for which he is eligible shall be

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permitted to carry forward the unexpired portion of such annual leave to a future occasion in the same leave year, but due to exigencies of the service if it is not possible to take such annual leave including leave carried forward during the current leave year it shall be taken as soon as practicable in the leave year immediately following that leave year.

Weekly rest days.

**25.** All Inspectors, Subordinate Police Officers and Constables shall be eligible for two weekly rest days in every seven days:

Provided that in the scheduling of any duty rota a total of eight rest days in a period of twenty-eight days may be granted provided that an Inspector, Subordinate Police Officer or Constable is not required to work more than seven days without a rest day.

Sick leave.

**26.** (1) Sick leave on full pay may be granted by the Commissioner of Police to any Inspector, Subordinate Police Officer or Constable for a period not exceeding twenty-one days on the production of a medical certificate signed by a government medical officer:

Provided that sick leave shall not be granted under this regulation for periods which exceed in the aggregate three months in any year.

(2) Any Inspector, Subordinate Police Officer or Constable who has been on continuous sick leave for a period of three months shall be required to attend for examination by a Medical Board consisting of not less than two government medical officers.

(3) On the recommendation of a Medical Board, an Inspector, Subordinate Police Officer or Constable, in whose case the Medical Board certifies that there is a reasonable prospect of eventual recovery, may be granted further sick leave with full pay up to a maximum period, including any period of sick leave granted under paragraph (1), of six months in any year:

Provided that, further sick leave may be granted with full pay, beyond the period mentioned in this paragraph for a period not exceeding six months in any period of twelve months until the Medical Board certifies the officer as fit for duty or recommends his discharge from the Force on medical grounds.

**27.** An Inspector, Subordinate Police Officer or Constable who has retired from the Force shall, if he so desires, be provided with passages for himself, his wife and children, up to a maximum of four passages in addition to his own, to the place where he was recruited together with the reasonable cost of transporting his household and personal effects; but no such passage or expenses shall be provided after a lapse of six months from the date of retirement or in the case of an Inspector, Subordinate Police Officer or Constable who has been dismissed from the Force.

Passages on termination of service.

**28.** Where an Inspector, Subordinate Police Officer or Constable dies whilst in the service of the Force, his widow and dependent children who are unmarried and under the age of eighteen years shall be provided with passages to the place of recruitment of such Inspector, Subordinate Police Officer or Constable, or to the place of birth of the widow and the reasonable expenses of transporting the widow's household effects and the personal effects of the widow and dependent children shall be met from public funds.

Passages for widows and dependents of deceased officers.

## PART V

### UNIFORMS, BADGES AND EQUIPMENT

**29.** Gazetted Police Officers, Inspectors, Subordinate Police Officers and Constables shall when required, wear the uniform and equipment prescribed in the First Schedule.

Uniforms to be worn.

**30.** Gazetted Police Officers, Inspectors, Subordinate Police Officers and Constables shall wear the distinguishing marks and badges specified in the Second Schedule.

Distinguishing Badges.

**31.** All arms, equipment and clothing provided at public expense shall remain the property of the Crown, and the Gazetted Police Officers, Inspectors, Subordinate Police Officers and Constables to whom they are issued will be responsible for the proper care of them and for handing over the several articles of their equipment at the termination of their employment or when ordered to do so by a superior officer. They will be liable to make good by stoppage from pay any damage to or loss of arms, equipment or clothing otherwise than by fair wear and tear or through

Government property.

injury sustained in the performance off duty unless they can show that such loss or damage did not arise from their own fault or negligence.

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FIRST SCHEDULE

(r. 30)

UNIFORM

Uniform will comprise of:

No. 1 Full Dress to be worn for Guards of Honour, ceremonial parades or such other occasions as ordered.

No. 2 Service Dress to be worn by Gazetted Officers and Inspectors when so ordered.

No. 3 Working Dress to be worn for ordinary duties.

No. 4 Mess Dress to be worn by Gazetted Officers and Inspectors at official evening functions.

DETAILSNo. 1 Full Dress - Gazetted OfficersMale

White tunic

Blue trousers with 1 1/2" silver stripe

Royal blue sash

Sword belt with slings

Sword with steel scabbard and silver sword knot

Blue cap with braid according to rank

Full sized medals

Black dress boots.

Female

White tunic

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Blue skirt with 1 1/2" silver stripe

Royal blue sash

White topped "Robin Hood" hat

Full sized medals

Black stockings or tights

Black shoes.

No. 2 Service Dress - Gazetted Officers

Male

Khaki tunic - long sleeves with belt or Sam Browne

Khaki trousers

Blue lanyard with whistle

White shirt with collar

Black tie

Blue cap with braid according to rank

Medal ribbons

Female

Khaki tunic - long sleeves with belt

Khaki shirt

Blue lanyard with whistle

White shirt with collar

Black tie

White topped "Robin Hood" hat

Medal Ribbons

Black stockings or tights

Black shoes

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No. 3 Working Dress - Gazetted OfficersMale

Khaki bush tunic or bush shirt

Khaki trousers

Blue lanyard with whistle

Blue cap

Black shoes

Medal ribbons

Female

Khaki bush jacket or bush shirt

Khaki skirt

Blue lanyard with whistle

White topped "Robin Hood" hat

Black stockings or tights

Black shoes

No. 4 Mess Dress - Gazetted OfficersMale

White mess jacket

White dress shirt

Black bow tie

Blue cummerbund

Blue trousers with 1 1/2" silver stripe

Miniature medals

Female

Long evening dress

Inspectors

No. 1 Full dress - as for Gazetted officers except as follows :-

- (a) White helmet with spike and chain in place of cap for male officers
- (b) Black mohair stripe down trousers and skirt in place of silver stripe
- (c) Cross-belt and pouch in place of sash

No. 2 Service Dress	)	As for Gazetted Officer
	)	
No. 3 Working Dress	)	except black mohair
	)	
No. 4 Mess Dress	)	Mess Dress trousers in place of silver braid
	)	

Subordinate Police Officers and ConstablesNo. 1 Full DressMale

White tunic

Blue trousers with white stripe

Black boots

Stable belt

Side arms

Helmet with spike and chain

Medals

Female

White tunic

Blue skirt with white stripe

Black stockings or tights

Black shoes

Side arms

No. 3 Working DressMale

Grey shirt

Blue trousers with white stripe

Black boots or shoes

Stable belt

Blue cap with chequered band

White helmet

Female

White blouse

Blue skirt with white stripe

Stable belt

White topped "Robin Hood" hat with chequered band

Black stockings or tights

Black shoes

Note: Where appropriate e.g., Marine duty blue trousers with white stripe may be worn.

Auxiliary Constables

Auxiliary Constables will be issued with No 3 - Working Dress, except headgear for male and female officers will carry a royal blue band.

SECOND SCHEDULE

(r. 31)

BADGES OF RANK

- |                            |   |  |
|----------------------------|---|--|
| For Commissioner of Police | - | Crossed tipstaves surrounded by a laurel wreath surmounted by a crown. |
| For Deputy Commissioner    | - | Crossed tipstaves surrounded by laurel wreath                          |
| Superintendent             | - | Crown above one bath star  |

- 
- Chief Inspector - 3 bath stars
  - Inspector - 2 bath stars
  - Station Sergeant - 3 chevrons surmounted by a crown
  - Sergeant - 3 chevrons

Additionally all Subordinate Police Officers and Constables will wear an identifying numeral on the shoulder strap of their uniform

Give people the tools, resources and mentorship to do the job

## CHAPTER 200.

### BUSINESS, PROFESSIONS AND TRADE LICENCES.

(1st January, 1990.)

10/1989

1. This Act may be cited as the Business, Professions and Trade Licences Act. Short title.

2. In this Act— Interpretation.

“business or trade” means any operation of a commercial character by which a trader provides to customers for fee or reward any kind of goods or services;

“licence” means any business, profession or trade licence issued under section 6;

“licensee” means a person to whom a licence has been granted under this Act;

“marine products” means fish, turtle, whelks, conch, sponge, corals and any other natural product of the sea;

“non-belonger” means any person other than a person deemed to belong to the Virgin Islands under the provisions of section 2 (2) of the Virgin Islands Constitution Order, 1976 and includes a non-belonger company as defined in section 2 of the Non-belongers Land Holding Regulation Act; Cap. 122.

“prescribed” means prescribed by regulation under this Act;

“profession” includes any vocation;

“sell” includes barter or offer or expose for sale or barter, or cause to be sold, bartered or offered or exposed for sale or barter;

“Trade Inspector” means a public officer designated as a Trade Inspector under section 18 and includes any officer acting under the authority in writing of such Inspector.

Business,  
Profession or  
Trade Licence.  
First Schedule.

**3.** (1) Notwithstanding the provisions of any other Act, no person shall engage in a business, profession or trade as set out in the First Schedule, or otherwise, without first having obtained a licence for that purpose.

(2) The provisions of subsection (1) shall not apply to the selling of any locally produced unprocessed agricultural products or any marine products by a belonger.

Businesses etc.  
not covered in  
First Schedule.

**4.** (1) A person who is engaged in any business, profession or trade that is not set out in the First Schedule, shall submit a written application to the Minister for the grant of a licence.

(2) The provisions of paragraphs (a) and (b) of subsection (2) of section 5, relating to the furnishing of information by an applicant, shall apply in respect of an application submitted under subsection (1) of this section, and where an application is approved under this Act, the applicant shall upon payment of the licence fee as may be determined by the Minister be issued a licence.

Procedure for  
making  
application for  
licence.

**5.** (1) An application for a licence for a business, profession or trade set out in the First Schedule, shall be in the prescribed form and be forwarded to the Minister in duplicate.

(2) Where an applicant is—

(a) an individual, such applicant shall furnish information together with the prescribed form concerning his identity, personal history, experience, business record or any conviction of any offence (which is a felony or misdemeanour) involving moral turpitude in the jurisdiction where the offence occurred, and any other pertinent facts that the Minister may reasonably require;

(b) a firm or body corporate, the applicant shall designate every partner of that firm and every director of that body corporate and each officer, or employee who will exercise the powers to be conferred by the licence upon such firm or body corporate, and the Minister may require any such partner, director, officer or employee, as the case may be, to furnish him with the information required of applicants under paragraph (a).

(3) Where the holder of a licence is a firm or body corporate, then if at any time a change occurs in the persons who are partners or directors of that firm or body corporate,

as the case may be, the licensee shall as soon as reasonably practicable after that serve on the Minister a notice giving particulars of the change.

**6.** (1) The Minister may, on receipt of an application under subsection (1) of section 4, or subsection (1) of section 5, approve or disapprove the application.

Grant and issue  
of licence.

(2) Where the Minister—

(a) approves an application he shall issue a licence subject to such terms and conditions as he may determine, and where the applicant is a non-belonger require such applicant to deposit such sum of money as may be determined by the Minister for securing payment of any wages and taxes that may be incurred in respect of such business, trade or profession;

(b) disapproves an application he shall within a period of seven days of disapproval notify the applicant setting out the grounds of such disapproval.

**7.** A licence issued under this Act shall be in the form set out in the Second Schedule.

Form of licence.  
Second Schedule.

**8.** (1) On the issue of a licence under this Act the applicant shall pay to the Accountant General the prescribed fee, set out in the First Schedule, or a fee determined by the Minister in respect of an application under section 4.

Fees for licences.

First Schedule.

(2) Where several businesses, professions or trades in respect of which licences are required under section 3, are carried on in the same premises, the licence fee payable in respect of each such business, profession or trade shall be the licence fee fixed in respect of such business, profession or trade as set out in the First Schedule.

(3) In respect of a licence issued after 31st March in any year, the licensee shall pay the proportionate amount of the annual fee for the remaining quarter of the year, and for the purpose of computing the proportionate amount every portion of a quarter of the year shall be computed as a full quarter.

**9.** Every licence issued to a person under this Act other than an itinerant vendor shall—

Licence to  
named person.

(a) entitle the licensee for the period specified in the licence, to carry on the specified business, profession or trade from the place designated in the licence;

(b) subject to subsection (2) of section 6, be put into active use in the business, profession or trade for which the licence was granted within ninety days or such further period as may be determined by the Minister following the issuance of such licence, subject to automatic revocation of the licence if not put into active use within such time.

Inspection of  
licensed  
premises.

**10.** A Trade Inspector may, after the issue of a licence, inspect any building or premises during normal working hours, to verify that the business, profession or trade being carried on at such building or premises complies with the terms or conditions of the licence.

Production of  
licences.

**11.** Every person who is required by this Act to obtain a licence shall produce that licence for inspection to the Trade Inspector or to a police officer when so requested by such Inspector or officer.

Duration and  
renewal of  
licences.

**12.** Every licence issued under this Act shall expire on the thirty-first day of December in the year in which that licence was issued and may be renewed thereafter upon application and the payment of the prescribed fee.

Penalty for  
default.

**13.** Where a licence is not renewed within a period of thirty days after the expiry of such licence, the defaulter shall pay in addition to the licence fee, a penalty of a sum equivalent to ten per cent of the licence fee, for every month or part thereof during which such default continues.

Transfer of  
licence.

**14.** The Minister may upon such terms and conditions as he deems appropriate transfer a licence granted under this Act to the appointee of the licensee, or in the event of the death of the licensee to his personal representative, or to the appointee of such personal representative; and such transfer shall, upon the payment of a transfer fee of a sum equivalent to twenty per cent of the licence fee, be made by endorsement on the original licence in the prescribed form.

Notice by licence  
holder.

**15.** (1) Every holder of a licence shall keep his licence affixed in some conspicuous place on the premises where he carries on his business, profession or trade.

(2) Any person who acts in contravention of this section is guilty of an offence.

**16.** (1) A person who desires to carry on a business, profession or trade on any premises other than in the principal place where the business, profession or trade is being carried out shall first obtain from the Minister a licence for that purpose in respect of each such premises in addition to the licence already obtained for his principal place of business, profession or trade.

Licence required for each premises.

(2) For each additional premises in respect of a business, profession or trade, the applicant shall pay a licence fee of a sum equivalent to fifty per cent of the business, profession or trade licence fee, paid in respect of his principal place of business, profession or trade.

(3) Any person who acts in contravention of this section is guilty of an offence.

**17.** The Minister may revoke a licence—

Revocation of licence.

(a) for contravention of any condition subject to which the licence is granted;

(b) where he is of the opinion that the licensee is carrying on a business, profession or trade in a manner detrimental to the public interest;

(c) where the licensee is a company—

(i) the company concerned has ceased to carry on business in the Territory;

(ii) the company concerned goes into liquidation or is wound up or otherwise dissolved; or

(iii) if the company concerned fails to comply with any directive or requirement issued by the Minister under this Act.

**18.** For the purposes of this Act, the Minister may designate any public officer employed in the Ministry of Trade to function as a Trade Inspector.

Minister's power to designate officers.

**19.** A Trade Inspector may—

Functions of Trade Inspector.

(a) enter and inspect during normal working hours any premises where a business, profession or trade is conducted under a licence issued under this Act;

(b) make enquiries to ascertain whether the provisions of this Act are being complied with by the licensee;

(c) examine any record kept on those premises and required for the purpose of an enquiry under paragraph (b), and take copies of extracts of such records; and

(d) where any record required under paragraph (b) is not available for examination, request the licensee to provide such document within a period of forty-eight hours.

Identity of Trade  
Inspector.

**20.** (1) Every Trade Inspector shall be issued a certificate of his designation or other form of identification signed by the Minister and upon entering any premises where a business, profession or trade is conducted shall produce the certificate or other form of identification on demand by the proprietor or the person for the time being in charge of such business, profession or trade.

(2) Where a Trade Inspector enters any premises by virtue of the provisions of section 19, the proprietor or the person for the time being in charge of such business, profession or trade shall furnish him with the information required under section 19 (c).

Obstruction of  
Trade Inspector  
an offence.

**21.** A person who hinders, assaults or obstructs a Trade Inspector in the discharge of his functions under this Act, or refuses or neglects to answer a question or furnish any information required by a Trade Inspector is guilty of an offence and is liable on summary conviction to a fine not exceeding five hundred dollars or to imprisonment for a term not exceeding six months or to both such fine and imprisonment.

Penalty for  
permitting  
premises to be  
used for offences  
against Cap. 178.

**22.** (1) A person holding a licence under this Act who permits the premises to be used for the commission of an offence under the Drugs (Prevention of Misuse) Act shall himself be guilty of an offence and liable on summary conviction to a fine of two thousand dollars and to imprisonment of twelve months and notwithstanding any other provisions of this Act in addition thereto the court before whom the case is heard may order that the licence be revoked forthwith and that such person be disqualified from holding any licence for such period not exceeding five years as the court may determine.

(2) For the purposes of this section if the holder of the licence is a firm or a body corporate then every partner of such firm or body corporate or if any director, secretary or officer of the body corporate or any manager or person in charge of the premises in respect of which the licence is held permits the commission of any offence under the Drugs (Prevention of Misuse) Act on such premises then both such person and the firm or body corporate shall be deemed guilty of an offence under subsection (1) and liable to the penalties specified thereunder.

**23.** A person who makes any declaration required to be made by this Act knowing the same to be false in any material particular in regard to such declaration is liable on summary conviction to imprisonment for a term not exceeding one year or to a fine not exceeding five hundred dollars and in the case of a second or subsequent conviction, to imprisonment for a term not exceeding two years, or to a fine not exceeding one thousand dollars or in certain cases to both such imprisonment and fine.

Penalty for false declaration.

**24.** Every person who contravenes any of the provisions of this Act for which no other punishment is expressly provided in this Act, is guilty of an offence and is liable on summary conviction to imprisonment for a term not exceeding six months or to a fine not exceeding two thousand dollars, or to both such imprisonment and fine.

General penalty.

**25.** A licence fee payable under this Act and all fines and penalties imposed under this Act shall be recoverable summarily before a Magistrate under the provisions of the Magistrate's Code of Procedure Act, and proceedings for the recovery of such fine or penalty may be commenced at any time within the two years after the commission of the offence for which the penalty has been incurred.

Recovery of licence fee, fines, and penalties.

Cap. 44.

**26.** The Minister may make regulations—

Regulations.

(a) prescribing the forms to be used for any of the purposes of this Act;

(b) prescribing the limit as to the number of licences that may be issued to non-belongers from time to time, either generally or in relation to a particular business, profession or trade in relation to any district or any area; and

(c) for the purpose of giving effect to the objects and purposes of this Act.

Licence not  
authority for sale  
of intoxicating  
liquor.

**27.** A licence issued under this Act shall not be deemed to authorise the sale of intoxicating liquor or any other matter for the sale of which a licence is required by any other Act.

FIRST SCHEDULE.

Ss. 3, 4, 5 & 6.

LICENCE FEES.

Categories	Fee Belonger per annum \$	Fee Non-Belonger per annum \$
<b>I AGENTS</b>		
Travel and Ticket	100.00	300.00
Travelling Agent	50.00	350.00
<b>II COMMERCIAL</b>		
Accounts and Bookkeeping Services .	50.00	400.00
Advertising Agency	50.00	400.00
Air Cargo Transportation	100.00	500.00
Air Charter Service	100.00	500.00
Answering Service	25.00	350.00
Automobile Towing Service	25.00	350.00
Baggage, Cargo, Mail Handling	25.00	350.00
Bakeries	50.00	200.00
Barber	50.00	350.00
Beauty Salons	50.00	350.00
Blasting and Demolition Service	50.00	400.00
Boat Rental	25.00	350.00
Book Store	50.00	400.00
Boutique	50.00	400.00
Bus and Taxi Transportation	50.00	400.00
Business Management or Consulting Firms	100.00	500.00
Butcheries	25.00	350.00
Cable Television and Antenna Service	100.00	500.00
Car Rental	50.00	300.00
Carpet Laying and Rental Service	50.00	400.00
Catering Service	25.00	350.00
Commercial Art Services/Artists Studio	50.00	400.00

Categories	Fee	Fee
	Belonger	Non-Belonger
	per annum	per annum
	\$	\$
Commercial School	50.00	400.00
Commercial Ware Housing	50.00	400.00
Driving School	50.00	400.00
Drug Store	50.00	400.00
Dry Cleaning and Commercial Laundry or Laundromat	50.00	400.00
Employment Agency	50.00	400.00
Funeral Parlour	50.00	400.00
Garage and Repair Shop	50.00	400.00
Garbage Removal Service	75.00	400.00
Gasoline Bulk Storage	100.00	500.00
Gasoline Station	75.00	500.00
Grocery Store	25.00	500.00
Hardware	75.00	500.00
Horticulture and Maintenance Service	50.00	400.00
Insurance Company	150.00	450.00
Interior Decorating	50.00	400.00
Itinerant Vendor/Pedlar	10.00	200.00
Janitorial Service and Supply	50.00	400.00
Landscaping Consultant	50.00	500.00
Machine Shop	50.00	400.00
Marine Salvage and related Under Water Service	100.00	500.00
Mini Cruise Ships	200.00	500.00
Mobile Food Service and Refreshment Stand	25.00	350.00
Modelling Agency	25.00	350.00
Motor Vehicle Dealer (new & used)	100.00	500.00
Printing and Publishing House	100.00	500.00
Radio Station	100.00	500.00
Real Estate Agent, Broker and Manager	100.00	500.00
Rental and Lease of Equipment (office, gardening, etc.)	50.00	400.00
Repair Shop	50.00	400.00
Rental and Lease of Heavy Equipment	100.00	500.00

Categories	Fee Belonger per annum \$	Fee Non-Belonger per annum \$
Sailing School	100.00	500.00
*Salvage and Sale of Used Parts/ Wreckshop	50.00	400.00
Scooter and/or Motorcycle Rental	25.00	350.00
Scuba Diving School and Related Services	50.00	400.00
Secretarial Services	25.00	350.00
Security Guard Services	25.00	350.00
Sport and Entertainment Promoter	25.00	350.00
Superette	50.00	400.00
Supermarket	100.00	500.00
Telegraph Office	100.00	500.00
Television Station	100.00	500.00
Upholstery Shop	25.00	350.00
Variety Store	25.00	400.00
Welding Service	50.00	400.00
Wholesaler of Goods	75.00	450.00
Yacht and Boat Management and Charter	100.00	500.00
Yacht Brokerage and Sales	100.00	450.00
Yacht Provisioning	50.00	400.00
III ENTERTAINMENT		
Discotheque	50.00	400.00
Motion Picture Theatre	100.00	500.00
Transient Amusement Parks	50.00	400.00
IV HOTELS, RESTAURANTS, BARS, GUEST HOUSES AND APARTMENTS		
Apartment Rentals	50.00	400.00
Bars	25.00	350.00
Coffee Shops & Ice Cream Parlour	25.00	350.00
Guest Houses	50.00	400.00
Hotels	100.00	500.00
Restaurant and Bar	50.00	400.00
Vacation Home Rental	50.00	400.00
V MANUFACTURING		
Blenders and Bottlers of Alcoholic Beverages	100.00	450.00

\*If part of garage, no charge

Categories	Fee Belonger per annum \$	Fee Non-Belonger per annum \$	
<b>VI PROFESSIONS</b>			
Manufacturing and Repair of Fiberglass Boats and Related Products		50.00	400.00
Manufacturing of Aerated Waters and/or Ice Manufacturers		50.00	500.00
Prime Distillers of Alcoholic Beverages		75.00	500.00
Accountants:			
A. Individual	100.00	500.00	
B. Company	200.00	600.00	
Architects:			
A. Individual	100.00	500.00	
B. Firm	200.00	600.00	
Barristers/Solicitors:			
A. Individual	100.00	500.00	
B. Firm	200.00	600.00	
Chiropractors	100.00	500.00	
Doctors/Dentists/Opticians:			
A. Individual	100.00	500.00	
B. Firm	200.00	600.00	
Veterinarians	100.00	500.00	
<b>VII TRADES</b>			
Construction/Contractor:			
A. Individual	100.00	500.00	
B. Firm	200.00	500.00	
Carpenters	50.00	400.00	
Draughtsmen	50.00	400.00	
Electricians	50.00	400.00	
Plumbers	50.00	400.00	

} self-employed

SECOND SCHEDULE.

S. 7.

TRADE DIVISION

CHIEF MINISTER'S OFFICE

GOVERNMENT OF THE BRITISH VIRGIN ISLANDS.

LICENCE NO. ....

Licence for a Business/Profession/Trade

Name and Address of Licensee .....

has been duly Licensed to Engage in the Business/Profession/  
Trade of.....

Address of Licensed Premises .....

Effective Date  
Day    Month    Year

Expiration Date  
Day    Month    Year

.....  
Minister

Ministry of Trade

This Licence issued, subject to payment in full, will be in force until  
the            day of            , 19    .

**LAWS OF THE VIRGIN ISLANDS**

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**1990**



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No. 11 of 1990

VIRGIN ISLANDS

IMMIGRATION AND PASSPORT  
(AMENDMENT) ACT, 1990

ARRANGEMENT OF SECTIONS

*Section*

1. Short title
2. Amendment of section 18 of Ordinance No. 9 of 1977.
3. Amendment of section 40 of the principal Ordinance.
4. Repeal of sections 41 to 44 of the principal Ordinance.
5. Amendment of section 45 of the principal Ordinance.

No. 11 of 1990      Immigration and  
Passport (Amendment)  
Act, 1990

Virgin  
Islands

I Assent  
J. M. A. Herdman  
Governor  
17th September, 1990

VIRGIN ISLANDS

No. 11 of 1990

An Act to amend the Immigration and Passport Ordinance, 1977  
(No. 9 of 1977).

[ Gazetted 27th September, 1990 ]

ENACTED by the Legislature of the Virgin Islands as follows:-

Short title.

1. This Act may be cited as the Immigration and Passport  
(Amendment) Act, 1990.

Amendment  
of section 18  
of Ordinance  
No. 9 of  
1977.

2. Section 18 of the Immigration and Passport Ordinance,  
1977 in this Act referred to as the "principal Ordinance" is  
amended in subsection (1) thereof, by deleting the words from  
"on the" to "may" and substituting therefor the words "the  
Governor in Council may, having regard to any observations of  
the Board,".

Amendment  
of section 40  
of the  
principal  
Ordinance.

3. Subsection (1) of section 40 of the principal Ordinance is  
amended by the deletion of the words "Subject to the provisions  
of sections 41 to 44 inclusive, if at any time after a person, other  
than a person deemed to belong to the Territory" and substitut-  
ing therefor the words -

"If at any time after a person, other than a person  
deemed to belong to the Territory,".

Repeal of  
sections 41  
to 44 of the  
principal  
Ordinance.

4. Sections 41 to 44 of the principal Ordinance are re-  
pealed.

Amendment  
of section 45  
of the  
principal  
Ordinance.

5. Section 45 of the principal Ordinance is amended as  
follows -

(a) in subsection (4) thereof by deleting all the words from  
"under subsection (1);" to the end of that subsection and  
substituting therefor the words "under subsection (1).";  
and

**Virgin  
Islands**

(b) in subsection (5) thereof by deleting the words "section 40 (1)" and substituting therefor the words "section 40 (3)".

Passed the Legislative Council this 10th day of September, 1990.

K. L. FLAX,  
Speaker.

HUGH A. HODGE,  
Clerk of the Legislative Council.

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*THE VIRGIN ISLANDS*  
*OFFICIAL GAZETTE*

Published by Authority

Vol. XXIV ROAD TOWN TORTOLA WEDNESDAY 31 OCTOBER, 1990 NO. 50

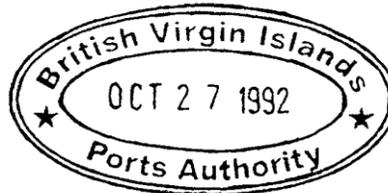
E X T R A O R D I N A R Y

NOTICE

The below listed document is circulated with and forms part of this issue of the Gazette: -

ACT

1990 NO. 12: - BRITISH VIRGIN ISLANDS PORTS AUTHORITY ACT, 1990



Printed at the Government Office, Road Town, Tortola, British Virgin Islands by A. Smith a Government Printer by Authority.

(Price: \$25.20)

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OFFICE OF THE DEPUTY GOVERNOR  
Road Town, Tortola, British Virgin Islands

**VIRGIN ISLANDS**

**British Virgin Islands  
Ports Authority Act, 1990**

**ARRANGEMENT OF SECTIONS**

Section

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2. Interpretation.

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4. Functions of the Authority.
5. Powers of the Authority.
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THIRD SCHEDULE

No. 12 of 1990

British Virgin Islands  
Ports Authority Act, 1990

I Assent

(Sgd) J.M.A. Herdman Governor  
17th September, 1990

VIRGIN ISLANDS

NO. 12 OF 1990

An Act to provide for the establishment of a  
Ports Authority in the British Virgin Islands.

(Gazetted 31 October, 1990)

PART I

PRELIMINARY

Short title  
and date of  
commencement.

1. This Act may be cited as the British Virgin Islands  
Ports Authority Act, 1990 and shall come into operation on  
such date as the Minister may appoint by notice published  
in the Gazette.

Interpreta-  
tion.

2. (1) For the purposes of this Act -

“animal” includes any domestic, captive or wild  
animal, either bird, beast, fish, reptile or insect;

“authorized employee” means a person authorized by  
the Authority to exercise the powers or perform  
the duties in respect of which the expression  
is used;

“Authority” means the British Virgin Islands  
Ports Authority established by section 3;

“buoy” means any moored float and includes any  
floating light, mark or sign used as an aid  
to navigation, other than a lighthouse;

“cargo” includes all kinds of movable property other  
than animals;

“charges” means all sums received or receivable, charged or chargeable, for or in respect of the carriage, storage or warehousing of goods by means of the Authority of for or in respect of any ship, harbor or other service performed or facility provided by means of the Authority;

“dangerous or offensive goods” means any goods defined as such by the regulations;

“employee” means a person who is employed whether on a whole-time or part-time basis by the Authority;

“ferry” means any vessel plying from one side of a waterway to the other or between places on the same or different islands or territories for the purpose of the carriage of goods or passengers;

“fund” means the Fund established by section 7;

“goods” include all kinds of goods, wares, merchandise and animals;

“harbour” means any harbour or port described in the Second Schedule, together with all the wharves, jetties, slips, docks and breakwaters, and the machinery, plant, tools and other property appertaining thereto vested in or used for the purposes of the Authority;

“master” in relation to a ship means any person other than a berthing master having charge for the time being of that ship;

“Managing Director” means the Managing Director appointed under section 20, and includes any employee acting under the authority in writing of such Managing Director;

“Minister” means the Minister responsible for the management of the Authority;

“owner” -

- (a) in relation to a ship includes any joint or part owner, and a person who, though only the hirer of a ship, appoints the master and other persons working such ship, and

includes also the agent of the owner or hirer;

- (b) in relation to goods means any person who is for the time being entitled, either as owner or as agent for the owner, to the possession of the goods;

“passenger” means a person other than a stowaway being carried on a ship who is not a member of the crew of that ship;

“perishable goods” means goods liable to rapid deterioration, and, in particular, include fish, fruit, vegetables, bread, meat, poultry, game, butter, eggs, milk, cheese, plants, small animals or any other thing which the Authority prescribes;

“pilot” means a qualified person duly appointed or licensed by the Authority and not belonging to a ship but has conduct therefore;

“pilotage certificate” means a pilotage certificate issued under section 61;

“pilot’s licence” means a pilot’s license issued under section 53 (2);

“pleasure yacht” includes any ship, launch, houseboat, randan, ferry, skiff, dinghy, shallop, punt or canoe, however navigated, not being used for the carriage of passengers or goods or for hire or reward;

“rates” includes all sums which may, under the provisions of this Act or the regulations, be levied for or in respect of the carriage, storage or warehousing of goods by means of the Authority, or for or in respect of any ship, harbour or other service performed or facility provided by means of the Authority;

“sea-plane” includes a flying boat and any other aircraft designed to maneuver on the water;

“ship” includes every description of vessel used in navigation not exclusively powered by oars and includes sea-planes and similar craft;

“territorial waters” means the territorial sea and internal waters of the British Virgin Islands, including all the bays, coves, inlets, sounds, channels, passages, marinas, ports and harbours directly or indirectly opening or adjacent thereto, whether natural or artificial, within the limits of the British Virgin Islands;

“Tariff Book” means the Tariff Book prepared and published under section 96;

“vehicle” includes any vehicle towed or propelled by any means whatsoever for the portage of goods or persons otherwise than by sea;

“vessel” includes every description of craft other than sea-plane on the water used or capable of being used as a means of transportation on, through or under water;

“warehouse” includes any building or part of a building, place, whether enclosed or not, wagon container, ship or vehicle used for the purpose of warehousing or depositing or storage of goods by means of the Authority;

“wharf” includes any wharf, jetty, pier, mooring or quay of whatever description erected or extending beyond the high water mark of Ordinary Spring Tides (OST) or extending into waters of any navigable channel and also includes any portion or extension moored in such waters and used as a wharf, jetty, pier, mooring or quay.

(2) A reference in this Act or the regulations or in any document issued under this Act to -

(a) “accepted by the Authority” means, subject to the provisions of any regulations made under this Act, accepted by an authorized employee in the course of his duty for carriage, storage or warehousing in accordance with the provisions of this Act or the regulations;

(b) “delivered to the Authority” means, subject

to the provisions of any regulations made under this Act, delivered to an authorized employee in the course of his duty under this Act or the regulations;

(c) “the possession of the Authority” means, subject to the provisions of any regulations made under this Act, the possession of any authorized employee in the course of his duty under this Act or the regulations;

(d) “the purposes of the Authority” means any purpose necessary or desirable for the performance of the services or the provision of any facilities authorized to be performed or provided by means of the Authority under this Act or the regulations.

## PART II

### ESTABLISHMENT, CONSTITUTION AND STATUS OF THE BRITISH VIRGIN ISLANDS PORTS AUTHORITY

Establishment of the Authority.

3. (1) For the purposes of this Act, there is hereby established an Authority to be known as the British Virgin Islands Ports Authority.

(2) The Authority shall be a body corporate and shall have perpetual succession and a common seal and may sue and be sued in that name and perform such other acts as bodies corporate perform.

First Schedule.

(3) The provisions of the First Schedule shall have effect with respect to the constitution of the Authority and otherwise in relation thereto.

Functions of the Authority.

4. The functions of the Authority shall be -

(a) to provide, operate, and maintain all port and harbour services and facilities in the Territory as the Minister considers necessary;

(b) to take such action as the Authority considers necessary in relation to the exercise of any of its functions mentioned in paragraph (a);

(c) to provide in any port or harbour, directly or through any authorized agent, regular

services for stevedoring, shipping and transshipping, landing and warehousing loading and unloading of any cargo;

- (d) to collect the dues and charges authorized by this Act or the regulations;
- (e) to develop and manage all lands including lands on or under the sea-bed leased to or vested in the authority;
- (f) to perform such acts as the Minister determines and report to the Minister at such times as he requires respecting the matters to which this Act relates; and
- (g) generally to carry out the provisions of this Act.

Powers of the Authority.

5. Without prejudice to section 4, in the exercise of its functions under this Act, the Authority may -

- (a) make rules in relation to officers and other employees of the Authority including their appointment, promotion, remuneration, discipline, conduct, leave, working times, holidays and grant of loans and advances of salary to them;
- (b) make rules and prescribe procedures in respect of the administration of the Authority;
- (c) delegate to the Managing Director or any member of the Authority any such functions as the Authority may consider necessary to delegate for the efficient transaction of business;
- (d) co-ordinate and execute any Government project in any specified port;
- (e) control the entry of vehicles, persons, goods and animals within the limits of any specified port and to regulate their movements within such limits;

- (f) determine, impose and levy rates, charges, dues or fees for -
  - (i) services performed,
  - (ii) the use by any person of any facilities or services provided by the Authority; or
  - (iii) the grant to any person of a certificate, licence or permit;
- (g) prohibit, control or regulate -
  - (i) the use by any person of the services performed or the facilities provided by the Authority; or
  - (ii) the presence of any person, ship, vehicle or goods within any harbour port or premises occupied for the purposes of the Authority;
- (h) enter into agreement with any person for -
  - (i) the supply, construction (whether on or under the sea-bed or elsewhere), manufacture, maintenance or repair of any property, real or personal, which, in the opinion of the Authority, is necessary or desirable for the purpose of discharging any of its functions;
  - (ii) the performance or the provision any of the services or facilities which may be performed or provided by the Authority;
  - (iii) the payment or collection of any rates, charges or other receipts arising out of the performance or the provision of any of those services or facilities referred to in sub-paragraph (ii);
  - (iv) the raising by the Authority of charges or dues different from those specified in the Tariff Book, and for such

purposes, to finance or assist in financing whether by way of loan, the holding of stocks, shares or securities, the guaranteeing of interest or dividends on stocks, shares or securities, or otherwise;

- (i) enter into, and perform, directly or through any officer or agent authorized in that behalf by the Authority, all such contracts as may be necessary for the performance of the functions of and the exercise of the powers of the Authority;
- (j) engage in such other activities and do such other things as appear to the Authority to be beneficial or necessary or convenient for it to carry on, for or in connection with the exercise, performance and discharge of its functions or duties under this Act or necessary for carrying on its business;
- (k) established and maintain on and off the coast of the Territory such lights and other means for the guidance and protection of vessels as are necessary for navigation in and out of the specified ports; and
- (l) control the use of, and to issue licences in respect of all vessels crafts, equipment, vehicles and services that are operated within the limits of any specified port.

Powers of entry on land or building.

6. (1) Subject to subsection (2), the Authority may authorize any employee or any agent of the Authority to enter at all reasonable hours of the day into or upon, by himself or with such other assistants as are necessary any land or building for the purpose of making any survey or inspection or of executing any work required to be made or executed for the purposes of this Act.

(2) No land or building may be entered upon by a person authorized under subsection (1) unless at least seven days notice thereof is given to the owner or occupier of the land or building.

(3) An employee acting in accordance with an authorization under subsection (1) and all other persons assisting him shall cause no more damage than is necessary for the purpose, and where any damage is so caused to any person, no action or suit

shall lie, but such person is entitled to compensation in respect of the damage.

(4) In the case of a dispute in relation to liability or to the amount of compensation payable under this section, the matter shall be determined in accordance with the Arbitration Ordinance, 1976.

(5) Nothing in subsection (3) shall be construed as entitling any person to compensation -

(a) for any damage suffered, unless that person would have been entitled to compensation otherwise than under subsection (3); or

(b) for any damage suffered as a result of the use of any works authorized under this Act or the regulations unless such damage results from negligence in such use.

### PART III

#### FINANCIAL PROVISIONS

Establish-  
ment and  
management  
of Fund.

7. (1) The Authority shall have its own Fund. All receipts of the Authority shall be paid into the Fund and all payments made by the Authority shall be paid out of the Fund.

(2) The Authority shall keep proper accounts of the Fund and proper records in relation thereto.

(3) The Authority shall, at least two months before the commencement of each financial year, submit to the Minister in respect of such year and in such form as he approves -

(a) estimates of capital expenditure for his approval;

(b) a statement of revenue and other expenditure for his information.

(4) The Authority shall within three months from the end of each financial year to which the accounts relate, prepare and submit a statement of accounts in respect of that year.

(5) The accounts of the Authority shall be audited at least once every financial year by an Auditor appointed by the Authority with the approval of the Minister.

(6) The fee to be paid to the auditor appointed under subsection (5) shall be such sum as the Authority determines.

Power to issue debentures or debenture stock or other security for the purpose of raising capital.

8. (1) Subject to subsection (3), the Authority may, borrow or raise money by the issue of debentures or debenture stock, or other security -

- (a) for the provision of working capital;
- (b) for the provision of capital for the expansion of and additions to its fixed assets;
- (c) for the repayment of any moneys borrowed or raised by the Authority;
- (d) to meet any other expenditure properly chargeable to capital account.

(2) Without prejudice to subsection (1), the Authority may, borrow by the way of overdraft or otherwise such sums as are required by the Authority for meeting its obligations and discharging its functions under this Act.

(3) The total amount of moneys borrowed or raised under this section shall not at any one time exceed such sum, having regard to the assets of the Authority, as the Minister responsible for Finance determines.

Guarantee of borrowings by Government.

9. (1) The Minister responsible for Finance may with the approval of the Legislative Council guarantee, in such manner and on such conditions as he thinks fit, the payment of the principal and of interest and other on any borrowings of the Authority under sections 8 and 10.

(2) Any guarantee given under this section shall be given in writing in the name of the Government, and such guarantee may be signed on behalf of the Government by the Minister

responsible for Finance or any person authorized in writing to do so by the Minister responsible for Finance.

(3) As soon as possible after a guarantee is given under this section, the Minister responsible for Finance shall cause to be presented to the Legislative Council a statement of the guarantee.

(4) Where the Government has guaranteed a loan, the Minister responsible for Finance may, from time to time, give general or special directions in writing to the Authority to furnish him with such returns and information with respect to the steps being taken to repay the loan and the Authority shall carry out every such direction.

(5) Where it is made to appear to the Minister responsible for Finance that there is reasonable cause to believe that the Government is or may become liable under any guarantee given under this section, the Minister responsible for Finance may give in writing such directions to the Authority to ensure that satisfactory arrangements are made by the Authority to enable it to duly discharge its obligations under this section and the Authority shall comply with such directions.

(6) Where the Minister responsible for Finance is satisfied that there is default in the repayment by the Authority of any principal moneys or interest guaranteed under this section, he shall direct that the repayment of such moneys or interest be made out of the Consolidated Fund.

Power to  
borrow  
from  
Government.

10. (1) The Authority may borrow by way of advances from the Government such sums as are necessary for carrying out its functions under this Act.

(2) Notice of advances made to the Authority under this section shall be given to the Legislative Council by the Minister responsible for Finance.

(3) For the purposes of making advances to the Authority, the Minister responsible for Finance may authorize advances out of the Consolidated Fund or from the proceeds of any loan to be raised for the purposes of the Authority.

(4) Where advances are to be met from the proceeds of a loan, the Minister responsible for Finance may, pending the raising of that loan, by warrant under his hand authorize the Accountant-

General to make advances out of the Consolidated Fund to the Authority in such sums and on such terms and conditions as he thinks fit.

(5) The repayment of any advances made under this section and the payment of interest and other charges thereon shall, subject to any special terms and conditions which the Minister responsible for Finance stipulates in relation to the repayment, be made by the Authority in like manner and on like conditions as borrowings by the Authority.

Application  
of moneys  
of the  
Authority.

11. The moneys of the Authority in any financial year shall be applied in payment of the following charges: -

- (a) the interest and other charges on, on provisions for repayment of, any loan payable by the Authority;
- (b) the sums required to be paid towards the repayment of any loan made to the Authority;
- (c) the remuneration, fees and allowances payable under this Act;
- (d) the salaries, remuneration, allowances, pensions, gratuities, provident fund and other superannuation benefits of the officers and staff, employed in or in connection with the activities carried on by the Authority;
- (e) the working and establishment expenses of, and the expenditure on, or provision for the maintenance of the property and installations of the Authority, and the discharge of the functions of the Authority properly chargeable to revenue;
- (f) such sums as the Authority may deem appropriate to set aside in respect of obsolescence and depreciation or renewal or installations of the Authority;
- (g) the cost, or any portion thereof, of any new works, plant, or appliances not being a renewal of property as the Authority may determine to charge to revenue; and

- (h) any other expenditure authorized by the Authority and properly chargeable to revenue.

Authorized investments.

12. Any moneys standing to the credit of the Fund which are not immediately required to be expended in meeting the obligations or in the discharge of the functions of the Authority may be invested in securities with the concurrence of the Minister responsible for Finance, for investment by the Authority.

Assets to be interest free.

13. All assets transferred from the Government to the Authority shall be free of interest or any capital obligation except such as are being financed by loans raised by the Government at the commencement of this Act.

Grants for unremunerative services.

14. (1) Where services are provided by the Authority in any place or places, and the Minister is satisfied that -

- (a) those services are unremunerative; and
- (b) it is desirable for social or economic reasons that the service in question should for the time being continue to be provided either in the same or some different form or manner; and
- (c) because of the unremunerative nature of the service which the Minister is satisfied is desirable for those reasons (hereafter in this section referred to as “the required service”) the Authority cannot reasonably be expected to provide them without assistance under this section,

then, subject to the provisions of this section, the Minister may from time to time with the concurrence of the Minister responsible for Finance undertake to make grants to the Authority in respect of the provision of the required service during that period not exceeding three years at a time as the Minister may think fit.

(2) The aggregate amount payable by way of grants in pursuance of an undertaking under subsection (1) shall be the

amount by which it is estimated, on such basis and in such manner as the Minister, with the concurrence of the Minister responsible for Finance and after consultation with the Authority may determine, that the expenditure properly attributable to the provision of the required service will exceed the revenue properly so attributable.

Fixing of rates, fees etc.

15. (1) The Authority shall fix the rates fees, dues and other charges for or in connection with the carriage, storage or warehousing of goods by means of the Authority, and the fixing of ships' fees, dues, wharfage charges, harbor rates, fees, dues, other charges and the payment, exemption from payment, refund or remission thereof.

(2) The rates, fees, dues and other charges fixed by the Authority under subsection (1) shall be approved by the Legislative Council and shall be published in Gazette and in one issue of a local newspaper.

(3) The rates, fees, dues or other charges prescribed under the Ports and Marine Services Regulations 1988, shall be deemed to be the rates, fees, dues and other charges fixed under subsection (1), until such time such rates, fees, dues and other charges are fixed under this Act.

Rules.

16. (1) The Authority shall by resolution make rules in respect of the following matters –

- (a) the manner in which and the officers by whom payments are to be approved and cheques are to be signed;
- (b) the bank or banks into which the moneys of the Authority are to be deposited, and the title of an account with any such bank and the transfer of funds from one account to another;
- (c) the moneys to be retained by the accountant for the purpose of making petty disbursements or immediate payments, and the maximum amount that may be so disbursed for any one payment;

- (d) the method to be adopted in making payments out of the Fund;
- (e) generally as to all matters necessary for the proper keeping and control of the accounts and books and the control of the finance of the Authority.

(2) All decisions, orders, rules and regulations relating to the financial operations of the Authority and authorized by this Act shall be made by resolution of the Authority at a meeting thereof and shall be recorded in the minutes of the Authority.

Accounts and operations.

17. (1) The Authority shall, as soon as practicable after the end of every month, make up a statement of the financial condition of the Authority as at the close of business on the last business day of each month, and shall transmit a copy to the Minister.

(2) Within four months of the close of each financial year or such longer period as the Minister allows, the Authority shall -

- (a) transmit to the Minister a copy of its annual accounts certified by the auditor;
- (b) submit to the Minister a report on its operations during the year.

(3) The Minister shall lay a copy of the annual accounts of the Authority, together with the certificate of the auditor and the report on the Authority's operations for the year, before the Legislative Council as soon as practicable after he has received such accounts, certificate and report.

Exemption from customs duty, stamp duty, income tax and other taxes.

18. Notwithstanding any other enactment the Authority is exempt from -

- (a) the payment of customs duties and any other duties or taxes on goods imported for its own use;
- (b) the payment of any taxes in respect of lands owned or leased by the Authority;
- (c) the payment of stamp duty on its documents;

- (d) the payment of income tax and any other tax imposed on the income or profits.

Powers of the Minister in relation to the Authority.

19. (1) The Minister may give the Authority general directions in writing as to the performance of its powers under this Act on matters which appear to him to affect the public interest and the Authority shall give effect to such directions.

(2) The Minister may, from time to time, direct the Authority to furnish to him, in such form as he may require, returns, accounts and other information with respect to its property and business, and the Authority shall carry out every such direction.

(3) The Minister may, from time to time, order all or any of the activities of the Authority to be investigated and reported upon by such person or persons as he may specify, and upon such order being made, the Authority shall afford all such facilities and furnish all such information, as may be necessary to carry out the order.

#### PART IV

#### STAFF, ADMINISTRATION AND MANAGEMENT

#### OF THE AUTHORITY

Appointment of Managing Director and Deputy.

20. (1) The Authority shall, with the approval in writing of the Governor in Council appoint a Managing Director, and a Deputy Managing Director.

(2) The Managing Director shall, subject to the general direction of the Authority, be the Chief Executive Officer and be charged with the direction of the business of the Authority, the organisation and the exercise, performance and discharge of its powers, duties and functions and the administrative control of the employees of the Authority.

(3) The Managing Director may delegate in writing to the Deputy Managing Director or to any other employee of the Authority, such of his powers, duties or functions as he may from time to time consider necessary and the Deputy Managing Director or any employee to whom such powers, duties and functions are so delegated shall exercise them subject to the general or special directions of the Managing Director.

(4) If the Managing Director is temporarily absent from the Territory or is temporarily incapacitated by illness or for other reasons is temporarily unable to perform his duties, the Deputy

Managing Director shall act in the place of the Managing Director until he is able to resume duties.

(5) The Managing Director shall give effect to any of the powers delegated to him under section 5.

Power to appoint officers and other employees.

21. (1) Subject to the provisions of this Part, the Authority may appoint on such terms and conditions as the Authority may determine such other officers and employees as are necessary and proper for the administration, management and performance by the Authority of its functions under this Act.

(2) The Authority may, with the approval of and subject to such terms and conditions as may be imposed by the Minister, provide for the establishment and maintenance of a Pension Scheme or Provident Fund Scheme for the benefit of officers and employees of the Authority, and in any such Scheme different provisions may be made for classes of officers and employees.

Transfer of officers and employees from Government to the Authority.

22. (1) (a) Every officer and employee of the Ports and Marine Services Department shall, at the commencement of this Act, be deemed to be transferred from the service of Government to service of the Authority upon terms and conditions not less favourable in aggregate than those which are attached to the appointments held by such officers and employees under Government and shall be offered within three months thereafter the alternatives of

(i) continuing in the service of the Authority whereby such service shall be retrospective from the date of his transfer and he shall be entitled to such pension, gratuity and other allowances and rights if any as he would have received had he been retired from the service of Government on the abolition of his appointment on the date of his transfer to the Authority;

(ii) transferring to another department of Government, subject to a suitable vacancy existing, with his service

with the Authority counting as service with Government in respect of his pension, gratuity and other allowances and rights if any; or

- (iii) being deemed to have retired from the service of Government on the abolition of his appointment on the date he ceases to be in the service of the Authority.
- (b) Any such officer or employee who within one month of the alternatives under paragraph (a) of this subsection being offered him fails to indicate which of the alternatives he elects to accept shall be deemed to have accepted alternative (iii).
- (c) The Authority shall reimburse Government with the cost of the pension, gratuity and other allowance and rights, if any, arising from the period which any such officers or employees who do not elect to continue serving with the Authority did serve with the Authority.

(2) Nothing in this section shall be deemed to affect the right of the Authority to terminate the employment of any such officer or employee transferred to the service of the Authority or to vary his rate of pay or conditions of service, in the manner and to the extent that Government could have done had he continued in the service of the Government.

(3) Notwithstanding anything to the contrary in this section where any officer or employee has elected under subparagraph (i) of paragraph (a) of subsection (1) to continue in the service of the Authority, then, such officer or employee shall not be entitled to be paid any pension, gratuity or other allowances that may have accrued to such officer or employee whilst in the service of the Government until such officer or employee would have qualified for a pension, gratuity or other allowances under the Pensions Act, had such officer or employee continued in the service of the Government.

## PART V

### CONTROL OF SHIPPING

Harbours.  
Second  
Schedule.

23. (1) The harbours specified in the Second Schedule shall be harbours for the purposes of this Act.

(2) The Minister may by order amend the Second Schedule by extending the limits of an existing harbour or by adding thereto or deleting therefrom any harbour.

Vessels  
under  
general  
direction  
of the  
Managing  
Director.

24. (1) All vessels within the territorial waters or entering, being or remaining in any harbour in the Territory are, during their continuance therein, subject to the general direction and control of the Managing Director.

(2) Notwithstanding anything contained in the regulations, the Managing Director may -

- (a) give directions as to where any vessel or sea-plane shall be berthed, moored, anchored, or parked and as to the method of berthing, mooring, anchoring or parking of the vessel or sea-plane within a harbour or the approaches thereto;
- (b) order the removal of any vessel or sea-plane from any berth, station or position to another berth, station or position and specify in the order the time within which removal is to be effected;
- (c) regulate the movement of vessels or sea-planes and other traffic within a harbour and the approaches thereto; and
- (d) request the Master of any vessel to proceed to and render assistance to any other vessel in distress.

Removal of  
foreign  
vessel from  
territorial  
waters.

25. (1) Notwithstanding anything contained in the Regulations, the Minister with the approval of the Governor in Council, may order the removal of any foreign vessel, or sea-plane from the territorial waters and may specify the time limit within which the removal is to be effected.

(2) In specifying the time limit referred to in subsection (1), the Minister may take due account of any limitations of the vessel, sea-plane and of the crew.

(3) Any owner or person in charge of any vessel or sea-plane who, without reasonable excuse, fails to comply with an order given under section 24 (?) or under subsection (1) of this section is guilty of an offence and is liable on summary conviction to a fine of \$2,000.

(4) Where a person has been convicted of an offence under subsection (3) and the order in respect of which the conviction was obtained is still not complied with, that person is guilty of a continuing offence and is liable on summary conviction to a fine of \$1,000 for each day in respect of which the offence continues after the first conviction was obtained.

(5) In the case of a failure to comply with any order given under subsection (1) the Minister is satisfied that it is urgent and necessary and in the public interest or for the protection of the marine environment so to do, he may, without prejudice to any proceedings being instituted against any person, request the Authority or the Managing Director to take such measure and action as may be reasonable and necessary for the purpose of having the order complied with; and any measure and action taken at the request of the Minister shall be at the risk and expense of the person against whom the order under subsection (1) was directed.

(6) This section does not apply to a vessel in distress in the territorial waters, if the vessel is removed by the owner or person in charge of it within such period of time as the Minister considers reasonable.

Removal and disposal of wrecks etc.

26. (1) No owner or person in charge of a vessel shall -

- (a) unlawfully place that vessel; or
- (b) allow that vessel to remain sunk, stranded or abandoned,

within any harbour, or other territorial waters or in any fairway or on the seashore or on or near any rock, bank, shoal, or reef or in any part of the sea adjacent to the coast of the British Virgin Islands.

(2) Where a vessel is allowed to remain sunk, stranded, abandoned or unlawfully placed in a place mentioned in subsection (1) and the Authority is satisfied that the vessel is likely -

- (a) to cause -

- (i) obstruction to navigation or to the lawful landing of a vessel on the beach, foreshore or bank of the harbour, bank of the inland water or of the sea; or
- (ii) obstruction to the use of the beach, harbour, inland water or sea; or

(b) to constitute -

- (i) a risk of pollution; or
- (ii) a danger to the environment,

the Authority may without notice to the owner of the vessel, authorize the Managing Director or any other officer of the Authority to perform in relation to the vessel any of the acts specified in subsection (3).

(3) The acts referred to in subsection (2) are -

- (a) to take possession of or raise, remove or destroy the whole or any part of the vessel;
- (b) to light the vessel or any part of it or buoy it until it is raised, removed or destroyed, as the case may be; or
- (c) to sell, in such manner as may be convenient -
  - (i) the vessel or any part thereof; or
  - (ii) its contents or any part thereof.

(4) The proceeds of a sale under this section shall be appropriated in satisfaction of the expenses incurred by the Authority as a result of the raising of the vessel and of the sale and the remainder shall be held in trust for the person entitled thereto.

(5) If, after the expiration of a period of six months, no claim is made for the remainder of the proceeds to which subsection (4) refers, it shall be paid into the Fund.

(6) If the proceeds of a sale under this section are less than the expenses mentioned in subsection (4), the balance may be recovered in civil proceedings as debt due to the Authority.

(7) An order of the court is not necessary for the taking of possession and sale of a vessel under this section and no liability attaches to the Crown, to the Authority or to any person acting under the authorization of the Authority for any act performed under subsection (3).

Willful  
sinking and  
abandoning  
etc. of  
vessel in  
harbour.

27. (1) Any person who, without the permission in writing of the Authority -

- (a) willfully sinks, strands or abandons a vessel in any harbour, or in the territorial waters; or
- (b) does so in contravention of the terms of any such permission,

is, without affecting the operation of subsections (2) to (7) of section 26, guilty of an offence and is liable on summary conviction to a fine of \$10,000 or to imprisonment for a term of twelve months or to both such fine and imprisonment.

(2) A vessel that is left anchored in the territorial waters for a period of three months or more and is not removed by the owner upon being requested to remove it by the Managing Director is an abandoned vessel for the purposes of this section and section 26.

Obstruction  
of territorial  
waters etc.

28. (1) No person shall unlawfully cause an obstruction or do anything that is likely to cause obstruction to -

- (a) navigation in the territorial waters;
- (b) the lawful use of any landing place, whether or not it has been reserved under the regulations or otherwise;
- (c) the lawful use of any pier, jetty, wharf, quay, dock, or mooring; or
- (d) any works connected with navigation in the territorial waters.

(2) Any person who contravenes subsection (1) is guilty of an offence and is liable on summary conviction to a fine of \$500 or to imprisonment for a term of six months or to both such fine and imprisonment.

(3) Notwithstanding subsection (2), the court may, in addition to any punishment it imposes under that subsection, make such order for the removal of the obstruction as it thinks fit and the order may contain a direction that the convicted person pay the cost of the removal.

Setting  
vessel  
adrift.

29. Any person who, for the purpose of obtaining salvage or for any other purpose -

- (a) willfully sets any vessel adrift; or
- (b) cuts, breaks or unfastens the moorings of any vessel with intent to set the vessel adrift,

is guilty of an offence and is liable on summary conviction to a fine not exceeding \$2,000 or to imprisonment for a term of six months or to both such fine and imprisonment.

Prevention of  
collisions.

30. (1) The prevention of Collisions at Sea Act, 1987 shall be followed in respect of all vessels, sea-planes and other craft navigating all territorial waters of the British Virgin Islands, including British Vessels registered in the British Virgin Islands, upon the high seas and in all waters connected therewith navigable by seagoing vessels; except in any case as may be prescribed by the Authority or by any regulations under the Merchant Shipping Act, 1894, of the United Kingdom Parliament or any Act replacing that Act.

(2) Any master or owner of a vessel who operates a vessel in contravention of the regulations referred to in subsection (1) is guilty of an offence and is liable on summary conviction to a fine of \$5,000.

(3) If any damage to person or property arises as a result of non-compliance with any of the regulations referred to in subsection (1), the damage shall be deemed to have been occasioned by the willful default of the person in charge of the deck or the person for the time being having the immediate control or direction of the vessel, unless the Court is satisfied that the

circumstances of the case made a departure from the regulations necessary.

Liability for pollution, damage to property, of Authority or Crown and to marine environment.

31. (1) The owner or master of a vessel is liable to the Authority for -
- (a) any damage, caused, by the vessel or or by any person employed on or about the vessel to any harbour works, installation, plant, equipment or machinery or other property of the Authority or of the Crown.
  - (b) the cost of clearing from the territorial waters or from any part of the foreshore any pollution caused by the vessel or by any person employed on or about the vessel; and
  - (c) any damage or injury to the marine environment or marine life of the British Virgin Islands, arising from or connected with the pollution or any other damage done by the vessel or by any person employed in or about the vessel.

(2) An amount in respect of which the owner of a vessel is liable under subsection (1) is recoverable from the owner of the vessel in civil proceedings as a debt due to the Authority of the Crown.

(3) Subsection (2) shall be construed as not affecting any other remedy available to the Crown under any law for the time being in force in the Territory.

(4) Notwithstanding subsections (2) and (3), a vessel referred to in subsection (1) and any other vessel belonging to the owner of that vessel may be seized and detained until the estimated cost of making good such damage or injury or of clearing of the pollution has been fully paid or security therefore given to the Authority or the Crown.

Accident and pollution.

32. (1) Where damage or injury referred to in paragraph (a) or (c) of section 31 (1) had been caused by a vessel, or where any vessel in the territorial waters -

- (a) has sustained damage;
- (b) has been the cause of an accident resulting in the loss of life or in serious injury to any person; or
- (c) has sustained any material damage affecting its seaworthiness or efficiency either in its hull or in any part of its machinery, gear or tackle,

its owner shall within the period of 24 hours immediately following the accident or as soon as possible thereafter submit to the Managing Director, a written report of the accident or damage and the probable occasion thereof signed by the owner or master.

(2) A master or owner of a vessel who fails without reasonable cause to comply with this section is guilty of an offence and is liable on summary conviction to a fine of \$500.

Assistance to damaged vessel a duty.

33. (1) Where two or more vessels are involved in a collision, the master or person in charge of each vessel, shall, in so far as he can without damage to his vessel, crew and passengers, if any, -

- (a) render to the other vessel involved in the collision, its master, crew and passengers, such assistance as may be practical and necessary to save them from danger and to stay by the other vessel until he has ascertained that it has no need for further assistance, or
- (b) give to the master or person in charge of the other vessel involved in the collision -
  - (i) his own name and address;
  - (ii) the name of his vessel; and
  - (iii) the name and address of its owner and its owner and its port of registration.

(2) A master or person in charge of a vessel who fails without reasonable cause to comply with this section is guilty of an offence and is liable on summary conviction to a fine of \$2,000.

Detention of unsafe vessels.

34. (1) The Managing Director may provisionally detain a vessel that is in a harbor and direct the master not to put it to sea if the Managing Director is satisfied that the vessel is an unseaworthy

vessel -

- (a) by reason of the defective condition of its hull, equipment or machinery;
- (b) by reason of undermanning; or
- (c) by reason of overloading or improper loading,

and it cannot be put to sea without serious danger to human life, having regard to the nature of the service for which the vessel is being used.

(2) Where a vessel has been provisionally detained under subsection (1), the Managing Director shall serve notice thereof on its owner or master directing him not to put the vessel to sea until the Managing Director has cleared the vessel as safe for being put to sea.

(3) If any ship -

- (a) has been provisionally detained under subsection (1); and
- (b) a notice has been served on the owner or master under subsection (2).

and the ship is put to sea in contravention of that notice, the owner or master, as the case may be, is guilty of an offence and is liable on summary conviction to a fine of \$1,000.

(4) Every notice served under subsection (2) must contain particulars of the alleged unseaworthiness of the vessel and a statement to the effect that an order for the final detention of the vessel will be issued unless steps are taken within such period as may be specified in the notice for the performance of such conditions with respect to the execution of repairs or alterations, or the unloading or reloading of cargo, or the manning of the vessel, as the Managing Director may require.

(5) The Managing Director may vary a notice given under this section and may extend the period required by the notice within which any act is to be performed.

(6) If the owner or master of any vessel on whom notice has been served under this section complies with the notice within

the period specified therein or within any extended period granted, the Managing Director shall release the vessel, but if he fails to comply with the notice the Managing Director shall order the vessel to be finally detained.

(7) An order for final detention of a vessel shall be served on the owner or master of the vessel affected thereby and shall indicate the date from which it is effective.

Provisions in relation to finally detained vessel.

35. (1) No vessel in respect of which an order for final detention has been made shall be put to sea or remain in any harbor for a longer period than ten days after the date of the order for its final detention except in accordance with the written permission of the Managing Director.

(2) The Managing Director may direct that a vessel in respect of which an order for final detention has been made be beached or moored in any part of a harbor where its presence will neither constitute a hazard to navigation nor injuriously affect the interests of other users of the harbor.

(3) The owner or master of a vessel in respect of which an order for final detention has been made who -

- (a) puts the vessel to sea; or
- (b) allows the vessel to remain in any harbor in contravention of any direction given under subsection (2),

is guilty of an offence and is liable on summary conviction to a fine of \$2,000 if the offence is in contravention of paragraph (a) and \$1,000 if the offence is in contravention of paragraph (b).

(4) If any vessel in respect of which an order for final detention had been given remains in any harbor contrary to any direction given under subsection (2), the Managing Director may cause the vessel to be removed and disposed of.

(5) Subsections (3) to (7) of section 26 apply mutatis mutandis with respect to the disposal of a vessel that is in contravention of subsection (4) as they do in respect of vessels that are in contravention of that section.

Cancellation of order for final detention.

36. If at any time after an order for final detention has been made in respect of any vessel but before it has been disposed of under section 35 (4), the owner or master thereof satisfies the Managing Director that the vessel is no longer seaworthy within the meaning of subsection (1) of section 34 the Managing Director shall cancel

the order for its final detention.

Appeal  
against  
order for  
final deten-  
tion.

37. The owner or master of any vessel in respect of which an order for final detention had been made may, within three days of being notified of the order, appeal to the Minister whose decision shall be final.

Putting to  
sea in  
inclement  
weather.

38. Where the Managing Director is satisfied that, by reason of any impending hurricane or other threatening signs of turbulent weather, it would be unsafe to allow any vessel in a harbor to put to sea, he may direct the owner of that vessel not to put it to sea and an owner who puts a vessel to sea contrary to such direction is guilty of an offence and is liable on summary conviction to a fine of \$500.

Passengers  
etc. to be  
embarked etc.  
only at a  
harbor.

39. (1) Subject to subsection (2), no ship may embark or disembark any passenger or goods at any place other than a harbor as described in the Second Schedule.

(2) The Authority may with the consent in writing of -

- (a) the Minister responsible for Finance, in the case of goods;
- (b) the Minister responsible for Immigration and Customs, in the case of passengers,

authorise the master of any ship to embark or disembark such goods or passengers at any place, other than at harbour as mentioned in subsection (1), designated by the Authority for the purpose.

Master to  
supply in-  
formation.

40. The master of any ship arriving in a harbour shall produce on demand to an authorized employee -

- (a) the ship's register and the ship's papers;
- (b) a list of the passengers, if any, showing particulars of their sex, occupation and nationality;
- (c) a list showing the deaths, if any, which occurred during the voyage;
- (d) a list showing stowaways, if any on the ship; and
- (e) the ship's manifest,

and shall also supply such other information in relation to the ship, passengers and cargo thereof, as such employee requires.

Power to arrest ship for harbor rates and charges.

41. (1) Where any harbour rates or charges are owing in respect of any ship, an authorized employee may arrest the ship and the tackle, apparel and furniture thereof, and may detain it until the amount of such rates or charges is paid.

(2) Where, after an arrest under subsection (1), any harbor rates or charges remain unpaid for a period of seven days, the authorised employee may cause the ship and the tackle, apparel and furniture thereof arrested to be sold, and out of the proceeds of such sale he shall retain the amount necessary to meet the expenses of the detention and sale thereof and shall, after paying the amount of any harbour rates or charges which is owing to the Authority, deliver the balance, if any, to the master of the ship.

Power to withhold clearance.

42. (1) Before any discharge or outward clearance is given to any vessel, the Comptroller of Customs or any customs officer shall require the master, owner, or person in charge of the vessel to submit to him a certificate from the Managing Director stating that -

- (a) all dues and charges payable under this Act or the regulations and any costs against the vessel or master or owner or person in charge of such vessel have been paid;
- (b) security to the satisfaction of the Managing Director has been given for the payment of the dues and charges; and
- (c) he has complied with the provisions of this Act and of the regulations.

Removal of wrecks etc.

43. The Authority may take such action as may be prescribed respecting the removal and disposal of any wreck, building, ship or other thing causing obstruction in or about any harbour.

Retention and Delivery of goods etc.

44. (1) Where the owner or master of a ship from which any goods have been landed at a harbour and accepted by the Authority for carriage, storage or warehousing or for delivery to the consignee, notifies the Managing Director in writing that freight or other charges to the amount specified in the notice remain unpaid in respect of the goods, the Managing Director shall obtain and refuse delivery thereof to the consignee or any other person until -

- (a) the payment of any rates, charges and customs duties due in respect of such goods; and
- (b) the production of a receipt for, or a release from, the payment of such amount signed, or purporting to be signed by or on behalf of the ship owner; or
- (c) the payment of the amount by the person entitled to take delivery thereof; or
- (d) the deposit by the consignee of the goods with the Managing Director of a sum of money equal in amount to the sum claimed as freight and other charges as specified in the notice by the owner or master of a ship; and in which event the lien for freight and other charges shall be discharged without prejudice to any other remedy which the shipowner may have for recovery of the freight charges.

(2) When a deposit is made with the Managing Director under paragraph (d) of subsection (1), the person making the same may, within fifteen days after making it, give to the Managing Director notice in writing to retain it, stating in the notice the sums, if any, which he admits to be payable to the shipowner, or, as the case may be, that he does not admit any sum to be so payable, but if no such notice is given, the Managing Director may, at the expiration of the fifteen days, pay the sum deposited over to the shipowner.

(3) If a notice is given as aforesaid the Managing Director shall immediately apprise the shipowner of it, and shall pay or tender to him out of the sum deposited the sum, if any, admitted by the notice to be payable, and shall retain the balance, or, if no sum is admitted to be payable, the whole of the sum deposited, for thirty days from the date of the notice.

(4) At the expiration of those thirty days unless legal proceedings have in the meantime been instituted by the shipowner against the owner of the goods to recover the said balance or sum, or otherwise for the settlement of any disputes which may have arisen between them concerning the freight or other charges as aforesaid, and notice in writing of those proceedings has been served on the Managing Director, the Managing Director shall pay the balance or sum to the owner of the goods. The Managing

Director by any payment made under this section shall be discharged from all liability in respect thereof.

(5) Where the Managing Director causes to be delivered any goods in respect of which a notice has been given under subsection (1) to a person producing such receipt or release or making such payment as is referred to in paragraph (b) or (c) or making a deposit as is referred to in paragraph (d) of that subsection, the Authority shall be freed from all liability to any person in respect of the goods.

(6) An authorised employee is entitled to levy such charges as may be determined under this Act or the regulations in respect of the custody of any goods delivered to him in accordance with this section, and he may do all such reasonable acts and incur such reasonable expenses as are necessary for the proper custody and preservation of the goods, and the Authority shall have a lien on the goods for such charges and any other expenses so incurred.

(7) Nothing in this section shall be construed as requiring any person to take into the custody of the Authority any goods which would not otherwise be receivable by means of the Authority under this Act or the regulations, or as requiring the Managing Director to enquire into the validity of any claim for freight or any other charges made in any notice given by a master under subsection (1).

Sale of  
of goods  
by Managing  
Director.

45. (1) If the lien is not discharged, and no deposit is made as aforesaid the Managing Director may, and, if required by the shipowner, shall, at the expiration of ninety days from the time when the goods were placed in his custody, or, if the goods are of a perishable nature, at such earlier period as in his discretion he thinks fit, sell by public auction, either for home use or for exportation, the goods or so much thereof as may be necessary to satisfy the charges hereinafter mentioned.

(2) Before making the sale the Managing Director shall give notice thereof by advertisement in two local newspapers and also, if the address of the owner of the goods has been stated on the manifest of the cargo, or on any of the documents which have come into the possession of the Managing Director or is otherwise known to him, send notice of the sale to the owner of the goods by post.

(3) The title of a bona fide purchaser of the goods shall not be invalidated by reason of the omission to send the notice

required by subsection (2), nor shall any such purchaser be bound to inquire whether the notice has been sent.

Application of proceeds of sale.

46. The proceeds of sale shall be applied by the Managing Director as follows, and in the following order: -

- (a) first, if the goods are sold for home use, in payment of any customs or excise duties owing in respect thereof; then
- (b) in payment of the expenses of the sale; then
- (c) in payment of the charges of the Managing Director and the shipowner according to such priority as may be determined by the terms of the agreement (if any) in that behalf between them; or if there is no such agreement -
  - (i) in payment of the rent, rates, and other charges due to the Managing Director in respect of the said goods; and then
  - (ii) in payment of the amount claimed by the shipowner as due for freight or other charges in respect of the said goods;

and the surplus, if any, shall be paid to the owner of the goods.

Managing Director's rent and expenses.

47. Whenever any goods are placed in the custody of the Managing Director the Managing Director shall be entitled to rent in respect of the same and shall also have power, at the expense of the owner of the goods, to do all such reasonable acts as in the judgment of the Managing Director are necessary for the proper custody and preservation of the goods, and shall have a lien on the goods for the rent and expenses.

Failure to pay customs duty etc.

48. Where customs duty or any other duty or charge payable in respect of goods in possession of the Authority under this Act remains unpaid for a period of one month or more, those goods may be disposed of as unclaimed goods.

Liability for demurrage.

49. The Authority is not liable for any demurrage which may occur or be due on any ship, howsoever such demurrage may have

been caused.

Master responsible for contravention of Act etc.

50. The master of a ship is responsible for the compliance in respect of such ship with the provisions of this Act and the regulations, and, in the event of a contravention thereof, he may be proceeded against and held liable for the contravention.

Delivery to masters of copy of Act.

51. The Managing Director shall, on the demand of the master of any ship arriving at any harbor, cause to be delivered to such master on loan for a period of 14 days a copy of this Act and any Regulations relating to harbours, quarantine and matters related thereto.

#### PART VI PILOTAGE

Compulsory pilotage harbour.

52. (1) The harbours specified in the Second Schedule shall be compulsory pilotage harbours, and all ships, other than exempted ships, navigating, whether by entering, leaving or moving within the limits thereof, shall be under the pilotage of -

(a) a licensed pilot employed by the Authority or a person whose services are on contract with the Authority; or

(b) any other person licensed as a pilot.

(2) For the purposes of this section, exempted ships are -

(a) ships belonging to Her Majesty;

(b) pleasure yachts or fishing vessels;

(c) ferry boats plying as such exclusively within the limits of a harbour;

(d) ships of less than two hundred tons gross registered tonnage;

(e) ships trading exclusively between harbours within the Territorial waters;

(f) tugs, dredgers, barges or similar vessels whose ordinary course of navigation does not extend beyond the limits of the territorial waters.

(3) The Managing Director may exempt any ship from compulsory pilotage.

(4) Where any harbour is a compulsory pilotage harbour, the Authority may prescribe the limits of such harbour for the purposes of compulsory pilotage.

(5) Neither the Authority nor the Crown shall be responsible for any loss or damage through the act, neglect or default of any pilot.

(6) The owner or master of a ship navigating under circumstances in which pilotage is compulsory shall be answerable for any loss or damage caused by the ship or by any fault of the navigation of the ship in the same manner as he would if pilotage were not compulsory.

(7) A pilot shall not be liable for neglect or want of skill in the performance of his duties under this Act or the regulations beyond the sum of five thousand dollars.

(8) Where any proceedings are taken against a pilot for any neglect or want of skill in respect of which his liability is limited under subsection (7), and other claims are made or apprehended in respect of the same neglect or want of skill, the court in which the proceedings are taken -

- (a) may determine the amount of the liability;
- (b) upon payment into court by the pilot of any amount so determined or the sum of five thousand dollars, whichever is the less, may order that the amount so paid into court be distributed rateably among the several claimants;
- (c) may, where that court is the High Court, order that any proceedings pending in any other court in relation to the same matter be stayed; and
- (d) may proceed in such manner and subject to such conditions as to making persons interested parties to the proceedings, the exclusion of any claimants who do not commence proceedings within a certain time, requiring security from the pilot, and the payment of any costs as the court thinks just.

Compulsory pilotage and licencing of pilots.

53. (1) The Authority may with the approval of the Minister upon receipt of the prescribed fee, license as pilots such persons as the Authority is satisfied are competent to conduct cargo vessels and passenger vessels into and out of a harbor.

(2) Every qualified pilot on his appointment shall be issued with a licence, to be known as a “pilot’s license” in such form as the Minister approves and the licence shall, in addition to any other particulars, contain in respect of the person to whom it is issued, the following: -

- (a) his name and address;
- (b) his photograph; and
- (c) the limits within which he must operate as a pilot.

(3) Every pilot’s licence must be signed by the holder thereof and also by the Chairman of the Authority or any other officer authorised by the Chairman.

(4) A pilot’s licence is valid for a period of one-year unless a shorter period is specified in the pilot’s licence for its validity; but it is renewable for a further period of one year upon payment of the prescribed fee.

Production of pilot’s licence.

54. Every pilot shall, when acting as such, produce his pilot’s licence to any person by whom he is employed or to whom he offers his services as pilot.

Delivery up of pilot’s licence.

55. (1) Every pilot shall, when required to do so by the Authority, deliver up his pilot’s licence to the Authority or to such person as the Authority authorises to take possession of the licence.

(2) On the death of a pilot, any person who has possession of such pilot’s licence shall transmit it to the Authority without delay.

(3) A pilot who contravenes subsection (1) and a person who contravenes subsection (2) is guilty of an offence and is liable on summary conviction to a fine of \$250 or to imprisonment for a term of one month or to both such fine and imprisonment.

Pilot’s licence not transferable.

56. A pilot’s licence is not transferable.

Fraudulent use of pilot's licence.

57. A person who -
- (a) uses or attempts to use a pilot's licence that he is not entitled to use; or
  - (b) uses or attempts to use a pilot's licence for a purpose that is not within the limits specified in the licence in pursuance of paragraph section 53 (2),

is guilty of an offence and is liable on summary conviction to a fine of \$500 or imprisonment for a term of three months or to both such fine and imprisonment.

Recovery of pilotage fees.

58. (1) Pilotage fees due to any pilot, in respect of services rendered in respect of a vessel may be recovered by the pilot in civil proceedings from -
- (a) the master or owner of the vessel; or
  - (b) a consignee or an agent who has paid or made themselves liable to any charge or account of the vessel at port of arrival, discharge, loading or departure,

except that no action for recovery of pilotage fees shall be entertained by the Court unless a request for payment had been made in writing by the pilot.

Indemnity of consignee or agent for fees.

59. A consignee, or an agent, not being the master or owner of a vessel who is liable for payment of pilotage fees or from whom payment of pilotage fees has been recovered may, out of any moneys received by him on account thereof or belonging to the owner of the vessel, retain any reasonable expenses he has incurred by reason of payment of the fees or of his liability to pay the fees.

Offences in relation to pilots.

60. (1) A pilot who -
- (a) lends his pilot's licence to any person;
  - (b) within or outside the limits of his licence acts as a pilot during a period that he is suspended;
  - (c) within or outside the limits of his licence acts as a pilot while he is under the influence of alcohol or drugs;

- (d) refuses to take charge or willfully delays in taking charge, of any vessel within the limits of his licence -
  - (i) when not prevented from doing so by reason of illness or other reasonable cause; and
  - (ii) upon being requested to do so by the master of the vessel, its owner, agent or consignee or by any member of the Authority or by the Managing Director;
- (e) unnecessarily cuts, slips or causes to be cut or slipped, any cable or line belonging to any vessel;
- (f) refuses when requested by the master to conduct a vessel of which he is in charge into any harbour, port or place into which he is qualified to conduct that vessel, except on reasonable grounds of the likelihood of danger to the vessel; or
- (g) without the consent of the master, quits a vessel of which he has charge before the service for which he has been hired has been performed,

is guilty of an offence and is liable on summary conviction to a fine of \$500 or to imprisonment for a term of three months and, in addition thereto, is personally liable for any damage to the vessel that is the result of his action.

(2) A person who aids, abets, counsels or procures the commission of any offence under this section is liable in like manner and to the same extent as specified in subsection (1).

(3) If the person referred to in subsection (1) is a pilot, he is, in addition to the liability he incurs, liable at the discretion of the Authority to suspension or dismissal.

(4) If a pilot while he is in charge of a vessel willfully, negligently or by reason of his being under the influence of drugs or alcoholic drink -

- (a) does anything that -
  - (i) causes or is likely to cause the loss or destruction of, or serious damage to, the vessel, or

(ii) is likely to be a source of danger to the life or limb of any person on board thereof; or

(b) fails to do any lawful act that is necessary to be done by him for -

(i) preserving the vessel from loss, destruction or serious damage; or

(ii) preserving any person belonging thereto or on board thereof from danger to life or limb,

is guilty of an offence.

(5) A pilot guilty of an offence under subsection (4) is liable -

(a) on conviction on indictment to a fine of \$5,000 or to imprisonment for a term of 2 years or to both such fine and imprisonment; or

(b) on summary conviction to a fine of \$2,000 or to imprisonment for a term of twelve months or to both such fine and imprisonment;

and, in addition thereto, the Authority may revoke his pilot's licence.

Pilotage certificates to masters and mates.

61. (1) The Authority may, if it thinks fit -

(a) on the application of the master or mate of any vessel; and

(b) on payment by him of the prescribed fee,

examine him as to his competence to pilot the vessel of which he is master or mate within any harbour in respect of which there is compulsory pilotage.

(2) If the Authority, after an examination of a master or mate, is satisfied that the master or mate is competent to pilot the vessel of which he is the master or mate, it may issue to him on payment by him of the prescribed fee a certificate to be known as a pilotage certificate specifying -

- (a) the name of the person to whom it is issued;
- (b) the vessel in respect of which it is issued;
- (c) the limits which the master or mate is entitled to pilot the vessel; and
- (d) the period for which it is valid.

(3) A person to whom a pilotage certificate is granted is, while he is acting as master or mate of the vessel specified in the certificate, entitled to pilot that vessel within the limits specified in the certificate.

(4) A pilotage certificate is not transferable and is valid for a period of one year unless a shorter period is specified in the pilotage certificate for its validity; but it is renewable for a further period of one year upon payment of the prescribed fee.

(5) A person to whom a pilotage certificate has been issued who -

- (a) lends his pilotage certificate to any person;
- (b) acts as a pilot after his pilotage certificate has been cancelled under section 62;
- (c) acts as a pilot without having obtained a pilotage certificate; or
- (d) acts as a pilot while he is under the influence of alcohol or drugs,

is guilty of an offence and is liable on summary conviction to a fine of \$500 or to imprisonment for a term of three months; and, in addition, is personally liable for any damage that results from his actions.

Cancellation of pilotage certificate.

62. The Authority may cancel any pilotage certificate it has issued if it is satisfied that the person to whom it was issued has been guilty of misconduct or has shown himself incompetent to pilot the vessel.

Liability of master of vessel.

63. Notwithstanding the provisions of this Act or any law in force in the Territory, the owner or master navigating in circumstances in which pilotage is compulsory is answerable for any loss or damage caused by the vessel or by any fault arising from the navigation of the vessel as he would be if pilotage were not compulsory.

Liability

64. The grant of renewal of a pilot's licence or pilotage

in case of grant or renewal of pilot's licence or pilotage certificate.

certificate by the Authority under the powers given to it by this Act does not operate to attach liability to the Crown, the Authority or to any member or staff of the Authority for any loss or damage that arises as a result of any act or default of a person to whom a pilot's licence or a pilotage certificate has been issued.

Pilot to be servant of owner or master.

65. A pilot is, while he is engaged in any act of pilotage, the servant of the owner, master or person in charge of the vessel under pilotage, and neither the Crown nor the Authority nor any member of the Authority is liable for any loss or damage that arises as a result of the act, omission or default of any pilot, whether or not the pilot is normally employed in the service of the Authority.

Inquiries by Authority into conduct of pilots.

66. (1) The Authority may on its own motion or when so directed by the Minister, inquire into the conduct of a pilot whenever -

- (a) there is reason to suspect that the pilot has been guilty of misconduct affecting his capability as a pilot;
- (b) has failed to perform his duty or has been negligent in the performance of his duty as a pilot;
- (c) appears to be no longer competent to act as a pilot; or
- (d) has had an allegation of negligence or incompetence made against him.

(2) If the Authority after the inquiry under subsection (1), is satisfied as to -

- (a) the misconduct, failure, neglect or incompetence of a pilot; or
- (b) the truth of the allegation made against a pilot, it may, with the approval of the Minister, suspend or cancel the pilot's licence of the pilot.

Suspension of pilot's

67. (1) The Authority in its discretion, may suspend the pilot's licence of any pilot pending an inquiry under section 66

licence  
pending  
inquiry.

but any such suspension shall be reported forthwith to the Minister by the Authority.

(2) A pilot who is aggrieved by the suspension of his licence under subsection (1) may appeal to the Minister.

(3) The Minister may, after hearing an appeal, either himself or by some person assigned by him for the purpose, affirm, vary or reverse the decision of the Authority but, before varying any decision of the Authority in such a way as to be detrimental to the pilot, the Minister shall give the pilot an opportunity to be heard.

(4) The decision of the Minister under this section is final.

## PART VII

### RESPONSIBILITY OF THE AUTHORITY AS A WAREHOUSEMAN

Liability  
for loss  
etc goods.

68. (1) Subject to this Act or the regulations or any contract, the Authority is of not liable for the loss, misdelivery or detention of, or damage to, goods -

- (a) delivered to or in the possession of the Authority otherwise than for the purposes of carriage, storage or warehousing, except where the loss, misdelivery, detention or damage is caused by the want of reasonable foresight and care on the part of any person employed in or for the purpose of the Authority;
- (b) accepted by the Authority for carriage, storage or warehousing where the loss, misdelivery, detention or damage occurs otherwise than while the goods are being carried, stored or warehoused and is not caused by the want of reasonable foresight and care on the part of any person employed in or for the purpose of the Authority.

(2) The Authority is in no case liable for any loss, misdelivery, detention or damage arising from -

- (a) an act of God;
- (b) an act of war of the Queen's enemies;

- (c) arrest or restraint of princes or rulers, or seizure under legal process;
- (d) an act or omission of the consignor, consignee, depositor, or the servant or agent of any such person;
- (e) fire, flood, hurricane, tempest, earthquake, riot, civil commotion, strike, lock-out, stoppage, or restraint of labour from whatever cause, whether partial or general;
- (f) inherent liability to wastage in bulk or weight, latent or inherent defect, vice or natural deterioration;
- (g) deficiency in the contents of unbroken packages;
- (h) insufficient or improper packing or from leakage from defective drums, containers or packages.

Limitation for loss etc. where value of goods given is mis-stated.

69. The liability of the Authority in respect of any goods accepted by the Authority for carriage, storage or warehousing, shall be based on the true value of the goods and not on the mis-stated value of any such goods.

Burden of proof.

70. In any proceedings brought against the Authority, it shall not be necessary for the person claiming damages or compensation to prove how the loss, misdelivery, detention, or damage to the goods occurred.

## PART VIII

### FERRIES

Ferry Licences.

71. (1) No person shall operate a ferry service within the territorial waters unless he has obtained a licence from the Authority for the purpose.

(2) An application to obtain a licence to operate a ferry service shall be in the prescribed form and is obtainable from the

Authority.

(3) The Authority shall upon receiving an application under subsection (2) -

- (a) interview the applicant; and
- (b) carry out such investigations in respect of the application as may be necessary.

(4) The Authority shall upon completion of its investigations, with the approval of the Minister -

- (a) approve the schedule and the route of the ferry service proposed by the applicant; or
- (b) disapprove the application.

(5) Where an application has been granted under this section, the Authority shall, subject to such terms and conditions it may deem fit and upon payment of the prescribed fee, issue to the applicant a licence on such form as may be prescribed.

(6) Where the Authority disapproves an application it shall notify the applicant setting out the reasons for such disapproval.

(7) Notwithstanding the issue of a Ferry Licence under subsection (5) the Authority may, having regard, to the safety of navigation within the territorial waters, amend, modify or vary any condition set out therein.

(8) A Ferry Licence is valid for a period of one year but is renewable for a like period upon payment of the prescribed fee and may only be used in respect of the ferry in relation to which it is issued.

Ferry  
Licence to  
be displayed.

72. Where the Authority issues a Ferry Licence, that license shall be displayed in a conspicuous place on the ferry in respect of which the Ferry Licence is issued.

Suspension  
of Ferry  
Licence.

73. The Authority may, with the approval of the Minister, suspend a Ferry Licence granted under this Part if the ferry or the mode of its operation is, in the opinion of the Authority, unsafe or, as the case may be, contrary to good seamanship; or contravenes the terms and conditions of a licence; and where a Ferry Licence is

suspended, the suspension remains until the Authority is satisfied that the cause of the suspension has been remedied.

Ferries to be licensed in accordance with coastal craft regulations.

74. Every vessel in respect of which a Ferry Licence has been issued shall be licensed in accordance with the regulations relating to coastal craft and if the vessel ceases at anytime to be so registered the Ferry Licence granted under this Part lapses.

Appeal against decision of the Authority.

75. (1) Any person who is aggrieved by a decision of the Authority made under section 73 may, within seven days of the receipt of such decision, appeal in writing against such decision to the Minister.

(2) Upon receipt of any appeal under subsection (1) the Minister shall -

- (a) allow the appeal; or
- (b) confirm the decision of the Authority; or
- (c) require the Authority to vary or reconsider the decision of the Authority.

(3) The decision of the Minister on an appeal under this section shall be final.

Duty of person operating a ferry service to operate approved route and schedule.

76. (1) It shall be the duty of every person who operates a ferry service to operate such service in accordance with the approved route and schedule.

(2) Any departure by a licensee from the approved routes and schedules due to force majeure shall be reported by him to the Managing Director or his representative at the port of arrival or departure.

Offences in relation to this part.

77. (1) Any person who -

- (a) contravenes section 71 (1) or 72;
- (b) in an application for a Ferry Licence willfully makes a statement that he knows to be false;
- (c) operates a ferry while the Ferry Licence is suspended under section 73; or

- (d) operates a ferry contrary to the approved route and schedule under section 76,

is guilty of an offence and is liable on summary conviction to a fine of five hundred dollars or to imprisonment for a term of three months or to both such fine and imprisonment.

(2) Where a person convicted of an offence under paragraph (c) or (d) of subsection (1) is the holder of a certificate of competency issued under this Act the Court may, in addition to any other penalty that may be imposed, order that the certificate of such person be suspended on such terms and conditions as may be specified in such order or if the certificate was issued outside the Territory, order that the holder shall not be entitled to operate any ship or coastal craft within the territorial waters for such period of time as the Court may determine.

(3) The Court shall cause the particulars of the conviction and of any other order made under subsection (2) to be endorsed on the certificate and shall cause a copy of such particulars to be sent to the Director, who shall thereupon note them on the appropriate register.

(4) A person who, without reasonable cause, fails to produce any certificate required to be produced under this section is guilty of an offence and is liable on summary conviction to a fine not exceeding five hundred dollars.

(5) A person who is convicted of an offence under paragraph (a) or (c) or (d) of subsection (1) and continues the offence is guilty of a continuing offence and is liable on summary conviction to a fine of two hundred dollars in respect of each day or part thereof on which the offence continues after the first conviction.

## PART IX

### OFFENCES

Damaging property in manner likely to endanger life.

78. (1) A person who unlawfully damages or in any way interferes with any lighthouse, a buoy, mark, beacon or any other property of the Authority or of the Crown is guilty of an offence and is liable on summary conviction upon indictment to a fine not exceeding ten thousand dollars or to imprisonment for a term not exceeding ten years or to both such fine and imprisonment.

(2) Where any damage is caused to any lighthouse, buoy, mark, beacon or any other property of the Authority or of the

Crown it shall be the duty of such person who caused such damage to forthwith report such damage to the Managing Director.

(3) Every person who fails to comply with the provisions of subsection (2) is guilty of an offence and is liable to a fine not exceeding on thousand dollars.

(4) This section shall not prevent the Authority from taking any legal proceedings for the recovery of the full amount of the damage caused by such person.

False returns

79. A person who makes, either knowingly or recklessly, any statement which is false in any material particular in any return, claim or other document, which is required or authorised to be made under this Act or the regulations is guilty of an offence and is liable on summary conviction to a fine of five thousand dollars or to imprisonment for two years, or to both such fine and imprisonment.

Person endangering safety of operations.

80. A person who, while on duty or lawfully employed in any premises of the Authority or of the Crown used by or for the purposes of the Authority or upon any ship or vehicle of the Authority or of the Crown used by or for the purposes of the Authority, endangers the safety of any other person by -

- (a) contravening any of the provisions of this Act or of the regulations;
- (b) contravening any lawful order, direction or rule given to such person, or made in respect of his service;
- (c) being under the influence of alcohol or drugs; or
- (d) any rash or neglect or negligent act,

is guilty of an offence and is liable on summary conviction to a fine of two thousand dollars or to imprisonment for a period not exceeding twelve months or to both such fine and imprisonment.

Person demanding improper amount.

81. A person who, with intent to defraud, demands or receives from any other person delivery goods for carriage, storage or warehousing by means of the Authority, or from any other person making use of the facilities provided by means of the Authority any greater or less amount than he should demand or receive is guilty of

an offence and is liable on summary conviction to a fine of one thousand dollars or to imprisonment for a period not exceeding six months or to both such fine and imprisonment.

Miscellaneous summary offences.

82. A person who -
- (a) being a trespasser on any wharf or premises of the Authority or of the Crown used by or for the purposes of the Authority, or upon any ship or vehicle of the Authority or of the Crown used by or for the purposes of the Authority, refuses to leave such wharf or premises, ship or vehicle after being requested to do so by any authorized employee or member of the Police Force;
  - (b) being on any wharf or premises of the Authority or of the Crown used by or for the purposes of the Authority, or upon any ship or vehicle of the Authority or of the Crown used by or for the purposes of the Authority -
    - (i) refuses when called upon by an authorised employee or member of the Police Force to give his name and address, or gives a false name or address, for the purpose of avoiding prosecution;
    - (ii) is in a state of intoxication or behaves in a violent or offensive manner to the annoyance of any other person;
    - (iii) discharges any firearm or does anything which may cause injury to any person on such wharf or premises or upon such ship or vehicle;
    - (iv) commits any nuisance or act of indecency, or uses profane, obscene, indecent or abusive language;
    - (v) without lawful excuse contravenes any lawful directions given by any authorized employee;

- (vi) save with the express permission of the Managing Director hawks, sells or exposes for sale on any wharf or premises, any article, or touts, applies for or solicits custom of any description; or
- (vii) smokes in any part of any wharf or such premises, ship or vehicle bearing a notice that smoking is not permitted in that part;
- (c) writes, draws, or affixes any profane, obscene, indecent or abusive word, matter, representation or character on any wharf or premises of the Authority or of the Crown used by or for the purposes of the Authority, or upon any ship or vehicle of the Authority or of the Crown used by or for the purposes of the Authority;
- (d) defaces the writing on any board or any notice authorised to be maintained on any wharf or premises of the Authority or of the Crown used by or for the purposes of the Authority, or upon any ship or vehicle of the Authority or of the Crown used by or for the purposes of the Authority;
- (e) damages or without lawful excuse interferes with any property of the Authority or of the Crown, used by or for the purposes of the Authority;
- (f) without lawful excuse does any act which obstructs, or is likely to obstruct the free navigation of any harbour or the use of any wharf or dock therein;
- (g) being a driver or conductor of any vehicle, disobeys, while upon premises of the Authority or of the Crown used by or for the purposes of the Authority, any reasonable directions given by any authorised employee or member of the Police Force;
- (h) fails to deliver at the earliest possible opportunity to any authorised employee any

property which there is reason to believe has been lost or misplaced, found on any wharf or premises of the Authority or of the Crown used by or for the purposes of the Authority;

- (i) willfully obstructs or impedes any other person in the discharge of his duties arising out of his employment in or for the purposes of the Authority;
- (j) gives or offers to any other person money or money's worth for the purpose of avoiding payment of any sum due to the Authority; or
- (k) unlawfully removes any property of the Authority or of the Crown used by or for the purposes of the Authority,

is guilty of an offence and is liable on summary conviction to a fine of five hundred dollars or to imprisonment for a term not exceeding six months or to both such fine and imprisonment.

Navigating without pilot in compulsory pilotage harbour.

83. If any ship is navigated in circumstances in which pilotage is compulsory and such ship is not under the pilotage of a pilot, the master thereof is guilty of an offence and is liable on summary conviction to a fine of one thousand dollars or to imprisonment for a term of six months or to both such fine and imprisonment.

Offences by masters.

84. A master who contravenes any of the provisions of section 39 or 40 or produces any document or gives any information which is false in any material particular is guilty of an offence and is liable on summary conviction to a fine of two thousand dollars or to imprisonment for a period of twelve months or both such fine and imprisonment.

Power of arrest or removal.

85. (1) A person who commits any offence mentioned in section 80, 82 or 84 may be arrested without a warrant by any member of the Police Force.

(2) A person who commits any offence against this Act or the regulations, other than an offence mentioned in subsection (1), may be arrested without warrant by any member of the Police Force if -

- (a) there is reason to believe that such person will abscond;

- (b) he refuses on demand to give his name and address; or
- (c) there is reason to believe that the name or address given by him is incorrect:

Provided that, save where there is reason to believe that such person will abscond, he shall, if his true name and address are ascertained, be released on his executing a bond without sureties for his appearance before a Magistrate when required.

(3) A person who commits any of the offences set out in section 84 may be required by any member of the Police Force to leave the premises, ship or vehicle, as the case may be, in which such person is at the time of the commission of the offence, and if such person fails to comply with such requirement he may be removed therefrom with such force as may be reasonably necessary in the circumstances.

Compounding  
of offences.

86. (1) Notwithstanding anything contained in this Act, where -

- (a) an offence has been committed under this Act; and
- (b) the Managing Director is satisfied that the departure of a vessel may be unduly delayed by reason of the time that is likely to elapse before the trial of the offence is concluded,

he may, if the accused person admits to committing the offence, offer him the opportunity of paying to the Managing Director an amount equal to three-quarters of the maximum penalty that the court may impose for the offence as well as the total cost of repairing any damage or replacing any loss sustained by the Authority or the Crown as a result of the offence having been committed.

(2) Where an amount is paid under subsection (1), the Managing Director shall give a receipt for the amount paid and the effect of the receipt given is to discharge the accused person from all liability in respect of the offence.

(3) An amount collected by the Managing Director under this section shall be paid into the Fund.

## PART X

### GENERAL LEGAL PROVISIONS

Notice of  
claim.

87. (1) Notwithstanding anything contained in any other Act, no person -

- (a) is entitled to compensation or damages for non-delivery of the whole of a consignment of goods, or of any separate package forming part of such consignment, accepted by the Authority for carriage, storage or warehousing, unless a claim in writing, giving such particulars as may reasonably be necessary, is given to the Managing Director within six months of the date upon which such goods were accepted by the Authority; and
- (b) is entitled to compensation or damages for any goods missing from a packed or unpacked consignment of, or for misdelivery of, damage or delay to, or detention of, any goods accepted by the Authority for carriage, storage or warehousing unless-
  - (i) the Managing Director is notified of the fact in writing within four days of the date upon which such goods were delivered to the consignee or person entitled to take delivery thereof; and
  - (ii) a claim in writing, giving such particulars as may reasonably be necessary, is given to the Managing Director within one month of such date.

(2) Where the person claiming compensation or damages proves that it was impracticable for him to notify the Managing Director or to give the Managing Director his claim as set out in subsections (1) and (2) within the times specified therein and that such notification or claim was made or given in a reasonable time, nothing in those subsections shall prejudice the right of such person to obtain compensation or damage.

Limitation.

88. Where after the commencement of this Act, any action or other legal proceedings is commenced against the Authority for any act done in pursuance or execution, or intended execution of this Act or the regulations or of any public duty or authority imposed or conferred by this Act or the regulations, or in respect of any alleged neglect or default in the execution of this Act or the regulations, or of any such duty or authority, the following provisions shall have effect notwithstanding anything contained in any other Act -

- (a) the action or legal proceeding shall not be commenced until at least one month after written notice containing the particulars of the claim, and of intention to commence the action or legal proceeding, has been served upon the Managing Director by the plaintiff or his agent;
- (b) the action or legal proceeding shall not lie or be instituted unless it is commenced within twelve months next after the act, neglect or default or damage complained of, or in the case of a continuing injury or damage, within six months next after the cessation thereof.

Restriction of execution against property of the Crown or the Authority.

89. Notwithstanding anything to the contrary contained in this Act or the regulations or in any other Act or regulations made under that other Act, where any judgment or order of any court or any award of an arbitration tribunal has been obtained against the Authority for or in respect of anything done or omitted to be done under the provisions of this Act, the regulations, any contract or Otherwise for or in respect of the Authority or its purposes –

- (a) no execution or attachment or process in the nature thereof shall be issued against the Crown or against any property of the Crown or of the Authority, but the Minister responsible for Finance shall cause to be paid out of the Consolidated Fund such amounts as may, by the judgment or order, be awarded against the Crown or against the Authority to the person entitled thereto;
- (b) no property of the Crown or of the Authority shall be seized or taken by any person having by law power to attach or distrain property.

Overcharge.  
and under-  
charge of  
rates.

90. (1) Subject to subsection (2), where the amount paid for any harbour rates or charges is found to be incorrect, then if such amount is-

- (a) an overcharge, the person who paid the rate or charge is entitled to a refund of the amount of the overcharge;
- (b) an undercharge, the amount of the undercharge may be collected from the person who paid the rate or charge.

(2) Notwithstanding anything contained in any other Act, such overcharge or undercharge shall not be refunded, or collected, as the case may be, unless notice in writing containing such particulars as may reasonably be necessary is given -

- (a) by the person claiming such overcharge, to the Managing Director; or
- (b) by the Managing Director to the person against whom the amount of such undercharge is claimed,

within six months after the goods were accepted or the services rendered, as the case may be, by the Authority, so however, that where such undercharge is caused by any information or description subsequently found to be incorrect, such period of six months shall commence from the date of the discovery by the Managing Director of the correct information or description.

Medical  
examination  
of person  
claiming  
compensation  
or damages.

91. Whenever any person claims compensation or damages against the Authority in respect of any injury alleged to be suffered by him as a result of the operation of the Authority, any court or person having by law, or consent of the parties, authority to determine the claim, may order that the person injured be examined by a registered medical practitioner named in the order, and may also make such order with respect to the costs of the examination as may be thought fit.

Service of  
notice etc.  
on the  
Managing  
Director, any  
authorised  
employee or

92. A notice or other document required or authorised under this Act or the regulations to be served on the Managing Director, any authorized employee or an employee may be served by -

- (a) delivering the notice to the Managing Director or to the authorised employee;

an employee.

- (b) leaving it at the office of the Managing Director; or
- (c) sending it by registered post addressed to the Managing Director at his office.

Service of notice etc. by the Managing Director, any authorised employee or an employee.

93. A notice or other document required or authorised under this Act or the regulations to be served on any person by the Managing Director, any authorised employee, or an employee may be served by -

- (a) delivering it to the person;
- (b) leaving it at the usual or last known place of abode of the person; or
- (c) sending it by registered post addressed to the person at his usual or last known address.

## PART XI

### MISCELLANEOUS

Regulations.

94. (1) The Minister may make Regulations in respect of matters required by this Act to be prescribed or in respect of which regulations are authorised to be made and in particular in respect of all or any of the following matters: -

- (a) the services to be performed by the Authority including the provision of lighthouses and other facilities for the safety of navigation in the territorial waters;
- (b) the maintenance of order on any wharf or premises, or in any harbour, ship or vehicle used by or for the purposes of the Authority;
- (c) the collection, receipt, storage, conditions of carriage, storage or warehousing and delivery of goods to or by means of the Authority, and the disposal of perishable or unclaimed goods;
- (d) the prohibition of smoking in any portion of any wharf, premises, ship or vehicle used by or for the purpose of the Authority;

- (e) the proper control and management of harbours and the entrances thereof, the prevention and removal of obstructions therein, and the regulation of any work, service or facility performed or provided thereat;
- (f) the control of all persons and vehicles on any wharf or premises used by or for the purposes of the Authority, the maintenance of order thereon and the admission or exclusion of persons therefrom, and the charges, if any, to be made for admission;
- (g) the protection of ships and cargoes, and the removal, destruction, sale or abandonment of stranded ships and their cargoes and appurtenances which obstruct or are likely to obstruct the fairway of any harbour, the payment of expenses in connection therewith, and the levy and recovery of a rent for the right of a hulk or wreck or wreckage to lie in any harbour;
- (h) the examination, registration and licensing of pilots, their duties and obligations and the charges to be made for pilotage;
- (i) the licensing of ferrymen, boatmen, porters, landing agents, stevedores, forwarding agents, shipping agents, baggage and parcel agents, and contractors for the supply of water or ballast, or other persons concerned in harbour work, and the regulation of charges leviable by them and their duties and the hours of their attendance at work;
- (j) the defining of dangerous or offensive goods, and the conditions under which they may be carried, stored or warehoused;
- (k) the sale of any article on any premises occupied for the purposes of the Authority;
- (l) subject to the provisions of any law relating to merchant shipping -

- (i) the taking of measures for the prevention of ships from leaving any harbour if overloaded, improperly found, insufficiently named or without qualified officers or engineers, or with a number of passengers in excess of the number that can be carried with reasonable safety, or if otherwise unseaworthy;
- (ii) the examination and certification of masters, mates and engineers of tugs, dredges, and light craft, and licence fees payable in respect thereof;
- (iii) the registration, licensing, inspection and control of ferries, tugs, launches, hulks, fishing or ferry boats, or other craft, the charges to be paid therefore and the number of passengers to be carried therein;
- (m) the prevention of theft of, pilferage of or damage to, or the commission of nuisance on, any property owned, used or being handled by the Authority;
- (n) the safety of employees of the Authority and of port users in any specified port;
- (o) the prevention of damage to or pollution of premises of the Authority and the pollution of the water in the harbours of any specified port;
- (p) the operation of a security service to protect cargo, equipment and property of the Authority, to assist in maintaining law and order within the premises of specified ports and to enforce the provisions of this Act;
- (q) the entry of persons and vehicles and goods to and the regulation of their movement within specified ports;

- (r) defining the boundaries of any harbour specified in the Second Schedule and of any compulsory pilotage harbour;
- (s) the preservation of the marine environment in a harbour area;
- (t) the prevention of accidents and the procedure to be followed in the case of an accident;
- (u) the procedures to be adopted in the event of a natural disaster for the safety of employees of the Authority and of other persons within its premises or of any port and for the prevention of damage to any equipment, property or premises of the Authority or of any port;
- (v) the giving effect to the provisions of any treaty or convention ratified by the United Kingdom; and
- (w) prescribing anything that is by this Act to be prescribed.

(2) The power of the Minister to make regulations under this section in relation to any matter shall not be construed as derogating from any other powers conferred upon the Minister under this Act or the regulations in relation to any such matter in any different manner.

(3) Regulations made under this section may provide that any breach or contravention of any regulation shall be punished by the imposition of such fine not exceeding five thousand dollars or of such term of imprisonment not exceeding twelve months or to both such fine and imprisonment as may be specified in the regulations.

(4) Every regulation made by the Minister shall be published in the Gazette and shall come into operation on the date of such publication or on such later date as may be specified in the regulation.

(5) Every regulation made by the Minister shall, as soon as convenient after its publication in the Gazette, be brought before the Legislative Council for approval.

(6) Any regulation which is not so approved, shall be deemed to be rescinded as from the date of disapproval but without prejudice to anything previously done thereunder.

(7) The date on which any regulation shall be deemed to be rescinded shall be published in the Gazette.

Rules made by the Authority.

95. (1) The Authority may make rules in respect of all or any matters for which rules are authorised or required by this Act to be made.

(2) A rule made by the Authority under subsection (1) shall not have effect until its approved by the Minister and notification of such approval is published in the Gazette.

Tariff Book.

96. The Authority shall cause to be prepared and published in such manner as it thinks fit –

(a) a Tariff Book containing all matters which under this Act or the regulations are required to be contained therein together with such other matters as the Authority thinks fit; and

(b) such other books and other documents as under this Act or the regulations are required to be kept.

Authority may maintain a ports security service.

97. The Authority may establish and maintain a ports security service within the limits of any specified Port.

## PART XII

### VESTING OF CERTAIN PROPERTY RIGHTS AND LIABILITIES IN THE AUTHORITY

Vesting of certain property, purposes rights and liabilities.

98. (1) Upon the commencement of this Act, all property including lands and buildings, and all interest therein of whatever nature, belonging to the Crown and used exclusively for the purposes of the Ports and Marine Services Department shall be transferred to and be vested in the Authority.

(2) Where a question arises as to whether any property lands or buildings to which subsection (1) applies was used exclusively for the purposes of the Ports and Marine Services Department, a certificate under the hand of the Minister shall be

conclusive.

Transitional provisions.

99. (1) All liabilities incurred by or on behalf of the Ports and Marine Services Department in respect of any of its functions under the Ports and Marine Services Ordinance 1985 and subsisting at the commencement of this Act shall, as from such commencement, have effect as if they had been incurred by the Crown.

(2) Any contract made by or on behalf of the Ports and Marine Services Department in respect of any of its functions to be transferred to the Authority upon the commencement of this Act, shall, as from such commencement, be construed with such modifications and adaptations as are necessary to give effect to the provisions of this section.

(3) Where at the time of the transfer of any functions by or under this Act, any legal proceedings are pending to which the Ports and Marine Services Department is a party and those proceedings relate to the functions transferred by or under this Act, the Authority shall be substituted in those proceedings for the Ports and Marine Services Department and the proceedings shall not abate by reason of the substitution.

(4) All debts and liabilities standing in the books of the Ports and Marine Services Department shall be assumed by the Authority at the time of transfer and be enforceable against the Crown.

(5) All works, capital or otherwise, negotiation of any kind, or any matter incomplete at the time of transfer from the Ports and Marine Services Department to the Authority shall be continued as if there had been no transfer from one body to the other.

(6) If any difficulty arises with respect to any of the provisions of this Act, the Minister may, within one year from the commencement of the Act, make such order as he considers necessary to remove the difficulty and such order may modify the provisions of this Act so far as may appear to the Minister to be necessary or expedient for removing the difficulty.

(7) An order made under subsection (6) shall be subject to a negative resolution.

(8) All equipment in use immediately before the commencement of this Act exclusively for the purposes of the Port and Marine Services Department shall, upon such commencement, be transferred to and be vested in the Authority.

(9) Notwithstanding the repeal by this Act of the Ports and Marine Services Ordinance 1985 or of any written law -

- (a) every rule, or regulation made under such repealed Ordinance or law shall, if it is in force immediately prior to the date of commencement of this Act and is not inconsistent with the provisions of this Act, be deemed to be a rule, or regulation made under this Act, and have effect accordingly; and may be amended, replaced or rescinded by any rule, or regulation, as the case may be, under this Act;
- (b) any order or requirement made, table of fees, licences or certificates issued, notice, decision, determination, direction or approval given, application made, or thing done, under the repealed Ordinance or law, by this Act; and every such order requirement, table of fees, licence certificate notice, decision, determination, direction, approval, application or thing shall, if in force on the date immediately prior to the date of commencement of this Act, continue in force and in the case of a licence, or certificate until the date of expiry of such licence or certificate by effluxion of time or otherwise as set out in such licence or certificate and shall, so far as it could have been made, issued, given or done under this Act have effect as if made, issued given or done under the corresponding provisions of this Act.

Repeal and savings.

100. (1) Subject to subsection (2), the Ports and Marine Services Ordinance, 1985 is repealed.

Third Schedule.

(2) The enactments specified in the Third Schedule shall continue in force until amended or revoked by the Minister under this Act, and shall be so construed as to give effect to the provisions of this Act.

CONSTITUTION OF THE BRITISH VIRGIN ISLANDS  
PORT AUTHORITY AND MATTERS RELATED THERETO

Constitution of the Authority.

1. (1) The Authority shall consist of -
  - (a) A Chairman appointed by the Governor in Council on the recommendation of the Minister;
  - (b) not more than six members (hereinafter referred to as “appointed members”) who shall not be public officers and such members shall be appointed by the Governor in Council, having taken into account the desirability of such interests as are affected by the Authority’s activities being represented; and
  - (c) three other members, hereinafter referred to as “ex officio members”, who shall be the persons holding office for the time being as -
    - (i) the Permanent Secretary of the Ministry responsible for the subject of Ports;
    - (ii) the Managing Director of the Authority or if he is unable to attend any meeting of the Authority, any other officer authorised by him to attend and vote on his behalf at that meeting; and
    - (iii) the Financial Secretary or if he is unable to attend any meeting of the Authority any officer authorised by him to attend and vote on his behalf at that meeting.
- (2) A person shall be disqualified from being appointed or being a member of the Authority under subsection (1) -
  - (a) if he is an elected member of the Legislative Council;

- (b) if he has been declared insolvent or bankrupt under any law in any country and has not been discharged, or has made a composition with his creditors and has not paid his debts in full.

Resignation and removal in from office.

2. The Chairman or any appointed member of the Authority may resign his office by notice in writing addressed to the Governor in Council, and may be removed from office by the Governor in Council in his discretion at any time.

Tenure of office.

3. (1) Subject to section 2, an appointed member, other than the Chairman or an ex officio member, shall hold office for such periods not exceeding three years, as may be specified in the notice appointing him, and on the expiration of such period shall be eligible for re-appointment, but in the case of appointed members the Governor in Council shall specify such periods of appointment so that the periods of appointment of not more than one-third of the members shall expire in any one year.

(2) Subject to section 2, the Chairman shall hold office as Chairman for a period of three years and may be reappointed for any further period of three years.

(3) The Authority shall once in every year elect from among its appointed members a Deputy-Chairman who shall hold office as Deputy Chairman for a period of one year.

(4) Where the Chairman or a member appointed under subsection (1) is by reason of illness, other infirmity or for any other cause temporarily unable to perform the duties of his office, the Governor in Council may appoint any person to act in his place.

(5) The Authority shall pay to all or any of its members such remuneration, fees and allowances for expenses as may be approved by the Governor in Council.

Meetings of the Authority.

4. (1) The Authority shall meet at least once in every four months or at such other times and places as may be necessary or expedient for the transaction of its business.

(2) The Chairman, or in the event of his absence from the Territory or inability to act as such, the Deputy Chairman, may at any time call a special meeting of the Authority within seven days of the receipt by him of a requisition for that purpose addressed to him in writing and signed by three members.

(3) Subject to sub-section (4), the Chairman, or in his absence the Deputy Chairman, shall preside at all meetings of the Authority.

(4) In the absence of both the Chairman and the Deputy Chairman, the members present and constituting a quorum shall elect a Chairman from among their number to preside at that meeting.

(5) Five members of the Authority present at a meeting shall form a quorum.

(6) The decisions of the Authority shall be by a majority of votes, and in any case in which the voting is equal the Chairman presiding at the meeting, in addition to having an original vote, shall have a casting vote.

(7) Minutes of each meeting shall be confirmed by the Authority and signed by the Chairman or Deputy Chairman at the next meeting of the Authority.

(8) Certified copies of the minutes of each meeting shall be forwarded to the Minister.

(9) Minutes of meetings of the Authority shall be recorded by a person assigned by the Managing Director from among the staff of the Authority to be Secretary.

(10) (1) The Authority may -

(a) appoint such committees composed of members of the Authority and other persons not being members of the Authority, for the purpose of assisting or advising the Authority in the proper carrying out of its functions; and

(b) delegate to such committees functions as it considers necessary.

(2) A person co-opted under paragraph (1) shall not vote at any meeting of the Authority.

(11) Subject to this Act, the Authority may regulate its own procedure.

(12) Any act done or proceeding taken by the Authority under this Act or the regulations shall not be questioned on the ground of the existence of any vacancy in the membership of the Authority, or any defect in the constitution of the Authority.

SECOND SCHEDULE

(Section 23)

LIST OF HARBOURS IN THE VIRGIN ISLANDS

1. Road Harbour which includes all that area of water and foreshore lying to the north of an imaginary line drawn from Burt Point to Hog Point, in the Island of Tortola.
2. West End Harbour which includes all that area of water and foreshore lying between the island of Tortola and Frenchman’s Cay bounded on the west by an imaginary line joining the westernmost point of Frenchman’s Cay to the westernmost point of Tortola at Steele Point, West End, and on the east by the causeway connecting Frenchman’s Cay with the island of Tortola.
3. Great Harbour (Jost Van Dyke) which includes all that area of water lying generally to the north of, and enclosed by, an imaginary line joining Dog Hole Point and Betty Brown Rock in Thomas George Bay in the island of Jost Van Dyke.
4. St. Thomas Bay which includes all that area of water lying generally to the east of, and enclosed by, imaginary line drawn from Collision Point to Fort Point, on the island of Virgin Gorda.

THIRD SCHEDULE

(Section 100)

ENACTMENTS AFFECTED

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FIRST COLUMN	SECOND COLUMN
Foreign Shipping (Agreements) Act (Cap. 120)	Substitute the words “the Managing Director of the British Virgin Islands Ports Authority” for the words “the Director of Ports and Marine Service” wherever they appear therein.

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Receivers of Wreck Act (Cap. 126)

Substitute the words “Managing Director of the British Virgin Islands Ports Authority” for the words “Director of Ports and Marine Services”.

Power-craft Ordinance, 1972

In section 5, substitute the words “office of the Managing Director of the British Virgin Islands Ports Authority” for the words “office of the Director of Ports and Marine Services”.

**No. 6 of 1994**

**Non-Belongers  
Land Holding Regulation  
(Amendment) Act, 1994**

**Virgin  
Islands**

**I Assent  
P. A. Penfold  
Governor  
3rd June, 1994**

**VIRGIN ISLANDS**

**No. 6 of 1994**

An Act to amend the Non-Belongers Land Holding Regulation Act (Cap. 122).

[ Gazetted 16th June, 1994 ]

ENACTED by the Legislature of the Virgin Islands as follows -

Short title.

**1.** This Act may be cited as the Non-Belongers Land Holding Regulation (Amendment) Act, 1994.

Amendment  
of section 2  
of Cap. 122.

**2.** Section 2 of the Non-Belongers Land Holding Act, in this Act referred to as the principal Act, is amended by -

- (a) repealing in the definition of "banker" the words "a general banking licence under section 5 (2) (a) of the Banking Ordinance" and substituting the words "a licence under the Banks and Trust Companies Act 1990,";
- (b) inserting immediately after the definition of "debenture" the following new definition-

Cap. 229

" "Land Registry" means the land registry established in accordance with the Registered Land Ordinance."

Amendment of  
section 3 of the  
principal Act.

**3.** Section 3 of the principal Act is amended -

- (a) in paragraph (a) by repealing the word "by"; and
- (b) in paragraph (h) by repealing "withing" and substituting "within".

Amendment of  
section 4 of the  
principal Act.

**4.** Section 4 of the principal Act is amended as follows -

- (a) by repealing subsection (2) and substituting the following-

"(2) A licence granted under subsection (1) other than a licence granted under the provisions of the Bank and Trust Companies Act 1990, shall be subject to the terms and conditions the Governor in Council may deem fit including the following-

- (a) that the licence is operative only as to the person or company to whom the licence is granted and is not transferable;
- (b) that the licence applies only to the land described in the licence;
- (c) that the land described in the licence shall not be sub-divided or sold or otherwise disposed of without the prior written approval of the Governor;
- (d) that the land described in the licence shall be used only for the purposes set out in the licence and shall be subject to the conditions the Governor in Council imposes for the development of the land;
- (e) that any development of land required by the licence shall be completed within a prescribed time after the registration of the licence.";

(b) by repealing subsection (3) and substituting the following -

"(3) A licence granted under this Act shall be registered at the Land Registry within three months of the date of its issue and the licence shall be of no force or effect until it is so registered.";

(c) by inserting immediately after subsection (3) the following new subsection -

"(3a) A fee shall be paid on the registration of every licence granted under this Act and the fee payable shall be the same as that payable for the registration or filing of an instrument under the Registered Land Ordinance.";

Cap. 229

(d) by inserting immediately after the new subsection (3a) the following new subsection -

"(3b) Notwithstanding the provisions of sub-

section (3) the Governor in Council may upon application in writing permit the registration of a licence after the time for its registration has expired, together with any conditions it may deem fit including the payment of an additional filing fee of fifty dollars.";

- (e) by inserting immediately after the new subsection (3b) the following new subsection -

"(3c) Where a person to whom a licence is granted fails to comply with the conditions for development of the land within the prescribed time that person may apply to the Governor for an extension of time to comply with the conditions."

Amendment of  
section 9 of  
the principal  
Act.

**5.** Section 9 of the principal Act is repealed and the following substituted-

"9. (1) The Governor may on the application of a company to which the provisions of section 6 (1) apply grant a licence for all or any of the following matters -

- (a) for a non-belonger to be a director of a company holding land or an interest in land in the Territory;
- (b) for a non-belonger to hold shares or debentures in a company holding land or an interest in land in the Territory;
- (c) for a non-belonger to be a member of a company having no share capital to hold land or an interest in land in the Territory.

(2) A licence granted under this section shall be subject to the terms and conditions the Governor may deem fit including the terms and conditions in section 4.

(3) The Governor may, by Order, exempt from the provisions of this section -

- (a) a non-belonger company, whose principal business is the provision of a public utility service to the general public in the Territory; or
- (b) any non-belonger company that, by reason of either the number of its members or directors or the purpose for which the licence is required, the Governor considers should be exempted".

**6.** Section 14A of the principal Act is amended as follows -

Amendment of section 14A of the principal Act.

- (a) by repealing subsection (1) and substituting the following -

"(1) Every application for a licence under section 4 or 9 shall be accompanied by a licence application fee of fifty dollars in the case of an individual applying and seventy-five dollars in the case of an application by a company.";

- (b) by repealing subsection (3) and substituting the following -

"(3) A licence granted under this Act shall be subject to the payment of a fee of one hundred and fifty dollars in the case of an individual and two hundred dollars in the case of a company, and this fee shall be in addition to the fee paid under subsection (1) and shall be paid before the licence is registered in the Land Registry of the Territory.";

- (c) by insertion of a new subsection (4) immediately following the new subsection (3) -

"(4) An application for an extension of time shall be accompanied by a fee of twenty-five dollars in the case of an individual and seventy-five dollars in the case of a company.".

**7.** Section 15 is amended by repealing subsection (3) and substituting the following -

Amendment of section 15 of the principal Act.

"(3) A person who intentionally contravenes the provisions of this section commits an offence and is liable on summary conviction to a fine not exceeding three thousand five hundred dollars or to a term of imprisonment not exceeding two years and the property to which this section applies shall be liable to forfeiture in accordance with this Act".

**8.** Section 16 of the principal Act is amended by repealing "provision" and substituting "provisions".

Amendment of section 16 of the principal Act.

**9.** Section 21 of the principal Act is amended -

Amendment of section 21 of the principal Act.

- (a) by renumbering that section as subsection (1); and

- (b) by inserting immediately after subsection (1) as renumbered, the following new subsection -

"(2) Subsection (1) shall not apply to a transfer of property or a transfer of an interest in property (including the shares in a company that owns property) where the property is held pursuant to a licence granted under this Act, if -

- (a) in the case of property registered in the name of an individual, the transfer is -
  - (i) to the legal spouse, children or grandchildren of the individual exclusively,
  - (ii) to a trustee of a trust the beneficiaries of which at the time of transfer are any of the persons referred to in subparagraph (i),
  - (iii) from the trustee to any other trustee of a trust referred to in subparagraph (ii), or
  - (iv) from the trustee of a trust referred to in subparagraph (ii) to any beneficiary of the trust being one of the persons referred to in subparagraph (i); or
- (b) in the case of the property registered in the name of a company, the transfer is -
  - (i) to the legal spouse, children or grandchildren of the beneficial owner of the company exclusively,
  - (ii) to a trustee of a trust the beneficiaries of which at the time of transfer are any of the persons referred to in subparagraph (i), or
  - (iii) from the trustee to any other trustee of a trust referred to in subparagraph (ii), or
  - (iv) from the trustee of a trust referred to in subparagraph (ii) to any beneficiary of the trust being one of the persons referred to in subparagraph (i)" .

**10.** The Schedule to the principal Act is amended in paragraphs (a) and (b) under the heading "Lease" by repealing "5%" and substituting "1 1/2%".

Amendment of  
Schedule to the  
principal Act.

Passed by the Legislative Council this 26th day of May, 1994.

K. L. FLAX,  
Speaker.

HUGH A. HODGE,  
Clerk of the Legislative Council.



**British Virgin Islands  
CRIMINAL CODE 1997  
OF  
THE VIRGIN ISLANDS**

PASSED.....1<sup>ST</sup> APRIL, 1997  
ASSENTED TO.....2<sup>ND</sup> MAY, 1997  
BROUGHT INTO FORCE.....1<sup>ST</sup> SEPTEMBER, 1997

**No. 1 of 1997**

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**CRIMINAL CODE 1997  
VIRGIN ISLANDS  
NO. 1 OF 1997**

**AN ACT to amend and codify the criminal laws of the Virgin Islands and other matters connected therewith**

**[Gazetted 16<sup>th</sup> May 1997]**

**ENACTED by Legislature of the Virgin Islands as follows:**

**Preliminary**

**1.** This Act (hereinafter referred to as “this Code”) may be cited as the Criminal Code, 1997, and shall come into force on such date as the Governor may, by Proclamation published in the Gazette, appoint.

**2.** (1) Except as hereinafter expressly provided, nothing in this Code shall affect

- (a) the liability, trial or punishment of a person for an offence against the common law or any other law in force in the Territory other than this Code;
- (b) the power of any court to punish a person for contempt of such court under the Contempt of Court Act;
- (c) the liability or trial of a person or the punishment of a person under any sentence passed or to be passed in respect of any act done or commenced before the commencement of the Code;
- (d) any power of Her Majesty, or of the Governor vested in him as the representative of Her Majesty, to grant any pardon or to remit or commute, in whole or in part, or to respite the execution of any sentence passed or to be passed, or
- (e) Any law for the time being in force for the Government of Her Majesty’s naval, military or air forces.

(2) Where a person does an act, which is punishable under this Code and also punishable under any other law, he shall not be punished for that act both under this Code and that other law.

**3.** (1) Except as otherwise in this Code, or in the Interpretation Act, expressly provided, this Code shall be interpreted in accordance with the principles of legal interpretation obtaining in England, and expressions used in the Code shall be presumed, so far as is consistent with their

context, to be used in accordance with the meanings attached to them in the criminal law of England, and shall be construed in accordance therewith.

(2) In this Code, unless the context otherwise requires,

“arrestable offence” means an offence for which a person may be arrested without a warrant, under the provisions of section 321;

“court” means the High Court or the Magistrate’s Court as the context requires;

“knowingly”, used in connection with any term denoting uttering or using, implies knowledge of the character of the thing uttered or used;

“money” includes bank notes, bank drafts, cheques and other orders, warrants or requests for the payment of money;

“night” or “night-time” means the interval between 1900 hours in the evening and 0600 hours in the morning of the following day;

“oath” includes an affirmation or statutory declaration;

“offence” includes an act, attempt or omission punishable by law;

“person employed in the public service” includes

- (a) a person holding any public office, whether temporarily or permanently by appointment, by election or by operation of law;
- (b) an arbitrator, umpire or referee in any proceeding or matter acting with the sanction of any court or in pursuance of any law;
- (c) any magistrate or justice of the peace;
- (d) any member of any statutory body, tribunal or commission appointed under or in pursuance of any law, and
- (e) any marriage officer or Civil Marriage Officer appointed under the Marriage ordinance when acting in the performance of his functions as such;

“possession” includes not only having in one’s own personal possession, but knowingly having anything in the actual personal possession or custody of any other person, or having anything in any place (whether belonging to or occupied by oneself or not) for the use or benefit of oneself or another person; and if there are two or more persons and any one or more of them with the knowledge and consent of all or any of the others has or have anything in his or their custody or possession it shall be deemed to be in custody and possession of each and all of them;

“property” includes any description of real or personal property, money, debts and legacies and any deeds, instruments or other documents relating to or evidencing the title or right to any property or giving a right to recover or receive any money or goods;

“public” includes not only all persons in the Territory but also persons inhabiting or using any particular place, or any number of persons and also such indeterminate persons as may happen to be affected by the conduct in respect of which such expression is used;

“public place” includes any highway, market place, square, street, bridge or other way, which is lawfully used by the public as of right;

“publicly”, when applied to acts done, means either that they are so done in any public place as to be seen by any person, whether such person be or be not in a public place, or that they are so done in any place which is not a public place as to be likely to be seen by any person in a public place;

“utter” includes using or dealing with or attempting to use or deal with, or attempting to induce any person to use, deal with or act upon the thing in question;

“valuable security” includes a document which is the property of a person and which is evidence of the ownership of any property or of the right to recover or receive any property;

“vessel” includes any thing or device capable of being used for the conveyance of goods or passengers on water from one place to another and includes a hovercraft and any vessel being towed or carried by another vessel;

“wound” means any incision or puncture which breaks the continuity of the whole skin and not merely the cuticle or upper skin.

(3) Except where the context otherwise requires, Part I and II of this Code apply to offences under any other law as they apply to offences under this Code.

4. When an act which, if done wholly within the jurisdiction of the court, would be an offence against this Code, is done partly within and partly beyond the jurisdiction, every person who within the jurisdiction does or takes part in such act may be tried and punished under this Code in the same manner as if such act had been done wholly within the jurisdiction.

## **PART I**

### **GENERAL RULES AS TO CRIMINAL LIABILITY**

5. Ignorance of the law does not afford any excuse for any act or omission which would otherwise constitute an offence unless knowledge of the law by the offender is expressly declared to be an element of the offence.

**6.** A person is not criminally responsible in respect of an offence relating to property, if the act done or omitted to be done by him with respect to the property was done in the exercise of an honest claim of right and without intention to defraud.

**7.** (1) Subject to the express provision of this Code or any other law, a person is not criminally responsible for an act or omission which occurs independently of the exercise of his will, or for an event which occurs by accident

(2) Unless the intention to cause a particular result is expressly declared to be an element of an offence constituted in whole or in part by an act or omission, the result intended to be caused by an act or omission is immaterial.

(3) Unless otherwise expressly declared, the motive by which a person is induced to do or not to do or omit to do an act, or to form an intention, is immaterial as regards criminal responsibility.

(4) In determining whether a person has committed an offence, a court

(a) shall but be bound in law to infer that he intended or foresaw a result of his actions by reason only of its being a natural and probable consequence of those actions, but

(b) shall decide whether he did intend or foresee that result by reference to all the evidence, drawing such inference from the evidence as appears proper in the circumstances

**8.** Subject to the express or implied provisions of this Code or any other law, a person who does or omits to do an act under an honest and reasonable, but mistaken, belief in the existence of any state of things is not criminally responsible for the act or omission to any greater extent than if the real state of things had been such as he believed to exist.

**9.** Every person is presumed to be of sound mind, and to have been of sound mind at any material time, until the contrary is proved.

**10.** (1) Subject to subsection (2) and to the provisions of this Code with regard to persons suffering from diminished responsibility, a person shall not be criminally responsible for an act or omission if at the time of doing the act or making the omission he is through any disease affecting his mind incapable of understanding what he is doing or of knowing that he ought not to do the act or make the omission.

(2) A person may be criminally responsible for an act or omission, although his mind is affected by disease, if such disease does not in fact produce upon his mind one or other of the effects in subsection (1) in reference to the act or omission.

**11.** (1) Save as provided in this section, intoxication shall not constitute a defence to a criminal charge.

(2) Intoxication shall be a defence to a criminal charge if by reason thereof, at the time of the act or omission complained of, the person charged did not know that such act or omission was wrong or did not know what he was doing, and

- (a) the state of intoxication was caused, without his consent, by the malicious or negligent act of another person, or
- (b) the person charged was by reason of intoxication insane, temporarily or otherwise, at the time of such act or omission.

(3) Where a defence under subsection (2) is established, then

- (a) in a case falling within paragraph (a) of subsection (2), the accused shall be discharged;
- (b) in a case falling within paragraph (b) of subsection (2), the provisions of section 10 shall apply and the person charged shall be dealt with in accordance with the provisions relating to insanity contained in the Criminal Procedure Act.

(4) Intoxication shall be taken into account for the purpose of determining whether the person charged had formed any intention, in the absence of which he would not be guilty of the offence.

(5) For the purpose of this section "intoxication" shall be deemed to include a state produced by narcotics or drugs.

**12.** (1) A person under the age of ten years is not criminally responsible for any act or omission.

(2) A person under the age of fourteen years is not criminally responsible for an act or omission unless it is proved that at the time of doing the act or making the omission he had capacity to know that he ought not to do the act or make the omission.

(3) A male person under the age of twelve is presumed to be incapable of having carnal knowledge.

(4) Where a person is charged with an offence under this Code or any other law in respect of a child who is alleged to be under any specified age and that the child appears to the court to be under that age, such child shall be presumed to be under that age unless contrary is proved.

**13.** A person is not criminally responsible for performing, in good faith and with reasonable care and skill, a surgical operation upon any person for his benefit, or intended benefit or upon an unborn child for the purpose of the preservation of the mother's life, if the performance of the operation is reasonable having regards to the patient's state at the time and all the circumstances of the case.

**14.** (1) Except for the offence of murder, genocide and treason, a person is not criminally responsible for an offence if the act is done or omitted to be done only because during the time which it is being done or omitted to be done the person is compelled to do or not to do the act by threats on the part of another person.

(2) For the purpose of subsection (1), a threat must consist of immediate or proximate death or grievous bodily harm upon refusal to comply therewith to that person or any third party.

**15.** A married woman is not free from criminal responsibility for doing or omitting to do any act merely because the act or omission takes place in the presence of her husband, but on a charge against a wife, other than for treason or murder, it shall be a good defence to prove that the offence was committed in the presence of and under the coercion of the husband.

**16.** Subject to the express provisions of this Code or any other law for the time being in force in the Territory, criminal responsibility for the use of force in the defence of a person or property shall be determined according to the common law.

**17.** A person may use such force as is reasonable in the circumstances in preventing crime, or in effecting or assisting in the lawful arrest of offenders or suspected offenders or of persons unlawfully at large.

**18.** A person shall not be punished twice, either under the provisions of this Code or under the provisions of any other law, for the same offence.

**19.** (1) When an offence is committed, each of the following persons is deemed to have taken part in committing the offence and to be guilty of the offence, and may be charged with actually committing it, that is to say:

- (a) every person who actually does the act or makes the omission which constitutes the offence;
- (b) every person who does or omits to do any act for the purpose of enabling or aiding any other person to commit the offence;
- (c) every person who aids or abets another person in committing the offence, and
- (d) any person who counsels or procures any person to commit the offence.

(2) In a case arising out of paragraph (d) of subsection (1), the accused may be charged with himself committing the offence or with counseling or procuring its commission.

(3) A conviction of counseling or procuring the commission of an offence entails the same consequences in all respects as a conviction of committing the offence.

(4) Any person who procures another to do or omit to do any act of such a nature that, if he had himself done the act or made the omission the act or omission would have constituted an

offence on his part, is guilty of an offence of the same kind, and is liable to the same punishment, as if he himself had done the act or made the omission, and he may be charged with himself doing the act or making the omission.

**20.** When two or more persons form a common intention to prosecute an unlawful purpose in conjunction with one another and in the prosecution of such unlawful purpose an offence is committed of such a nature that its commission was a probable consequence of prosecution of such unlawful purpose, each of them is deemed to have committed the offence

**21.** When a person counsels another to commit an offence and an offence is actually committed after such counsel by the person to whom it is give, it is immaterial whether the offence actually committed is the same as that counseled or a different one, or whether the offence is committed in the way counseled or in a different way, provided in either case that the facts constituting the offence actually committed are a consequence of the carrying out of the counsel, and in either case the person who gave the counsel is deemed to have counseled the other person to commit the offence actually committed by him.

## **PART II**

### **PUNISHMENTS**

**22.** Subject to the provisions of this code and of any other law in force relating to the jurisdiction of particular courts, the following kinds of punishments may be imposed by a court on persons convicted of offences under this Code:

- (a) imprisonment;
- (b) fine;
- (c) payment of compensation to injured party;
- (d) suspended sentence;
- (e) finding security to keep the peace and be of good behavior or to come up for judgment
- (f) probation under the Probation of Offenders Act;
- (g) forfeiture of articles involved in an offence;
- (h) any other punishment expressly provided for by law for the time being in force.

**23.** (1) A person liable for imprisonment for life or any other period may be sentenced to shorter term, except in the case of a sentence passed in pursuance of section 150.

(2) Subject to the provisions of this Code or any other law, a person liable to imprisonment may be sentenced to pay a fine in addition to or instead of imprisonment.

**24.** (1) Where a fine is imposed under any law then, in the absence of express provisions relating to such fine in such aw, the following provisions shall apply:

- (a) where no limit is expressed as regards the amount of the fine, the amount of the fine, which may be imposed, is unlimited but shall not be excessive;
- (b) in the case of an offence punishable by a fine or a term of imprisonment or both, the imposition of a fine or of a term of imprisonment or both, shall be in the discretion of the court;
- (c) in the case of an offence punishable with imprisonment as well as a fine, and in which the offence is sentenced to a fine (with or without imprisonment) and in every case of an offence punishable with a fine only in which the offender is sentenced to a fine, the court imposing the fine may, in its discretion direct by its sentence that in default of payment of the fine, within such time (if any) as the court may direct, the offender shall suffer imprisonment for a term not exceeding the maximum term specified in section 25, which imprisonment shall be in addition to and consecutive with any other imprisonment to which he may have been sentenced or may be liable under a commutation of sentence.

(2) For the purpose of paragraph (c) of subsection (1), where the sentence directs that in default of payment of the fine the offender shall be imprisoned, and if such person has undergone the whole of such imprisonment in default, no court shall issue a distress warrant unless for special reasons to be recorded in writing by the court, it considers it necessary so to do.

**25.** (1) In the absence of express provisions in any law relating thereto, the term of imprisonment which may be ordered by a court in respect of the non-payment of any sum adjudged to be paid as a fine, costs or compensation or of any sum adjudged to be paid under any law relating to the offence of witch the offender has been convicted, shall be such term as in the opinion of the court will satisfy the justice of the case, but shall not exceed the maximum fixed by the following scale:

<b>Where the amount of the sum of money adjudged to be paid is</b>	<b>The period of imprisonment shall not exceed</b>
0 - \$200.00	Four (4) days
\$201.00 - \$500.00	Thirty (30) days
\$501.00 - \$1000.00	Two (2) months
\$1001.00 - \$2000.00	Four (4) months
Exceeds \$2000.00	Six (6) months

(2) Imprisonment imposed in default of the payment of any sum payable in respect of a fine, costs or compensation shall terminate immediately the fine is paid or levied by process of

law, and in a case where part of the amount payable is paid, the term of the imprisonment shall be reduced in proportion to the amount so paid.

**26.** (1) Where any person is convicted of an offence under sections 79, 80, 81 or 101, the court may, in addition to or in lieu of any other penalty which may be imposed, order the forfeiture to the Crown of any property which has passed in connection with the commission of the offence or, if such property cannot be forfeited or cannot be found, of such sum as the court shall assess as the value of the property, and any property or sum so forfeited shall be dealt with in such manner as the Governor may direct.

(2) The payment of any sum ordered to be forfeited under subsection (1) may be enforced in the same manner and subject to the same incidents as in the case of the payment of a fine.

**27.** (1) Any person who is convicted of an offence may be ordered by a court to make compensation to any person injured, in person or property, by his offence and any such compensation may be in addition to any other punishment.

(2) Subsection (1) shall not preclude any person, who or whose property, has been injured by the act or omission of another from bringing an action in respect of such injury but if he shall so do the court, in making an award, shall take into account any compensation that may have been paid by virtue of an order under subsection (1).

**28.** Subject to limitations imposed by any other law, a court may order any person convicted of an offence to pay costs of and incidental to the prosecution or any part thereof.

**29.** (1) Subject to subsection (2), where a court passes a sentence of imprisonment for a term of not more than two years for an offence, it may order that the sentence shall not take effect unless, during a period specified in the order, being not less than one year or more than two years from the date of the order, the offender commits in the Territory another offence punishable with imprisonment.

(2) A court shall not deal with an offender by means of a suspended sentence unless it is of the opinion that

- (a) the case is one in which a sentence of imprisonment would have been appropriate even without the power to suspend the sentence; and
- (b) the exercise of that power can be justified by the exceptional circumstances of the case.

(3) A court which passes a suspended sentence on any person for an offence shall

- (a) consider whether the circumstances of the case are such as to warrant in addition the imposition of a fine or of making of a compensation order; or
- (b) not to make a probation order in his case in respect of another offence of which he is convicted by or before the court or for which he is dealt with by the court.

(4) Where an offender is convicted of an offence punishable with imprisonment committed during the period of a suspended sentence, then, unless the sentence has already taken effect, the court shall consider his case and deal with him by one of the following methods:

- (a) the court may order that the suspended sentence shall take effect with the original term unaltered;
- (b) the court may order that the sentence shall take effect with the substitution of a lesser term for the original term;
- (c) the court may by order vary the original order under subsection (1) by substituting for the period specified therein a period expiring not later than two years from the date of the variation;
- (d) the court may make no order with respect to the suspended sentence.

(5) Where the court orders that a suspended sentence shall take effect, with or without any variation of the original term, it may order that that sentence shall take effect immediately or that the term thereof shall commence on the expiration of another term of imprisonment passed on the offender by that or another court.

6) In proceedings for dealing with an offender in respect of a suspended sentence, any question whether the offender has been convicted of an offence punishable with imprisonment committed during the period of the suspended sentence is one of law to be determined by the court and not by the verdict of a jury.

**30.** (1) Subject to subsection (2), a person convicted of an offence not punishable with imprisonment for life may, instead if, or in addition to, any punishment to which he is liable, be ordered to enter into his own recognizance, with or without sureties, in such amount as the court thinks fit, that he shall keep the peace and be of good behavior for a time to be fixed by the court, and may be ordered to be imprisoned until such recognizance with sureties if so directed, is entered into.

(2) An order of imprisonment under subsection (1) or not entering into the recognizance shall not,

- (a) extend for a period longer than one year; and
- (b) together with the fixed term of imprisonment, if any, extend for a term longer than the longest term to which he might be sentenced to be imprisoned for the offence of which he is convicted.

**31.** When a person is convicted of an offence not punishable with imprisonment for life, the court may, instead of passing sentence, discharge the offender on entering on his own

recognizance, with or without sureties, in such sum as the court thinks fit, conditioned that he shall appear and receive judgment at some future sitting of the court or when called upon.

**32.** When I this Code or any other law no imprisonment is specially provided for an offence it shall be punishable with imprisonment for a term not exceeding two years or with a fine not exceeding two thousand dollars, or with both.

**33.** (1) Where a person after conviction for an offence is convicted of another offence, either before sentence is passed upon him under the first conviction or before the expiration of that sentence, any sentence other than a sentence of corporal punishment, which is passed upon him under the subsequent conviction, shall be executed after the expiration of the former sentence, unless the court, subject to subsection (20) directs that it shall be executed concurrently with the former sentence or of any part thereof.

(2) No court shall direct that a sentence of imprisonment in default of a payment of a fine shall be executed concurrently with a former sentence imposed under section 24 (1) (c) of this Code or of any part thereof.

**34.** If a sentence is passed under this Code upon an escaped convict, the sentence shall run consecutively or concurrently, as the court may order, with the unexpired portion of the sentence which the convict was undergoing when he escaped.

**35.** (1) Where in any trial the court thinks that the charge is proved, but is of the opinion that, having regard to the character, antecedents, age, health or mental condition of the accused, or to the trivial nature of the offence or to the extenuating circumstances in which the offence was committed, it is inexpedient to inflict any punishment, the court may, without proceeding to conviction, make and order dismissing the charge.

(2) An order made under subsection (1) shall, for the purpose of re-vesting or restoring stolen property and of enabling a court to make any order in that behalf, have the like effect of a conviction

(3) Where any charge is dismissed under subsection (1) the court may order the accused person to pay the whole or any part of the costs of and incidental to the prosecution.

### **PART III**

#### **OFFENCES AGAINST GOVERNMENT AND PUBLIC ORDER**

**36.** (1) A person commits the offence of treason and is liable on conviction to suffer imprisonment for life if he

(a) expresses, utters, declares or publishes in any manner, or by any overt act manifests an intention to publish, any matter, thing or intention whatsoever which, if done in England, is treason by the law of England

(b) does in the Territory, any act which if done in England would be treason by the law of England; or

(c) instigates any other person to invade the Territory with armed forces.

**37.** A person who,

(a) knowing that any person intends to commit treason, does not give information thereof with all reasonable dispatch to the Governor, the Magistrate, a justice of the peace or a police officer, or use other reasonable endeavors to prevent the commission of the offence, or

(b) knowing or believing that any person is guilty of treason, does any act with intent to impede his apprehension or prosecution for that offence,

commits an offence and is liable on conviction to imprisonment for life

**38.** Any person who, in the Territory, does an act or publishes anything which by the law of England if done in England constitutes an offence under the Treason 11 and 12 Vict.c.12 Felony Act, 1848, commits an offence and is liable on conviction to imprisonment for life

**39.** (1) No person shall be tried for an offence, committed within the Territory, under section 36, 37 or 38 unless the prosecution is commenced within three years after the date of the commission of the offence.

(2) A person charged with an offence to which this section refers shall not be convicted, otherwise than on his own plea of guilty, except on the evidence in open court of two witness at least to one overt act of the kind alleged or the evidence of one witness to one overt act and one other witness to another act relevant to the same kind of offence.

(3) This section shall not apply in any case in which this act of treason alleged is the killing of Her Majesty or a direct attempt to endanger the life or injure the person of Her Majesty.

**40.** For the purposes of any offences referred to in this Part, when the manifestation by overt act of an intention to effect any purpose is an element of the offence, in addition to any other act which may be held to constitute an overt act, every act of conspiring with any person to effect that purpose, and every act done in furtherance of the purpose by any of the persons conspiring, shall be deemed to be an overt act manifesting the intention.

**41.** (1) A person who deliberately attempts

(a) to seduce any person serving in Her Majesty's naval, military or air forces, or any police officer or member of any security force from his duty or allegiance to Her Majesty,

(b) to incite any such persons to commit an act of mutiny or any traitorous or mutinous act,  
or

(c) to incite any such persons to make or endeavor to make a mutinous assembly commits an offence and is liable on conviction to imprisonment for life.

(2) For the purposes of this section and of sections 42 and 43 “security force” means any force established in the Territory by virtue of an enactment.

**42.** Any person who

(a) aids, abets or is accessory to any act of mutiny by, or

(b) incites to sedition or to disobedience to any lawful order given by a superior officer,

any member of Her Majesty’s naval, military or air forces or any police officer or member of any security force, commits an offence and is liable on conviction to imprisonment to five years.

**43.** Any person who

(a) procures or persuades or attempts to procure or persuade to desert,

(b) aids, abets or is accessory to the desertion of, or

(c) having reason to believe that he is a deserter, harbors or aids in concealing,

any member of Her Majesty’s naval, military or air forces or any police officer or member of any security force, commits an offence and is liable on conviction to imprisonment for a term not exceeding six months or to a fine not exceeding five hundred dollars.

**44.** (1) Any person who is guilty of piracy *jure gentium* is liable on conviction to imprisonment for life.

(2) For the purposes of this section piracy *jure gentium* means piracy as defined in the Schedule to the Tokyo Convention Act 1967, as applied to the Territory by the 1864 Tokyo Convention Act 1967 (Overseas Territories) Order 1968.

**45.** Any person who is guilty of piracy, or of any crime connected with, relating to or akin to [piracy, in circumstances not constituting an offence under section 44, is liable to be tried and punished according to the laws of England.

**46.** For the purpose of section 47 to 52,

“import” includes

(a) bring into the Territory; and

(b) to bring into the territorial waters of the Territory, whether or not the matter so brought is brought ashore or whether there is or is not an intention to bring the same ashore;

**“publication”** includes all written and printed matter, and any gramophone or other record, perforated roll, recording tape, cinematograph film or other contrivance by means of which any words or ideas may be mechanically produced, represented or conveyed and everything, whether of a nature similar to the forgoing or not, containing any visible representation, or by its form, shape or other characteristics, or in any manner is capable of producing, representing or conveying words or ideas and every copy or reproduction of any publication;

**“periodical publication”** includes every publication issued periodically or in part or numbers at intervals whether regular or irregular;

**“prohibited publication”** means any publication, the sale or public display of which has been prohibited by order under section 49;

**“seditious publication”** means a publication having a seditious intention within the meaning of section 47; and

**“seditious words”** means words having a seditious intention within the meaning of section 47.

**47. (1)** A “seditious intention” is an intention

(a) to bring into hatred or contempt or to excite disaffection against the person of the Sovereign, Her heirs, or successors, the Governor, or the Government of the Territory by law established;

(b) to excite the inhabitants of the Territory to attempt to procure the alteration, otherwise than by lawful means, of any matter in the Territory as by law established;

(c) to bring into hatred or contempt or to excite disaffection against administration of justice in the Territory

(d) to raise discontent or disaffection amongst the inhabitants of the Territory; or

(e) to promote ill will or hostility between different classes of the population of the Territory.

(2) An act or any speech or publication is not seditious by reason only that it intends

(a) to show that the Crown has been misled or mistaken in an of its measures;

(b) to point out errors or defects in the Government or constitution of the Territory;

(c) to persuade the inhabitants of the Territory to attempt to procure by lawful means the alteration of any matter in the Territory as by law established; or

- (d) to point out, with a view to their removal, any matters which are producing or have a tendency to produce feelings of ill-will or enmity between different classes of the population.

(3) In determining whether the intention with which any act was done, any words were spoken, or any document was published, was or was not seditious, every person shall be deemed to intend the consequences which would naturally flow from his conduct at the time and under the circumstances in which he so conducted himself.

**48.** (1) Any person who

- (a) does or attempts to do, or makes any preparation to do any act with a seditious intention,
- (b) utters any seditious words
- (c) prints, publishes, sells, offers for sale, distributes or reproduces any seditious publication, or
- (d) imports any seditious publication, unless he has no reason to believe it is seditious,

commits an offence and is liable on conviction to imprisonment for a term not exceeding three years or to a fine not exceeding three thousand dollars, or both, and any seditious publication shall be forfeited to the Crown.

(2) Any person, who without lawful excuse, has in his possession any seditious publication commits an offence and is liable on conviction to imprisonment for a term not exceeding two years or to a fine not exceeding two thousand dollars or both, and any such publication shall be forfeited to the Crown.

(3) It shall be a defence to a charge under subsection (2) that, if the person charged did not know that the publication was seditious when it came into his possession, he did, as soon as the nature of the publication became known to him, deliver it to the nearest police station.

**49.** (1) If the Governor in Council is of the opinion that any publication, or all publications published by any person or association of persons outside the Territory would be contrary to the public interest, he may by order published in the Gazette prohibit the importation of such publication or publications and, in the case of a periodical publication may, by the same or subsequent order, prohibit the importation of any past or future issue of the publication.

(2) An order under subsection (1) shall, unless a contrary intention is expressed therein, apply to a translation into any language of the publication specified in the order.

**50.** (1) Any person who imports, sells, offers for sale, distributes or reproduces any publication, the importation of which is prohibited under section 49, or any extract there from, or who publicly displays any prohibited publication or any extract there from, commits an offence

and is liable on conviction to imprisonment for a term not exceeding three years or to a fine not exceeding three thousand dollars or both, and the publication shall be forfeited to the Crown.

(2) Any person who, without lawful excuse, has in his possession any publication, the importation of which is prohibited under section 49 or any extract there from, commits an offence and is liable on conviction to imprisonment for a term not exceeding two years or to a fine not exceeding two thousand dollars or both, and the publication shall be forfeited to the Crown.

**51.** (1) A person to whom any publication the importation of which is prohibited under section 49, or any extract there from, is sent without his knowledge or privity, and not in response to a request made before the prohibition of the importation of such publication came into effect, may forthwith if and as soon as the nature of its contents have become known to him, or in the case of a publication or extract there from coming into the possession of such person before an order prohibiting its importation has been made, forthwith upon the coming into effect of an order prohibiting the importation of such publication, deliver such publication or extract there from to the nearest police station.

(2) A person who defaults in complying with subsection (1) commits an offence and is liable on conviction to imprisonment for a term not exceeding two years or to a fine not exceeding two thousand dollars or both, and the publication shall be forfeited to the Crown.

(3) A person who complies with subsection (1) or is convicted of an offence under subsection (2) shall not be liable to be convicted for having imported or having in his possession the same publication or an extract there from.

**52.** (1) A person employed in the public service and authorized in that behalf by the Governor may detain, open and examine any package or article which he suspects to contain any publication or extract there from which it is an offence under the provisions of section 50 to import and during such examination may detain any person importing, distributing or posting such package or article or in whose possession such package or article is found.

(2) If any such publication or extract there from is found in such package or article, the whole package or article may be impounded and retained and the person importing, distributing or posting it, or in whose possession it is found may be arrested and proceeded against.

**53.** (1) No prosecution for an offence under section 48 shall be begun except within six months after the offence is committed, save that where a person leaves the Territory within six months of committing the offence, the prosecution may be begun within six months from the date when such person returns to the Territory.

(2) No person shall be prosecuted for an offence under section 48 without the written consent of the Attorney General.

**54.** No person shall be convicted of an offence under section 48 upon the uncorroborated testimony of one witness.

**55.** A person commits an offence and is liable on conviction to imprisonment for life, if he

(a) administers or is present at and consents to the administration of any oath, or engagement in the nature of an oath, purporting to bind the person who takes it to commit any offence punishable with imprisonment for life; or

(b) takes any such oath or engagement, not being compelled so to do.

**56.** A person commits an offence and is liable on conviction to imprisonment for a term not exceeding ten years if he

(a) administers or is present at and consents to the administration of, any oath or engagement in the nature of an oath, purporting to bind the person who takes it

(i) to engage in any enterprise having a ;mutinous or seditious intention;

(ii) to commit any offence not punishable with imprisonment for life

(iii) to disturb the public peace

(iv) to be a member of any association, society or confederacy, formed for the purpose of doing any act mentioned in sub-paragraphs (i), (ii) or (iii);

(v) to obey the orders or commands or any committee or body of men not lawfully constituted, or any leader or commander or other person not having authority by law for that purpose;

(vi) not to inform of give evidence against an associate, confederate or other person;

(vii) not to reveal or discover any unlawful association, society or confederacy, or any illegal act done or to be done or any illegal oath or engagement that may have been administered or tendered to or taken by himself or any other person, or the import of such oath or engagement, or

(b) takes any such oath or engagement, not being compelled do to do.

**57.** A person who takes an oath or engagement as is mentioned in section 55 and 56 cannot set up a defence that he was compelled to do so unless within fourteen days after taking it or, if he is prevented by actual force or sickness, after fourteen days after the termination of the prevention, he declares on oath before a judicial officer the whole of what he knows concerning the matter, including the person or persons by whom and in whose presence, and the place where and the time when, the oath or engagement was administered or taken.

**58.** (1) A person commits an offence and is liable on conviction to imprisonment for a term not exceeding seven years, if he

- (a) without the permission of the Governor trains or drills any other person to the use of arms or the practice of military exercises, movements or evolutions; or
- (b) is present at any meeting or assembly or persons, held without the permission of the Governor, for the purpose of training or drilling any other person in the use of arms or the practice of military exercises, movements or evolutions.

(2) Any person who at any meeting or assembly held without the permission of the governor, is trained or drilled in the use of arms or the practice of military exercises, movements or evolutions, or who is present at any such meeting or evolutions, or who is present at any such meeting or assembly for the purpose of being so trained or drilled, commits an offence and is liable on conviction to imprisonment for a term not exceeding two years or to a fine not exceeding two thousand dollars, or both.

**59.** (1) Any person who publishes any false statement, rumor or report which is likely to cause fear or alarm or to disturb the public peace, commits an offence and is liable on conviction to imprisonment for a term not exceeding one year or to a fine not exceeding one thousand dollars, or both.

(2) It shall be defence to a charge under subsection (1) if the accused proves that, prior to the publication, he took such measures to verify the accuracy of the statement, rumor or report as to lead him reasonably to believe that it was true.

**60.** Any person who, without any justification or excuse as would be sufficient on the defamation of a private person publishes in any manner anything tending to degrade, revile or expose to hatred or contempt any foreign prince, potentate, ambassador or other foreign dignitary with intent to disturb peace and friendship between the United Kingdom or the Territory and the country to which the prince, potentate, ambassador or dignitary belongs commits an offence and is liable on conviction to imprisonment for a term not exceeding two years or to a fine not exceeding two thousand dollars, or both.

**61.** Any person who, not being licensed in writing by the Governor, in that behalf,

- (a) being a British subject, accepts or agrees to accept any commission or engagement in the air, military or naval service of any foreign state at war with any friendly state or whether a British subject or not, induces any other person to accept or agree to accept any commission or engagement in the air, military or naval service of any foreign state in this paragraph, or
- (b) being a British subjects, quits or goes on board any ship or aircraft with a view to quitting the Territory, with intent to accept any commission, or engagement in the air, military or naval service of any foreign state at war with a friendly state, or whether a British subject or not, induces any other person to quit or go on board any ship or aircraft with a view to quitting the Territory with the like intent,

commits an offence and is liable on conviction to imprisonment for a term not exceeding two years or to a fine not exceeding two thousand dollars , or both.

**62.** (1) When three or more persons assemble with intent to commit an offence, or being assembled with intent to carry out some common purpose, conduct themselves in such a manner as to cause persons in the neighborhood reasonably to fear that the persons so assembled will commit a breach of the peace, or will by such assembly needlessly and without any reasonable occasion provoke other persons to commit a breach of the peace, they are guilty of any unlawful assembly.

(2) For the purposes of subsection (1), it is immaterial that the original assembling was lawful if, being assembled , they conduct themselves with a common purpose in such manner as stated in subsection (1).

(3) Any person who takes part in an unlawful assembly commits an offence and is liable on conviction to imprisonment for a term not exceeding one year or to a fine not exceeding one thousand dollars, or both.

**63.** (1) When an unlawful assembly begins to execute the purpose for which it is assembled, by a breach of the peace and to the terror of the public, the assembly becomes a riot, and the persons assembled are said to be riotously assembled.

(2) Any person who takes part in a riot commits an offence and s liable on conviction to imprisonment for a term not exceeding five years or to a fine not exceeding five thousand dollars, or both.

**64.** (1) A Magistrate or any justice of the peace, in whose view twelve or more persons are riotously assembled or who apprehends that a riot is about to be committed by twelve or more persons assembled within his view, may make or cause to be made a proclamation, in the Governor's name, in such form as he thinks fit, commanding the rioters or persons so assembled to disperse peaceably.

(2) If upon the expiration of a reasonable time after such proclamation being made, or if, the making thereof having been prevented by force, twelve or more persons continue riotously assembled together, any person authorized to make such proclamation or any police officer, or any person acting in aid of such person or police officer, may do all things necessary for dispersing the persons so continuing assembled, or for apprehending them or any of them, and if any person makes resistance, may use all such force as is reasonably necessary for overcoming such resistance and shall not be liable in any criminal or civil proceeding for having, by use of such force, caused harm or death to any person.

(3) If a proclamation is made, as provided in this section, any person who, after the expiration of a reasonable time after the making of the proclamation for the dispersal of the persons assembled, takes or continues to take part in the riot or assembly, commits an offence and is liable on conviction to imprisonment for a term not exceeding ten years.

**65.** (1) Any person who forcibly prevents or obstructs the making of a proclamation, as mentioned in subsection (1) of section 64, commits an offence and is liable on conviction to imprisonment for a term not exceeding ten years.

(2) Any person who, knowing that the making of such proclamation has been so prevented, takes or continues to take part in the riot or assembly, commits an offence and is liable on conviction to imprisonment for a term not exceeding five years.

**66.** Any persons who, being riotously assembled together, unlawfully pull down, destroy or burn, or begin to pull down, destroy or burn or unlawfully damage any building, machinery or structure, each commits an offence and is liable on conviction to imprisonment to a term not exceeding fourteen years.

**67.** Any person who, being riotously assembled together, unlawfully and with force prevent, hinder or obstruct the loading or unloading of any aircraft, vehicle or vessel, or the starting or transit of any aircraft, vehicle or vessel or the sailing operations or navigation of any aircraft, vehicle or vessel, or unlawfully and with force board any aircraft, vehicle or vessel with intent so to do, each commits an offence and is liable on conviction to imprisonment for a term not exceeding to years or to a fine not exceeding two thousand dollars, or both.

**68.** (1) For the purposes of sections 69, 70, 71 and 72 the following definitions apply:

- (a) “**automatic rifle**” means any rifle so designed or adapted that if pressure is applied to the trigger missiles continue to be discharged until the pressure is removed from the trigger or until the magazine containing the missiles is empty;
- (b) “**dagger**” includes any sword, or any knife, or other instrument having a blade ending in a sharp point, which is not primarily designed for use in a profession, craft or business or for domestic use;
- (c) “**flick knife**” or “**flick gun**” means any knife which has a blade which opens automatically by hand pressure applied to a button, spring or other device in or attached to the handle of the knife;
- (d) “**firearm**” means any machine gun, sub-machine gun, rifle, shot gun, revolver, pistol, air gun, air pistol, or any lethal barreled weapon from which any shot, bullet or other missile can be disclosed or noxious fumes can be emitted (except any air rifle, air gun or air pistol of a type prescribed by the Governor in Council and of a caliber so prescribed), and includes any component part of a any such weapon and accessory to any such weapon designed or adapted to diminish the noise or flash caused by firing the weapon;
- (e) “**gravity knife**” means any knife that has a blade which is released from the handle or sheath thereof by the force of gravity or the application of centrifugal force and which, when released, is locked in place by means of a button, spring, lever or other device;

- (f) **“knife”** includes any cutting instrument, not having a dagger, whether ending in a sharp point or not;
- (g) **“offensive weapon”** includes any automatic rifle, bale, hook, block jack, bludgeon, cutlass, dagger, flick knife, firearm, gravity knife, ice pick, iron bar of any description,, knife, knuckle duster, open razor, pick handle, razor or razor blade, staff, stick, stone or sword, and any object adapted for use as a weapon;
- (h) **“prohibited weapon”** means any machine gun, sub-machine gun, automatic rifle or any weapon of any description or design, adapted for the discharge of any noxious liquid or gas and also any black jack, bludgeon, flick knife, gravity knife or knuckle duster.

(2) For the purposes of paragraph (b) of subsection (1), sword, knife or other instrument when worn or carried by any person shall be deemed to be a dagger unless it is designed primarily for use in a profession, craft or business exercised or carried on by such person or for domestic use, and is being worn or carried by such person for the purpose of its use in such profession, craft or business, or for domestic use.

**69.** Any person who imports into the Territory or manufactures, sells or hires or offers for sale or hire, or exposes or has in his possession for the purpose of sale or hire, or wears or carries in public, any prohibited weapon, commits an offence and is liable on conviction to imprisonment for a term not exceeding ten years or to a fine not exceeding ten thousand dollars, or both.

**70.** (1) Any person who carries or has in his possession any offensive weapon or any explosive or incendiary device, in any public place or outside his own house or premises, commits an offence and is liable on conviction to imprisonment for a term not exceeding two years or to a fine not exceeding two thousand dollars, or both.

(2) Where the offensive weapon is a firearm, a person does not commit an offence under this section if he is in the possession of a firearm license, issued under the Firearms Ordinance and a permit in writing, signed by the Commissioner of Police, giving him permission to carry the firearm outside his house or premises.

(3) Where the offensive weapon is a knife, a person does not commit an offence under this section if he proves that he was wearing or carrying the knife outside his own house or premises for some lawful purpose, for which the knife was necessary.

(4) For the purposes of this section and imitation firearm shall be deemed to be an offensive weapon and “imitation firearm” means anything which has the appearance of a firearm, whether or not the same is capable of being fired.

(5) Nothing in this section shall be deemed to prevent any police officer or member of Her Majesty’s armed forces from wearing or carrying any firearm, sword, staff or other weapon issued for the purposes of his duty.

**71.** (1) A police officer who suspects that any person has concealed about his person any offensive weapon may request such person to accompany him to the nearest police station where the senior police officer on duty may cause the person to be searched.

(2) Any person who refuses to accompany a police officer when so required for the purpose of subsection (1) commits an offence and may be arrested without a warrant and is liable on conviction to a fine not exceeding one hundred dollars.

(3) Any offensive or prohibited weapon or explosive or incendiary device in respect of which any person has been convicted under this Part shall be forfeited to the Crown.

**72.** (1) A person who, in order to take possession thereof, enters into any building or onto any land in a violent manner, whether such violence consists in actual force applied to any other person, or in threats or in breaking open any house, or in collecting an unusual number of persons, commits an offence and is liable on conviction to imprisonment for a term not exceeding two years or to a fine not exceeding three thousand dollars, or both.

(2) It is immaterial whether or not the person entering into a building or onto a land contrary to subsection (1) is entitled to enter into the building or onto the land.

(3) A person does not commit an offence under this section if he

- (a) acts in pursuance of a warrant or other lawful authority authorizing the use of force to gain entry into the building or onto the land; or
- (b) enters into a building or onto a land of his own, but which is in the custody of his servant agent or bailiff.

**73.** Any person who, being in actual possession of any building or land without colour of right, holds possession of it, in a manner likely to cause a breach of the peace, against a person lawfully entitled to the possession thereof, commits the offence of forcible detainer and is liable on conviction to imprisonment for a term not exceeding two years or to a fine not exceeding two thousand dollars, or both.

**74.** (1) A person who enters into or upon any property in possession of another with intent to commit an offence or to intimidate, insult or annoy any person in lawful possession of such property, or who, having lawfully entered into or upon the property, remains there with intent thereby to intimidate, insult or annoy any such person, or with intent to commit an offence, commits an offence and is liable on conviction to imprisonment for a term not exceeding one year or to a fine not exceeding one thousand dollars, or both.

(2) If the property upon which the offence is committed under subsection (1) is a vessel, or a building or tent used as a human dwelling, or a building used as a place of worship, or as a

pace for the custody of property, the offender is liable on conviction to imprisonment for a term not exceeding two years or to a fine not exceeding two thousand dollars.

**75.** A person who does any act with intent to provoke any other person to fight, whether in a public place or not, with any deadly or dangerous instrument, and any person who agrees or offers so to fight, commits an offence and is liable on conviction to imprisonment for a term not exceeding two years or to a fine not exceeding two thousand dollars, or both.

**76.** A person who takes part in a fight in a public place commits an offence and is liable on conviction to imprisonment for a term not exceeding one year or to a fine not exceeding one thousand dollars, or both.

**77.** (1) A person commits an offence and is liable on conviction to imprisonment for a term not exceeding one year if he,

- (a) with intent to intimidate or annoy any person , threatens to break or damage a dwelling-house; or
- (b) with intent to alarm any person in a dwelling house, discharges any firearm or commits any breach of the peace.

(2) If an offence under subsection (1) is committed in the night, the offender is liable to imprisonment for a term not exceeding two years.

**78.** Any person who assemble together, to the number of two or more, for the purposes of unshipping, carrying or concealing any goods subject to customs duty and liable to forfeiture under any law relating to customs, commits an offence and each of them is liable on conviction to imprisonment for a term not exceeding two years or to a fine not exceeding two thousand dollars, or both.

#### **PART IV**

#### **OFFENCES AGAINST THE ADMINISTRATION OF LAWFUL AUTHORITY**

**79.** A person commits an offence and is liable on conviction to imprisonment for a term not exceeding three years, if he

- (a) being employed in the public service, and being charged with the performance of any duty by virtue of such employment, corruptly solicit, receives or obtains, or agrees or attempts to receive or retain, any property or benefit of any kind for himself or any other person on account of anything already done or omitted to be done by him in the discharge of the duties of his office, or to be afterwards done or omitted to be done; or
- (b) corruptly gives, confers or procures, or promises or offers to give or confer, or to procure or attempt to procure, to, upon or for any person employed in the public service, or to, upon or for any other person, any property or benefit of any kind on account of such act or omission on the part of the person so employed.

**80.** Any person, who being employed in the public service, takes or accepts from any person for the performance of his duty as such officer, any reward beyond his proper pay and emoluments, or any promise of such reward, commits an offence, and is liable on conviction to imprisonment for a term not exceeding three years.

**81.** Any person who, being employed in the public service receives any property or benefit of any kind for himself, on the understanding, expressed or implied, that he shall favour the person giving the property or conferring the benefit, or any one in whom that person is interested, in any transaction then pending or likely to take place, between the person giving the property or conferring the benefit, or anyone in whom he is interested, and any person employed in the public service, commits an offence and is liable on conviction to imprisonment for a term not exceeding one year.

**82.** Any person who, being employed in the public service, and being charged by virtue of his employment with any judicial or administrative duties respecting property of a special character, or respecting the carrying on of any manufacture, trade or business of a special character, and having acquired or holding, directly or indirectly, a private interest in such property, manufacture, trade or business, discharges any such duties with respect to the property, manufacture, trade or business in which he has such interest or with respect to the conduct of any person in relation thereto, commits an offence and is liable to on conviction to imprisonment for a term not exceeding one year.

**83.** Any person who, being employed in the public service in such a capacity as to require him or enable him to furnish returns or statements touching any sum payable or claimed to be payable to himself or to any other person, or touching any other matter required to be certified for the purpose of any payment of money or delivery of goods to be made to any person, makes a return or statement as touching any such matter which is, to his knowledge, false in any material particular, commits an offence and is liable on conviction to imprisonment for a term not exceeding two years.

**84.** (1) Any person who, being employed in the public service, does or directs to be done, in abuse of the authority of his office, any arbitrary act prejudicial to the rights of another, commits an offence and is liable on conviction to imprisonment for a term not exceeding two years,

(2) If the act referred to in subsection(1) is done or directed to be done for the purposes of gain, the person commits an offence and is liable on conviction to imprisonment for a term not exceeding three years.

**85.** Any person employed in the public service, who, being authorized or required by law to give any certificate which is, to his knowledge, false in any material particular, commits an offence and is liable on conviction to imprisonment for a term not exceeding two years.

**86.** Any person who administers an oath, or who takes a solemn declaration or affidavit touching any matter with respect to which he has not by law any authority so to do, commits an offence and is liable on conviction to imprisonment for a term not exceeding one year.

**87.** A person commits an offence and is liable on conviction to imprisonment for a term not exceeding three years, if he

- (a) not being a judicial officer, assumes to act as such; or
- (b) falsely represent himself to be a person authorized by law to sign a document testifying to the contents of any register or record kept by a lawful authority, or testifying to any fact or event and signs such document as being so authorized.

**88.** (1) A person commits an offence and is liable on conviction to imprisonment for a term not exceeding three years, if he

- (a) personates any person employed in the public service on an occasion when the latter is required to do any act or attend in any place by virtue of his employment; or
- (b) falsely represents himself to be a person employed in the public service and assumes to do an act or attend in any place for the purpose of doing any act by virtue of such employment.

**89.** A person who holds out any threat of injury to any person employed in the public service, or to any person in whom he believes that person employed in the public service to be interested, for the purpose of inducing that person employed in the public service to do any act or to forbear or delay to do any act connected with the exercise of the public functions of such persons employed in the public service, commits an offence and is liable on conviction to imprisonment for a term not exceeding three years.

## **PART V**

### **OFFENCES RELATING TO THE ADMINISTRATION OF JUSTICE**

**90.** Any person who practices any fraud or deceit, or knowingly makes or exhibits any false statement or representation to any person called, or to be called, as a witness in any judicial proceeding, with intent to affect the testimony of such person as a witness, commits an offence and is liable on conviction to imprisonment for a term not exceeding two years.

**91.** Any person who, knowing that any book, document or thing, of any kind whatsoever, is or may be required in evidence, in any judicial proceeding, willfully removes or destroys it or renders it illegible or undecipherable or incapable of identification, with intent thereby to prevent it from being used in evidence, commits an offence and is liable on conviction to imprisonment for a term not exceeding two years.

**92.** Any person who swears falsely or makes a false affirmation or declaration before any person authorized to administer an oath or take a declaration upon a matter of public concern or private legal rights under such circumstances that the false swearing or declaration, if committed in a judicial proceeding would have amounted to perjury, commits an offence and is liable on conviction to imprisonment for a term not exceeding two years.

**93.** A person commits an offence and is liable on conviction to imprisonment for a term not exceeding three years, if he

- (a) conspires with any other person to accuse any person falsely of any offence or to do anything to obstruct, prevent, pervert or defeat the course of justice;
- (b) in order to obstruct the due course of justice, dissuades, hinders or prevents any person lawfully bound to appear and give evidence as a witness from so appearing and giving evidence, or endeavours so to do; or
- (c) obstructs or in any way interferes with or knowingly prevents the execution of any legal process, civil or criminal.

**94.** (1) A person commits an offence and is liable on conviction to imprisonment for a term not exceeding three years, if he,

- (a) within the premises in which any judicial proceedings is being held, or within the precinct of same, shows disrespect, in speech or manner to or with reference to such proceedings, or any person before whom any such proceeding is being held;
- (b) having been summoned to give evidence in a judicial proceeding, fails to attend;
- (c) being present at a judicial proceeding and being called upon to give evidence refuses to be sworn or to make an affirmation;
- (d) having been sworn or affirmed, refuses without lawful excuse to answer a question or to produce a document which it is within his power to produce;
- (e) having attended a judicial proceeding to give evidence remains in the room in which the proceeding is being held after the witnesses have been ordered to leave the room;
- (f) causes an obstruction or disturbance in the course of a judicial proceeding;
- (g) while a judicial proceeding is pending, makes use of any speech or writing misrepresenting such proceeding or capable of prejudicing any person in favour of or against any parties to such proceeding, or calculated to lower the authority of any person before whom the proceeding is to be held
- (h) publishes a report of the evidence taken in any judicial proceeding which has been directed to be held in private;
- (i) attempts wrongfully to interfere with or influence a witness in any judicial proceeding, either before or after he has given evidence

- (j) dismisses any employee because he has given evidence on behalf of a certain party to a judicial proceeding;
- (k) wrongfully retakes possession of any land from any person to whom possession has been awarded by writ or order of a court; or
- (l) commits any other act or intentional disrespect to any court or any judicial proceeding or to any person before whom the proceeding is being held.

(2) When any offence against paragraphs (a), (c), (d), (e), (f), (g) or (l) of subsection (1) is committed in view of the court, the court may cause the offender to be detained in custody, and at any time before the rising of the court on the same day may take cognizance of the offence and summarily sentence the offender to a fine not exceeding two hundred dollars or to imprisonment for a term not exceeding one month.

(3) The provisions of this section shall be deemed to be in addition to and not in derogation of the powers conferred by the Contempt of Court Act, the Magistrate's Code of Procedure Act, and any other powers of the High Court or the Court of Appeal to punish for contempt of court.

**95.** (1) Any person lawfully sworn as a witness, or as an interpreter, in a judicial proceeding who willfully makes a statement, material in that proceeding, which he knows to be false or does not believe to be true, commits an offence and is liable on conviction to imprisonment for a term not exceeding seven years.

(2) Where a statement made for the purpose of a judicial proceeding is not made before the court or tribunal itself but is made on oath before a person authorized by law to administer an oath to the person who makes the statement and to record or authenticate the statement it shall, for the purpose of this section, be treated as having been made in a judicial proceeding.

(3) For the purpose of this section, it is immaterial whether

- (a) the person making the statement is or is not competent to be a witness and whether or not his evidence is admissible; and
- (b) the false testimony is given orally or in writing.

(4) The question whether a statement, in respect of which a charge of perjury is made, was material is a question of law to be determined by the court of trial.

(5) A person shall not be liable to be convicted of an offence under this section, or of any offence declared by any law to be perjury or subordination of perjury, solely upon the evidence of one witness as to the falsity of any statement alleged to be false.

(6) For the purposes of this section, proceedings before any statutory body or tribunal which is empowered to take evidence on oath shall be deemed to be judicial proceedings.

**96.** Any person who aids, abets, counsels, procures or suborns another person to commit an offence under this Part commits an offence and is liable on conviction to imprisonment for a term not exceeding seven years.

**97.** (1) Any person who, with the intent to mislead any court, fabricates evidence or knowingly makes use of fabricated evidence, to defeat, obstruct or pervert the course of justice in any judicial proceeding, commits an offence and is liable on conviction to imprisonment for a term not exceeding seven years.

(2) A person fabricates evidence if he causes any circumstances to exist, or makes any false entry in any book, account or record false or make any document containing a false statement, or makes up a false story in any form whatsoever, or forges any document with intent to mislead any judicial proceedings.

(3) For the purposes of this section and sections 98 and 99 “court” includes a tribunal, commission or inquiry and any person authorized to take evidence on oath.

**98.** (1) Subject to subsection (2), where two or more inconsistent or contradictory statements of fact or alleged fact, material to the issue or matter in question, have been willfully made on oath by the same witness in any judicial proceedings, whether before the same court, that witness commits an offence and is liable on conviction to imprisonment for a term not exceeding one year.

(2) A person shall not be convicted for an offence under this section unless the court is satisfied that the statements or either of them, were or was made with the intent to deceive the court, before which the statements or either of them were or was made.

(3) Upon the trial of any person for an offence under this section, it shall not be necessary to prove the falsity of either the inconsistent or contradictory statements, but upon proof that both the statements were made by the accused, and being satisfied that the accused had the intent referred to in subsection (2) the court may convict the accused.

(4) the trial of any person for an offence under this section, the record of any court containing any statement made on oath by the person charged shall be prima facie evidence of such statement.

**99.** On the trial of any person

(a) for perjury, or

(b) for procuring or suborning the commission of perjury,

the fact of a former trial before the court shall be sufficiently proved by the production of a certificate containing the substance and effect (omitting the formal parts) of the proceedings at the former trial purporting to be signed by the Registrar or other person having custody of the

records of the court without proof of the signature or official status of the person appearing to have signed the certificate.

**100.** For the purposes of this Part, the form and ceremonies used in administering an oath are immaterial if the court or the person before whom the oath is taken has power to administer an oath for the purpose of verifying the statement in question and if the oath has been administered in a form and with the ceremonies which the person taking the oath has accepted without objection or has declared to be binding on him.

**101.** Any person who asks, receives or obtains, or agrees or attempts to receive or obtain, any property or benefit of any kind for himself or any other person upon any agreement or understanding that he will compound or conceal an offence or will abstain from, discontinue or delay, a prosecution for an offence, or will withhold any evidence thereof, commits an offence and is liable on conviction to imprisonment for a term not exceeding two years.

**102.** Any person who

- (a) publicly offers a reward for the return of any property which has been stolen or lost, and in the offer makes use of any words purporting that no question will be asked, or that the person producing such property will not be seized or molested,
- (b) publicly offers to return to any person who may have bought or advanced money by way of loan upon an stolen or lost property the money so paid or advanced, or any other sum of money or reward for the return of such property, or
- (c) prints or publishes an offer referred to under paragraph (a) or (b)

commits an offence and is liable on conviction to imprisonment for a term not exceeding one year or to a fine not exceeding one thousand dollars, or both.

**103.** (1) Subject to subsection (2), any person who, by force, rescues or attempts to rescue from lawful custody any person,

- (a) who is under sentence of imprisonment for life or charged with an offence punishable with imprisonment for life commits an offence and is liable on conviction to imprisonment for life.
- (b) who is imprisoned on a charge or under sentence for an offence other than those specified in paragraph (a) commits an offence and is liable on conviction to imprisonment for a term not exceeding seven years.
- (c) in any other case, commits an offence and is liable on conviction to imprisonment for a term not exceeding two years.

(2) If the person rescued is in the custody of a private person, the offender must have been aware of the fact that the person rescued is in lawful custody.

**104.** Any person who, being in lawful custody, escapes from such custody commits an offence and is liable on conviction to imprisonment for a term not exceeding two years.

**105.** Any person who, having another person in his custody, intentionally or negligently permits him to escape, commits an offence and is liable on conviction to imprisonment for a term not exceeding two years.

**106.** (1) A person commits an offence and is liable on conviction to imprisonment for a term not exceeding seven years, if he

(a) aids a prisoner in escaping or attempting to escape from lawful custody, or

(b) conveys anything or causes anything to be conveyed into a prison with intent to facilitate the escape of a prisoner.

(2) A person who harbours or assists in any manner another person in harbouring a prisoner who has escaped from lawful custody, commits an offence and is liable on conviction to imprisonment for a term not exceeding fourteen years.

**107.** Any person who, when any property has been attached or taken under the process or authority of a court, knowingly and with intent to hinder or defeat the attachment process receives, removes, retains, conceals or disposes of such property, commits an offence and is liable on conviction to imprisonment for a term not exceeding three years.

**108.** Any person who willfully obstructs or resists any person lawfully charged with the execution of an order or warrant of a court, commits an offence and is liable on conviction to imprisonment for a term not exceeding two years.

**109.** Any person who, being employed in the public service, in the discharge of his duties, commits any fraud or breach of trust affecting the public, whether such fraud or breach of trust would have been criminal or not if committed against a private person, commits an offence and is liable on conviction to imprisonment for a term not exceeding three years.

**110.** A person who gives to any person employed in the public service any information in the truth of which he does not believe, intending thereby to cause, or knowing it to be likely that he will thereby cause, such person employed in the public service

(a) to do or omit anything which such person employed in the public service ought not to do or omit if the true state of facts respecting which such information is given were known to him, or

(b) to use lawful power of such person employed in the public service to the injury or annoyance of any person, commits an offence and is liable on conviction to imprisonment for a term not exceeding two years or to a fine not exceeding two thousand dollars, or both.

## PART VI

### OFFENCES RELATING TO RELIGION

111. Any person who destroys, damages or defiles any place of worship or any object which is held sacred by any group or class of persons with the intention thereby of insulting the religion of those persons or with the knowledge that any group or class of persons is likely to consider such destruction, damage or defilement as an insult to their religion, commits an offence and is liable on conviction to imprisonment for a term not exceeding two years or to a fine not exceeding two thousand dollars, or both.

112. Any person who voluntarily causes disturbance to any assembly lawfully engaged in the performance of religious worship or ceremony, commits an offence and is liable on conviction to imprisonment for a term not exceeding two years or to a fine not exceeding two thousand dollars, or both.

113. Any person who, with the intention of wounding the religious feelings of any other person, writes any word, or utters any word or makes any sound in the hearing of any other person or makes any gesture or places an object in the sight of any other person, commits an offence and is liable on conviction to imprisonment for a term not exceeding one year or to a fine not exceeding one thousand dollars, or both.

114 Any person who unlawfully hinders the burial of the dead body of any person, or, without lawful authority in that behalf, disinters, dissects or harm the dead body of any person, or being under a duty to cause the dead body of any person to be buried, fails to perform such duty, commits an offence and is liable on conviction to imprisonment for a term not exceeding two years or to a fine not exceeding two thousand dollars, or both.

115. (1) Any person who, with the intention of wounding the feelings of any other person or of insulting the religion of any person, or with the knowledge that the feelings of any person are likely to be wounded or that any person is likely to be wounded or that any person is likely to consider that his religion has been insulted thereby, trespasses in any place of worship or of sculpture, or which is set apart for the performance of funeral rites or for the burial or depository of the remains of the dead, or who offers any assembled for any funeral ceremony commits an offence and is liable on conviction to imprisonment for a term not exceeding two years or to a fine not exceeding two thousand dollars, or both.

(2) Any person who willfully removes, damages or interferes with in any way flowers, candles, wreaths, tombstones or any other thing whatsoever placed on or near a grave in memory or respect of or as a tribute to the dead, commits an offence and is liable on conviction to imprisonment for a term not exceeding two years or to a fine not exceeding two thousand dollars, or both.

(3) For the purposes of this section, any flowers, candles, wreaths, tombstones or other thing placed on or near a grave shall, until the contrary be proved, be deemed to have been so placed in memory or respect of or as tribute to the dead.

**PART VII**  
**SEXUAL OFFENCES**

116. (1) For the purposes of this Part,

“brothel” means a house, room or any other place resorted to by more than one prostitute for the purposes of prostitution, and the fact that one of the women is the owner or tenant and the occupier of the premises is immaterial;

“man: includes a boy;

“woman” includes a girl; and

“unlawful sexual intercourse” means sexual intercourse outside the bond of marriage.

(2) Where upon the trial of an offence under this Part it is necessary to prove intercourse (whether natural or unnatural) it shall not be necessary to prove the completion of the intercourse by the emission of seed, but the intercourse shall be deemed to be complete upon proof of penetration only.

117. (1) A man who rapes a woman commits an offence and is liable on conviction to imprisonment for life.

(2) A man commits rape if

(a) he has unlawful sexual intercourse with a woman who at the time of the intercourse did not consent to it, and

(b) at the time he knows that she does not consent to the intercourse or he is reckless as to whether she consented to it.

(3) If at the trial for a rape offence the jury has to consider whether a man believed that a woman was consenting to sexual intercourse, the presence or absence of reasonable grounds for such belief is a matter to which the jury is to have regard, in conjunction with any other relevant matters in considering whether he so believed.

(4) In subsection (3) a “rape offence” means rape or attempted rape, or aiding, abetting, counseling or procuring rape or attempted rape, or incitement to rape.

(5) For the purposes of this section, a woman is deemed not to have consented to sexual intercourse if her acquiescence is obtained by threat of force or use of force, or by means of threats or intimidation of any kind, or by fear of bodily harm, or by means of false representations as to the nature of the act or, in the case of a married woman, by personating her husband.

(6) On a trial for rape, the jury may find the accused guilty of

- (a) sexual intercourse with a girl under the age of thirteen years, under section 118;
- (b) sexual intercourse with a girl under the age of sixteen years, under section 119;
- (c) indecent assault on a woman, under section 124;
- (d) procurement of a woman by threats, under section 129;
- (e) procurement of a woman by false pretences, under section 130;
- (f) administering drugs to obtain or facilitate intercourse, under section 131; or
- (g) common assault, under section 183.

(7) A person may be charged for attempting to commit rape or aiding, abetting, counseling or procuring rape or attempting rape, or inciting to rape and is liable on conviction to imprisonment for a term not exceeding seven years.

118. (1) Any man who has sexual intercourse with a girl under the age of thirteen years, commits an offence and is liable on conviction to imprisonment for a term not exceeding fourteen years.

(2) It is immaterial in the case of a charge for an offence under this section that the intercourse was had with the consent of the girl concerned.

(3) Any man who is convicted of an attempt to commit an offence under this section is liable to imprisonment for a term not exceeding seven years.

119. (1) Subject to the provisions of this section, a man who has unlawful sexual intercourse with a girl above the age of thirteen and under the age of sixteen years, commits an offence and is liable on conviction to imprisonment for a term not exceeding seven years.

(2) It is immaterial in the case of a charge for an offence under this section that the intercourse was had with the consent of the girl concerned.

(3) Where a marriage is void under section 24A of the Marriage Ordinance because the wife is under the age of sixteen years, the invalidity of the marriage does not make the husband guilty of an offence under this section because he had sexual intercourse with her, if at the time he believed her to be his wife and had reasonable cause for the belief.

(4) A man shall not be convicted of an offence under this section because he has unlawful sexual intercourse with a girl under the age of sixteen if he is under the age of twenty one years, and has not previously been charged with a like offence, and he believes her to be of the age of sixteen years or over and has reasonable cause for the belief.

120. (1) Subject to the provisions of this section, a man who has unlawful sexual intercourse with a woman who is a mental defective, commits an offence and is liable on conviction to imprisonment for a term not exceeding seven years.

(2) A man shall not be convicted of an offence under this section if he did not know and had no reason to suspect that the woman was a mental defective.

(3) For the purpose of this section, it is immaterial that the unlawful sexual intercourse was had with consent.

(4) In this section “a mental defective” means a woman who has been ordered to be detained under the provisions of the Mental Health Ordinance or who is shown by the evidence of two medical practitioners to be suffering from mental disorder, psychopathic disorder or sub-normality.

121. (1) A husband commits the offence of sexual assault if he has sexual intercourse with his wife without her consent by force or fear where there is in existence in relation to them

(a) a decree nisi of the divorce;

(b) a decree of judicial separation

(c) a separation agreement;

(d) a protection order made under the Domestic Violence (Summary Proceedings) Act, 1996; or

(e) any other order for the husband not to molest his wife or have sexual intercourse with her.

(2) A husband who commits the offence of sexual assault is liable on conviction to imprisonment for a term not exceeding ten years.

(3) No proceedings for an offence under this section shall be instituted except by or with the consent of the Attorney General.

122. (1) A man who has sexual intercourse with a woman whom he knows to be his grand-daughter, daughter, step-daughter, sister or mother, commits an offence and is liable on conviction to imprisonment for a term not exceeding ten years.

(2) In subsection (1), “sister” includes half-sister, and for the purpose of that subsection importing a relationship between two people shall be taken to apply notwithstanding that the relationship is not traced through lawful wedlock.

(3) It is immaterial in the case of a charge for an offence under this section that the intercourse was had with the consent of the woman concerned.

(4) A man convicted if an attempt to commit an offence under this section is liable to imprisonment for a term not exceeding five years.

123. (1) A woman of the age of sixteen years or over who permits a man whom she knows to be her grandfather, father, brother, son or step-son to have sexual intercourse with her, with her consent, commits an offence and is liable on conviction to imprisonment for a term not exceeding ten years.

(2) In subsection (1) “brother” includes half-brother, and for the purposes of that subsection any expression importing a relationship between two people shall apply notwithstanding that the relationship is not traced through lawful wedlock.

(3) A woman convicted of an attempt to commit an offence under this section is liable to imprisonment for a term not exceeding five years.

124. (1) Subject to the provisions of this section, any man who makes an indecent assault on a woman commits an offence and is liable on conviction,

(a) if on a girl under the age of thirteen years, to imprisonment for a term not exceeding five years, or

(b) in any other case, to imprisonment for a term not exceeding three years.

(2) A girl under the age of sixteen years cannot in law give consent, which would prevent an act being an assault for the purpose of this section.

(3) Where a marriage is invalid under section 24A of the Marriage Ordinance, because the wife is under the age of sixteen years, the invalidity of the marriage does not make the husband guilty of an offence under this section by reason of her incapacity to consent while under that age, if he believes her to be his wife and has reasonable cause for that belief.

(4) A woman who is a lunatic, or a mental defective who is receiving treatment for mental or psychopathic disorder, cannot in law give consent which would prevent an act being an assault for the purpose of this section, but a person is only to be treated as guilty of an indecent assault under this section by reason of such incapacity to consent if that person knew or had reason to know that such woman was a lunatic or mental defective receiving treatment.

125. Any person who commit an act of gross indecency with or towards a child under the age of fourteen years or who incites a child under that age to such act with him or another, commits an offence and is liable on conviction to imprisonment for a term not exceeding three years or to a fine not exceeding three thousand dollars, or both.

126. Any person who is the owner or occupier of any premises or who has, or acts or assists in, the management or control of any premises and who induces or knowingly allows a girl under that age of sixteen years to resort or to be on those premises for the purpose of having sexual intercourse with men or with a particular man, commits an offence and is liable on conviction to imprisonment for life.

127. (1) Any person who causes or encourages the prostitution of, or the commission of sexual intercourse with, or an indecent assault on, a girl under the age of sixteen years for whom he is reasonable, commits an offence and is liable on conviction to imprisonment for a term not exceeding five years.

(2) Where a girl has become a prostitute, or has had sexual intercourse or has been indecently assaulted, a person shall be deemed for the purposes of this section to have caused or encouraged it if he knowingly allows her to consort with, or to enter or continue in the employment of, any prostitute or person of known immoral character.

(3) Subject to subsection (4), the persons who are to be treated, for the purposes of this section, as responsible for a girl are

- (a) any person who is her parent or legal guardian;
- (b) any person who has the custody or control of her, or to whose charge she has been committed by her parents or legal guardian or by a person having the custody of her; and
- (c) any other person who has the custody, charge or care of her.

(4) In subsection (3),

- (a) “parent” does not include, in relation to any girl, a person deprived of the custody of her by order of any court of competent jurisdiction, but (subject to that) in the case of a girl who has been adopted under the Adoption of Children Act, means her adopters and in the case of a girl who was born outside of marriage, means her mother and any person who has been adjudged to be her (putative) father; and
- (b) “legal guardian” means, in relation to any girl, any person who is for the time being her guardian having been so appointed according to law by deed or will or by order of a court of competent jurisdiction.

(5) If a charge for an offence under this section, the girl appears to the jury to have been under the age of sixteen years at the time of the offence charged, she shall be presumed to for the purposes of this section to have been so unless the contrary is proved.

128. (1) Any person who, within the Territory, procures or attempts to procure, a woman

- (a) to become a common prostitute, whether within the Territory or elsewhere,
- (b) to leave the Territory, intending her to become an inmate of or to frequent a brothel elsewhere,  
or
- (c) to leave her usual place of abode in the Territory, intending her to become an inmate of or to frequent a brothel in any part of the world for the purposes of prostitution,

commits an offence and is liable on conviction to imprisonment for a term not exceeding three years.

(2) A person shall not be convicted of an offence under this section on the evidence of one witness only, unless the witness is corroborated in some material particular,

129. Any person who procures or attempts to procure a woman by threats or intimidation to have unlawful sexual intercourse, whether within the Territory or elsewhere, commits an offence and is liable on conviction to imprisonment for a term not exceeding three years.

130. Any person who procures, or attempts to procure a woman by false pretences or false representation to have unlawful sexual intercourse whether within the Territory or elsewhere, commits an offence and is liable on conviction to imprisonment for a term not exceeding three years.

131. (1) Any person who applies or administers to, or causes to be taken by, a woman any drug, matters or thing with intent to stupefy or overpower her so as thereby to enable any man to have unlawful sexual intercourse with her, commits an offence and is liable on conviction to imprisonment for a term not exceeding seven years.

(2) A person shall not be convicted of an offence under this section on the evidence of one witness only, unless that witness is corroborated in some material particular.

132. (1) Any person who detains a woman against her will on any premises with the intention that she shall have unlawful sexual intercourse with men or with a particular man, or who detains a woman against her will in a brothel, commits an offence and is liable on conviction to imprisonment for a term not exceeding five years.

(2) Where a woman is on any premises for the purpose of having unlawful sexual intercourse, or is in a brothel, a person shall be deemed, for the purposes of this section, to detain her there if, with the intention of compelling or inducing her to remain there, he either withholds from her clothes or any other property belonging to her or threatens her with legal proceedings in the event of her taking away clothes provided for her by him or on his directions.

(3) A woman shall not be liable to any legal proceedings, whether civil or criminal, for taking away or being found in possession of any clothes she needed to enable her to leave premises on which she was for the purposes of having unlawful sexual intercourse or to leave a brothel.

133. (1) A man who knowingly lives wholly or partly on the earnings of prostitution, commits an offence and is liable on conviction to imprisonment for a term not exceeding ten years or to a fine not exceeding ten thousand dollars, or both.

(2) For the purposes of this section, a man who lives with or is habitually in the company of a prostitute, or who exercises control over a prostitute's movements in a way which shows he is aiding, abetting or compelling her prostitution with others, shall be presumed to be knowingly living on the earnings of prostitution, unless he proves the contrary.

134. A woman who, for the purposes of gain, exercises control, direction or influence over a prostitute's movements in any way which shows that she is aiding, abetting or compelling her prostitution, commits an offence and is liable on conviction to imprisonment for a term not exceeding ten years or to a fine not exceeding ten thousand dollars, or both.

135. Any person who knowingly lives wholly or partly on the earnings of prostitution of a man, commits an offence and is liable on conviction to imprisonment for a term not exceeding three years or to a fine not exceeding three thousand dollars, or both.

136. Any person who keeps a brothel or manages or assists in managing a brothel commits an offence and is liable on conviction to imprisonment for a term not exceeding two years or to a fine not exceeding two thousand dollars, or both.

137. (1) Any person who is the owner or lessor, or who is the occupier or in control, of any premises, or his agent, who lets or arranges for the letting of the premises as a brothel, commits an offence and is liable on conviction to imprisonment for a term not exceeding three years or to a fine not exceeding three thousand dollars, or both.

(2) Upon the conviction of a person for an offence under subsection (1), after having been previously convicted of an offence under that subsection, he shall be liable to imprisonment for a term not exceeding three years or to a fine not exceeding here thousand dollars, or both.

138. Any person who commits or attempts to commit an indecent assault on a man or procures or attempts to procure a man to commit an indecent assault on another man, commits an offence and is liable on conviction to imprisonment for a term not exceeding three years.

## **PART VIII**

### **ABORTION**

139 (1) Subject to the provisions of this section, any person who

- (a) being with child, with intent to procure he own miscarriage, unlawfully administers to herself any poison or other noxious thing, or unlawfully uses any instrument or other means whatsoever with the like intent, or
- (b) with intent to procure the miscarriage of any woman whether or not she is with child, unlawfully administers to her, or causes her to take, any poison or other noxious thing, or unlawfully uses any instrument or other means whatsoever with the like intent,

commits an offence and is liable on conviction to imprisonment for a term not exceeding fourteen years.

(2) A person shall not be convicted of an offence under subsection (1) when a pregnancy is terminated in a hospital, or other establishment approved for the purposes by the Director of Health Services, by a medical practitioner if two medical practitioners are of the opinion, formed in good faith,

(a) that the continuance of the pregnancy would involve risk of life of the pregnant woman, or injury to the physical or mental health of the pregnant woman greater than if the pregnancy were terminated; or

(b) that there is a substantial risk if the child were born it would suffer from such physical or mental abnormality as to be seriously handicapped.

(3) The reference to the opinion of two medical practitioners and of an approved hospital or other establishment shall not apply to the termination of pregnancy by a registered medical practitioner in a case in which he is of the opinion, formed in good faith, that the termination is immediately necessary to save the life or to prevent grave permanent injury to the physical or mental health of the pregnant woman.

140. Any person who unlawfully supplies or procures any poison or other noxious thing, or any instrument or thing whatsoever, knowing that the same is intended to be unlawfully used or employed with intent to procure the miscarriage of any woman, whether or not she is with child, commits an offence and is liable on conviction to imprisonment for a term not exceeding five years.

141. (1) Any person who, with intent to destroy the life of a child capable of being born alive, by any willful act or omission causes a child to die before it has an existence independent of its mother, commits an offence and is liable on conviction to imprisonment for life.

(2) A person shall not be convicted of an offence under subsection (1) if it is proved that the act, which caused the death of the child, was done in good faith for the purpose only of preserving the life of the mother.

(3) For the purposes of this section, evidence that a woman had at any material time been pregnant for a period of twenty-eight weeks or more shall be prima facie proof that she was at the time pregnant of a child capable of being born alive.

## **PART IX**

### **OFFENCES RELATING TO MARRIAGE**

142. (1) Subject to subsection (2), any person who, being married, marries any other person during the life of the former husband or wife, commits an offence and is liable on conviction to imprisonment for a term not exceeding seven years.

(2) A person shall not be convicted of an offence under subsection (1) by reason of marrying a second time in any of the following cases:

(a) where the husband or wife, as the case may be, of the person marrying a second time has been continually absent from such person for the space of three years immediately preceding the date of the second marriage, and has not been known to the other party to the first marriage to have been living during any part of such period;

(b) where the husband or wife, as the case may be, who marries a second time, although no such period of three years as is specified to in paragraph (a) has elapsed, in good faith and on reasonable grounds believed at the time of the second marriage that the other party to his first marriage was dead; or

(c) where, prior to the date of the second marriage, the first marriage has been dissolved or declared to be void or a decree of nullity made by a court of competent jurisdiction.

(3) The husband or wife of a person charged with bigamy may be called as a witness for the prosecution or the defence without the consent of the person charged.

143. Any person who willfully and by fraud causes any woman, who is not lawfully married to him, to believe that she is lawfully married to him, and to cohabit or have sexual intercourse with him in that belief, commits an offence and is liable on conviction to imprisonment for a term not exceeding seven years.

144. Any person who dishonestly, or with fraudulent intention, goes through a sham marriage ceremony, knowing that he is not thereby lawfully married, commits an offence and is liable on conviction to imprisonment for a term not exceeding five years.

145. Any person who impersonates another person in a marriage ceremony, or who marries under a false name or description, with intent to deceive the other party to the marriage, commits an offence and is liable on conviction to imprisonment for a term not exceeding seven years.

## **PART X**

### **GENOCIDE**

146. (1) In this Part, “the Genocide Convention” means the Convention on the Prevention and Punishment of the Crime of Genocide approved by the General Assembly of the United Nations on 9<sup>th</sup> December, 1948.

(2) A person commits an offence of genocide if he commits any act falling within the definition of “genocide” in Article II of the Genocide Convention, as set out in subsection (3)

(3) “Genocide” means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group:

(a) killing members of the group;

(b) causing serious bodily or mental harm to members of the group;

(c) deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part.

(d) imposing measures intended to prevent births to another group;

(e) forcibly transferring children of the group to another group.

147. (1) A person who commits the offence of genocide is liable on conviction,

(a) if the offence consists of the killing of any person, to imprisonment for life;

(b) in any other case, to imprisonment for a term not exceeding fourteen years.

(2) A prosecution in respect of genocide shall not be instituted except by, or with the consent of, the Attorney General.

## PART XI

### HOMICIDE AND OTHER OFFENCES AGAINST THE PERSON

148. (1) Subject to subsection (2) and to the provisions of section 149, 151 and 154, any person who, of malice aforethought express or implied, causes the death of another person by an unlawful act or omission commits murder.

(2) Where on the facts found the offence would under the law of England be reduced to one of manslaughter, then the offence shall be so reduced.

(3) For the purposes of this section, malice aforethought shall be deemed to be established by evidence proving

(a) an intention to cause the death of or to so grievous bodily harm to any person, whether such person is the person actually killed or not, or

(b) knowledge that the act or omission causing death will probably cause the death of or cause grievous bodily harm to some person, whether or not such person is the person actually killed, although such knowledge is accompanied by indifference whether or not death or grievous bodily harm is caused, or by a wish that it may be caused.

149. (1) Where a person kills or is party to the killing of another, he shall not be convicted of murder if he was suffering from such abnormality of mind (whether arising from a condition of arrested or retarded development of mind or other inherent causes or induced by disease or injury) as substantially impaired his mental responsibility for his acts in doing or being a party to the killing.

(2) On a charge of murder, it shall be for the defence to prove that the person charged is by virtue of this section not liable to be convicted of murder.

(3) A person who but for this section would be liable, whether as principal or otherwise, to be convicted of murder shall be liable instead to be convicted of manslaughter.

(4) The fact that one party to a killing is by virtue of this section not liable to be convicted of murder shall not affect the question whether the killing amounted to murder in the case of any other party to it.

150. Any person who is convicted of murder is liable to imprisonment for life.

151. (1) Where on a charge of murder there is evidence on which a jury can find that the person charged was provoked (whether by things done or things said or both) to lose his self-control, the question whether the provocation was enough to make a reasonable man do as he did shall be left to be determined by the jury, and the jury shall take into account everything done and said according to the effect which, in their opinion, it would have on a reasonable man.

(2) Where on a charge of murder, the jury find that all the other elements of the offence have been proved, but there is evidence of provocation, such as is referred to in subsection (1), the jury shall not return a verdict of guilty of murder but shall return a verdict of guilty of manslaughter.

(3) For the purposes of this section, "provocation" is any wrongful act or insult which is of such a nature as to be likely, when done to an ordinary person, or in the presence of an ordinary person to another person who is under his immediate care, or to whom he stands in a conjugal, parental, filial or fraternal relation, to deprive him of the power of self-control and to induce him to assault the person by whom the act or insult is done or offered.

152. Any person who, by any means, attempts to commit murder is liable on conviction to imprisonment for life.

153. (1) Any person who, by any unlawful act or omission, causes the death of another person, commits the offence of manslaughter.

(2) Any person who is convicted of manslaughter is liable to imprisonment for life.

(3) For the purposes of this section, an unlawful omission is an omission amounting to culpable negligence to discharge a duty tending to the preservation of life or health, whether such omission is or is not accompanied by an intention to cause death or bodily harm.

154. (1) Where a woman by any willful act or omission causes the death of her child, being a child under the age of twelve months, but at the time of the act or omission the balance of her mind was disturbed by reason of her not having fully recovered from the effect of giving birth to the child or the reason of the effect of lactation consequent upon the birth of the child, then notwithstanding that the circumstances were such that but for this section the offence would have amounted to murder, she commits the offence of infanticide, and may for such offence be dealt with and punished as if she had committed the offence of manslaughter.

(2) Where upon the trial of a woman for the murder of her child, being a child under the age of twelve months, the jury are of the opinion that by any willful act or omission she caused its death, but that at the time of the act or omission the balance of her mind was disturbed by reason of her not having fully recovered from the effect of giving birth to the child or by reason of the effect of lactation consequent upon the birth of the child, then the jury, notwithstanding that the circumstances were such that but for this section they might have returned a verdict of murder, may return in lieu thereof a verdict of manslaughter.

(3) Nothing in this section shall affect the power of the jury upon an indictment for murder of a child to return a verdict of manslaughter, or a verdict of guilty but insane, or a verdict of concealment of birth in pursuance of section 161.

155. (1) Any person who maliciously sends, delivers or utters, or directly or indirectly causes to be received, knowing the contents thereof, any letter, writing or other document threatening to kill or murder any person, commits an offence and is liable on conviction to imprisonment for a term not exceeding ten years.

(2) For the a purposes of subsection (1), “document” shall be deemed to include any disc, tape, sound track or other device in which sounds or other data are embodied so as to be capable (with or without the aid of some other equipment) of being reproduced therefrom.

156. Any person who conspires with another person or solicits, encourages, persuades, endeavors to persuade, or proposes to any other person to murder any person, whether such person is within the Territory or elsewhere, commits an offence and is liable on conviction to imprisonment for a term not exceeding fourteen years.

157. (1) Any person who aids, abets, counsels or procures the suicide of another, or the attempt by another to commit suicide, commits an offence and is liable on conviction to imprisonment for a term not exceeding fourteen years.

(2) If on the trial of an indictment for murder or manslaughter it is proved that the accused aided, abetted, counseled or procured the suicide of the person in question, the jury may find him guilty of the offence.

158. (1) It shall be manslaughter and not murder for a person acting in pursuance of a suicide pact between him and another person to kill the other person or to be a party to that other person killing himself or being killed by a third person.

(2) Where it is shown that the person charged with the murder of another person killed that other or was a party to his killing himself or being killed it shall be for the defence to prove that the person charged was acting in pursuance of a suicide pact between him and the other person

(3) For the purposes of this section, “suicide pact” means a common agreement between two or more persons having for its object the death of all of them, whether or not each is to take his own life, but nothing done by a person entering into a suicide pact shall be treated as done by him in pursuance of the pact unless it is done while he has a settled intention of dying in pursuance of that pact.

159. A person shall be deemed to have caused the death of another person, although his act is not the immediate or the sole cause of death, in any of the following cases:

- (a) if he inflicts bodily injury on another person in consequence of which that other person undergoes surgical or medical treatment which causes his death, and in such a case it is immaterial whether the treatment was proper or mistaken, if it was employed in good faith and with common knowledge and skill; but the person inflicting the injury shall not be

deemed to have caused the death if the treatment which was the immediate cause of the death was not employed in good faith or was so employed without common knowledge and skill;

- (b) if he inflicts bodily injury on another person which would not have caused death if the injured person had submitted to proper surgical or medical treatment or had observed proper precautions as to his mode of living;
- (c) if by actual or threatened violence he caused such other person to perform an act which causes the death of that person, such act being a means of avoiding such violence which in the circumstances would appear natural to the person whose death is so caused;
- (d) if by any act or omission he hastens the death of another person suffering under any disease or injury which, apart from such act or omission, would have caused death;
- (e) if his act or omission would not have caused death unless accompanied by an act or omission of the person killed or another person.

160. A child becomes a person capable of being killed when it has completely proceeded in a living state from the body of its mother, whether it has breathed or not, whether it has independent circulation or not and whether the naval string is severed or not.

161. Any person who, when a woman is delivered of a child, endeavours by any secret disposition of the dead body of the child, to conceal birth, whether the child died before, at or after its birth, commits an offence and is liable on conviction to imprisonment for a term not exceeding two years.

162. (1) A person shall not be deemed to have killed another person if the death of that person does not take place within a year and a day of the act or omission alleged to have contributed to the death of that other person.

(2) The period referred to in subsection (1) shall be reckoned inclusive of the date on which the last act or omission contributing to the death occurred.

163. Any person who unlawfully and maliciously, by any means whatsoever, wounds or causes any grievous bodily harm to any person with intent so to do or with intent to resist or prevent the lawful apprehension or detainer of any person, commits an offence and is liable on conviction to imprisonment for life.

164. Any person who unlawfully and maliciously wounds or inflicts any grievous bodily harm upon any other person, either with or without any weapon or instrument, commits an offence and is liable on conviction to imprisonment for a term not exceeding five years.

165. Any person who unlawfully wounds another person, commits an offence and is liable on conviction to imprisonment for a term not exceeding two years.

166. Any person who, by means whatsoever, attempts to choke, suffocate or strangle any other person, or who by any means calculated to choke, suffocate or strangle, attempts to render any other person insensible, unconscious or incapable of resistance with intent in any such cases thereby to enable himself or any other person to commit, or with intent in any of such cases thereby to assist any other person in committing, any criminal offence, commits an offence and is liable on conviction to imprisonment for life.

167. Any person who unlawfully applies or administers to, or causes to be taken by, or who attempts to administer to or attempts to cause to be taken by, any other person, any chloroform, laudanum or other anesthetic or any stupefying or overpowering drug, matter or thing, with intent in any of such cases thereby to enable himself or any other person to commit or with the intent in any of such cases thereby to assist any other person in committing, any criminal offence, commits an offence and is liable on conviction to imprisonment for life.

168. Any person who unlawfully and maliciously administers to, or causes to be administered to or taken by, any other person any poison or other destructive or noxious thing so as thereby to endanger the life of such person, or so as thereby to inflict upon such other person any grievous bodily harm, commits an offence and is liable on conviction to imprisonment for a term not exceeding ten years.

169. Any person who unlawfully and maliciously administers to, or causes to be administered to or taken by, any other person any poison or other destructive or noxious thing with intent to injure, aggrieve or annoy such person, commits an offence and is liable on conviction to imprisonment for a term not exceeding five years.

170. Any person who unlawfully and maliciously prevents or impedes any person, being on board of or having quitted any ship or vessel which is in distress or wreck, stranded or cast on shore, in his endeavour to save his life, or unlawfully and maliciously prevents or impedes any other person in his endeavour to save the life of any such person, commits an offence and is liable on conviction to imprisonment for life.

171. Any person who unlawfully and maliciously, by the use of any corrosive substance or the explosion of any explosive substance, burns, maims, disfigures, disables or causes any grievous bodily harm to any person, commits an offence and is liable on conviction to imprisonment for life.

172. Any person who unlawfully or maliciously

- (a) causes any explosive substance to explode'
- (b) sends or delivers or causes to be taken or received by any person any explosive substance or any other dangerous or noxious thing,
- (c) puts or lays at any place any corrosive fluid or any destructive or explosive substance, or
- (d) casts or throw upon or otherwise applies to any person any corrosive fluid or any destructive or explosive substance,

with intent in any such case to burn, maim, disfigure or disable any person, or to do some grievous bodily harm to any person, commits an offence and is liable on conviction to imprisonment for life.

173. Any person who unlawfully and maliciously places or throws in, into, upon, against or near any building, aircraft, ship or vessel any explosive substance it intent to do any bodily injury to any person, whether or not any explosion takes place and whether or not any bodily injury be effected, commits an offence and is liable on conviction to imprisonment for life

174. Any person who unlawfully and maliciously causes by any explosive substance an explosion of a nature likely to endanger life or to cause serious injury to property, whether any injury to person or property has been actually caused or not, commits an offence and is liable on conviction to imprisonment for a term not exceeding fourteen years.

175. (1) Any person who sets or places or causes to be set or paced any spring gun, mantrap or other engine or other device (including any electrical device or wiring) calculated to destroy human life or inflict grievous bodily harm, with the intent that the same or whereby the same may kill or inflict grievous bodily harm upon a trespasser or other person coming into contact therewith, commits an offence and is liable on conviction to imprisonment for a term not exceeding five years.

(2) Any person who knowingly and willfully permits any such contrivance, engine or device as is referred t in subsection (1), which may have been set or placed in any place, then being in or afterwards coming into his possession, to continue so set or placed shall be deemed to have set or placed the same with such intent as is referred to in subsection (1).

(3) Nothing in this section contained shall extend to make it illegal to set or place any trap or other device such as may have been or may be usually set with the intent of destroying vermin.

176. Any person who unlawfully discharges or attempts to discharge any firearm at ay person or, being armed with a firearm, unlawfully threatens to discharge such firearm at any person, commits an offence and is liable on conviction in addition to any other liability for any offence he may thereby commit, to imprisonment for a term not exceeding five years.

177. Any person who is authorized by law, or by the consent of a person injured by him, to use force shall be criminally responsible for the consequences of the force he may use, if it exceeds what is reasonable, having regard to all the circumstances of the case.

178. Any person who, in any manner so rash or negligent as to endanger human life or safety,

(a) drives or rides in any public place,

(b) navigates or takes part in the navigation or working of any vessel or aircraft,

(c) does any act with fire or any combustible matter, or omits to take precautions against any probable danger from fire or any combustible matter in his possession or control,

- (d) omits to take precautions against any probable danger from any animal in his control or possession,
- (e) dispenses, supplies, sells, administers or gives away any medicine or poisonous or dangerous matter,
- (f) does any act with respect to, or omits to take proper precautions against, any probable danger from any machinery of which he is solely or partly in charge, or
- (g) does any act with respect to, or omits to take proper precautions against, any probable danger from any explosive or firearm in his possession or control,

commits an offence and is liable on conviction to imprisonment for a term not exceeding two years.

179. Any person who unlawfully does any act, or omits to do any act which it is his duty to do, not being an act or omission specified in section 178, by which act or omission harm is caused to any person, commits an offence and is liable on conviction to imprisonment for a term not exceeding six months or to a fine not exceeding five hundred dollars.

180. Any person who does with any poisonous substance any act in a manner so rash or negligent as to endanger human life or be likely to cause hurt or injury to any other person, or knowingly or negligently omits to take such care with any poisonous substance in his possession or control as is sufficient to guard against probable danger to human life from such poisonous substance, commits an offence and is liable on conviction to imprisonment for a term not exceeding six months or to a fine not exceeding five hundred dollars.

181. (1) Any person who unlawfully masks, alters or destroys or removes any beacon, light or signal, or unlawfully exhibits any false light or signal with intent to bring any aircraft or vessel into danger or who unlawfully and maliciously does anything tending to the immediate loss or destruction of any aircraft or vessel, commits an offence and is liable on conviction to imprisonment for life.

(2) Any person who unlawfully and maliciously cuts away, casts adrift, alters, defaces, sinks, conceals or destroys any beacon, buoy, rope, perch or mark used or intended for the guidance of seamen or airmen for the purposes of navigation, commits an offence and is liable on conviction to imprisonment for a term not exceeding seven years.

(3) For the purposes of this section, “beacon” includes any radio beacon and “signal” includes any radio or similar signal.

182. Any person who knowingly or negligently conveys or causes any person to be conveyed for hire by water or air in any vessel or aircraft when the vessel or aircraft is in such a state or so loaded as to be unsafe, commits an offence and is liable on conviction to imprisonment for a term not exceeding one year.

183. Any person who unlawfully assaults another commits an offence and, if the assault is not committed in circumstances for which a greater punishment is provided by this Code or any other

law, is liable on conviction to imprisonment for a term not exceeding one year or to a fine not exceeding one thousand dollars, or both.

184. Any person who commits an assault occasioning actual bodily harm commits an offence and is liable on conviction to imprisonment for a term not exceeding five years.

185. Any person who assaults and strikes or wounds a judicial or police officer or other person lawfully authorized in or on account of the execution of his duty or concerning the preservation of any vessel or aircraft in distress, or of any vessel or aircraft or goods or effects wrecked, stranded or cast on any land or shore, or lying under water, commits an offence and is liable on conviction to imprisonment for a term not exceeding seven years.

186. A person commits an offence and is liable on conviction to imprisonment for a term not exceeding two years, if he

- (a) assaults any person with intent to commit an offence or to resist to prevent the lawful apprehension or detainer of himself or another for any offence;
- (b) Assaults, resists or obstructs any person engaged in the lawful execution of process, or in making lawful distress, with intent to rescue any property lawfully taken under such process or distress; or
- (c) Assaults any person on account of any act done by him in the execution of any duty imposed on him by law.

187. Any person who is guilty of an aggravated assault on any female, or on any male child whose age appears to the court not to exceed fourteen years, if the assault is not committed in circumstances for which a greater punishment is provided by this Code, is liable on conviction to imprisonment for a term not exceeding six months, or to a fine not exceeding five hundred dollars.

188. Any person who assaults, resists or willfully obstructs any police officer acting in the due execution of his duty, or any person acting in aid of such officer, or who assaults any person with intent to resist or prevent the lawful apprehension or detainer of himself or any other person for any offence, commits an offence and is liable on conviction to imprisonment for a term not exceeding two years, or to a fine not exceeding two thousand dollars, or both.

## **PART XII**

### **NEGLECT ENDANGERING LIFE OR HEALTH**

189. Any person who either as a master or as mistress of any apprentice or servant,

- (a) being legally liable to provide for the apprentice or servant necessary food, lodging or clothing, without lawful excuse, refuses or neglects to provide the same, or

- (b) unlawfully or maliciously does, or causes to be done, any bodily harm to the apprentice or servant,

so that the life of the apprentice or servant is endangered or the health of the apprentice or servant is, or is likely to be, thereby seriously or permanently injured, commits an offence and is liable on conviction to imprisonment for a term not exceeding five years.

190. Any person who, being charged with the duty of providing for another the necessaries of life, without lawful excuse fails to do so, whereby the life of that other person is, or is likely to be, endangered, or his health is, or is likely to be, seriously or permanently injured, commits an offence and is liable on conviction to imprisonment for a term not exceeding five years.

191. Any person who unlawfully abandons or exposes any child, being under the age of two years, whereby the life of the child is endangered or the health of the child is, or is likely to be, seriously or permanently injured, commits an offence and is liable on conviction to imprisonment for a term not exceeding seven years.

192. (1) If any person, who has attained the age of sixteen years and has the custody or care of any young person under that age, willfully assaults, ill-treats, neglects, abandons or exposes him or causes or procures him to be assaulted, ill-treated, neglected, abandoned or exposed in a manner likely to cause him unnecessary suffering or injury to health (including injury to or loss of sight or hearing or organ of the body and any mental derangement), that person commits an offence and is liable

- (a) on conviction on indictment to imprisonment for a term not exceeding five years, or to a fine not exceeding five thousand dollars, or both; or
- (b) on summary conviction to imprisonment for a term not exceeding six months or to a fine not exceeding five hundred dollars, or both.

(2) For the purposes of this section,

- (a) a parent or other person legally liable to maintain a child or young person shall be deemed to have neglected the child or young person in a manner likely to cause injury to his health if he has failed to provide adequate food, clothing, medical aid or lodging for him;
- (b) where it is proved that the death of an infant under the age of three years was caused by suffocation (not being suffocation caused by disease or the presence of any foreign body in the throat or the air passages of the infant) while the infant was in bed with some other person who has attained the age of sixteen years, that other person shall, if he was when he went to bed under the influence of drink, be deemed to have neglected the infant in a manner likely to cause injury to its health;
- (c) any person, having attained the age of sixteen years, who gives, or causes to be given, or sells or causes to be sold, to any child under the age of ten years any intoxicating liquor, except upon the order of a duly qualified medical practitioner, or in case of sickness, apprehended

sickness, or other urgent cause, shall be deemed to have ill-treated that child in a manner likely to cause injury to the child's health;

- (d) any person, having attained the age of sixteen years, and having the custody, charge or care of any child under the age of seven years, who allows that child to be in any room or yard containing a stove, coal-stove or open fire-place, not sufficiently protected to guard against the risk of that child being burnt or scalded, without taking reasonable precautions against the risk, and by reason thereof that child is killed or suffers serious injury, shall be deemed to have neglected that child in a manner likely to cause injury to the child's health.

(3) A person may be convicted under this section

- (a) notwithstanding that actual suffering or injury to health or the likelihood of actual suffering or injury to health, was obviated by the action of another person;

- (b) notwithstanding the death of the child or young person in question.

(4) If it is proved that a person convicted under this section was directly or indirectly interested in any sum of money accruing or payable in the event of the death of the child or young person, and had knowledge that such sum of money was accruing or becoming payable, then

- (a) in the case of a conviction on indictment, the amount of the fine which may be imposed under this section shall be seven thousand dollars and the court in lieu of any penalty under this section may sentence the person convicted to imprisonment for a term not exceeding seven years; and

- (b) in a case of summary conviction, the court in determining the sentence shall take into consideration the fact that the person convicted was so interested and had such knowledge.

(5) For the purposes of subsection (4),

- (a) a person shall be deemed to be directly or indirectly interested in a sum of money if he has any shares in or any benefit from the payment of that money, notwithstanding that he may not be a person to whom it is legally payable; and

- (b) a copy of a policy of insurance, certified to be a true copy by an officer or agent of the insurance company granting or issuing the policy, shall be evidence that the child or young person therein stated to be insured has in fact been so insured and that the person in whose favour the policy has been granted is the person to whom the money thereby insured is legally payable.

(6) Nothing in this section shall be construed as affecting the right of any parent, teacher or other person having the lawful control or charge of a child or young person to administer punishment to him.

193. Any person who unlawfully does an act or omits to do an act which it is his duty to do, by which act or omission harm is caused to any other person, in circumstances which do not constitute an offence under any other provisions of this Code or any other law, commits an offence and is liable on conviction to imprisonment for a term not exceeding one year or to a fine not exceeding one thousand dollars, or both.

### PART XIII

#### ABDUCTION, KIDNAPPING AND SIMILAR CRIMES

194. For the purposes of this Part,

(a) any person who, without lawful authority, by force or threat or by any deceitful means compels or induces any person to go from any place is said to abduct that person; and

(b) any person who, without lawful authority,

(i) conveys any person beyond the limit of any Territory without the consent of that person or of some person legally authorized to consent on behalf of that person, or

(ii) imprisons any person within the Territory in such manner as to prevent him from applying to a court for his release or from discovering to any other person the place where he is imprisoned or in such manner as to prevent any such person entitled to have access to him from discovering the place where he is so imprisoned, is said to kidnap that person.

195. Any person who kidnaps another person commits an offence and is liable on conviction to imprisonment for a term not exceeding ten years.

196. Any person who abducts another person with intent to cause that other person to be taken beyond the limits of the Territory or to be secretly and unlawfully confined within the Territory, commits an offence and is liable on conviction to imprisonment for a term not exceeding fourteen years.

197. Any person who abducts or kidnaps a female of any age with intent to marry or have sexual intercourse with her, or to cause her to be married or to have sexual intercourse with any other person, commits an offence and is liable on conviction to imprisonment for a term not exceeding fourteen years.

198. Any person who unlawfully takes or causes to be taken, any unmarried girl under the age of sixteen years, out of the possession and against the will of her father or mother or other person having the lawful care or charge of her, commits an offence and is liable on conviction to imprisonment for a term not exceeding two years.

199. (1) Any person who,

- (a) unlawfully either by force or fraud, leads or takes away, or decoys or entices away, or detains any child under the age of fourteen years with intent to deprive any parent, guardian or other person having the lawful care or charge of such child, of the possession of the child,
- (b) with intent to steal any article upon or about the person of such child, to whoever the article may belong, by force or fraud, leads or takes away, or detains the child, or
- (c) with any such intent receives or harbours any such child, knowing the same to have been by force or fraud led, taken, decoyed, enticed away or detained as in this section mentioned,

commits and offence and is liable on conviction to imprisonment for a term not exceeding seven years.

(2) It is a defence to a charge under subsection (1) if the accused claims in good faith and establishes a right to the possession of the child, or is the mother or father of the child.

200. Any person who, without lawful authority, confines another person, in circumstances not constituting an offence under any of the other provisions of this Part, commits and offence and is liable on conviction to imprisonment for a term not exceeding five years.

201. Any person who unlawfully compels another person to labour against the will of that other person, commits and offence and is liable on conviction to imprisonment for a term not exceeding five years.

## PART XIV

### OFFENCES RELATING TO PROPERTY

202. For the purposes of this Part,

- (a) “gain” and “loss” are to be construed as extending not only to gain or loss in money or other property, but as extending to any such gain or loss whether temporary or permanent; and
- (i) “gain” includes a gain by keeping what one has, as well as gain by getting what one has not; and
- (ii) “loss” includes a loss by not getting what one might get, as well as a loss by parting with what one has;
- (b) “goods”, except in so far as the context otherwise requires, includes money and every other description of property except land, and includes things severed from the land by stealing.

203. (1) A person is guilty of theft if he dishonestly appropriates property belonging to another with the intention of permanently depriving the other or it, and “thief” and “steal” shall be construed accordingly.

(2) It is immaterial whether or not the appropriation is made with a view to gain, or is made for the thief's own benefit.

(3) Section 204 and 208 shall have effect as regards the interpretation and operation of this section and (except as otherwise provided by this Part) shall apply only for the purposes of this section.

204. (1) A person's appropriation of property belonging to another is not to be regarded as dishonest,

- (a) if he appropriates the property in the belief that he has in law the right to deprive the other of it on behalf of himself or of a third person;
- (b) if he appropriates the property in the belief that he would have the other's consent if the other knew of the appropriation and the circumstances of it; or
- (c) (except where the property came to him as a trustee or personal representative) if he appropriates the property in the belief that the person to whom the property belongs cannot be discovered by taking reasonable steps.

(2) A person's appropriation of property belonging to another may be dishonest notwithstanding that he is willing to pay for the property.

205. (1) Any assumption by a person of the rights of an owner amounts to an appropriation, and this includes, where he has come by the property (innocently or not) without stealing it, any later assumption of the right to it by dealing with it as its owner.

(2) Where property or right or interest in property is or purports to be transferred for value to a person acting in good faith, no later assumption by him of the rights which he believed himself to be acquiring shall, by reason of any defect in the transferor's title, amount to theft of the property.

206. (1) "Property" includes money, defined, whether in the form of cash, cheque, credit card, bank draft, money order or otherwise, and all other property, real or personal, including things in action and other intangible property.

(2) In the case of a credit card the interest or number comprised in the card shall constitute property.

(3) A person cannot steal land, or things forming part of land and severed from it by him or his directions, except in the following cases:

- (a) when he is a trustee or personal representative, or is authorized by power of an attorney, or as a liquidator of a company, or otherwise, to sell or dispose of land belonging to another, and he appropriates the land or anything forming part of it by dealing with it in breach of the confidence reposed in him;
- (b) when he is not in possession of the land and appropriates anything forming part of the land by severing it or causing it to be severed, or after it has been severed; or

(c) when, being in possession of the land under a tenancy, he appropriates the whole or part of any fixture or structure let to be used with the land.

(4) For the purposes of this section, “land” does not include incorporeal hereditament and “tenancy” means a tenancy for years or any less period and includes an agreement for such tenancy, but a person who after the end of the tenancy remains in possession as statutory tenant or otherwise is to be treated as having possession under the tenancy, and “let” shall be construed accordingly.

(5) A person who picks mushrooms growing wild on any land or who picks flowers, fruit or foliage from a plant growing wild, on any land, does not (although not in possession of the land) steal what he picks, unless he does it for reward or for sale or other commercial purposes, and for the purposes of this section “mushroom” includes any fungus, and “plant” includes any shrub or tree.

(7) Wild creatures, tamed or untamed, shall be regarded as property, but a person cannot steal a wild creature not tamed nor ordinarily kept in captivity, or the carcass of any such creature unless it has been reduced into possession by or on behalf of another and possession of it has not since been lost or abandoned, or another person is in the course of reducing it into possession.

207. (1) Property shall be regarded as belonging to any person having possession or control of it, or having in it any proprietary right or interest (not being an equitable interest arising only from a agreement to transfer or grant an interest).

(2) Where property is subject to a trust, the persons to whom it belongs shall be regarded as including any person having a right to enforce the trust, and an intention to defeat the trust shall be regarded accordingly as an intention to deprive of the property any person having that right.

(3) Where a person receives property from or on account of another, and is under an obligation to the other to retain and deal with that property or its proceeds in a particular way, the property or proceeds shall be regarded (as against him) as belonging to the other.

(4) Where a person gets property by another’s mistake, and is under an obligation to make restoration (in whole or in part) of the property or its proceeds or of the value thereof, then to the extent of that obligation the property or proceeds shall be regarded (as against him) as belonging to the person entitled to restoration and an intention not to make restoration shall be regarded accordingly as an intention to deprive that person of the property or proceeds.

(5) Property of a corporation sole shall be regarded as belonging to the corporation notwithstanding a vacancy in the corporation.

208. (1) A person appropriating property belonging to another without meaning the other permanently to lose the thing itself is nevertheless to be regarded as having the intention of permanently depriving the other of it if the intention is to treat the thing as his own to be disposed of regardless of the other’s right, and the borrowing or lending of it may amount to so treating it if the borrowing or lending is for a period and in circumstances making it equivalent to an outright taking or disposal.

(2) Without prejudice to the generality of subsection (1) where a person having possession or control (whether lawfully or not) of property belonging to another, parts with the property under a condition as to its return which may not be able to perform, this (if done for the purposes of his own and without the other's authority) amounts to treating the property as his own regardless of the other's rights.

209. Any person who commits theft is guilty of an offence and is liable on conviction to imprisonment

(a) on summary conviction, for a term not exceeding two years; or

(b) on conviction on indictment for a term not exceeding ten years.

210. (1) A person is guilty of robbery if he steals and, immediately before or at the time of doing so, and in order to do so, he uses force on any person or seeks to put any person in fear of being then and there subjected to force.

(2) A person who commits robbery is guilty of an offence and is liable on conviction to imprisonment for life.

211. (1) A person commits the offence of burglary if

(a) he enters a building or part of a building as a trespasser and with intent to commit any offence mentioned in subsection (2);

(b) having entered a building or part of a building as a trespasser he steals or attempts to steal anything in the building or that part of it or attempts to inflict on any person therein any grievous bodily harm.

(2) The offences referred to in subsection (1) (a) are offences of stealing anything in the building in question, of inflicting on any person in the building any grievous bodily harm or raping any woman in the building, and of doing unlawful damage to the building or anything therein.

(3) References in this section to a building shall apply also to any inhabited vehicle or vessel and shall apply to any such vehicle or vessel at time when the person having a habitation in it is not there as well as at time when he is.

(4) Any person who is convicted of burglary is liable on conviction to imprisonment for a term not exceeding fourteen years.

212. (1) A person commits the offence of aggravated burglary if he commits burglary and at the time have with him any firearm or imitation firearm, any weapon of offence, or any explosive

(2) Any person who is convicted of aggravated burglary is liable to imprisonment for life.

(3) For the purposes of this section

- (a) “firearm” includes an air gun or air pistol, and “imitation firearm” means anything which has the appearance of being a firearm, whether capable of being discharged or not;
- (b) “weapon of offence” means any article made or adapted for use for causing injury to or incapacitating a person, or intended by the person having it with him for such use; and
- (c) “explosive” means any article or substance manufactured for the purpose of producing a practical effect by explosion, or intended by the person having it with him for that purpose.

213. (1) Subject to subsections (2) and (3), where the public having access to a building in order to view the building, or part of it, or a collection or part of collection housed in it, any person who without lawful authority removes from the building or its grounds the whole or any part of any article displayed, or kept for display, to the public in the building or that part of it or in its grounds, commits an offence and is liable on conviction to imprisonment for a term not exceeding five years.

(2) For the purposes of this section, “collection” includes any collection got together for the temporary purpose, but does not include a collection made or exhibited for the purpose of affecting sale or other commercial dealings.

(3) It is immaterial for the purposes of subsection (1) that the public’s access to a building is limited to a particular period or occasion, but where anything removed from the building or its grounds is there otherwise than as forming part of, or being on loan for exhibition with, a collection intended for permanent exhibition to the public, the person removing it does not thereby commit an offence under this section unless he removes it on a day when the public have access to the building as mentioned in subsection (1).

(4) A person does not commit an offence under this section if he believes that he has lawful authority for the removal of the thing in question or that he would have that authority if the person entitled to give it knew of the removal and the circumstances of it.

214. Any person who dishonestly uses without due authority, or dishonestly causes to be wasted or diverted, any electricity, commits an offence and is liable on summary conviction to imprisonment for a term not exceeding two years, or to a fine not exceeding two thousand dollars, or both.

215. Any person who dishonestly uses a telephone, fax, or telex system with intent to avoid payment, commits an offence and is liable on conviction to imprisonment for a term not exceeding two years, or to a fine not exceeding two thousand dollars, or both.

216. (1) Any person who, for his own use or that of another person takes any conveyance constructed or adapted for the carriage of a person, whether by land, water or air, without having the person’s consent thereto of the owner or hirer thereof (including a hirer under a self-drive or hire purchase contract) or not having other lawful authority or, knowing that such conveyance has been taken without such consent or authority, drives it or allows himself to be carried in or on it, commits an offence and is liable on conviction to imprisonment for a term not exceeding two years, or to a fine not exceeding two thousand dollars, or both and in addition the court may order the offender to

pay the owner of the conveyance compensation for the use thereof and for any damage caused to the conveyance.

(2) It is a defence to a charge under subsection (1) to show that the person charged has an honest belief that he acted under lawful authority or that in the circumstances the owner or hirer would have given his consent had he been aware of the taking.

(3) If on a trial for the theft of a conveyance it is found that the accused was not guilty of the theft of the conveyance but then it is proved that the accused committed an offence under this section, he may be found guilty of the offence, and convicted, under this section.

217. (1) Any person who, by any deception, dishonestly obtains property belonging to another, with the intention of permanently depriving the other of it, commits an offence and is liable on conviction to imprisonment for a term not exceeding ten years.

(2) For the purposes of this section a person shall be treated as obtaining property if he obtains ownership, possession or control of it and “obtain” includes obtaining for another or enable another to obtain or retain.

(3) Section 208 shall apply for the purposes of this section, with the necessary adaptation of the reference of the appropriating, as it apply for the purposes of section 203.

(4) For the purposes of this section and sections 218 and 219 “deception” means any deception (whether deliberate or reckless) by words or conduct as to fact or as to law, including a deception as to the present intentions of the person using the deception or any other person.

218. (1) Subject to subsection (2), any person who, by any deception,

(a) dishonestly secures the remission of the whole or any part of any existing liability to make a payment whether his or another’s liability,

(b) with intent to make permanent default in whole or in part on any existing liability to make a payment, or with intent to let another do so, dishonestly induces the creditor to wait for payment (whether or not the due date for payment is deferred) or to forego payment, or

(c) dishonestly obtains any exemption from or abatement of liability to make a payment, commits an offence and is liable

(i) on summary conviction to imprisonment for a term not exceeding one year; or

(ii) on conviction on indictment to imprisonment for a term not exceeding five years.

(2) For the purposes of this section, “liability” means legally enforceable liability, and subsection (1) shall not apply in relation to a liability that has not been accepted or established to pay compensation for a wrongful act or omission.

(3) For the purposes of subsection (1) (b), a person induced to make in payment a cheque or other security for money by way of conditional satisfaction of a pre-existing liability is to be treated as not being paid but as induced to wait for payment.

(4) For the purposes of subsection (1) (c), “obtains” includes obtaining for another or enabling another to obtain.

219. (1) Any person who, by any deception, dishonestly obtains for himself or any other person any pecuniary advantage, or any services from another, commits an offence and is liable

(a) on summary conviction, to imprisonment for a term not exceeding one year; or

(b) on conviction on indictment to imprisonment for a term not exceeding five years.

(2) The cases in which a pecuniary advantage within the meaning of this section is to be regarded as obtained for a person are where

(a) any debt or charge for which he makes himself liable or is or may become liable (including one not legally enforceable) is reduced in whole or in part or evaded or deferred;

(b) he is allowed to borrow on overdraft, or to take out a policy of insurance or annuity contract, or obtains an improvement of the terms on which he is allowed to do so; or

(c) he is given the opportunity to earn a remuneration or greater remuneration in any office or employment, or to win money by betting.

(3) For the purposes of subsection (1), the obtaining of services by any person involves circumstances where the other person is induced to confer a benefit by doing some act, or causing or permitting some act to be done on the understanding that the benefit has been or will be paid for.

220. (1) Subject to subsection (3), a person who, knowing that payment on the spot for any goods supplied or services done is required or expected of him, dishonestly makes off without having paid as required or expected and with intent to avoid payment of the amount, commits an offence and is liable on conviction to imprisonment for a term not exceeding six months or to a fine not exceeding five hundred dollars.

(2) For the purposes of this section, “payment on the spot” includes payment at the time of collecting goods on which work has been done or in respect of which service has been provided.

(3) Subsection (1) shall not apply where the supply of the goods or the doing of the service is contrary to law, or where the service is such that payment is not legally enforceable.

221. (1) Any person who dishonestly, with a view to gain for himself or another or with intent to cause loss to another,

- (a) destroys, defaces, conceals or falsifies any account or any record or document made or required for an accounting purpose, or
- (b) in furnishing information for any purpose, produces or makes use of any account or any such record or document, which to his knowledge is or may be misleading, false or deceptive in a material particular,

commits an offence and is liable on conviction to imprisonment for a term not exceeding seven years.

(2) For the purposes of this section, a person who makes or concurs in making in any account or other document an entry which is or may be misleading, false or deceptive in a material particular, or who omits or concurs in omitting a material particular from an account or other document, is to be treated as falsifying the account or document.

222. (1) Where an offence under this Part is committed by a body corporate and is proved to have been committed with the consent or connivance of any director, manager, secretary or other similar officer of the body corporate, or any person who was purporting to act in any such capacity, he as well as the body corporate commits an offence and are liable to be proceeded against and punished accordingly.

(2) Where the affairs of a body corporate are managed by its members, this section shall apply in relation to the acts or defaults of a member in connection with his functions of management as if he were a director of the body corporate.

223. (1) Where a director or officer (by whatever name called) of a body corporate or unincorporated association (or person purporting to act as such), with intent to deceive the members or creditors of the body corporate or association about its affairs, publishes or concurs in publishing a written statement, account or other document which to his knowledge is or may be misleading, false or deceptive in a material particular, he commits an offence and is liable on conviction to imprisonment for a term not exceeding seven years.

(2) For the purposes of this section, a person who has entered into a security for the benefit of a body corporate or association shall be deemed to be a creditor of it.

(3) Where the affairs of a body corporate or association are managed by its members, this section shall apply to any statement, account or document which a member publishes or concurs in publishing in connection of that body corporate or association.

224. (1) Any person who dishonestly, with a view to gain for himself or another, or with intent to cause loss to another, destroys, defaces or conceals any valuable security, any will or other testamentary document or any original document of or belonging to, or filed or deposited in, any court of justice or any Government department, commits an offence and is liable on conviction to imprisonment for a term not exceeding seven years.

(2) Any person who dishonestly, with a view to gain for himself or another, or with intent to cause loss to another, by any deception procures the execution of a valuable security, commits an offence and is liable on conviction to imprisonment for a term not exceeding seven years.

(3) Subsection (2) shall apply in relation to the making, acceptance, endorsement, alteration, cancellation or destruction in whole or in part of a valuable security, and in relation to the signing or sealing of any paper or other material in order that it may be made or converted into, or used or dealt with as, a valuable security, as if that were the execution of a valuable security.

(4) For the purposes of this section “deception” has the same meaning as in section 217 and “valuable security” means any document creating, transferring, surrendering or releasing any right to, in or over property, or authorizing or evidencing the creation, transfer, surrender or release of any such right or the payment of money or the delivery of any property, or the satisfaction of any obligation.

225. (1) A person commits the offence of blackmail, if with a view to gain for himself or another, or with intent to cause loss to another, he makes any unwarranted demand with menaces.

(2) For the purpose of subsection (1), a demand with menaces is unwarranted unless the person making it does so in the belief

(a) that he has reasonable grounds for making the demand; and

(b) that the use of menaces is a proper means of reinforcing the demand.

(3) The nature of the act or omission demanded is immaterial, and is also immaterial whether the menaces relate to action to be taken by the person making the demand.

(4) Any person convicted of blackmail is liable to imprisonment for a term not exceeding fourteen years.

226. (1) A person handles stolen goods if (otherwise than in the course of stealing), knowing or believing them to be stolen goods, he dishonestly receives the goods or dishonestly undertakes or assists in their retention, removal, disposal or realization by or for the benefit of another person or if he arranges so to do.

(2) Any person who handles stolen goods commits an offence and is liable on conviction to imprisonment for a term not exceeding ten years.

227. (1) The provisions of this Code relating to goods which have been stolen shall apply, whether the stealing occurred in the Territory or elsewhere (and whether it occurred before or after the commencement of this Code), provided that the stealing, if not an offence under this Code, amounted to an offence where and at the time when the goods were stolen, and references to stolen goods shall be construed accordingly.

(2) For the purposes of those provisions, references to stolen goods shall include, in addition to the goods originally stolen and parts of them, whether in their original state or not,

- (a) any other goods which directly or indirectly represent or have at any time represented the stolen goods in the hands of the thief as being the proceeds of any disposal or realization of the whole or part of the goods stolen or of goods so representing the stolen goods; and
- (b) any other goods which directly or indirectly represent or have at any time represented the stolen goods in the hands of a handler of the stolen goods, or any part of them, as being the proceeds of any disposal or realization of the whole or part of the stolen goods handles by him or of goods so representing them.

(3) Notwithstanding subsection (1) and (2), no goods shall be regarded as having continued to be stolen goods after they have been restored to the person from whom they were stolen or to other lawful possession or custody, or after that person and any other person claiming through him have otherwise ceased, as regards those goods, to have any right to restitution in respect of the theft.

(4) For the purposes of the provisions of this Code relating to goods which have been stolen (including the provisions of this section), goods obtained in the Territory or elsewhere by blackmail, or in the circumstances referred to in section 217 (1), shall be regarded as stolen, and “steal”, “theft” and “thief” shall be construed accordingly.

228. (1) Any number of persons may be charged n one incident, with reference to the same theft, with having at different times or at the same time handled all or any of the stolen goods, and the persons so charged may be tried together.

(2) On the trial of two or more persons charged for jointly handling any stolen goods the court or the jury, as the case may be, may find any of the accused guilty if satisfied that he handled any of the stolen goods, whether or not he did so jointly with the other accused or any of them.

(3) Where a person is charged with handling stolen goods (but not with any offence other than handling stolen goods), then at any stage of the proceedings, if evidence has been given of his having or arranging to have in his possession the goods that are the subject of the charge, or of his undertaking, or assisting in, or arranging to undertake or assist in their retention, removal, disposal or realization, the following evidence shall be admissible for the purpose of proving that he knew or believed the goods to be stolen goods:

- (a) evidence that he has had in his possession, or has undertaken or assisted in the retention, removal, disposal or realization of the stolen goods from any theft taking place not earlier than twelve months before the offence charged; and
- (b) evidence that he has within five years preceding the date of the offence charged been convicted of theft, or of handling stolen goods, provided that seven days’ notice in writing has been given to him of the intention to prove the conviction.

(4) This section shall be construed in accordance with section 227, and in subsection (3) (b) the references to theft and handling stolen goods shall be construed to include any corresponding offence committed before the coming into force of this Code.

229. (1) I any proceedings for the theft of anything in the course of transmission (whether by post or otherwise), or for handling stolen goods from such a theft, a statutory declaration made by any

person that he dispatched or received or failed to receive any goods or postal packet, or that any goods or postal packet when dispatched or received by him were in a particular state or condition, shall be admissible as evidence of the facts stated in the declaration, subject to the following conditions:

- (a) a statutory declaration shall only be admissible where and to the extent to which oral evidence to the like effect would have been admissible in the proceedings; and
- (b) a statutory declaration shall only be admissible if at least seven days before the trial of the charge a copy of it has been given to the accused person and he has not, at least three days before the trial or within such other time as the court may in any particular case allow, given the prosecutor written notice requiring the attendance at the trial of the person making the declaration.

(2) This section shall be construed in accordance with section 227.

230. (1) A person commits an offence if, when not at his place of abode, he has with him any article for use in the course of or in connection with any burglary, theft or cheat, and is liable on conviction to imprisonment for a term not exceeding three years.

(2) Any person may arrest without warrant anyone who is, or whom he, with reasonable cause, suspects to be, committing an offence under this section.

(3) Where a person is charged with an offence under this section, proof that he had with him any article made or adapted for use in committing a burglary, theft or cheat shall be evidence that he had it with him for such use.

(4) For the purpose of this section an offence under section 216 shall be treated as theft.

231. When any person is convicted of an offence under this Part, the court may order that any article referred to in section 230 (1) carried or used in connection with any such offence, or found in possession of or under the control of such person at the time of his arrest, shall be forfeited to the Crown, or returned to the owner if the article was removed from his possession for such purpose and without his knowledge or consent.

232. (1) Where goods have been stolen, and either a person is convicted of an offence under this Part with reference to the theft (whether or not the stealing is the gist of the offence) or a person is convicted of any other offence but such an offence is taken into consideration in determining his sentence, the court by or before which the offender is convicted may, on the conviction (whether or not the passing of the sentence is in other respects deferred), exercise any of the following powers:

- (a) the court may order anyone having possession or control of the goods to restore them to any person entitled to recover them from him;
- (b) on the application of a person entitled to recover from the person convicted any other goods directly or indirectly representing the first-mentioned goods (as being the proceeds of any

disposal or realization of the whole or part of them or of goods so representing them), the court may order those other goods to be delivered to the applicant; or

(c) the court, whether or not an application is made in that behalf, may order that a sum not exceeding the value of the first-mentioned goods shall be paid, out of any money of the person convicted which was in his possession on his apprehension, to any person who, if those goods were in the possession of the person convicted, would be entitled to recover them from him.

(2) Where under subsection (1) the court has power on the conviction of a person to make an order against that person both under paragraph (b) and paragraph(c) thereof with reference to the stealing of the same goods, the court may make orders under both paragraphs provided that the person in whose favour the orders are made does not thereby recover more than the value of those goods.

(3) Where under subsection (1) the court on a person's conviction makes an order under paragraph (a) thereof for the restoration of any goods, and it appears to the court that the person convicted has sold the goods to a person acting in good faith, or has borrowed money on the security of them from a person so acting, the court may order that there shall be paid to the purchaser of the lender, out of any money of the person convicted which was taken out of his possession on his apprehension, a sum not exceeding the amount paid for the purchase by the purchaser or, as the case may be, the amount owed to the lender in respect of the loan.

(4) The powers conferred by subsection (3) exercised whether or not an application in that behalf is made to the court by or on behalf of any person claiming to be interested in the property concerned.

(5) The court shall not exercise the powers conferred by this section unless in the opinion of the court the relevant facts appear from the evidence given at the trial or the available documents, together with admissions made by or on behalf of any person in connection with any proposed exercise of the said powers, and for this purpose "the available documents" means any written statements or admissions which were made for use, and depositions taken at any committal proceedings and any written statements or admissions used as evidence in those proceedings.

(6) Where a person is committed to the High Court for sentence under the provisions of the Criminal Procedure (Committal for Sentence) Act, the powers conferred by this section shall be exercisable by the High Court and not by the Magistrate's Court, and the High Court shall be deemed to be the court before which such person is convicted.

(7) Where an order is made under this section and the person convicted successfully appeals against the conviction of the offence on the basis of which the order was made, the order shall cease to have effect, and a person against whom such an order is made may appeal against the order as if it was part of the sentence imposed on the conviction for the offence.

## **PART XV**

### **FORGERY, COINING AND COUNTERFEITING**

**233.** (1) For the purposes of this Code, forgery is the making of a false document in order that it may be used as genuine, and in the case of seals and dies referred to in this Part the counterfeiting of a seal or die, and forgery with intent to defraud or deceive shall be punishable as in this Part provided.

(2) A document is false within the meaning of this Part if the whole or any material part thereof purports to be made by or on behalf, or on account, of a person who did not make it not authorize its making, or if though made by or on behalf, or on account, of the person by whom or by whose authority it purports to have been made, the time or place of making, where either is material, or, in the case of a document identified by number or mark, the number or any distinguishing mark identifying the document, is falsely stated therein, and in particular, a document is false

- (a) if any material alteration, whether by addition , insertion, obliteration, erasure, removal or otherwise, has been made in the document;
- (b) if the whole or some material part of it purports to have been made by or on behalf of a fictitious or deceased person; or
- (c) if though made in the name of an existing person, it is made by him or by his authority with the intention that it should pass as having been made by some person, real or fictitious, other than the person who made or authorized it.

(3) A document may be a false document for the purposes of this Part notwithstanding that it is not false in such manner as is described in subsection (2).

(4) For the purposes of this Part,

- (a) it is immaterial in what language a document is expressed or in what place, whether within or without the Territory, it is expressed to take effect;
- (b) forgery of a document may be complete even if the document when forged is incomplete, or is not or does not purport to be such a document as would be binding in law;
- (c) the crossing on any cheque, draft on a banker, post office money order, postal order, coupon or other document the crossing of which is authorized or recognized by law, shall be a material part of such cheque, draft, order, coupon or document;
- (d) “document” does not include a trade mark or other sign used in connection with articles of commerce, although written or printed;
- (e) “currency note” includes any notes (by whatever name called) which are legal tender in the country in which they are issued;
- (f) “bank note” includes any note or bill of exchange of any person or body carrying on banking business in any part of the world.

234. An intent to defraud is presumed to exist if it appears that at the time when the false document was made there was in existence a specific person, ascertained or unascertained, capable of being defrauded thereby, and this presumption is not rebutted by proof that the offender took or intended to take measures to prevent such persons from being defrauded in fact, nor by the fact that he had or thought he has a right to the thing to be obtained by the false document.

**235.** (1) Any person who, with intent to defraud, forges any of the following documents, commits an offence and is liable on conviction to imprisonment for life:

- (a) any will codicil or other testamentary document, either of a dead or a living person, or any probate of letters of administration, whether with or without the will annexed;
- (b) any deed or bond, or any assignment at law or equity of any deed or bond or any attestation of the execution of any deed or bond;
- (c) any currency note or bank note or any endorsement on or assignment of any bank note.

(2) Any person who, with intent to defraud, forges any of the following documents, commits an offence and is liable on conviction to imprisonment for a term not exceeding fourteen years:

- (a) any valuable security or assignment thereof or endorsement thereon, or where the valuable security is a bill of exchange, any acceptance thereof;
- (b) any document of title to lands or any assignment thereof or endorsement thereon;
- (c) any document of title to goods or any assignments thereof or endorsement thereon;
- (d) any power of attorney or other authority to transfer any share or interest in any stock, annuity or public fund of any state or country, or interest in the debt of any public body, company or society in any country or in the capital stock of any such company or society or to receive any dividend or money payable in respect of such share or interest, or any attestation of any such power of attorney or other authority;
- (e) any policy of insurance or any assignment thereof;
- (f) any charter-party or any assignment thereof.

**236.** (10) Any person who, with intent to defraud or deceive, forges any document having thereon or affixed thereto the stamp or impression of the Great Seal of the United Kingdom, Her Majesty's Privy Seal, any privy signet of Her Majesty, Her Majesty's Royal Sign manual, or any other of Her Majesty's official seals, or the seal or signature of the Governor, commits an offence and is liable on conviction to imprisonment for life.

(2) Any person who, with intent to defraud or deceive forges any of the following documents, commits an offence and is liable on conviction to imprisonment for a term not exceeding fourteen years.

- (a) any register or record of births, baptisms, marriages, deaths, burials or cremations, which is by law authorized or required to be kept in the Territory, or any part of such register or any certified copy of any such register or part thereof;
- (b) any copy of any register referred to in paragraph (a) directed or required by law to be transmitted to any registrar or other officer;
- (c) any certified copy of any record or document purporting to be signed by any officer having charge of any public records or documents in the Territory.
- (d) Any wrapper or label provided by or under the authority of any customs officer

(3) Any person who, with intent to defraud or deceive, forges any of the following documents, commits an offence and is liable on conviction to imprisonment for a term not exceeding seven years;

- (a) any official document of or belonging to any court of justice, or made or issued by any judge, magistrate, justice of the peace, clerk or officer of any such court;
- (b) any register or book kept under the provisions of any law in or under the authority of any court of justice;
- (c) any certificate, office copy or certified copy of any such document, register or book, or any part thereof as is mentioned in paragraph (a) or (b);
- (d) any other document which any judge, magistrate, or justice of the peace is authorized or required by law to make or issue;
- (e) any document which any person authorized to administer an oath under any law in force in the Territory is authorized or required by law to make or issue;
- (f) any document made or issued by the head of any department of the Government or by the Attorney General or any other legal officer in the public service, or any document upon which, by law or usage in force at the time, any court of justice or public officer might act;
- (g) any document or copy of any document used or intended to be used in evidence in any court of justice or any document which is made evidence by law;
- (h) any certificate or consent required by any law relating to the celebration of marriage;
- (i) any license for the celebration of marriage authorized to be issued by any law relating to the celebration of marriage;

- (j) any certificate, declaration or order under any law relating to the registration of births or deaths;
- (k) Any register, book, certificate, declaration, bill of sale, instrument or certificate of mortgage or sale under any law relating to merchants shipping, or any entry or endorsement required by such law to be made in or on any of those documents;
- (l) Any permits, certificate or similar document made or issued under the Customs Ordinance or Customs Duties Ordinances;
- (m) Any official certificate not specified in this subsection;
- (n) Any document purporting to be printed by the Government Printer.

**237.** Any person who, being the clerk of any court or either officer having the custody of the records of any courts or a person acting on behalf of any such clerk or officer, makes or utters any false process or any false copy or certificate of any record knowing the same to be false, and any person who delivers or causes to be delivered to any person any paper falsely purporting to be any such process or a copy thereof or to be any judgment, decree or order of any court, or a copy thereof, knowing that same to be false, or who acts or professes to act under any such false process knowing the same to be false, commits an offence and is liable on conviction to imprisonment for a term not exceeding seven years.

**238.** Any persons who knowingly and unlawfully inserts, or cause or permits to be inserted, in any register of births, baptisms, marriage, death or burials, which is by law authorized or required to be kept in the Territory, or in any certified copy thereof any false entry or any matter relating to any birth, baptism, marriage, death or burial, or knowingly gives any false certificate relating to any such occurrence or certifies any writing to be a copy of or extract from any such register, knowing such writing or the part of such register in which such copy or extract is so given, to be false in any material particular, or offers, utters, disposes of or puts off any such register, entry, certified copy or certificate or a copy thereof knowing the same to be false, commits an offence and is liable on conviction to imprisonment for life.

**239.** Any person who

- (a) forges any passport, or
- (b) makes any statement which to his knowledge is untrue for the purpose of procuring the issue of a passport, whether for himself or for another person,
- (c) alters a passport, whether by addition, insertion, obligation, erasure, removal or otherwise;
- (d) destroys, makes away with or by willful neglect allows another person to obtain possession of, a passport,

- (e) is in unlawful possession of a passport or, being the lawful holder of a passport, [arts with the possession of the passport to another person without lawful authority or for an unlawful purpose, or
- (f) on finding a passport, neglects or fails within seven days of the finding thereof, to deliver the passport to the Chief Immigration Officer or to the Officer in charge of the nearest Police Station

Commits an offence and is liable on conviction to imprisonment for a term not exceeding two years or to a fine not exceeding two thousand dollars, or both

**240.** (1) Any person who, with intent to defraud or deceive, forges any public or private document which is not made an offence under any provision of this Part, commits an offence and is liable on conviction to imprisonment for a term not exceeding two years or to a fine not exceeding two thousand dollars, or both.

(2) For the purposes of this section, any person who certifies any document as being a true copy of, or extract from, any other document, knowing the same not to be a true copy or extract in a material respect, shall be deemed to have forged that copy or extract.

**241.** (1) Any person who forges any of the following seals with intent to defraud or deceive, commits an offence and is liable on conviction to imprisonment for life.

- (a) the Great Seal of the United Kingdom, Her Majesty's Privy Seal, any privy signet of her Majesty, Her Majesty's Royal Sign Manual, or any other of Her Majesty's seals or the seal of the Governor;
- (b) the seal of any courts of justice.

(2) Any person who forges any of the following seals or dies, with intent to defraud or deceive, commits an offence and is liable on conviction to imprisonment for a term not exceeding fourteen years:

- (a) the seal of any registry office relating to births, baptisms, marriages or deaths;
- (b) any seal of or belonging to any office for the registry of deeds or of title to land or any interest in land
- (c) the seal of a notary public;
- (d) any die provided for, made or used by the Accountant General or any officer of customs;
- (e) any die which is or has by law, whether within the Territory or elsewhere, or be used for the marking or stamping of any gold or silver plate or any articles made of or containing gold or silver;

- (f) any stamp or die made or used for the purposes of the Post Office Act or the Stamp Act.

242. (1) Any person who knowingly, with intent to deceive or defraud, utters any forged document, seal or die, commits an offence and is liable on conviction to the same punishment as if he had himself forged the document, seal or die.

(2) A person utters a forged document, seal or die, who, knowing the same to be forged, and with either of the intents necessary to contribute the offence of forging the document, seal or die in question, uses, offers, publishes, delivers, disposes of, tenders in payment or in exchange, exposes for sake or exchange, exchanges, tenders in evidence, or puts off the said forged document, seal or die.

(3) a person may be convicted in the Territory of an offence under subsection (1) whether the document, seal or die was forged within the Territory or elsewhere, if it was uttered in the Territory.

243. Any person who knowingly utters, as and for a subsisting and effectual document, any document which has by any lawful authority been ordered to be revoked, cancelled or suspended, or the operation of which has ceased by lapse of time, or by death or the happening of any other event commits an offence and is liable on conviction to the same punishment as if he himself forged the document.

244. Any person who, with intent to defraud, demands, receives or obtains, or causes or procures to be delivered, paid or transferred to any person any money, security for money or other property, real or personal,

- (a) under, upon or by virtue of any forged document, knowing the same to be forged, or

- (b) under, upon, or by virtue of any probate or letters of administration, knowing the will, testament, codicil or testamentary writing on which such probate or letters of administration have been obtained to have been forged, or knowing such probate or letters of administration to have been obtained by virtue of any false oath, affirmation or affidavit,

commits an offence and is liable on conviction to imprisonment for a term not exceeding fourteen years.

245. (1) Any person who, without lawful authority or excuse, the proof of which lies upon him, imports into the Territory, purchases or receives from any person, or has in his custody or possession a forged currency note or bank note, knowing the same to be forged, commits an offence and is liable on conviction to imprisonment for a term not exceeding fourteen years.

(2) Any person who, without lawful authority or excuse, the proof of which lies upon him, knowing the same to be forged, has in his custody or possession

- (a) any forged die required or authorized by law (including the law of any country outside the Territory) to be used for the marking of gold or silver plate, or any articles made of or containing gold or silver, or any ware of gold or silver or base metal bearing the impression of any such forged die,

(b) any forged stamp or die resembling or purporting to represent any stamp or die made or used for the purposes of the Post Office Act or the Stamp Act, or

(c) any forged wrapper, label or authority resembling or purporting to represent any wrapper, label or authority provided by or under the authority of any customs officer or the Accountant General,

commits an offence and is liable on conviction to imprisonment for a term not exceeding fourteen years.

(3) Where the having of any document, seal or die in the custody or possession of any person is an offence under this Part, a person shall be deemed to have that thing in his possession if,

(a) he has it in his personal custody or possession; or

(b) knowingly and willfully, he has it in the actual custody or possession of any other person, or in any place, whether open or closed, or any building or structure, whether belonging to or occupied by himself or not.

(4) It is immaterial whether the thing is had in such custody, possession or place for the use of himself or another person.

246. (1) Any person who, without lawful authority or excuse, the proof of which lies upon him,

(a) makes, uses, or knowingly has in his custody or possession, any paper intended to resemble and pass as

(i) special paper such as is provided and used for making any currency note, bank note or government bill, or

(ii) revenue paper,

(b) makes, uses, or knowingly has in his custody or possession, any frame, mould or instrument for making any revenue paper or for producing in or on such paper any words, figures, letters, marks, lines or devices peculiar to or used in or on any such paper,

(c) engraves or in any manner makes on any substance or material any words, figures, letters, marks, lines or devices, the print of which resembles in whole or in part any words, figures, letters, marks, lines or devices peculiar to or used in or on any currency note or bank, or in or on any document entitling or evidencing or purporting to entitle or evidence the title of any person to any share or interest in any public stock, annuity, fund or debt of any body corporate, company or society established in any country, or

(d) uses or knowingly has in his custody or possession any paper upon which anything referred to in paragraph (c) has been printed or in any manner made as is mentioned in this subsection,

commits an offence and is liable on conviction to imprisonment for a term not exceeding seven years.

In this section “revenue paper” means any paper provided by the proper authority for the purpose of being used for stamps, licenses, permits, post office money orders, or for any purpose connected with the public revenue of the Territory or of any other country.

247. Any person who, without lawful authority or excuse, the proof of which lies upon him, acquires, receives, or knowingly has in his custody or possession,

- (a) any such special paper or revenue paper as is referred to in section 246 (1) before it has been duly stamped, signed and issued for public use,
- (b) any die peculiarly used in the manufacture of any such paper,
- (c) any facsimile of the signature on, or the design of, any currency note which is legal tender in the Territory, or
- (d) any unfinished or incomplete currency note purporting to be similar to a currency note which is legal tender in the Territory,

commits an offence and is liable on conviction to imprisonment for a term not exceeding two years.

248. For the purposes of this Part,

- (a) a coin shall be deemed to be current if at the material time it is legal tender in the Territory or elsewhere;
- (b) a coin apparently intended to resemble or pass as a current coin shall be deemed to resemble that coin
- (c) a current coin which has been gilt, silvered, washed, coloured or cased over, or in any manner altered so as to resemble any current coin of a higher denomination shall be deemed to be a false or counterfeit coin resembling a current gold or silver coin;
- (d) references to silver coin shall be deemed to include coin of cupro nickel;
- (e) a thing shall be deemed to be in the possession of a person if
  - (i) he has it in his personal custody or possession; or
  - (ii) knowingly and willfully, he has it in the actual custody or possession of any other person or in any place, whether open or closed or any building or structure, whether belonging to or occupied by himself or not, and

it is immaterial whether the thing is had in such custody, possession or place for the use of himself or another.

249. (1) Any person who falsely makes or counterfeits any coin resembling any currency coin, commits an offence and is liable on conviction,

- (a) in the case where the coin resembles a current gold or silver coin, to imprisonment for life; and
- (b) in the case where the coin resembles a current coin made of any metal other than gold or silver, to imprisonment for a term not exceeding seven years.

(2) The offence of falsely making or counterfeiting a coin is deemed to be complete although the coin made or counterfeiting thereof has not been finished or perfected.

250. (1) Any person who impairs, diminishes or lightens any current gold or silver coin with intent that the coin so impaired, diminished or lightened may pass for a current gold or silver coin, commits an offence and is liable on conviction to imprisonment for a term not exceeding fourteen years.

(2) Any person who unlawfully has in his possession any filing or clipping, or any gold or silver bullion, or any gold or silver dust, solution or otherwise, which has been produced or otherwise obtained by impairing, diminishing or lightening any current gold or silver coin, knowing that it has been so produced or obtained, commits an offence and is liable on conviction to imprisonment for a term not exceeding seven years.

251. (1) Any person who tenders, utters or puts off any false counterfeit coin resembling any current gold or silver coin, knowing it to be false or counterfeit, commits an offence and is liable on conviction to imprisonment for a term not exceeding one year or to a fine not exceeding one thousand dollars, or both.

(2) Any person who tenders, utters or puts off any false counterfeit coin resembling any current gold or silver coin, knowing it to be false or counterfeit, and

- (a) at the time of the tendering, uttering or putting off, has in his possession, beside that coin, other such false or counterfeit coin, or
- (b) at the date of the tendering, uttering or putting off, within the period of ten days next following that date, tenders, utters or puts off any other such false or counterfeit coin, knowing it to be false or counterfeit,

commits an offence and is liable on conviction to imprisonment for a term not exceeding two years or to a fine not exceeding two thousand dollars, or both.

(3) Any person who has in his possession three or more false or counterfeit coins resembling any current gold or silver coin, knowing them to be false or counterfeit, and with intent to utter or put off those coins, or any of them, commits an offence and is liable on conviction to imprisonment for a term not exceeding five years.

(4) Any person who has in his possession three or more false or counterfeit coins resembling any current coin not made of gold or silver, knowing them to be false or counterfeit, and with intent to utter or put off those coins, or any of them, commits an offence and is liable on conviction to imprisonment for a term not exceeding one year or to a fine not exceeding one thousand dollars, or both.

(5) Any person who commits

- (a) any offence under subsection (1) in respect of a coin resembling a current gold or silver coin, or
- (b) any offence under subsection (2) or (3),

having previously been convicted of any such offence or of any other offence under this Part, commits an offence and is liable on conviction to imprisonment for a term not exceeding fourteen years.

(6) Any person who, with intent to defraud, tenders, utters or puts off as for any current gold or silver coin

- (a) any coin not being that current coin and being of less value than that current coin, or
- (b) any metal or piece of metal or mixed metals resembling in size, figure or colour that current coin

commits an offence and is liable on conviction to imprisonment for a term not exceeding one year or to a fine not exceeding one thousand dollars, or both.

(7) The offence of tendering, uttering or putting off a false or counterfeit coin is deemed to be complete although the coin is not in a fit state to be uttered or the counterfeiting thereof has not been finished or perfected.

252. (1) Any person who, without lawful authority or excuse, the proof of which lies on him, buys, sells, receives, pays or puts off, or offers to buy, sell, receive, pay or put off, any false or counterfeit coin resembling any current coin at or for a lower rate of value than the false or counterfeit coin imports or apparently intended to import, commits an offence and is liable on conviction to imprisonment for a term not exceeding seven years.

(2) An offence under this section shall be deemed to be complete although the coin involved in the offence is not in a fit state to be uttered or the counterfeiting thereof has not been finished or perfected.

253. (1) Any person who, without lawful authority or excuse, the proof of which lies on him,

- (a) imports or receives into the Territory any false or counterfeit coin resembling any current coin, knowing it to be false or counterfeit, or
- (b) exports from the Territory, or puts on board any aircraft or vessel for the purpose of being so exported, any false or counterfeit coin resembling any current coin, knowing it to be false or counterfeit,

commits an offence and is liable on conviction to imprisonment for a term not exceeding seven years.

(2) The provisions of this section shall be without prejudice to any provisions of any other law relating to customs under which there is a prohibition of importation or exportation of false or counterfeit coin, currency or metal tokens resembling coin, or coin which is not of the established standard in weight or fineness.

254. Any person who, without lawful authority or excuse, the proof of which lies on him, makes, sells, offers for sale or has in his possession for sale, any medal, cast, coin or other thing made wholly or partially of metal or any mixture of metals,

- (a) resembling in size, figure and colour current gold or silver coin,
- (b) having thereon a device resembling a device on any such current coin, or
- (c) being so formed that it can, by gilding, silvering, colouring, washing or other like process be so dealt with as to resemble any such current coin,

commits an offence and is liable on conviction to imprisonment for a term not exceeding one year.

255. (1) Any person who, without lawful authority or excuse, the proof of which lies on him, knowingly makes or mends, or begins to make or mend, or buy or sells or has in his possession any puncheon, counter puncheon, matrix, stamp, die, pattern, or mould in or upon which there is made or impressed, or which will make or impress, or which is adapted or intended to make or impress, the figure, stamp, or apparent resemblance of both or either of the sides of any current gold or silver coin, commits an offence and is liable on conviction to imprisonment for a term not exceeding fourteen years.

(2) Any person who, without lawful authority or excuse, the proof of which lies on him, makes or mends, or begins to make or mend, or buys or sells, or has in his possession,

- (a) any edger, edging or other tool, collar, instrument or engine adapted and intended for the marking of coin round the edges with letters, graining or other marks or figures apparently resembling those on the edges of any current gold or silver coin, knowing it to be so adapted and intended, or
- (b) any press for coinage, or any cutting engine for cutting by force of a screw, or of any contrivance, round blanks out of gold, silver or other metal or mixture of metals, or any other machine, knowing the engine or machine to be a press for coinage or knowing the engine or machine to have been used or to be intended to be used for the false making or counterfeiting of any current gold or silver coin,

commits an offence and is liable on conviction to imprisonment for a term not exceeding fourteen years.

(3) Any person who, without lawful authority or excuse, the proof of which lies on him, knowingly makes or mends, or begins to make or mend, or buys or sells or has in his possession, any instrument, tool or engine adapted and intended for the counterfeiting of any current coin, which is not a current gold or silver coin, commits an offence and is liable on conviction to imprisonment for a term not exceeding seven years.

256. (1) Any person who defaces any current coin by stamping thereon any names or words, whether or not the coin is thereby diminished or lightened, commits an offence and is liable on conviction to imprisonment for a term not exceeding one year or to a fine not exceeding one thousand dollars, or both.

(2) A tender of payment in money made in any coin which has been defaced as is mentioned in subsection (1) is not legal tender.

(3) Any person who tenders, utters or puts off any coin which has been defaced as is mentioned in subsection (1), commits an offence and is liable on conviction to a fine not exceeding one hundred dollars.

(4) No proceedings for an offence under this section shall be instituted without the consent of the Attorney General.

257. Any person who melts down, breaks up or uses otherwise than as currency, any current coin which is legal tender in the Territory, commits an offence and is liable on conviction to imprisonment for a term not exceeding six months or to a fine not exceeding five hundred dollars.

258. Any person who, without lawful authority or excuse, the proof of which lies on him, mutilates, perforates or in any way defaces any currency note or bank note, which is legal tender in the Territory, whether by writing, printing, drawing or stamping thereon, or by attaching or affixing thereto anything in the nature or form of an advertisement, commits an offence and is liable on conviction to a fine not exceeding two hundred dollars.

259. (1) Any person who, without lawful authority or excuse, the proof of which lies on himself, sells or offers or exposes for sale any article which bears a design in imitation of any currency note, bank note or coin which is legal tender in the Territory or elsewhere, commits an offence and is liable on conviction to imprisonment for a term not exceeding six months or to a fine not exceeding five hundred dollars, or both.

(2) Any person who makes or causes to be made, or uses for any purpose, any document purporting to be in any way resembling, or so nearly resembling as to be calculated to deceive, any currency note which is legal tender in the Territory or elsewhere, commits an offence and is liable on conviction to imprisonment for a term not exceeding six months or to a fine not exceeding five hundred dollars in respect of each document.

(3) Any person whose name appears on any document the making of which is an offence under this section who, when requested so to do by a police officer, refuses to disclose the name and address of the person by whom it was made, commits an offence and is liable on conviction to a fine not exceeding two hundred dollars.

(4) Where the name of any person appears on any document in respect of which any person is liable to be charged with an offence under this section, or on any other document used or distributed in connection with that document, it shall be *prima facie* evidence that that person caused the document to be made.

260. Where any forged bank note, currency note or any counterfeit coin or any machinery, implement, utensil or material used or intended to be used for the forging of a bank note or currency note or for counterfeiting any coin, is seized under a search warrant or by a police officer, the same shall be forfeited by order of the court before which the offender is tried, or, if there is no trial, by order of the court issuing the search warrant, or in the case of seizure by a police officer, otherwise than in exercise of powers conferred by a court, shall be disposed of in such manner as the Governor, or any person authorized by him in that behalf, may direct and shall be deemed forfeited.

## PART XVI

### PERSONATION

261. (1) Any person who, with intent to defraud any person, falsely represents himself to be some other person, living or dead and whether fictitious or not, commits an offence and is liable on conviction to imprisonment for a term not exceeding one year or to a fine not exceeding one thousand dollars, or both.

(2) If the representation under subsection (1) is that the person making the representation is a person entitled, by will or operation of law, to any specific property and is made in order to obtain such property or possession thereof, such person is liable on conviction to imprisonment for a term not exceeding seven years.

262. (1) Any person who utters any document which has been issued by any lawful authority to another person, and whereby that other person is certified to be a person possessed of any qualification recognized by law for any purpose, or to be the holder of any office or to be entitled to exercise any profession, trade or business, or to be entitled to any right or privilege or to enjoy any rank or status, and falsely represents himself to be the person named in the document, commits an offence of the same kind and is liable on conviction to the same punishment as if he had forged the document.

(2) Any person who, being a person to whom any document has been issued by lawful authority whereby he is certified to be a person possessed of any qualification recognized by law for any purpose, or to be the holder of any office, or to be entitled to exercise any profession, trade or business, or to be entitled to any right or privilege, or to enjoy any rank or status, sells, gives or lends the document to another person with intent that that other person may represent himself to be the person named therein, commits an offence and is liable on conviction to imprisonment for a term not exceeding seven years.

263. (1) Any person who, for the purpose of obtaining any employment for himself, utters any document of a testimonial character given to another person, falsely pretending that he is the person named in the document, commits an offence and is liable on conviction to imprisonment for a term not exceeding one year or to a fine not exceeding one thousand dollars, or both.

(2) Any person who, being a person to whom any document of a testimonial character has been given, gives, sells or lends such document to another person with the intent that that other person may utter the document for the purpose of obtaining employment for himself or for another, commits an offence and is liable on conviction to imprisonment for a term not exceeding one year or to a fine not exceeding one thousand dollars, or both.

264. Any person who, without lawful authority or excuse, the proof of which lies upon him, makes in the name of any other etc. person, before any court or person authorized by law to take such acknowledgement, an acknowledgement of liability of any kind, or an acknowledgement of any deed or other instrument, commits an offence and is liable on conviction to imprisonment for a term not exceeding seven years.

## PART XVII

### CRIMINAL DAMAGE AND SIMILAR OFFENCES

265. (1) Any person who, without excuse, destroys or damages any property belonging to another intending to destroy or damage such property, or being reckless as to whether such property would be destroyed or damaged, commits an offence.

(2) A person commits an offence if he, without lawful excuse destroys or damages any property, whether belonging to himself or another,

(a) intending to destroy or damage any property, or being reckless as to whether any property would be destroyed or damaged; and

(b) intending by the destruction or damage to endanger the life of another, or being reckless as to whether the life of another would thereby be endangered.

(3) An offence committed under this section by destroying or damaging property by fire shall be charged as arson.

(4) A person convicted of arson under subsection (1) or of any offence under subsection (2) is liable to imprisonment for life, and a person convicted of any other offence under this section is liable to imprisonment for a term not exceeding ten years.

266. Any person who, without lawful excuse, makes to another a threat, intending that that other would fear that it would be carried out,

(a) to destroy or damage any property belonging to that other person or a third person, or

(b) to destroy or damage his own property in a way which he knows is likely to endanger the life of that other person or third person,

commits an offence and is liable on conviction to imprisonment for a term not exceeding ten years.

267. Any person who has anything in his custody or under his control intending, without lawful excuse, to use it to cause or permit another to use it

(a) to destroy or damage any property belonging to some other person, or

(b) to destroy or damage any property, whether belonging to himself or another, in a way which he knows is likely to endanger the life of some other person,

commits an offence and is liable on conviction to imprisonment for a term not exceeding ten years.

268. (1) This section applies to an offence under section 265, and any offence under section 266 and 267 other than one involving a threat by the person charged to destroy or damage property in a way which he knows is likely to endanger the life of another or involving an intent by the person charged to use or permit the use of something in his custody or under his control so to destroy or damage property.

(2) A person charged with an offence to which this section applies shall, whether or not he would be treated for the purpose of this Part as having a lawful excuse apart from this subsection, be treated for those purposes as having a lawful excuse,

(a) if at the time of the act alleged to constitute the offence he believed that the person whom he believed to be entitled to consent to the destruction of or damage to the property in question had so consented, or would have so consented to it if he had known of the destruction or damage and its circumstances; or

(b) if he destroyed or damaged or threatened to destroy or damage the property in question or, in the case of a charge of an offence under section 267, intended to use or cause or permit the use of something to destroy or damage it, in order to protect property belonging to himself or another or a right or interest in property which was, or which he believed to be, vested in himself or another, and at the time of the acts alleged to constitute the offence he believed

(i) that the property, right or interest was in immediate need of protection; and

(ii) that the means of protection adopted or proposed to be adopted were or would be reasonable having regard to all the circumstances.

(3) For the purposes of this section, it is immaterial whether a belief is justified or not if it is honestly held.

(4) For the purposes of subsection (2), a right or interest in property includes any right or privilege in or over land, whether created by grant, license or otherwise.

(5) This section shall not be construed as casting doubt on any defence recognized by law as a defence to a criminal charge.

269. (1) For the purpose of this Part,

(a) “property” means property of a tangible nature, whether real or personal, including money, growing crops, trees and other vegetable products, and wild creatures, which have been tamed or are ordinarily kept in captivity and any other wild creatures or their carcasses if they have been reduced into possession which has not been lost or abandoned, or are in the course of being reduced into possession;

(b) property shall, subject to paragraph (c), be treated as belonging to any person

i) having the custody of it;

- ii) having in it a proprietary right or interest (not being an equitable interest arising only from an agreement to transfer or grant an interest); or
  - iii) having a charge on it;
- (c) a tenant, under whatever form of tenure, may be convicted of an offence under this Part in respect of the property of his landlord notwithstanding that at the time of the offence the tenant had the custody of such property;
- (d) placing in or allowing any noxious substance to enter, any pond, river, well or watercourse shall be deemed to cause damage to the property of the owner or of any other person who has a right to use that pond, river, well or watercourse for any purpose.

(2) Where the property is subject to a trust, the person to whom it belongs shall be deemed to include any person having a right to enforce the trust.

(3) Property of a corporation sole shall be treated as belonging to the corporation notwithstanding a vacancy in the corporation.

270. On conviction of any person of an offence of destroying or damaging the property of another under section 265, the court may make a compensation order requiring him to pay compensation in respect of any injury, loss or damage arising from the offence.

271 (1) Without prejudice to the power to issue a search warrant under any law, if it is made to appear by information on oath before a Magistrate or a justice of the peace that there is reasonable cause to believe that any person has in his custody or under his control or on his premises anything which there is reasonable cause to believe is intended for use without lawful excuse

- (a) to destroy or damage property belonging to another, or
- (b) to destroy or damage any property in a way likely to endanger the life of another, the Magistrate or the justice of the peace, as the case may be, may grant a warrant authorizing any police officer to search for and seize that thing.

(2) A police officer who is authorized to search any premises under a warrant issued under this section may enter, if necessary by force, and search the premises accordingly and may seize anything which he believes to be intended to be used as mentioned in subsection (1).

272. (1) A person commits an offence and is liable on conviction to imprisonment for life, if he willfully and unlawfully

- (a) casts away or destroys any aircraft, vehicle or vessel, whether or not same is in a complete state; or
- (b) does any act which tends to the immediate loss or destruction of any aircraft, vehicle or vessel, whether or not he same is in a complete state.

(2) Any person who is convicted of an attempt to commit an offence under subsection (1) is liable to imprisonment for a term not exceeding fourteen years.

## PART XVIII

### CRIMINAL LIBEL

273. (1) Subject to the other provisions of this Part, any person who, by printing, effigy or by any other means in a permanent form and otherwise than solely any gestures, spoken words or sounds, unlawfully publishes any defamatory matter concerning another person with intent to defame that other person, commits the offence of libel and is liable on conviction to imprisonment for a term not exceeding one year or to a fine not exceeding one thousand dollars, or both.

(2) Notwithstanding subsection (1), for the purposes of this Part, the broadcasting of words by any means of wireless telegraphy shall be treated a publication in a permanent form.

(3) A prosecution for an offence under this section shall not be instituted except by, or with the consent of the Attorney General.

274. (1) Defamatory matter is matter likely to injure the reputation of any person by exposing him to hatred, contempt or ridicule, or likely to damage any person in his profession or trade by an injury to his reputation or to disturb the peace of the community.

(2) It is not necessary for libel that a defamatory meaning should be directly or completely expressed, and it suffices if such meaning and its application to the person alleged to be defamed can be collected either from the alleged libel itself or from any extrinsic circumstances, or partly from one and partly the other.

275. A person publishes a libel if he causes the medium by which the defamatory matter is conveyed to be so dealt with or used that the defamatory meaning thereof becomes known or is likely to become known either to the person defamed or to any other person.

276. Any publication of defamatory matter concerning a person is unlawful within the meaning of this Part, unless

- (a) the matter is true and it was for the public benefit that it should be published; or
- (b) it is privileged on one of the grounds hereafter in this Part mentioned.

277. (1) The publication of defamatory matter is absolutely privileged, and no person shall under any circumstances be liable to punishment under this Code in respect thereof, in any of the following cases:

- (a) if the matter is published by the Governor or by the Legislative Council in any official document or proceeding;

- (b) if the matter is published in the Legislative Council by the Governor or by any member of the Legislative Council;
- (c) if the matter is published by order of the Governor;
- (d) if the matter is published concerning a person subject for the time being to naval, military, air-force or police discipline, and relates to his conduct as a person subject to such discipline and is published by some person having authority over him in respect of such conduct, and to some person also having authority over him in respect of such conduct.
- (e) If the matter is published in the course of any judicial proceeding by a person taking part therein as a judge, magistrate, justice of the peace, commissioner, barrister-at-law, juror, assessor, arbitrator, referee, witness or party thereof;
- (f) If the matter published is in fact a fair report of anything said, done or published in the Legislative Council; or
- (g) If the person publishing the matter does so in pursuance of a duty imposed by law.

(2) For the purposes of this section, references to the Legislative Council shall be deemed to include any committee of the Legislative Council.

(3) Where a publication is absolutely privileged, it is immaterial for the purposes of this Part, whether the matter be true or false, and whether it be or be not known or believed to be false, and whether it be or be not published in good faith.

278. A publication of defamatory matter is privileged if it was published in good faith, if the relation between the parties by and to whom the publication is made is such that the person publishing the matter is under some legal, moral or social duty to publish it to the person to whom the publication is made or has a legitimate personal interest in so publishing it, and provided that the publication does not exceed either in extent or matter what is reasonably sufficient for the occasion, in any of the following cases:

- (a) if the matter published is in fact a fair report of anything said, done or shown in a civil or criminal inquiry or proceeding done before any court, except that if the court prohibits the publication of anything said or shown before it, on the grounds that it is seditious, immoral or blasphemous, the publication thereof shall not be privileged;
- (b) if the matter published is a copy by reproduction, or in fact a fair abstract or summary, of any matter which has been previously published, and the previous publication of which was or would have been privileged under section 277;
- (c) if the matter is an expression of opinion in good faith as to the conduct of a person in a judicial, official or other public capacity, or as to his personal character so far as it appears in such conduct;

- (d) if the matter is an expression of opinion in good faith as to the conduct of a person in relation to any public question or matter, or as to his personal character so far as it appears in such conduct;
- (e) if the matter is an expression of opinion in good faith as to the conduct of any person as disclosed by evidence given in a legal proceeding held in public, whether civil or criminal, or as to the conduct of any person as a party, witness or otherwise in any such proceeding, or as to the character of any person so far as it appears in any such conduct;
- (f) if the matter is an expression of opinion in good faith as to the merits of any book, writing, painting, speech or other work, performance or act published or publicly done or made or submitted by a person to the judgment of the public, or as to the character of a person so far as it appears therein;
- (g) if the matter is a censure passed by a person in good faith on the conduct of another person in any matter in respect of which he has authority, by contract or otherwise, over the other person, or on the character of the other person so far as it appears in such conduct;
- (h) if the matter is a complaint or accusation made by a person in good faith against another person in respect of his conduct in any matter, or in respect of his character so far as it appears in such conduct, to any person having authority by law to inquire into or receive complaints respecting such conduct or matter or
- (i) if the matter is published in good faith for the protection of the rights or interests of the person who publishes it, or of the person to whom it is published or of some person in whom the person to whom it is published is interested.

279. A publication by any person of defamatory matter shall not be deemed to have been made in good faith, within the meaning of section 278, if it is made to appear

- (a) that the matter was untrue and that he did not believe it to be true;
- (b) that the matter was untrue and that he published it without taking reasonable care to ascertain whether it was true or false; or
- (c) that in publishing the matter, he acted with intent to injure the person defamed in a substantially greater degree or substantially otherwise than was reasonably necessary for the interest of the public or the protection of the private right or interest in respect of which he claims to be privileged.

280. If it is proved, on behalf of an accused person, that any defamatory matter was published under such circumstances that the publication would have been justified if made in good faith, the publication shall be presumed to have been made in good faith until the contrary is made to appear, either from the libel itself or from the evidence given on behalf of the accused person or from evidence on behalf of the prosecution.

## PART XIX

## NUISANCES AND OTHER OFFENCES AGAINST THE PUBLIC IN GENERAL

281. Any person who does an act not authorized by law or who omits to discharge a legal duty and thereby causes a common injury or danger or annoyance, or who obstructs or causes inconvenience to the public in the exercise of common rights, commits the offence of being a common nuisance and is liable on conviction to imprisonment for a term not exceeding six months or to a fine not exceeding five hundred dollars.

282. (1) A person commits an offence and is liable on conviction to imprisonment for a term not exceeding six months or to a fine not exceeding five hundred, if he watches and besets

(a) any premises or the approaches to any premises with a view to preventing any person from doing any act which such person has a legal right to do there; or

(b) the house or other place where any person resides, works or carries on business, or happens to be, or the approaches to any such house or place, with a view to preventing such person from doing or compelling him to do any act which such person has a legal right to do or abstain from doing.

(2) No proceeding shall be brought in respect of an offence under this section without the consent of the Attorney General.

283. (1) Any person who sends or causes to be sent any chain letter, or who sends or receives any money or money's worth in connection with any chain letter, commits an offence and is liable on conviction to imprisonment for a term not exceeding six months or to a fine not exceeding five hundred dollars.

(2) For the purposes of this section, "chain letter" means a document addressed by one person to another suggesting to the person to whom it is addressed or requiring

(a) that he should send a document having the same purport to one or more other persons; and

(b) that he should remit to a person or to an address specified in the first mentioned document money or money's worth.

284. (1) A person commits an offence and is liable on conviction to imprisonment for a term not exceeding six months or to a fine not exceeding five hundred dollars, if he,

(a) for the purposes of or by way of trade, or for the purpose of distribution or public exhibition, makes, produces or has in his possession any obscene writing, drawing, print, painting, printed matter, pictures, posters, emblems, photographs, films, discs or any other obscene objects tending to corrupt morals;

(b) for the purposes mentioned in paragraph (a) imports, conveys or exports, or causes to be imported, conveyed or exported, any such matter or thing, or in any manner puts any of the same into circulation;

(c) carries on or takes part in any business, whether public or private, concerned with any such matter or things as mentioned in paragraph (a), or deals in the same in any manner, or distributes them publicly or makes a business of lending them;

(d) advertises or makes known by any means with a view to assisting the circulation of or traffic in, any such matter or thing as mentioned in paragraph (a), that a person is engaged in any of the acts referred to in this section, or advertised or makes known how, or from whom, any such matter or thing can be procured either directly or indirectly; or

(e) publicly exhibits any indecent show or performance, or any show or performance tending to corrupt morals.

(2) On the application of the Commissioner of Police, a Magistrate may order the destruction of any obscene matter or thing to which this section relates and which has been seized by or otherwise come into possession of the police, whether or not any person has been convicted under the provisions of this section in respect of such obscene matter or thing.

285. (1) Any person who

(a) wanders abroad or (not being a blind or disabled person,) places himself in any public place for the purpose of begging, or who causes or procures any child so to do or, having the custody, charge or care of a child, allows the child to be in any street, premises or public place for the purpose of begging or receiving alms, or of inducing the giving of alms (whether or not there is any pretence of singing, playing, performing, offering anything for sale or otherwise),

(b) being a common prostitute behaves in a disorderly or indecent manner in a public place,

(c) pretends to deal in obeah (as defined in section 290), myalism, duppy catching or witchcraft, or tells fortunes by palmistry or like superstitious means intending to deceive or impose people,

(d) publicly does an indecent act,

(e) in any public place conducts himself in a manner likely to cause a breach of the peace,

(f) solicits for immoral purposes in any public place,

(g) in any public place plays any game or pretended game of chance for money or money's worth,

(h) endeavours to obtain, or actually obtains, contributions for a charitable purpose unless authorized in writing so to do by the Commissioner of Police, in accordance with the Public Collections (Control) Ordinance or in pursuance of any instructions in that behalf given by the Governor in Council, or

(i) has no fixed abode and sleeps by night in open or public places, shall be deemed an idle and disorderly person and is liable on conviction to imprisonment for a term not exceeding three months or to a fine not exceeding two hundred and fifty dollars.

(2) The provisions of subsection (1) (h) shall not apply to charitable appeals or collections made in any established place of religious worship or on behalf of a religious organization recognized by the Governor in Council for the purpose of this section.

286. (1) Any person who

(a) has in his custody or possession, without lawful excuse (the proof of which lies on him) any pick-lock, key, jimmy or crow-jack, bit or other implement of housebreaking, with intent to break into any house or other building,

(b) is armed with any firearm, cutlass, bludgeon or other offensive weapon or instrument, with intent to commit any criminal act,

(c) is found by night, without lawful excuse (the proof of which lies on him) in or upon any dwelling house, warehouse, garage, stable or other building, or in any enclosed garden, yard or area, or on board any vessel or aircraft,

(d) having previously been convicted of an offence under Part XIV (or of any similar offence involving dishonesty or larceny under any law in force before the coming into force of this Code), frequents any wharf, warehouse or place adjoining thereto, with intent to commit an offence, or

(e) upon being apprehended as an idle and disorderly person, violently resists any police officer arresting him,

shall be deemed to be a rogue and a vagabond, and commits an offence and is liable on conviction,

(i) for a first offence under this section, to imprisonment for a term not exceeding one year;

(ii) for every subsequent offence under this section, or for an offence under this section after having been previously convicted as a rogue and vagabond under any law in force immediately before the coming in force of this Code, to imprisonment for a term not exceeding two years.

And every weapon or instrument of house breaking in the possession of the offender at the time of the offence shall, upon the conviction, be forfeited to the Crown.

(2) In proceedings under this section, it shall not be necessary in proving the intent to commit an offence to show that the person accused was guilty of any act or acts tending to show his purpose or intent, and he may be convicted if from the circumstances of the case and his known character as proved to the court, it appears to the court that his intent was as alleged, and his known character, as proved, shall be relevant evidence in that behalf.

287. (1) Any person who, in any public place, conducts himself in a disorderly manner, or conducts himself in such a noisy manner as to disturb the neighbourhood, commits an offence and is liable on conviction to imprisonment for a term not exceeding three months or to a fine not exceeding two hundred and fifty dollars.

(2) If any person, on any private premises, conducts himself, or allows any other person so to conduct himself thereon, as to repeatedly annoy or disturb the neighbourhood, any person disturbed or annoyed thereby may complain to a Magistrate who, if satisfied by evidence on oath that there are good grounds for such complaint, may cause the person so offending to be warned, and if, after such warning, such person, within three months, so conducts himself, or allows any other person so to conduct himself on the same premises as to annoy or disturb the neighbourhood, he commits an offence and is liable on conviction to imprisonment for a term not exceeding three months or to a fine not exceeding two hundred and fifty dollars.

(3) Any person who behaves profanely, indecently or in a disorderly manner during the performance of any religious worship or ceremony, or who smokes in any building appropriated for religious worship while any service or ceremony is taking place therein, commits an offence and is liable on conviction to imprisonment for a term not exceeding six months or to a fine not exceeding five hundred dollars.

(4) Any person who willfully disturbs, interrupts or disquiets any body of persons, assembled for any lawful purpose, by profane discourse, rude or indecent behavior, or by making a noise, either within the place of such assemble or so near thereto as to disturb the same, commits an offence and is liable on conviction to imprisonment for a term not exceeding three months or to a fine not exceeding two hundred and fifty dollars.

(5) Any person who at a lawful public meeting acts in a disorderly manner for the purpose of preventing the transaction of the business for which the meeting was called or who incites any other person so to act, commits an offence and is liable on conviction to imprisonment for a term not exceeding three months or to a fine not exceeding two hundred and fifty dollars.

288. (1) Any person found drunk in any public place or upon any premises licensed for the sale of alcohol, commits an offence and is liable on conviction

(a) upon a first conviction for such an offence, to a fine not exceeding fifty dollars;

(b) upon a second or subsequent conviction for such an offence, to a fine not exceeding one hundred dollars;

(c) upon any subsequent conviction within a period of twelve months from the date of a second or subsequent conviction for such an offence, to imprisonment for a term not exceeding three months or to a fine not exceeding two hundred and fifty dollars, or both.

(2) Any person found drunk in any public place when

(a) in charge of any vehicle or animal, or

(b) in possession of any firearm,

commits an offence and is liable on conviction to imprisonment for a term not exceeding six months or to a fine not exceeding five hundred dollars.

289. (1) Any person who uses any abusive, blasphemous, indecent, insulting, profane or threatening language

(a) in any public place,

(b) in any place to the annoyance of the public, or

(c) in any circumstances likely to cause a breach of the peace,

commits an offence and is liable on conviction to imprisonment for a term not exceeding three months or to a fine not exceeding two hundred and fifty dollars.

(2) Any person who in any public place or at any meeting open to members of the public, whether on payment or otherwise, makes any statement about any person which he knows to be false, or which statement is calculated or likely to bring such person into ridicule, odium, or contempt, or to undermine confidence in such person or in the conduct of public affairs by any person in any official position, commits an offence and is liable on conviction to imprisonment for a term not exceeding one year or to a fine not exceeding one thousand dollars, or both.

(3) For the purposes of subsection (2), “person in an official position” includes the Governor, any member of the Executive or Legislative Council, and any judge, magistrate, justice of the peace or member of any Commission of Inquiry issued under the Commissions of Inquiry Act.

(4) Any person who

(a) in any public place or at any meeting open to members of the public, whether on payment or otherwise, makes any statement which he knows to be false, makes such statement recklessly without regard to its truth or otherwise, or

(b) prints or distributes such a statement, which is of such a nature as to be likely to cause fear of alarm or to disturb the public peace or undermine the public confidence in the conduct of public affairs, commits an offence and is liable on conviction to imprisonment for a term not exceeding six months or to a fine not exceeding five hundred dollars.

(5) A prosecution for an offence under this section shall not be brought except by, or with the consent of, the Attorney General.

290. (1) For the purpose of this section and of section 285 (1) (c),

(a) a person practicing or dealing in obeah or myalism means a person who, to effect any fraudulent or unlawful purposes or for gain, or for the purpose of frightening any person, uses or pretends to use any occult means, or pretends to possess any supernatural power or knowledge; and

(b) “instrument” of obeah or myalism” means anything commonly used in or associated with the practice of obeah or myalism.

(2) A person commits an offence and is liable on conviction to imprisonment for a term not exceeding one year or to a fine not exceeding one thousand dollars, or both, if he

(a) practices or deals in obeah or myalism;

(b) for any fraudulent or unlawful purpose, consults any person practicing or reputed to be practicing, or who has been convicted of any offence under any law relating to, obeah or myalism; or

(c) for the purpose of effecting any purpose or bringing about any event by the use of occult means or any supernatural power or knowledge, consults any person practicing or reputed to be practicing obeah or myalism, or any person who has been convicted of any offence under any law relating to obeah or myalism and agrees to reward the person so consulted.

(3) Any person who has in his possession any instrument of obeah or myalism or who has under his control any premises upon which any such instrument is found shall, unless the contrary is proved, be deemed to be practicing obeah or myalism at the date when such instrument is found.

(4) Any person who composes, prints, sells or distributes any pamphlet or other printed or written matter calculated to promote the superstition of obeah or myalism, commits an offence and is liable on conviction to the same punishment as a person convicted of practicing obeah or myalism.

(5) Any court before which a person is convicted of an offence under this section may, in addition to any fine or sentence of imprisonment imposed, order that the person so convicted shall be subject to police supervision for a period not exceeding two years from the date of imposition of such fine or the expiration of any term of imprisonment, whichever is the later date, and thereupon such person shall be subject to the provisions of the Prevention of Crimes Act

291. Any person who unlawfully or negligently does any act which he knows or has reason to believe to be likely to cause the spread of any infectious or contagious disease, commits an offence and is liable on conviction to imprisonment for a term not exceeding six months or to a fine not exceeding five hundred dollars.

292. A person commits an offence and is liable on conviction to imprisonment for a term not exceeding six months or to a fine not exceeding five hundred dollars, or both, if he

(a) intentionally or negligently corrupts or fouls the water of any spring, stream, well or reservoir so as to render it less fit for the use of mankind or any livestock;

(b) intentionally or negligently vitiates the atmosphere in any place so as to render it noxious to the health or comfort of person in the neighbourhood;

(c) for any purpose makes loud noises or offensive smells in such place and circumstances as to interfere with the comfort of persons in the exercise of their common rights; or

(d) deposits offal or refuse in the sea within five hundred yards of the shore.

293. A person commits an offence and is liable on conviction to imprisonment for a term not exceeding six months or to a fine not exceeding five hundred dollars, or both, if he

(a) adulterates any article of food or drink so as to make such article noxious as food or drink, intending to sell or offer or sale the same as food or drink, or knowing that it is likely that it will be offered for sale as such;

(b) sells or offers for sale as food or drink any article which has been rendered or has become noxious or in a state unfit for use as food or drink, knowing or having reason to believe that the same is unfit for such use;

(c) adulterates any drug or medical preparation in such manner as to lessen the efficacy or to change the operation of such drug or preparation, or to make it noxious, intending that it shall be or is likely to be sold or offered for sale for any medical purpose as if it had not been so adulterated or rendered noxious; or

(d) knowing that any drug or medical preparation has been adulterated or rendered noxious, as mentioned in paragraph (c), sells the same or offers it for sale or issues it from any dispensary for medicinal purposes as if it had not been so adulterated or rendered noxious, or causes it to be so issued by any person.

294. (1) Any person who, without lawful excuse or authority, wears any uniform of the armed or police force of any Commonwealth country, or any clothing having the appearance or intended to have the appearance of such uniform, commits an offence and is liable on conviction to imprisonment for a term not exceeding six months or to a fine not exceeding five hundred dollars.

(2) It shall not be an offence under this section for a person taking part in a bona fide theatrical or similar entertainment to wear a costume resembling a military uniform, when required for the purpose of representing a particular character, but in such case the badges shall not be identical with those of any armed or police force of any Commonwealth country.

295. (1) Any person who in any place, negligently or recklessly, carries or uses any fire, commits an offence and is liable on conviction to imprisonment for a term not exceeding three months or to a fine not exceeding two hundred and fifty dollars.

(2) Any person who, by the careless or improper use of fire within any town or village, endangers any lives or property therein, commits an offence and is liable on conviction to imprisonment for a term not exceeding one year or to a fine not exceeding one thousand dollars, or both.

296. (1) Any person who, in or in the vicinity of any public place, unlawfully throws or discharges any missile or dangerous object to the damage or danger of any property or person, commits an offence and is liable on conviction to imprisonment for a term not exceeding one year or to a fine not exceeding one thousand dollars, or both.

(2) For the purpose of subsection (1), it is immaterial whether or not any person was actually injured or any property damaged, if in the circumstances of the case a reasonable person would have anticipated that such injury or damage might have occurred.

297. Any person who, without the consent of the owner or occupier,

(a) posts any advertisement, bill, placard or other paper against or upon, or

(b) writes upon, soils, marks or defaces,

any building, wall, fence, lamp post or other similar object, commits an offence and is liable on conviction to imprisonment for a term not exceeding three months or to a fine not exceeding two hundred and fifty dollars.

298. Any person who takes or attempts to take any vessel from or out of any mooring, wharf, boat-house, berth, beach, landing-stage or other place for the purpose of using same without the consent of the owner or other person having charge thereof, and without any reasonable claim of right or title thereto, commits an offence and is liable on conviction to imprisonment for a term not exceeding one year or to a fine not exceeding one thousand dollars, or both.

299. Any person in charge of any animals (other than cats or dogs) in any public place who willfully remains at such a distance from them as not to have proper control over them, commits an offence and is liable on conviction to a fine not exceeding two hundred and fifty dollars.

300. (1) Subject to subsection (2), any person who, in any public place or within one hundred yards thereof, discharges any firearm or lets off any fireworks, commits an offence and is liable on conviction to imprisonment for a term not exceeding three months or to a fine not exceeding two hundred and fifty dollars.

(2) A person shall not be convicted of an offence under subsection (1) by reason only that he fires a starting pistol or similar weapon in the ordinary course of the conduct of a sporting or athletic event, or that he lets off a firework in the ordinary course of some festival or celebration at which the use of fireworks has been permitted under the Fireworks Act.

301. (1) Any person who knowingly permits, or is concerned in, the use of any building or place for the purpose of gambling, betting or the holding of a lottery or sweepstake, commits an offence and is liable on conviction to imprisonment for a term not exceeding one year or to a fine not exceeding one thousand dollars, or both.

(2) A Magistrate or justice of the peace, on being satisfied by evidence on oath that there is good reason to believe that any house or place is kept or used for a purpose contrary to subsection (1) may, by warrant, authorize any police officer, with such assistance and by such force as may be necessary, by day or night to enter such house or place and to search the same and any persons found therein, and to seize all instruments and appliances of gambling, betting, or required for the holding of a lottery or sweepstake, and all money, securities for money and other articles reasonably supposed to have been used or intended to be used for any such purpose, and also to detain any persons there found until the completion of the search of such house or place.

(3) Where any instrument or appliances are found in the house or place searched, every person found therein at the time may be detained in custody until he can be brought before the court, or is granted bail by the police officer in charge of such search, for his appearance before the court.

(4) If, owing to the lateness of the hour or other sufficient cause, a search warrant cannot be obtained with sufficient speed, a police officer in uniform, not below the rank of sergeant, may exercise the powers referred to in subsection (3) without a search warrant.

(5) If any instruments or appliances for gambling, betting or the holding of a lottery or sweepstake are found in any house or place or on any person searched in pursuance of the powers conferred by this section, the fact of such finding shall be deemed to be evidence, until the contrary is made to appear, that such house or place was being used for gambling, betting or the holding of a lottery or sweepstake and that the persons found therein or escaping therefrom were gambling, betting or taking part in a lottery or sweepstake therein, although no such activity was actually seen by any police officer or other person assisting him at the time of entering or searching such house or place.

(6) Any person who is found in the house or place as is mentioned in subsection (5) commits an offence and shall, unless he satisfies the court to the contrary, be deemed to have been taking part in gambling or betting, or in a lottery or sweepstake and is liable on conviction to imprisonment for a term not exceeding six months or to a fine not exceeding five hundred dollars.

(7) Any person playing or betting in any public place at or with any table or instrument of gambling at any game, or pretended game of chance, commits an offence and is liable on conviction to imprisonment for a term not exceeding three months or to a fine not exceeding two hundred and fifty dollars.

(8) Nothing in this section shall apply to any lottery, sweepstake, pari mutuel or pool betting organized and controlled by an approved social and charitable organization or turf club or in connection with any race meeting held by or under the auspices of such club and, for the purposes of this subsection, "approved" means approved by the Governor in Council.

302. Any person who, being wholly or in part able to maintain his or her children, and if a male, his wife (if any) by work or other lawful means, refuses or neglects to do so, commits an offence and is liable on conviction to imprisonment for a term not exceeding three months or to a fine not exceeding two hundred and fifty dollars.

(2) Proceedings in respect of an offence under subsection (1) shall be without prejudice to any other legal remedy available to any person to enforce the payment of maintenance for, or to recover the cost of any necessaries supplied to, the wife (if any) and family of the offender.

303. Any person who unlawfully and maliciously depastures any animal on any land, public place or thoroughfare, commits an offence and is liable on conviction to imprisonment for a term not exceeding three months or to a fine not exceeding two hundred and fifty dollars.

304. Any person who willfully obstructs any police officer in the execution of his duties, commits an offence and is liable on conviction to imprisonment for a term not exceeding six months or to a fine not exceeding five hundred dollars.

305. (1) Any person who, in any public place, when lawfully called upon by a police officer to assist such officer in apprehending or securing any person whom such officer is endeavouring to apprehend or secure, without reasonable excuse refuses so to do, commits an offence and is liable on conviction to imprisonment for a term not exceeding three months or to a fine not exceeding two hundred and fifty dollars.

(2) Any person who, when lawfully required so to do by a judicial officer or police officer, refuses to give his name and address or gives a false name and address, commits an offence and is liable on conviction to imprisonment for a term not exceeding three months or to a fine not exceeding two hundred and fifty dollars.

306. (1) Any person who takes or drives or attempts to take or drive any animal from or out of any enclosure, stable, pasture or other place for the purpose of using the animal without the consent of the owner or other person entrusted with the charge thereof, and without having any probable claim or entitle thereto, commits an offence and is liable on conviction to a fine not exceeding two hundred and fifty dollars.

(2) Proceedings in respect of an offence under subsection (1) shall be without prejudice to any other legal remedy available to the party aggrieved for the recovery of any such animal and for damages in respect of the taking or using thereof by the offender or for any injury caused to the animal.

307. (1) Any person who behaves in an indecent manner in a public place, commits an offence and is liable on conviction to imprisonment for a term not exceeding three months or to a fine not exceeding two hundred and fifty dollars.

(2) Any person who writes or draws any indecent word, figure or representation in any public place, commits an offence and is liable on conviction to a fine not exceeding two hundred and fifty dollars.

(3) Any person who willfully

(a) exposes in any public place or in any premises visible or accessible to the public from any public place any obscene print, picture, photograph or indecent exhibition, or

(b) exposes his person in any public place or in view thereof,

commits an offence and is liable on conviction to imprisonment for a term not exceeding six months or to a fine not exceeding five hundred dollars.

308. Any person who is charged with having his possession in any place, or conveying in any manner, anything which is reasonably suspected of being stolen or unlawfully obtained and who does not give an account to the satisfaction of the court as to how he came by that thing, commits

an offence and is liable on conviction to imprisonment for a term not exceeding six months or to a fine not exceeding five hundred dollars.

309. Any person who, unlawfully and with force, hinders or prevents any person from working at or exercising his lawful trade, business or occupation, or who uses any threat of violence to any such person with intent to hinder him from working at or exercising such trade, business or occupation, commits an offence and is liable on conviction to imprisonment for a term not exceeding three months or to a fine not exceeding two hundred and fifty dollars.

310. (1) Where the facts alleged to constitute an offence charged under this Part appear to the Magistrate also to constitute another offence, not triable summarily, under some other Part or under some other law, the Magistrate, in his discretion, may stay the proceedings brought in respect of such offence under this Part and hold a preliminary inquiry with a view to committing the accused person for trial before the High Court for that other offence.

(2) Where the person committed for trial under subsection (1) is convicted before the High Court of that other offence, no further proceedings shall be taken on the same facts for an offence under this Part.

## **PART XX**

### **CONSPIRACY, ATTEMPT AND ASSISTING OFFENDERS**

311. (1) Subject to the provisions of this Part, a person who agrees with any other person that a course of conduct should be pursued which will necessarily amount to or involve the commission of an offence by one or more of the parties to the agreement if the agreement is carried out in accordance with their intention, is guilty of conspiracy to commit the offence in question.

(2) Where liability for an offence may be incurred without knowledge on the part of the person committing it of any particular fact or circumstance necessary for the commission of the offence, a person shall not be convicted of conspiracy to commit that offence by virtue of subsection (1), unless he and at least one other party to the agreement intend, or know, that the fact or circumstance shall or will exist at the time when the conduct constituting the offence is to take place.

(3) Where in pursuance of an agreement the acts in question in relation to an offence are to be done in contemplation or furtherance of a trade dispute, that offence shall be disregarded for the purposes of subsection (1), provided that it is an offence which is not punishable with imprisonment except in default of payment of a fine.

(4) For the purposes of this Part,

“offence” means an offence triable in the Territory, and it includes murder notwithstanding that the murder in question would not be so triable if committed in accordance with the intention of the parties; and

“trade dispute” means any dispute or differences between employers and workmen, or between workmen alone, connected with the employment or non-employment or the terms of employment, or the conditions of labour, of any person.

312. Any person who is convicted of conspiracy to commit an offence is, unless any other punishment is provided in this Code or any other law, liable to be punished for a term not exceeding the maximum penalty prescribed for that offence.

313. Any person who conspires with any other person to engage in conduct which tends to corrupt public morals or outrage public decency but would not amount to, or involve the commission of an offence if carried out by a single person otherwise than in pursuance of an agreement, commits an offence and is liable on conviction to imprisonment for a term not exceeding six months or to a fine not exceeding five hundred dollars.

314. A person shall not, by virtue of section 311, be convicted of conspiracy to commit an offence, if

(a) he is the sole intended victim of the offence; or

(b) the only person with whom he agrees is (both initially and at all times during the currency of the agreement) a person of any one or more of the following descriptions:

(i) his spouse;

(ii) a person under the age of ten years;

(iii) the sole intended victim of that offence.

315. (1) The rules laid down by section 311 and 314 shall apply for determining whether a person is guilty of an offence of conspiracy under any provisions of any enactment other than section 313.

(2) Incitement and attempt to commit the offence of conspiracy (whether the conspiracy incited or attempted would be an offence at common law or under section 311 or any other enactment) shall, on the coming into force of this Code, cease to be offences.

(3) The fact that the person who, so far as appears from the charge on which any person has been convicted of conspiracy, was the only other party to the agreement on which his conviction was based, has been acquitted of conspiracy by reference to that agreement (whether after being tried with the person convicted or separately) shall not be a ground for quashing his conviction, unless in all the circumstances of the case his conviction is inconsistent with the acquittal of the other person in question.

(4) Any rule of law or practice that is inconsistent with subsection (3) is abolished.

316. (1) Where a person, intending to commit an offence, begins to put his intention into execution by an act which goes so far towards the commission of the offence as to be more than

merely a preparatory act, but does not fulfill his intention to such an extent as to commit the offence, he is deemed to attempt to commit the offence.

(2) It is immaterial except in so far as regards punishment, whether the offender does all that is necessary on his part for completing the commission of the offence, or whether the complete fulfillment of his intention is prevented by circumstances independent of his will, or whether he desists on his own motion from the further prosecution of his intention.

317. (1) Any person who attempts to commit an offence, commits an offence and is, unless any other punishment is provided in this Code or any other law, liable on conviction,

(a) if the completed offence is punishable by imprisonment for life, or for ten years or more, to imprisonment for a term not exceeding seven years;

(b) if any other case, to the same penalty as may be imposed for the completed offence itself.

(2) A person charged with an attempt to commit an offence shall be charged under the section, whether of this Code or any other law, creating the offence under which he would be charged if the charge was of the complete offence.

(3) A provision in any law, including this Code, as to the consequences which may or shall follow conviction for any offence or as to the procedure or any other matter applicable where a person is convicted of an offence, shall apply equally where a person is charged or convicted of an attempt to commit the offence.

318. (1) Subject to subsection (2) and (3), where a person has committed an arrestable offence (as defined in section 320), any other person who, knowing or believing him to be guilty of that offence or of some other arrestable offence does, without lawful authority or reasonable excuse, an act to impede his apprehension or prosecution, commits an offence and is said to be an accessory after the fact.

(2) A wife does not become an accessory after the fact to an offence which her husband has committed by receiving in her husband's presence and by his authority another person who has committed an offence in the commission of which her husband has taken part, in order to enable that other person to escape punishment or avoid apprehension.

(3) a husband does not become an accessory after the fact to an offence which his wife has committed by receiving he or assisting he in order to enable her to escape punishment or avoid apprehension.

(4) If on the trial of an indictment for an arrestable offence the jury are satisfied that the offence charged (or some other offence of which the accused might on that charge be found guilty) was committed, but find the accused not guilty of it, they may find him guilty of any offence under subsection (1) of which they are satisfied that he is guilty in relation to the offence charged (or that other offence).

(5) A person who is convicted of being an accessory after the fact is liable to imprisonment according to the gravity of the offence to which he was accessory, as follows:

(a) if the offence is one of which the sentence is fixed by law, he is liable to imprisonment for a term not exceeding ten years;

(b) if the offence is one for which a person (not previously convicted) may be sentenced to imprisonment for fourteen years or more, he is liable to imprisonment for a term not exceeding seven years;

(c) if the offence is not included in paragraph (a) or )b) but is one for which a person (not previously convicted) may be sentenced to imprisonment for ten years, he is liable to imprisonment for a term not exceeding five years;

(d) in any other case, he is liable to imprisonment for a term not exceeding three years.

319. Where a person has committed an arrestable offence (as defined in section 320), any other person who, knowing or believing that the offence or some other arrestable offence has been committed, and that he has information which might be material assistance in securing the prosecution or conviction of the offender for it, accepts or agrees to accept for not disclosing that information any consideration other than the making good of loss or injury caused by the offence, or the making of a reasonable compensation for that loss or injury, commits an offence and is liable on conviction to imprisonment for a term not exceeding two years.

## PART XXI

### MISCELLANEOUS

320. (1) The powers of summary arrest conferred by this section shall apply to offences for which the sentence is fixed by law or for which a person (not previously convicted) may under or by virtue for a term of five years or longer, and to attempts to commit any such offence, and in this Code and in any other law “arrestable offence” means any such offence or attempt.

(2) Any person may arrest, without a warrant, anyone who is, or whom he, with reasonable cause suspects to be, in the act of committing an arrestable offence.

(3) Where an arrestable offence has been committed, any person may arrest, without a warrant anyone who is, or whom he, with reasonable cause suspects to be, guilty of the offence.

(4) Where a police officer, wit reasonable cause, suspects that an arrestable offence has been committed, he may arrest without warrant anyone whom he, with reasonable cause, suspects to be guilty of that offence.

(5) A police officer may arrest, without warrant, any person who is, or whom he, with reasonable cause, suspects to be, about to commit an arrestable offence.

(6) For the purpose of arresting a person under any power conferred by this section, a police officer may enter, if need by force, and search any place where that person is or where the police officer, with reasonable cause, suspects him to be.

(7) This section shall not affect the operation of any enactment restricting the institution of proceedings for an offence, nor prejudice any power of arrest conferred by law apart from this section.

321. (1) For the avoidance of doubt, where an offence is triable either summarily or on indictment and is punishable by imprisonment for five years or longer, if tried on indictment, it shall be deemed to be an arrestable offence notwithstanding that it would be punishable by a lesser term if tried summarily.

(2) Arrestable offences under this Code are shown as such in the fourth column of the Table of offences and penalties in Schedule 1.

322. Any person who causes any wasteful employment of the police by knowingly making to any person a false report tending to show that an offence has been committed, or to give rise to apprehension for the safety of any person or property, or tending to show that he has information material to any police inquiry, commits an offence and is liable on conviction to imprisonment for a term not exceeding six months or to a fine not exceeding five hundred dollars, or both.

323. Where in this Code or any other law it is provided that no prosecution shall be commenced except by or with the consent of the Attorney General, such provision shall not be deemed to prevent the arrest, or the issue of a warrant for the arrest, of a person for such an offence, or the remand in custody or on bail of a person charged with such offence pending the decision of the Attorney General in the matter.

324. The Table of offences and penalties contained in Schedule 1 sets out for convenience of reference to the offences and penalties therefore contained in this Code but shall not be construed to add to or derogate from the provisions in this Code in relation to each such offence.

325. Without prejudice to the provisions of the Criminal Procedure Act or to any other provisions of this Code, where a person is charged with an offence mentioned in the first column of the Table set out in Schedule 2, if the court finds that he is guilty of the offence charged but that, on the evidence before the court, he is guilty of another offence under a section of this Code referred to in the third column of the Table, he may be convicted of that other offence although he was not charged with it.

326. (1) Where any act or omission constitutes an offence under this Code and also under common law, proceedings in respect of that offence shall be brought under the relevant provision of this Code and not under common law, and the common law offence in any such case shall in respect of its application to the Territory, be deemed to have been abolished.

(2) Where any act or omission constitutes an offence under this Code and also under some other enactment, proceedings in respect of that offence shall not be brought under that other enactment except by, or with the consent of, the Attorney General.

327. (1) All distinctions between felony and misdemeanor are hereby abolished.

(2) Subject to the provisions of this Code and of the Criminal Procedure Act, on all matters on which a distinction has previously been made between felony and misdemeanor the law and

practice in relation thereto shall be the same as the law and practice applicable in relation to misdemeanors immediately before the coming into force of this Code.

328. (1) The following offences under common law are abolished:

(a) any distinct offence, under the common law, of maintenance (including champerty and embracery);

(b) challenging to fight;

(c) eavesdropping;

(d) being a common barrater, a common scold or a common night walker.

(2) For the avoidance of doubt, it is hereby declared that to the extent (if any) that the following Acts of the Parliament of England apply in the Territory, namely

(a) The Champerty Act (28 Edw. I.c.11),

(b) The Maintenance and Embracery Act 1540 (32 Hen. VIII c.9),

They are hereby repealed in relation to the Territory.

329. (1) The enactments specified in Part I of Schedule 3 are hereby repealed.

(2) The enactments specified in the Schedule 3 first column of Part II of Schedule 3 are hereby amended in the manner indicated in the second column of that Schedule.

(3) The amendments specified in Part III of Schedule 3 shall apply generally to any enactment to which they are relevant.

330. (1) For the avoidance of doubt, it is hereby declared that any proceedings pending in respect of an offence committed before the coming into force of this Code under any enactment hereby repealed or amended may be continued, and any penalty or punishment imposed, in accordance with the provisions of section 29 (1) (d) and (e) of the Interpretation Act.

(2) Where it is not certain whether an offence was committed before or after the coming into force of this Code, the offence shall be charged under this Code, and if it subsequently appears that the offence was committed before the coming into force of this Code that fact shall not prevent or invalidate a conviction, unless the facts as found do not constitute an offence other than under this Code.

## **SCHEDULE 1**

(Sections 321 and 324)

**TABLE OF OFFENCES AND PENALTIES**

In this Table,

“A” means offender may be arrested by a police officer without a warrant;

“S” means triable summarily, subject to the provisions of the Magistrate’s Code of Procedure Act and the Criminal Procedure Act.

Nothing in the description of an offence in the second column of this Table shall be construed as adding to or derogating from the provisions contained in the relevant section of this Code.

<b>CRIMINAL CODE SECTION</b>	<b>NATURE OF OFFENCE</b>	<b>MAX. PUNISHMENT</b>	<b>ARREST WITHOUT A WARRANT</b>	<b>TRIALE SUMMARILY</b>
36	TREASON	LIFE	A	
37	CONCEALMENT OF TREASON	LIFE	A	
38	TREASON FELONY	LIFE	A	
41	INCITEMENT TO MUTINY	LIFE	A	
42	AIDING, ETC. ACTS OF MUTINY	5 YEARS	A	
43	INDUCING POLICE OFFICER, ETC. TO DESERT	6 MONTHS		S
44	PIRACY <i>JURE GENTIUM</i>	LIFE	A	
4	PIRACY IN OTHER CASES	AS IN ENGLISH LAW	A	
48 (1)	SEDITIONOUS OFFENCES	3 YEARS/ (\$3000)		S

48 (2)	POSSESSION OF SEDITIOUS PUBLICATIONS	2 YEARS/(\$2000)		S
50(1)	IMPORTATION, ETC. OF PROHIBITED PUBLICATION	3 YEARS/(\$3000)		S
50(2)	POSSESSION OF PROHIBITED PUBLICATION	2 YEARS/(\$2000)		S
51	FAILURE TO SURRENDER PROHIBITED PUBLICATION RECEIVED INNOCENTLY	2 YEARS/(\$2000)		S
55	UNLAWFUL OATH TO COMMIT OFFENCES	LIFE	A	
56	OTHER UNLAWFUL OATHS TO COMMIT OFFENCES	10 YEARS	A	
58(1)	UNLAWFUL DRILLING	7 YEARS	A	
58(2)	PARTICIPATING IN UNLAWFUL DRILING	2 YEARS/(\$2000)		S
59	PUBLISHING FALSE NEWS LIKELY TO CAUSE ALARM, ETC.	1 YEAR/(\$1000)		S
60	DEFAMATION OF FOREIGN POTENTATES	2 YEARS/(\$2000)		S
61	FOREIGN ENLISTMENT	2 YEARS/(\$2000)		S
62	UNLAWFUL ASSEMBLE	1 YEAR		S
63	RIOT	5 YEARS/(\$5000)	A	
64	RIOTING AFTER PROCLAMATION	10 YEARS	A	
65(1)	FORCIBLY PREVENTING	10 YEARS	A	

	PROCLAMATION			
65(2)	RIOTING AFTER PREVENTING PROCLAMATION	5 YEARS	A	
66	RIOTERS DAMAGING PROPERTY	14 YEARS	A	
67	RIOTERS OBSTRUCTING, ETC. AIRCRAFT OR SHIPS	2 YEARS (\$2000)		S
69	IMPORTATION, ETC. OF PROHIBITED WEAPON	10 YEARS/(\$10,000)	A	
70	CARRYING OFFENSIVE WEAPON	2 YEARS/(\$2000)		S
71	REFUSAL TO ACCOMPANY POLICE OFFICER TO BE SEARCHED	\$100		S
72	FORCIBLE ENTRY	2 YEARS/(\$3000)		S
73	FORCIBLE DETAINER	2 YEARS/(\$2000)		S
74 (1)	EMTERING PROPERTY TO INTIMIDATE, ETC. PERSON IN POSSESSION	1 YEAR/(\$1000)		S
74 (2)	EMTERING PROPERTY WHICH IS A VESSEL, ETC. TO COMMIT OFFENCE	2 YEARS/(\$2000)		S
75	CHALLENGING TO FIGHT	2 YEARS/(\$2000)		S
76	AFFRAY	1 YEAR/(\$1000)		S
77(1)	THREATENING VIOLENCE	1 YEAR		S
77(2)	THREATENING VIOLENCE AT NIGHT	2 YEARS		S
78	ASSEMBLING FOR PURPOSE OF	2 YEARS/(\$2000)		S

	SMUGGLING			
79	OFFICIAL CORRUPTION	3 YEARS		S
80	EXTORTION BY PUBLIC OFFICER	3 YEARS		S
81	PUBLIC OFFICER RECEIVING PROPERTY TO SHOW FAVOUR	6 MONTHS		S
82	PUBLIC OFFICER EXERCISING POWERS IN RESPECT OF MATTER IN WHICH HE HAS PRIVAT INTEREST	1 YEAR		S
83	FALSE CLAIMS BY OFFICIALS	2 YEARS		S
84(1)	ABUSE OF POWERS OF PUBLIC OFFICER	2 YEARS		S
84(2)	ABUSE OF POWERS OF PUBLIC OFFICER FOR PRIVAT GAIN	2 YEARS		S
85	FALSE CERTIFICATE	2 YEARS		S
86	UNAUTHORISED ADMINISTRATION OF OATHS	1 YEAR		S
87	FALSE ASSUMPTION OF AUTHORITY	2 YEARS		S
88	PERSONATION OF PUBLIC OFFICER	3 YEARS		S
89	THREATS TO PUBLIC OFFICER	2 YEARS		S
90	DECEIVING WITNESS	2 YEARS		S
91	DESTROYING EVIDENCE	2 YEARS		S
92	FALSE SWEARING	5 YEARS	A	
93	CONSPIRACY TO	2 YEARS		S

	DEFEAT COURSE OF JUSTICE			
94(1)	OFFENCES RELATING TO JUDICIAL PROCEEDINGS	2 YEARS		S
94(2)	SUMMARY PUNISHMENT FOR OFFENCES COMMITTED IN VIEW OF COURT	1 MONTH/(\$200)		S
95	PERJURY	7 YEARS	A	
96	SUBORNATION OF PERJURY	7 YEARS	A	
97	FABRICATION OF EVIDENCE	7 YEARS	A	
98	CONTRADICTORY STATEMENTS BY WITNESS	1 YEAR		S
101	COMPOUNDING OFFENCES	2 YEARS		S
102	OFFERING REWARD FOR RETURN OF STOLEN PROPERTY	1 YEAR/(\$1000)		S
103	RESCUE FROM LAWFUL CUSTODY			
	(a) WHERE PRISONER UNDER SENTENCE OF LIFE IMPRISONMENT	LIFE	A	
	(b) IN CASE OF OTHER PRISONER	7 YEARS	A	
	(c) IN CASE OF OTHER RESCUE	2 YEARS		S
104	ESCAPE FROM LAWFUL CUSTODY	2 YEARS		S
105	PERMITTING PRISONER TO ESCAPE	2 YEARS		S
106(1)	AIDING PRISONER TO ESCAPE	7 YEARS	A	

106(2)	HARBOURING OR ASSISTING ANOTHER TO HARBOUR PRISONER	14 YEARS	A	
107	REMOVING PROPERTY LAWFULLY SEIZED	3 YEARS		S
108	OBSTRUCTING COURT OFFICERS	2 YEARS		S
109	FRAUDS AND BREACH OF TRUST BY PUBLIC OFFICER	3 YEARS		S
110	GIVING FALSE INFORMATION TO PUBLIC OFFICER	3 YEARS/(\$3000)		S
111	INSULTING RELIGION	2 YEARS/(\$2000)		S
112	DISTURBING RELIGIOUS ASSEMBLY	2 YEARS/(\$2000)		S
113	WRITING, ETC. WITH INTENT TO WOUND RELIGIOUS FEELING	1 YEAR/(\$1000)		S
114	HINDERING BURIAL, ETC.	2 YEARS/(\$2000)		S
115(1)	TRESPASSING ON BURIAL PLACE, ETC. WITH INTENT TO WOUND FEELINGS OR INSULT, ETC.	2 YEARS/(\$2000)		S
115(2)	REMOVING, ETC. FLOWERS, ETC. ON OR NEAR GRAVE	2 YEARS/(\$2000)		S
117(1)	RAPE	LIFE	A	
117(2)	ATTEMPTED RAPE	7 YEARS	A	
118(1)	SEXUAL INTERCOURSE WITH GIRL UNDER 13 YEARS	14 YEARS	A	

118(2)	ATTEMPT TO COMMIT OFFENCE UNDER (1)	7 YEARS	A	
119	UNLAWFUL SEXUAL INTERCOURSE WITH GIRL UNDER 16 YEARS	7 YEARS	A	
120	INTERCOURSE WITH DEFECTIVE	7 YEARS	A	
121	SEXUAL ASSAULT BY HUSBAND	10 YEARS	A	
122(1)	INCEST BY MAN	10 YEARS	A	
122(4)	ATTEMPT TO COMMIT INCEST	5 YEARS	A	
123(1)	INCEST BY WOMAN	10 YEARS	A	
123(3)	ATTEMPT TO COMMIT INCEST	5 YEARS	A	
124	INDECENT ASSAULT ON WOMAN			
	(a) UNDER 13 YEARS	5 YEARS	A	
	(b) IN ANY OTHER CASE	3 YEARS		S
125	INDECENCY WITH CHILD	3 YEARS/(\$3000)		S
126	PERMITTING USE OF PREMISES FOR SEXUAL INTERCOURSE BY GIRL	LIFE	A	
127	CAUSING PROSTITUTION, ETC. OF GIRL UNDER 16 YEARS	5 YEARS	A	
128	CAUSING PROSTITUTION OF WOMAN	3 YEARS		S
129	PROCURING WOMAN	3 YEARS		S

	BY THREATS			
130	PROCURING WOMAN BY FALSE PRETENCES	3 YEARS		S
131	ADMINISTERING DRUG TO FACILITATE INTERCOURSE	7 YEARS	A	
132	DETENTION OF WOMAN IN BROTHEL	5 YEARS	A	
133	MAN LIVING ON EARNINGS OF PROSTITUTION	10 YEARS/(\$10,000)	A	
134	WOMAN EXERCISING CONTROL OVER PROSTITUTE	10 YEARS/(\$10,000)	A	
135	LIVING ON EARNINGS OF MALE PROSTITUTION	3 YEARS/(\$3000)		S
136	KEEPING A BROTHEL	2 YEARS/(\$2000)		S
137	LETTING PREMISES FOR USE AS BROTHEL,			
	(a) ON FIRST CONVICTION FOR THIS OFFENCE	2 YEARS/(\$2000)		S
	(b) ON SECOND OR SUBSEQUENT CONVICTION OFR THIS OFFENCE	3 YEARS (\$3000)		S
138	INDECENT ASSAULT ON MAN	3 YEARS		S
139	USE OF POISON TO CAUSE MISCARRIAGE	14 YEARS	A	
140	SUPPLYING OR PROCURING MEANS TO CAUSE MISCARRIAGE	5 YEARS	A	
141	CHILD DESTRUCTION	LIFE	A	

142	BIGAMY	7 YEARS	A	
143	FRAUDULENT PRETENCE OF MARRIAGE	7 YEARS	A	
144	FRAUDULENT TAKING PART IN MARRIAGE CEREMONY	5 YEARS	A	
145	PERSONATION IN MARRIAGE CEREMONY	7 YEARS	A	
147	GENOCIDE			
	(a) IF KILLING INVOLVED	LIFE	A	
	(b) IN ANY OTHER CASE	14 YEARS	A	
150	MURDER	LIFE	A	
152	ATTEMPTED MURDER	LIFE	A	
153	MANSLAUGHTER	LIFE	A	
154	INFANTICIDE	LIFE	A	
155	THREATS TO MURDER	10 YEARS	A	
156	CONSPIRACY TO MURDER	14 YEARS	A	
157	ABETMENT OF SUICIDE	14 YEARS	A	
158	SUICIDE PACTS	AS FOR MANSLAUGHTER	A	
161	CONCEALING BIRTH OF CHILD	2 YEARS		S
163	INFLECTING GRIEVOUS BODILY HARM	LIFE	A	

164	INFLECTING BODILY HARM, WITH OR WITHOUT WEAPON	5 YEARS	A	
165	WOUNDING	2 YEARS		S
166	ATTEMPTING TO CHOKE, ETC. TO COMMIT OFFENCE	LIFE	A	
167	USING ANESTHETIC, ETC. TO COMMIT OFFENCE	LIFE	A	
168	ADMINISTERING POISON SO AS TO ENDANGER LIFE OR INFLICT FRIEVOUS BODILY HARM	10 YEARS	A	
169	ADMINISTERING POISON WITH INTENT TO INJURE, ETC.	5 YEARS	A	
170	IMPEDING ESCAPE FROM SHIPWRECK	LIFE	A	
171	CAUSING BODILY HARM BY CORROSIVE SUBSTANCE OR EXPLOSIVE	LIFE	A	
172	USING EXPLOSIVE OR CORROSIVE SUBSTANCE WITH INTENT TO DO BODILY HARM	LIFE	A	
173	PLACING EXPLOSIVE NEAR BUILDING, ETC. WITH INTENT TO CAUSE BODILY HARM	LIFE	A	
174	CASUING EXPLOSION LIKELY TO ENDANGER LIFE OR PROPETY	14 YEARS	A	
175	SETTING TRAPS, ETC. WITH INTENT TO INFLICT GRIEVOUS	5 YEARS	A	

	BODILY HARM			
176	UNLAWFUL USE OF FIREARMS	5 YEARS	A	
178	RECKLESS AND NEGLIGENT ACTS	2 YEARS		S
179	OTHER NEGLIGENT ACTS CAUSING HARM	6 MONTHS/(\$500)		S
180	DEALING WITH POISONOUS SUBSTANCE IN NEGLIGENT MANNER	6 MONTHS/(\$500)		S
181(1)	ACTS TENDING TO THE DESTRUCTION OF AIRCRAFT AND SHIPS	LIFE	A	
181(2)	ACTS TENDING TO HINDER GUIDANCE OF SEAMEN OR AIRMEN	7 YEARS	A	
182	CONVEYING PERSON FOR HIRE IN UNSAFE CONVEYANCE	1 YEAR		S
183	COMMON ASSAULT	1 YEAR/(\$1000)		S
184	ASSAULT CAUSING ACTUAL BODILY HARM	5 YEARS	A	
185	ASSAULT ON PERSON PROTECTIN WRECK	7 YEARS	A	
186	ASSAULTS SPECIALLY PUNISHABLE	2 YEARS		S
187	ASSAULTS ON FEMALE OR CHILD	6 MONTHS/(\$500)		S
188	ASSAULT ON POLICE OFFICER, ETC.	2 YEARS/(\$2000)		S
189	NEGLECTING SERVANT OR APPRENTICE	5 YEARS	A	

190	FAILURE TO SUPPLY NECESSARIES	5 YEARS	A	
191	ABANDONING OR EXPOSING CHILD UNDER TWO YEARS	7 YEARS	A	
192	CRUELTY TO CHILDREN			
	(a) ON CONVICTION ON INDICTMENT	5 YEARS/(\$5000)	A	
	(b) ON SUMMARY CONVICTION	6 MONTHS/(\$500)		S
193	OTHER NEGLIGENT ACTS OR OMISSIONS CAUSING HARM	1 YEAR /(\$1000)		S
195	KIDNAPPING	10 YEARS	A	
196	ABDUCTING WITH INTENT TO REMOVE FROM TERRITORY OR TO CONFINE IN TERRITORY	14 YEARS	A	
197	ABDUCTING OR KIDNAPPING FEMALE WITH INTENT TO MARRY, ETC.	14 YEARS	A	
198	UNLAWFULLY TAKING GIRL UNDER 16 YEARS AWAY FROM PARENT	2 YEARS		S
199	CHILD STEALING	7 YEARS	A	
200	WRONGFUL CONFINEMENT	5 YEARS	A	
201	UNLAWFUL COMPULSORY LABOUR	5 YEARS	A	
209	THEFT,		A	
	(a) ON SUMMARY CONVICTION	2 YEARS		S

	(b) ON CONVICTION ON INDICTMENT	10 YEARS	A	
210	ROBBERY	LIFE		S
211	BURGLARY	14 YEARS	A	
212	AGGRAVATED BURGLARY	LIFE	A	
213	REMOVING ARTICLES FROM PLACE OPEN TO PUBLIC	5 YEARS	A	
214	ABSTRACTION OF ELECTRICITY	2 YEARS/(\$2000)		S
215	FRAUDULENT USE OF TELEPHONE, FAX OR TELEX SYSTEM	2 YEARS/(\$2000)		S
216	TAKING CONVEYANCE WITHOUT AUTHORITY	2 YEARS/(\$2000)		S
217	OBTAINING PROPERTY DECEPTION BY	10 YEARS	A	
218	EVASION OF LIABILITY BY DECEPTION		A	
	(a) ON SUMMARY CONVICTION	1 YEAR		S
	(b) ON CONVICTION ON INDICTMENT	5 YEARS	A	
219	OBTAINING PECUNIARY ADVANTAGE OR SERVICES BY DECEPTION		A	S
	(a) ON SUMMARY CONVICTION	1 YEAR		S
	(b) ON CONVICTION ON INDICTMENT	5 YEARS	A	

220	MAKING OFF WITHOUT PAYMENT	6 MONTHS/(\$500)		S
221	FALSE ACCOUNTING	7 YEARS	A	
223	FALSE STATEMENTS BY COMPANY DIRECTORS, ETC.	7 YEARS	A	
224	DESTRUCTION, ETC. OF VALUABLE SECURITY OR PROCURING EXECUTION OF SAME BY DECEPTION	7 YEARS	A	
225	BLACKMAIL	14 YEARS	A	
226	HANDLING STOLEN GOODS	10 YEARS	A	
230	GOING EQUIPPED TO STEAL	3 YEARS	A	
235	FORGERY OF CERTAIN DOCUMENTS WITH INTENT TO DEFRAUD			
	(a) UNDER SUBSECTION (1)	LIFE	A	
	(b) UNDER SUBSECTION (2)	14 YEARS	A	
236	FORGERY OF CERTAIN DOCUMENTS WITH INTENT TO DEFRAUD OR DECEIVE			
	(a) UNDER SUBSECTION (1)	LIFE	A	
	(b) UNDER SUBSECTION (2)	14 YEARS	A	
	© UNDER SUBSECTION (3)	7 YEARS	A	
237	FORGING OR UTTERING FORGED COURT DOCUMENTS	7 YEARS	A	

238	FORGING OR UTTERING FORGED DOCUMENTS RELATING TO REGISTRATION OF BITRTHS, MARRIAGES AND DEATHS	LIFE	A	
239	FORGERY OF PASSPORT	2 YEARS/(\$2000)		S
240	FORGERY OF OTHER DOCUMENTS WITH INTENT TO DEFRAUD OR DECEIVE	2 YEARS/(\$2000)		S
241	FORGERY OF SEALS AND DIES			
	(a) UNDER SUBSECTION (1)	LIFE	A	
	(b) UNDER SUBSECTION (2)	14 YEARS	A	
242	UTTERING FORGED DOCUMENT, ETC. WITH INTENT TO DEFRAUD OR DECEIVE	THE SAME PENALTY AS IF HE HAD FORGED THE DOCUMENT, ETC.		
243	UTERING CANCELLED OR SPENT DOCUMENT	THE SAME PENALTY AS IF HEHAD FORGED THE DOCUMENT		
244	DEMANDING PROPERTY ON FORGED DOCUMENT	14 YEARS	A	
245	POSSESSIONOF FORGED NOTES, DOCUMENTS, SEALS OR DIES	14 YEARS	A	
246	MAKING OR POSSESSING IMPLEMENTS OR MATERIALS FOR FORGERY	7 YEARS	A	
247	UNAUTHORISED POSSESSION OF	2 YEARS		S

	PAPER, ETC. USED FOR MANUFACTURE OF CURRENCY NOTES			
249	COUNTERFEITING COIN,			
	(a) RESEMBLING GOLD OR SILVER COIN	LIFE	A	
	(b) RESEMBLING COIN OF OTHER METAL	7 YEARS	A	
250	IMPAIRING, ETC. CURRENT COIN,			
	(a) IMPAIRING GOLD OR SILVER COIN	14 YEARS	A	
	UNLAWFULLY POSSESSING GOLD OR SILVER FILLINGS, CLIPPINGS, ETC. OBTAINED BY IMPAIRING CURRENT COIN	7 YEARS	A	
251	KNOWINGLY UTTERING OR POSSESSING COUNTERFEIT COIN			
	(a) UNDER SUBSECTION (1)	1 YEAR/(\$1000)		S
	(b) UNDER SUBSECTION (2)	2 YEARS/(\$2000)		S
	(c) UNDER SUBSECTION (3)	5 YEARS	A	
	(d) UNDER SUBSECTION (4)	1 YEAR/(\$1000)		S
	(e) UNDER SUBSECTION (5)	14 YEARS	A	
	(f) UNDER SUBSECTION (6)	1 YEAR/(\$1000)		S
252	DEALING IN COUNTERFEIT COIN	7 YEARS	A	
253	IMPORTING AND EXPORTING COUNTERFEIT COIN	7 YEARS	A	

254	MAKING, POSSESSING AND SELLING ARTICLES RESEMBLING GOLD OR SILVER COIN			
255	MAKING, POSSESSING, ETC. IMPLEMENTS FOR COINING			
	(a) UNDER SUBSECTION (1)	14 YEARS	A	
	(b) UNDER SUBSECTION (2)	14 YEARS	A	
	(c) UNDER SUBSECTION (3)	7 YEARS	A	
256	DEFACING AND UTTERING DEFACED COINS	1 YEAR		S
	(a) UNDER SUBSECTION (1)	1 YEAR/(\$1000)		S
	(b) UNDER SUBSECTION (3)	\$100		S
257	MELTING DOWN CURRENCY	6 MONTHS/(\$500)		S
258	MUTILATING OR DEFACING CURRENCY NOTES	\$200		S
259	IMITATION OF CURRENCY			
	(a) UNDER SUBSECTION (1)	6 MONTHS/(\$500)		S
	(b) UNDER SUBSECTION (2)	6 MONTHS/(\$500)		S
	(c) UNDER SUBSECTION (3)	\$200		
261	PERSONATION IN GENERAL			
	(a) UNDER SUBSECTION (1)	1 YEAR/(\$1000)		S

	(b) UNDER SUBSECTION (2)	7 YEARS	A	
262(1)	PERSONATION OF PERSON NAMED IN CERTIFICATE, ETC.	THE SAME PENALTY AS FOR FORGERY OF THE CERTIFICATE, ETC.	A	
262(2)	LENDING CERTIFICATE, ETC. TO ANOTHER FOR PERSONATION OF PERSON NAMED THEREIN	7 YEARS	A	
263	PERSONATION OF PERSON NAMED IN TESTIMONIAL			
	(a) UNDER SUBSECTION (1)	1 YEAR/(\$1000)		S
	(b) UNDER SUBSECTION (2) 1 YEAR/(\$1000)			S
264	FALSELY ACKNOWLEDGING RECOGNISANCES, ETC.	7 YEARS	A	
265	DESTROYING OR DAMAGING PROPERTY,			
	(a) IN THE CASE OF ARSON	LIFE	A	
	(b) IN ANY OTHER CASE	10 YEARS	A	
266	THREATS TO DESTROY OR DAMAGE PROPERTY	10 YEARS	A	
267	POSSESSING ANYTHING WITH INTENT TO DESTROY OR DAAGE PROPERTY	10 YEARS	A	
272(1)	CASTING AWAY SHIPS, ETC.	LIFE	A	

272(2)	ATTEMPT TO COMMIT OFFENCE UNDER SUBSECTION (1)	14 YEARS	A	
273	CRIMINAL LIBEL	1 YEAR/(\$1000)		S
281	COMMON NUISANCE	6 MONTHS/(\$500)		S
282	WATCHING AND BESETTING	6 MONTHS/(\$500)		S
283	SENDING CHAIN LETTERS	6 MONTHS/(\$500)		S
284	IMPORTING, DISTRIBUTING, ETC. OBSCENE PUBLICATIONS	6 MONTHS/(\$500)		S
286	ROGUE AND VAGABOND,			
	(a) FOR THE FIRST OFFENCE	1 YEAR		S
	(b) FOR THE SECOND OR SUBSEQUENT OFFENCE	2 YEARS		S
287	DISORDERLY CONDUCT,			
	(a) UNDER SUBSECTION (1)	3 MONTHS/(\$250)		S
	(b) UNDER SUBSECTION (2)	3 MONTHS/(\$250)		S
	(c) UNDER SUBSECTION (3)	6 MONTHS/(\$500)		S
	(d) UNDER SUBSECTION (4)	3 MONTHS/(\$250)		S
	(e) UNDER SUBSECTION (5)	3 MONTHS/(\$250)		S
288	DRUNKENNESS IN PUBLIC PLACE			
	(a) ON FIRST CONVICTION	\$50		S

	(b) ON SECOND OR SUBSEQUENT CONVICTION	\$100		S
	(c) ON SUBSEQUENT CONVICTION WITHIN TWELVE MONTHS OF SUBSEQUENT CONVICTION	3 MONTHS/(\$250)		S
	(d) WHEN IN CHARGE OF VEHICLE OR FIREARM	6 MONTHS/(\$500)		S
289	ABUSIVE AND FALSE STATEMENTS,			
	(a) UNDER SUBSECTION (1)	3 MONTHS/(\$250)		S
	(b) UNDER SUBSECTION (2)	1 YEAR/(\$1000)		S
	(c) UNDER SUBSECTION (4)	6 MONTHS/(\$500)		S
290	PRACTISING OR DEALING IN OBEAH	1 YEAR/(\$1000)		S
291	NEGLIGENT ACT LIKELY TO SPREAD DISEASE	6 MONTHS/(\$500)		S
292	POLLUTION, NOISES AND SMELLS, ETC	6 MONTHS/(\$500)		S
293	ADULTERATION OF FOOD, ETC.	6 MONTHS/(\$500)		S
294	UNAUTHORISED WEARING OF UNIFORM	6 MONTHS/(\$500)		S
295	NEGLIGENCE WITH FIRE,			
	(a) UNDER SUBSECTION (1)	3 MONTHS/(\$250)		S
	(b) UNDER SUBSECTION (2)	1 YEAR/(\$1000)		S
296	THROWING MISSILES	1 YEAR/(\$1000)		S

	IN PUBLIC PLACE			
297	DEFACING BUILDINGS, ETC.	3 MONTHS/(\$250)		S
298	REMOVING BOATS, ETC	1 YEAR/(\$1000)		S
299	FAILING TO CONTROL ANIMALS IN PPUBLIC PLACE	\$250		S
300	LETTING OF FREWORKS AND FIREARMS IN PUBLIC PLACE	3 MONTHS/(\$250)		S
301	GAMBLING,			S
	(a) UNDER SUBSECTION (1)	1 YEAR/(\$1000)		S
	(b) UNDER SUBSECTION (6)	6 MONTHS/(\$500)		S
	(c) UNDER SUBSECTION (7)	3 MONTHS/(\$250)		S
302	NEGLECTING TO MAINTAIN FAMILY	3 MONTHS/(\$250)		S
303	UNLAWFUL DEPASTURING OF ANIMAL	3 MONTHS/(\$250)		S
304	OBSTRUCTING POLICE OFFICER	6 MONTHS/(\$500)		S
305	REFUSING TO ASSIST POLICE OFFICER	3 MONTHS/(\$250)		S
306	USING ANIMAL WITHOUT CONSENT OF WONER	\$250		S
307	INDECENCY IN PUBLIC PLACE,			
	(a) UNDER SUBSECTION (1)	3 MONTHS/(\$250)		S
	(b) UNDR SUBSECTION (2)	\$250		S

	(c) UNDER SUBSECTION (3)	6 MONTHS/(\$500)		S
308	HAVING THING REASONABLY SUSPECTED OF BEING STOLEN	6 MONTHS /(\$500)		S
309	UNLAWFULLY PREVENTING WORK OR TRADE	3 MONTHS/(\$250)		S
312	CONSPIRACY TO COMMIT AN OFFENCE	THE SAME PENALTY PRESCRIBED FOR THAT OFFENCE		
313	CONSPIRACY TENDING TO CORRUPT PUBLIC MORALS OR OUTRAGE PUBLIC DECENCY	6 MONTHS/(\$500)		S
317	ATTEMPT TO COMMIT AN OFFENCE WHERE NO PUNISHMENT PRESCRIBED			
	(a) IF COMPLETED OFFENCE PUNISHABLE BY IMPRISONMENT FOR LIFE	7 YEARS	A	
	(b) IN ANY OTHER CASE	THE SAME PENALTY AS FOR THE COMPLETED OFFENCE		
318	ASSISTING OFFENDER,			
	UNDER SUBSECTION 5 (a)	10 YEARS	A	
	UNDER SUBSECTION 5 (b)	7 YEARS	A	
	UNDER SUBSECTION 5 (c)	5 YEARS	A	

	UNDER SUBSECTION 5 (d)	3 YEARS		S
319	CONCEALING OFFENCE	2 YEARS		S
322	GIVING FALSE INFORMATION TO POLICE	6 MONTHS/ (\$500)		S



**2000**  
**ACTS**  
**&**  
**Statutory Instruments**  
**&**  
**IMPERIAL LEGISLATION**  
**OF**  
**THE VIRGIN ISLANDS**

No. 12 of 2000

**VIRGIN ISLANDS**

**IMMIGRATION AND PASSPORT (AMENDMENT)  
ACT, 2000**

**ARRANGEMENT OF SECTIONS**

*Section*

1. Short title.
2. Section 2 amended.
3. Section 3 amended.
4. Section 13 amended.
5. Part IV repealed and replaced.

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No. 12 of 2000      Immigration and      Virgin  
Passport (Amendment) Act, 2000      Islands

I Assent  
M. Elton Georges, OBE,  
Acting Governor.  
4th November, 2000

VIRGIN ISLANDS

No. 12 of 2000

An Act to amend the Immigration and Passport Act  
(Cap. 130).

[Gazetted 21st December, 2000]

ENACTED by the Legislature of the Virgin Islands as follows:

1. This Act may be cited as the Immigration and Passport (Amendment) Act, 2000. Short title.

2. Section 2 of the Immigration and Passport Ordinance (hereinafter referred to as "the principal Ordinance") is amended by deleting the definition of "British Subject". Section 2 amended.  
Cap. 130

3. Section 3 of the principal Ordinance is amended Section 3 amended.

(a) by the repeal of subsection (1) and the substitution therefor of the following subsection:

"(1) For the purposes of this Ordinance a person shall be deemed to belong to the Territory if that person so qualifies under section 2(2) of the Virgin Islands (Constitution) Order 1976.";

U.K. S.I. 1976  
No. 2145

(b) by the repeal of subsection (2) and the substitution therefor of the following subsection:

"(2) Subject to subsection (2A), the Governor may, at any time, by Order declare any person deemed to belong to the Territory by virtue only of a certificate of naturalisation to be no longer deemed to belong to the Territory on the grounds that such person

(a) has shown himself by act or speech to be disloyal or disaffected towards Her Majesty;

(b) has during any war in which Her Majesty was engaged, unlawfully traded or

communicated with an enemy or been associated with or engaged in any business that was to his knowledge carried on in such manner as to assist any enemy in that war;

(c) has within five years of the grant of such certificate been sentenced to imprisonment in any country for a criminal offence for a term of one year or more; or

(d) has obtained such a certificate by means of fraud, false representation or concealment of any material fact,

and upon publication of such Order in the *Gazette* such person shall cease to be deemed to belong to the Territory.”;

(c) by the insertion immediately after subsection (2) of the following subsection:

“(2A) The Governor shall not make an Order under subsection (2) if it appears to him that that person would thereupon become stateless.”;

(d) in subsection (6) by the repeal of paragraph (b) and the substitution therefor of the following paragraph:

“(b) the exercise of any power conferred upon the Governor by or under the British Nationality Act 1981.”.

UK No.  
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Section 13  
amended.

4. Section 13 of the principal Ordinance is amended

(a) in subsection (1) by the deletion of “the Chief Immigration Officer and six other members” and the substitution therefor of “eight members”;

(b) in subsection (4) by the deletion of “three of its members” and the substitution therefor of “five of its members”;

(c) in subsection (6) by deleting “Deputy”;

(d) by deleting subsection (7); and

(e) in subsection (8) by deleting “other than the Chief Immigration Officer”.

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5. The principal Ordinance is amended by the repeal of Part IV and the substitution therefor of the following Part: Part IV  
repealed and  
replaced.

**"PART IV**

**CERTIFICATE THAT A PERSON  
BELONGS TO THE TERRITORY:  
RESIDENCE.**

Certificate  
that a person  
belongs to  
the Territory.

16. (1) Subject to the provisions of this section, the Governor in Council, after consultation with the Board, may upon application being made in the manner prescribed grant a certificate certifying that the person who applied for the same belongs to the Territory for the purposes of this Ordinance.

(2) A person may be granted a certificate referred to in subsection (1) where

- (a) he qualifies under subsection (3);
- (b) there has been an exercise in relation to him of the power set out in subsection (4);
- (c) he or she is a spouse of a believer and meets the requirements set out in subsection (5) and is not disqualified thereunder.

(3) Subject to subsection (4), a person may be granted a certificate referred to in subsection (1) where he

- (a) is of good character;
- (b) is not less than eighteen years of age;
- (c) has been ordinarily resident in the Territory for a period of not less than ten years immediately prior to his application;
- (d) has held a certificate of residence granted under section 18 for a period of not less than twelve months immediately preceding the date of the application; and

(e) has, in his application, restated his intention of making the Territory his permanent home and has satisfied the Board that it is his intention so to do.

(4) Where in the exceptional circumstances of any case, the Governor in Council considers it fit to do so, it may, after consultation with the Board, grant a certificate referred to in subsection (1) to any person who is of good character and who is at the date of making the application for such a certificate ordinarily resident in the Territory and who has been so ordinarily resident for the period of not less than seven years immediately prior to his application.

(5) Subject to subsection (6), a spouse of a belonger may be granted the certificate referred to in subsection (1) where he or she has been ordinarily resident in the Territory with his or her spouse who is a belonger, and they have been living together as husband and wife, for at least five years, unless within that period of five years the spouse of the belonger has been sentenced to imprisonment in any country for a criminal offence for a term of one year or more.

(6) Where the spouse who is a belonger dies before his or her spouse completes the period of five years' residence referred to in subsection (5) and at the time of death the spouses were living together in the Territory as husband and wife for a period of at least two and a half years before the death of the belonger spouse, the Governor in Council may, upon application, grant the surviving spouse the certificate referred to in subsection (1) as if he or she had completed that period of residence.

(7) In deciding whether a certificate should be granted pursuant to subsection (2) (a) or (b) in respect of any applicant, the Governor in Council shall consider whether

(a) the economic situation in the Territory is such that the grant of a certificate to the applicant will prejudice the protection afforded under this Ordinance to other persons engaging in the trade or

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n the trade or

profession in which the applicant is  
engaged or in which he is likely to  
engage;

- (b) the applicant has established a  
close personal connection with the  
Territory;
- (c) the applicant's character and  
previous conduct are unexcep-  
tional; and
- (d) the applicant's continued residence  
in, and association with, the  
Territory may afford some  
advantage to the Territory.

(8) For the purposes of this section,

**"belonger"** means a person who is deemed  
to belong to the Territory under  
section 2 (2) of the Virgin Islands  
(Constitution) Order 1976;

U.K. S.I. 1976  
No. 2145

**"ordinarily resident"** means that the  
applicant was in the Territory at  
the beginning of the relevant period  
specified in subsection (3), (4) or (5)  
ending with the date of the  
application, and that

- (a) the number of days on which he  
was absent from the Territory in  
that period does not exceed,
  - (i) in the case of subsection (3),  
nine hundred days;
  - (ii) in the case of subsection (4), six  
hundred and thirty days; and
  - (iii) in the case of subsection (5),  
four hundred and fifty days;
- (b) the number of days on which he  
was absent from the Territory in  
the period of twelve months so  
ending does not exceed ninety;
- (c) he was not, at any time in the  
period of twelve months so ending,

subject under the immigration laws to any restriction on the period for which he might remain in the Territory; and

- (d) he was not, at any time in the relevant period so ending, in the Territory in breach of the immigration laws.

(9) Notwithstanding the definition of "ordinarily resident", an applicant shall be deemed to be ordinarily resident in the Territory where he proves to the satisfaction of the Governor in Council that he had been absent from the Territory on grounds of illness, study, Government service or service in the armed forces of Her Majesty's Government.

Validity of certificate issued under section 16.

17. (1) Where a person is granted a certificate under section 16, such certificate shall cease to be valid if subsequent to the grant of the certificate such person is ordinarily resident outside the Territory continuously for a period of five years, unless he proves to the satisfaction of the Governor in Council that his residence abroad for that period was necessary on the grounds of illness, study, Government service or service in the armed forces of Her Majesty's Government.

(2) Subject to subsection (3) and (4), a certificate granted under section 16 may be revoked by the Governor in Council by Order on the grounds that the person to whom it was granted

- (a) has shown himself by act or speech to be disloyal or disaffected towards Her Majesty;
- (b) has during any war in which Her Majesty was engaged, unlawfully traded or communicated with an enemy or been associated with or engaged in any business that was to his knowledge carried on in such manner as to assist an enemy in that war;

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- (c) has, within five years of the grant of such certificate, been sentenced to imprisonment in any country for a criminal offence for a term of one year or more; or
- (d) has obtained such certificate by means of fraud, false representation or concealment of any material fact.

(3) No Order shall be made in exercise of the powers conferred by subsection (2) unless the Chief Immigration Officer has first given the person against whom the Order is proposed to be made notice in writing of the grounds on which it is proposed to be made and has offered such person an opportunity to be heard.

(4) Where a person against whom an Order is proposed to be made under subsection (2) desires to be heard in person by the Governor in Council, he may submit a request to the Council through the Chief Immigration Officer.

(5) The Governor in Council shall not make an Order under subsection (2) if it appears that the person concerned would thereupon become stateless.

Certificate of residence.

18. (1) Subject to the other provisions of this section, the Governor in Council may, after consultation with the Board, grant a certificate of residence to any person who applies for the same in the prescribed manner and who

- (a) is of good character; and
- (b) in his application has stated his intention of residing permanently in the Territory.

(2) When a certificate of residence is granted to any person under this section, the Governor in Council may then, or on the subsequent application by the person, endorse the certificate to relate also to the spouse and any dependent child under the age of eighteen years of that person ordinarily resident with him subject to such conditions as the Governor in Council may impose.

(3) An endorsement for a dependent child ceases to have effect when the child attains the age of eighteen years.

(4) A child who attains the age of eighteen years and who wishes to remain in the Territory after the expiration of his endorsement under subsection (3) shall, within six months of his eighteenth birthday, apply for a certificate of residence in his own name and shall not remain in the Territory at the expiration of that period unless

- (a) his application for a certificate of residence is pending; or
- (b) he is permitted to remain in the Territory under this Ordinance or any other law.

Revocation of certificate of residence.

19. The Governor in Council may, after consultation with the Board, revoke a certificate of residence or any endorsement thereon on the grounds that the person to whom it relates

- (a) subsequent to the grant of such certificate has been ordinarily resident outside the Territory continuously for a period of three years;
- (b) has in any country been sentenced to imprisonment for a criminal offence for a term of one year or more; or
- (c) has so conducted himself that it is not in the public interest that he should continue to enjoy the privileges conferred by the certificate."

Passed by the Legislative Council this 3rd day of November, 2000.

REUBEN VANTERPOOL,  
Speaker.

OLEANVINE MAYNARD,  
Ag. Clerk of the Legislative Council.

VIRGIN ISLANDS  
POLICE (AMENDMENT) ACT, 2001  
ARRANGEMENT OF SECTIONS

- Section*
1. Short title and commencement.
  2. Sections 22A to 22F inserted.
  3. Section 75 amended.

I Assent  
FRANCIS J. SAVAGE,  
CMG, LVO, OBE  
Governor.  
6th December, 2001

VIRGIN ISLANDS  
No. 11 of 2001

An Act to amend the Police Act (Cap. 165).

[Gazetted 27th December, 2001]

ENACTED by the Legislature of the Virgin Islands as follows:

Short title and commencement.

1. This Act may be cited as the Police (Amendment) Act, 2001 and shall come into force on such date as the Governor may, by Proclamation published in the *Gazette*, appoint.

Sections 22A to 22F inserted. Cap. 165

2. The Police Act (hereinafter referred to as "the principal Act") is amended by inserting after section 22, the following section:

"Limits on period of detention without charge.

22A. (1) Subject to this section and sections 22B and 22C, a person shall not be kept in police detention for more than twenty-four hours without being charged.

(2) The time from which the period of detention of a person is to be calculated shall be the time of his arrest.

(3) Where a person who is in police detention is removed to a hospital because he is in need of medical treatment, any time during which he is being questioned, in hospital or on the way there or back, by a member of the Force for the purpose of obtaining evidence relating to an offence shall be included in the calculation of the period of his detention, but any other time while he is in hospital or on his way there or back shall not be so included.

(4) Subject to subsection (5), a person who at the expiry of twenty-four hours after the time of his arrest is in police detention and has not

been charged, shall be released at that time either on bail in accordance with section 22E, or without bail.

(5) Subsection (4) does not apply to a person whose detention for more than twenty-four hours after the time of his arrest has been authorised or is otherwise permitted in accordance with section 22B or 22C.

(6) A person released under subsection (4) shall not be re-arrested without a warrant for the offence for which he was previously arrested unless new evidence justifying a further arrest has come to light since his release.

(7) A person shall at the time of his arrest be entitled to be informed of his right to counsel of his own choice and at his own expense.

22B. (1) Where a member of the Force of the rank of Chief Inspector or above who is responsible for the police station at which a person is detained has reasonable grounds for believing that

(a) the detention of that person without charge is necessary to secure or preserve evidence relating to an offence for which he is under arrest or to obtain such evidence by questioning him;

(b) an offence for which he is under arrest is an offence punishable by imprisonment for five years or more; and

(c) the investigation is being conducted diligently and expeditiously,

he may, in writing, authorise the keeping of that person in police detention for a period expiring at or before forty-eight hours after the time of his arrest.

(2) No authorisation under subsection (1) shall be given in respect of any person more than twenty-four hours after the time of his arrest.

Authori-  
sation of  
continued  
detention.

(3) Where a member of the Force authorises the keeping of a person in police detention under subsection (1), it shall be his duty

(a) to provide that person with a copy of the written authorisation and to inform him of the grounds of his continued detention; and

(b) to record the authorisation and grounds in that person's custody record.

(4) Where a member of the Force has authorised the keeping of a person who has not been charged in detention under subsection (1), that person shall be released from detention, either on bail in accordance with section 22E or without bail, not later than forty-eight hours after the time of his arrest, unless

(a) he has been charged with an offence; or

(b) his continued detention is authorised or otherwise permitted in accordance with section 22C.

(5) A person released under subsection (4) shall not be re-arrested without a warrant for the offence for which he was previously arrested unless new evidence justifying a further arrest has come to light since his release.

Warrants of  
further  
detention.

22C. (1) Where, on an application on oath made by a member of the Force and supported by an information, a Magistrate is satisfied that there are reasonable grounds for believing that the further detention of the person to whom the application relates is justified, the Magistrate may issue a warrant of further detention authorising the keeping of that person in police detention.

(2) A Magistrate shall not hear an application for a warrant of further detention unless the person to whom the application relates

- (a) has been furnished with a copy of the information; and
- (b) has been brought before the court for the hearing.

(3) The person to whom the application relates shall be entitled to be legally represented at the hearing and, if he is not so represented but wishes to be so represented

- (a) the Magistrate shall adjourn the hearing to enable him to obtain representation; and
- (b) he may be kept in police detention during the adjournment.

(4) A person's further detention is only justified for the purposes of this section or section 22D if

- (a) his detention without charge is necessary to secure or preserve evidence relating to an offence for which he is under arrest or to obtain such evidence by questioning him;
- (b) an offence for which he is under arrest is an offence punishable by imprisonment for five years or more; and
- (c) the investigation is being conducted diligently and expeditiously.

(5) An application for a warrant of further detention may be made at any time before the expiry of forty-eight hours after the time of arrest of the person to whom the application relates.

(6) Where, on an application for a warrant of further detention, the Magistrate is not satisfied that there are reasonable grounds for believing that the further detention of the person to whom the application relates is justified, the Magistrate shall

- (a) refuse the application; or

- (b) adjourn the hearing of the application to a time not later than forty-eight hours after the time of arrest of that person.

(7) The person to whom an application under this section relates may be kept in police detention during an adjournment under subsection (6)(b).

(8) A warrant of further detention shall

- (a) state the time at which it is issued;
- (b) authorise the keeping in police detention of the person to whom it relates for the period stated in it.

(9) The period stated in a warrant of further detention shall be such period, not exceeding thirty-six hours, as the Magistrate thinks fit, having regard to the evidence before him.

(10) Any information submitted in support of an application under this section shall state

- (a) the nature of the offence for which the person to whom the application relates has been arrested;
- (b) the general nature of the evidence on which that person has been arrested;
- (c) the reasons for believing the continued detention of that person to be necessary.

(11) Where an application under this section is refused, the person to whom the application relates shall forthwith be charged or, subject to subsection (12), released, either on bail in accordance with section 22E or without bail.

(12) A person need not be released under subsection (11) before the expiry of twenty-four hours after the time of his arrest or before the expiry of any longer period for which his continued detention is or has been authorised under section 22B.

(13) Where an application under this section is refused, no further application shall be made under this section in respect of the person to whom the refusal relates, unless supported by evidence which has come to light since the refusal.

(14) Where a warrant of further detention is issued, the person to whom it relates shall be released from police detention, either on bail in accordance with section 22E or without bail, upon or before the expiry of the warrant unless he is charged.

(15) A person released under subsection (14) shall not be re-arrested without a warrant for the offence for which he was previously arrested unless new evidence justifying a further arrest has come to light since his release.

22D. (1) On an application on oath made by a member of the Force and supported by an information, a Magistrate may extend a warrant of further detention issued under section 22C if he is satisfied that there are reasonable grounds for believing that the further detention of the person to whom the application relates is justified.

(2) Subject to subsection (3), the period for which a warrant of further detention may be extended shall be such period as the Magistrate thinks fit, having regard to the evidence before him.

(3) The period shall not

- (a) be longer than thirty-six hours; or
- (b) end later than ninety-six hours after the time of arrest.

(4) Where a warrant of further detention has been extended under subsection (1), or further extended under this subsection, on any further application under subsection (1) a Magistrate may further extend the warrant if satisfied that there are reasonable grounds for believing that the further detention of the person to whom the application relates is justified; and subsections (2) and (3) shall apply

to such further extensions as they apply to extensions under subsection (1).

(5) A warrant of further detention shall, if extended or further extended under this section, be endorsed with a note of the period of the extension.

(6) Subsections (2), (3) and (10) of section 22C shall apply to an application made under this section as they apply to an application made under that section.

(7) Where an application under this section is refused, the person to whom the application relates shall forthwith be charged or, subject to subsection (8), released, either on bail in accordance with section 22E or without bail.

(8) A person need not be released under subsection (7) before the expiry of any period for which a warrant of further detention issued in relation to him has been extended or further extended on an earlier application made under this section.

Bail after arrest.

22E. (1) A member of the Force of the rank of Chief Inspector or above may release on bail a person who had been arrested without being charged, subject to a duty to attend at a police station at such times as may be specified to assist generally with investigations and shall record the detail in the Police Bail Book.

(2) Where a person who has been released on bail under subsection (1) fails to attend at the police station at the time specified under subsection (1) or (4)(c), he commits an offence and is liable on summary conviction to a fine not exceeding one thousand dollars.

(3) Without prejudice to the powers of a member of the Force under section 22, a member of the Force may arrest a person released on bail under subsection (1) if new evidence justifying a further arrest has come to light since his release.

(4) Where a person is released on bail under subsection (1), a member of the Force of the rank of Chief Inspector or above may

Extension of warrants of further detention.

subsequently give notice in writing to that person that

- (a) his attendance at the police station is no longer required;
- (b) his attendance at the police station at a particular time is not required; or
- (c) the times at which he is required to attend at the police station have been varied to times specified in the notice.

(5) Where a person who was released on bail subject to a duty to attend at a police station so attends, he may be detained without charge at the police station if there are reasonable grounds for believing that his detention is necessary to secure or preserve evidence relating to an offence for which he is under arrest or to obtain such evidence by questioning him.

(6) Where a person who was released on bail subject to a duty to attend at a police station is re-arrested, the provisions of section 22A shall apply to him as they apply to a person arrested for the first time.

Codes of practice.

22F. (1) The Governor may issue codes of practice in connection with the detention, treatment and questioning of persons by members of the Force.

(2) Codes of Practice issued pursuant to subsection (1) shall not come into force unless approved by an affirmative resolution of the Legislative Council."

**3. Section 75 of the principal Act is amended**

- (a) in subsection (1), by inserting after the word "Force", the words "and the Auxiliary Force";
- (b) in subsection (2), by inserting after the word "Force", the words "or the Auxiliary Force";
- (c) by repealing subsection (3) and substituting the following subsection:

" (3) If a member of the Force or the Auxiliary Force dies while he is in the service of the Force or the Auxiliary Force, as the case may be, the Governor may order that his funeral expenses be charged on and paid out of the Consolidated Fund."

Passed by the Legislative Council this 16th day of November, 2001.

REUBEN VANTERPOOL,  
Speaker.

OLEANVINE MAYNARD,  
Ag. Clerk of the Legislative Council.

**VIRGIN ISLANDS**  
**COMPLAINTS COMMISSIONER ACT, 2003**  
**ARRANGEMENT OF SECTIONS**

*Section*

**PART I**  
**PRELIMINARY**

1. Short title and commencement.
2. Interpretation.
3. Application.

**PART II**  
**PRINCIPAL FUNCTION AND JURISDICTION**  
**OF THE COMMISSIONER**

4. Principal function of the Commissioner.
5. Restrictions on matters for investigation.
6. Discretion of Commissioner.
7. Power to investigate in the public interest.
8. Preliminary inquiries.
9. Dealing with complaints by mediation.
10. Proceedings of Commissioner.
11. Power to obtain evidence.
12. Report on investigation.
13. Complainant to be informed of result of investigation.
14. Special report where no appropriate action taken.
15. Appeals restricted.

**PART III**  
**FINANCIAL AND ADMINISTRATIVE PROVISIONS**

16. Funds of the Commissioner.
17. Accounts and audit.
18. Fees prohibited.
19. Remuneration of the Commissioner.
20. Appointment of staff.
21. Appointment of mediators and advisers.
22. Acting Commissioner.
23. Premises and supplies.

**PART IV  
MISCELLANEOUS**

- 24. Laying of annual reports.
- 25. Oath of office and secrecy.
- 26. Commissioner and staff to maintain secrecy.
- 27. Protection of witnesses.
- 28. Immunity.
- 29. Offences.
- 30. Rules.

**SCHEDULE**

**I Assent**

**M. Elton Georges, OBE**  
**Acting Governor**  
**12<sup>th</sup> May, 2003**

**VIRGIN ISLANDS**

**No. 6 of 2003**

An Act to provide for the functions and jurisdiction of the Complaints Commissioner and matters connected therewith.

[Gazetted 13<sup>th</sup> May, 2003]

ENACTED by the Legislature of the Virgin Islands as follows:

**PART I**  
**PRELIMINARY**

**1.** This Act may be cited as the Complaints Commissioner Act, 2003 and shall come into force on such date as the Governor may, by Proclamation published in the *Gazette*, appoint. Short title and commencement.

**2.** (1) In this Act, unless the context otherwise requires, Interpretation.

“action” includes omission, recommendation, advice or decision and a reference in this Act to action taken by a department of Government or a public authority includes a reference to any omission made, recommendation or advice given or decision taken, by that department or authority;

“Commissioner” means the Complaints Commissioner appointed under section 66A of the Virgin Islands (Constitution) Order, 1976; U.K.S.I. 1976  
No. 2145

“complainant” means

- (a) a person who makes a complaint referred to in section 4(2)(a); or
- (b) a person or body of persons referred to in section 4(2)(b) or (c);

“complaint” means

- (a) a complaint referred to in section 4(2)(a); or
- (b) a request referred to in section 4(2)(b);

“department of Government” means a department or agency of the Government;

No. 5 of 2001

“document” includes an electronic record under the Electronic Transactions Act, 2001;

“investigation” means an investigation by the Commissioner under this Act;

“maladministration” means inefficient, bad or improper administration and, without prejudice to the generality of the foregoing, includes

- (a) unreasonable conduct, including delay, discourtesy and lack of consideration for a person affected by any action;
- (b) abuse of any power (including any discretionary power) or authority including any action which
  - (i) is unreasonable, unjust, oppressive or improperly discriminatory or which is in accordance with a practice which is or may be unreasonable, unjust, oppressive or improperly discriminatory; or
  - (ii) was based wholly or partly on a mistake of law or fact;
- (c) unreasonable, unjust, oppressive or improperly discriminatory procedures;

“Minister of Finance” means the Minister to whom responsibility for finance is assigned;

“officer” includes employee;

“public authority” means an authority or body

- (a) the majority of whose members are appointed by the Governor, the Governor in Council, the Executive Council or a Minister;
- (b) whose funds consist wholly or mainly of monies provided out of public funds;
- (c) established to recommend or determine the persons with whom any contract shall be entered into by or on behalf of the Government; or
- (d) that is declared by the Executive Council, by Order, to be a public authority for the purposes of this Act.

(2) A reference in this Act to a department of Government or a public authority includes a reference to the officers of that department or authority.

3. This Act does not apply to

Application.

- (a) judges, magistrates or the functions of any court;
- (b) deliberations and proceedings of the Executive Council, Legislative Council or any committee thereof;
- (c) the Attorney General in the exercise of any power conferred upon him by section 24, 49(2) or 50 of the Virgin Islands (Constitution) Order, 1976; or
- (d) the Chief Auditor in the exercise of any power conferred upon him by section 66 of the Virgin Islands (Constitution) Order, 1976.

U.K.S.I. 1976  
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## **PART II PRINCIPAL FUNCTION AND JURISDICTION OF THE COMMISSIONER**

4. (1) Subject to subsection (2) and sections 5 and 6, the principal function of the Commissioner shall be to investigate any action taken by a department of Government or a public authority in the exercise of its administrative functions.

Principal  
function of the  
Commissioner.

(2) The Commissioner may investigate a matter referred to in subsection (1) in the following circumstances:

- (a) where a complaint is made, in writing, to the Commissioner by a person alleging that he has sustained an injustice as a result of maladministration;
- (b) where a member of the Legislative Council requests, in writing, the Commissioner to investigate the matter on the ground that a person or body of persons specified in the request has or may have sustained an injustice as a result of maladministration;
- (c) in any other circumstances in which the Commissioner considers that he ought to investigate the matter on the ground that some person or body of persons has or may have sustained an injustice as a result of maladministration.

Restrictions on matters for investigation.

5. (1) In investigating any matter leading to, resulting from or connected with a decision of a Minister, the Commissioner shall not inquire into or question the policy of the Minister in accordance with which the decision was made.

(2) The Commissioner may investigate a matter notwithstanding that such matter raises questions as to the integrity or corruption of the public service or of any department of Government or public authority, and may investigate any conditions resulting from, or calculated to facilitate or encourage corruption in the public service or any such department or authority, but he shall not undertake any investigation into specific charges of corruption against individuals.

(3) Where in the course of an investigation it appears to the Commissioner that there is evidence of any corrupt act by any individual, he shall report the matter to the Governor with his recommendations as to any further investigation he may consider proper.

(4) The Commissioner shall not investigate

- (a) any matter in respect of which the complainant has or had
  - (i) a remedy by way of proceedings in a court, other than by way of judicial review; or
  - (ii) a right of appeal, objection, reference or review to or before any person, tribunal, board or other authority appointed or constituted by or under an enactment;
- (b) any such action, or action taken with respect to any matter, as is described in the Schedule.

Schedule

(5) Notwithstanding subsection (4), the Commissioner may investigate a matter notwithstanding that the complainant has or had a remedy by way of proceedings in a court, if satisfied that in the particular circumstances it is not reasonable to expect the complainant to take or to have taken such proceedings.

6. (1) In determining whether to initiate, continue or discontinue an investigation, the Commissioner shall, subject to sections 4 and 5, act in his discretion and, in particular and without prejudice to the generality of this discretion, the Commissioner may refuse to initiate or may discontinue an investigation where it appears to him that

Discretion of  
Commissioner.

- (a) a complaint relates to action of which the complainant has had knowledge for more than twelve months before the complaint was received by the Commissioner, unless the Commissioner is satisfied that in the particular circumstances it is proper to conduct an investigation into a complaint not made within that period;
- (b) the complaint is made anonymously or the complainant cannot be identified or traced;
- (c) the complaint is not made by
  - (i) the individual aggrieved himself;
  - (ii) his personal representative or by a member of his family or other individual suitable to represent him, where the individual by whom the complaint might have been made has died or is for any reason unable to act for himself; or
  - (iii) a member of the Legislative Council pursuant to section 4(2)(b);
- (d) where the complaint is made on behalf of a body corporate, the body corporate has not authorised the making of the complaint;
- (e) the complainant does not have a sufficient interest in the subject matter of the complaint;
- (f) the subject matter of the complaint is trivial;
- (g) the complaint is frivolous or vexatious or is not made in good faith;

- (h) the complaint, or a complaint of a substantially similar nature, has previously been the subject of an investigation as a result of which the Commissioner was of the opinion that there had been no maladministration; or
- (i) any investigation or further investigation is for any other reason unnecessary.

(2) Where the Commissioner decides not to undertake or continue an investigation into a complaint, he shall inform the complainant, in writing, of his decision and of his reasons.

Power to investigate in the public interest.

**7.** Where the Commissioner is of the opinion that it is in the public interest to do so, he may undertake or continue an investigation into a complaint notwithstanding that the complainant has withdrawn the complaint and, in any such case, the provisions of this Act shall apply to the complaint and the complainant as if the complaint had not been withdrawn.

Preliminary inquiries.

**8.** For the purposes of determining whether to undertake an investigation, the Commissioner may conduct such preliminary inquiries as he considers appropriate.

Dealing with complaints by mediation.

**9.** (1) The Commissioner may decide to deal with a complaint by mediation under this section if he is of the opinion, having regard to all the circumstances of the case, that the subject matter of the complaint involves no, or only minor, maladministration.

(2) The Commissioner shall appoint in accordance with section 21, such person as he thinks fit to be a mediator in any mediation.

(3) The Commissioner shall not participate in any mediation.

(4) Participation in the mediation by the complainant and the relevant department of Government or public authority is voluntary, and any party may withdraw at any time.

(5) The mediator may terminate the mediation at any time.

(6) Where an attempt to deal with a complaint by mediation under this section is unsuccessful,

- (a) the complaint is to be treated as if the mediation had not taken place; and

- (b) the mediator is excluded from participating as an investigating officer in any subsequent investigation of the complaint.

(7) Anything said or admitted during the mediation and any document prepared for the purposes of such mediation shall not be admissible in evidence

- (a) in any subsequent investigation of the complaint concerned unless the person who said or admitted the thing, or to whom the document relates, consents to its admission;
- (b) against any person in any court or at any inquiry or in any other proceedings,

and no evidence in respect of the mediation may be given against any person.

(8) Nothing in this section prevents a complaint from being dealt with otherwise than in accordance with this section.

**10.** (1) Before investigating any action, the Commissioner shall, subject to subsection (2), inform the head of the relevant department of Government or public authority of his intention to conduct an investigation and may seek his comments.

Proceedings of  
Commissioner.

(2) Subsection (1) shall not apply where the Commissioner is of the opinion that compliance is inappropriate in the particular circumstances of the case and, instead of complying with that subsection, informs the Governor of his intention to conduct an investigation.

(3) Subject to the provisions of this Act and any rules made under section 30, the Commissioner may

- (a) obtain any information, document or thing from such persons, and make such inquiries, as he thinks fit; and
- (b) regulate his procedure in such manner as he thinks fit.

(4) Every investigation shall be conducted in private and, subject to subsection (6), legal practitioners shall not have any right of audience before the Commissioner, but may appear before him if he thinks fit.

(5) It shall not be necessary for the Commissioner to hold any hearing, and, subject to subsection (6), no person shall be entitled to be heard by the Commissioner.

(6) If at any time during the course of an investigation it appears to the Commissioner that there may be sufficient grounds for him to make a report or recommendation that may criticise or adversely affect an officer, department of Government, public authority or person, he shall give the officer, the head of the department or authority or the person an opportunity to be heard, either personally or by his legal practitioner.

Power to obtain evidence.

**11.** (1) Subject to subsections (2) and (3), the Commissioner shall have the powers of the High Court to summon witnesses to appear before him and to compel them to give evidence on oath and to produce documents relevant to the proceedings before him and all persons giving evidence at those proceedings shall have the same duties and liabilities and enjoy the same privileges as they would have in civil proceedings in the High Court.

(2) The Commissioner shall not have power to summon the Governor or a Minister to appear before him or compel the Governor or a Minister to answer any questions relating to any matter under investigation by the Commissioner, but the Commissioner

(a) may, in his discretion, consult the Governor or a Minister on the matter; and

(b) shall, on the request of the Governor or a Minister, consult the Governor or the Minister on the matter.

(3) The Commissioner shall not have power to summon any witness to produce any Executive Council papers.

(4) The Commissioner shall have power to enter and inspect the premises of any department of Government or public authority, to call for, examine, make copies of and, where necessary, retain any document kept on such premises and there carry out any investigation in pursuance of his functions.

Report on investigation.

**12.** (1) Upon the completion of an investigation, the Commissioner shall provide the relevant department of Government or public authority with a report containing his findings of fact, his opinion and the reasons for his opinion.

(2) Where the Commissioner is of the opinion that any person has sustained an injustice as a result of maladministration, he shall include in his report such recommendations as he thinks fit and a request that the relevant department of Government or public authority notify him, within a specified time, of the steps, if any, that it proposes to take to give effect to his recommendations.

(3) The Commissioner may in his report, or at any later stage if he thinks fit, specify the time within which an injustice should be remedied.

(4) The Commissioner shall send a copy of his report to the Governor and each member of the Executive Council.

**13.** Where an investigation is undertaken as a result of a complaint, the Commissioner shall inform the complainant, and in the case of a complaint under section 4(2)(b) the relevant member of the Legislative Council, of the result of the investigation and may make such comments on the matter as he thinks fit.

Complainant to be informed of result of investigation.

**14.** (1) If, within a reasonable time after the Commissioner issues his report or the time specified under section 12(3), no action is taken which seems to the Commissioner to be adequate and appropriate, the Commissioner, after considering the comments, if any, made by or on behalf of the relevant department or authority, shall lay a special report on the matter before the Legislative Council.

Special report where no appropriate action taken.

(2) The Commissioner shall attach to every special report under subsection (1) a copy of any comments made by or on behalf of the relevant department of Government or public authority.

**15.** No proceeding of the Commissioner may be held bad for want of form and, except on the ground of lack of jurisdiction, no proceeding or decision of the Commissioner conducted or taken in good faith is liable to be challenged, reviewed, quashed or called in question in any court.

Appeals restricted.

### **PART III FINANCIAL AND ADMINISTRATIVE PROVISIONS**

**16.** (1) The funds of the Commissioner shall consist of

Funds of the Commissioner.

- (a) such monies that are appropriated to him by the Legislative Council for the purposes of this Act;
- (b) monies received by the Commissioner from agencies, other than the Government, approved by the Minister of Finance for the performance of his functions; and
- (c) donations, endowments and other gifts received by the Commissioner.

(2) The funds of the Commissioner shall be kept in such bank as the Minister of Finance may approve.

(3) The Commissioner shall cause to be prepared proper estimates of receipts and expenditure in respect of the performance of his functions for each financial year and the estimates shall be submitted to the Minister of Finance not later than such date as the Minister of Finance may direct.

Accounts and  
audit.

**17.** (1) The Commissioner shall cause proper accounts of all financial transactions to be kept in such form as the Chief Auditor may direct.

(2) The Commissioner shall, as soon as practicable after the end of the financial year, prepare a statement of his accounts.

(3) The accounts required to be kept under subsection (1) and the statement of accounts required under subsection (2) shall be audited, as soon as practicable and in any case within four months after the end of each financial year, by the Chief Auditor or an auditor appointed for the purpose by the Chief Auditor.

Fees prohibited.

**18.** No person shall be required to pay any fee in respect of a complaint or for any mediation or investigation under this Act.

Remuneration  
of the  
Commissioner.

**19.** The salary, allowances and other benefits payable to the Commissioner shall be determined by the Governor in Council and shall be paid out of the Consolidated Fund.

Appointment of  
staff.

**20.** (1) The Commissioner shall be provided with such staff as the Governor, after consultation with the Commissioner, considers necessary for the efficient administration of this Act.

(2) The Governor may, after consultation with the Commissioner, appoint the staff of the Commissioner either in accordance with the Public Service Commission Regulations, 1969 or on contract.

S.I. 1969 No. 29

(3) The salaries, allowances and other benefits payable to the staff of the Commissioner shall be determined by the Governor and shall be paid out of the Consolidated Fund.

Appointment of  
mediators and  
advisers.

**21.** (1) The Commissioner may, from time to time, appoint

- (a) mediators for the purposes of section 9; or
- (b) professional or technical advisers to assist him in the performance of his functions.

(2) Persons appointed under subsection (1) may be paid such remuneration as the Commissioner may approve.

(3) Any remuneration payable pursuant to subsection (2) shall be paid out of the funds of the Commissioner.

**22.** (1) Where the Commissioner is absent from the Territory or is for any other reason unable to perform the functions of his office, those functions shall, until such time as he resumes the functions of his office or another person is appointed as the Commissioner under section 66A of the Virgin Islands (Constitution) Order, 1976, be assumed and performed by such person as may be appointed in writing by the Governor to act as Commissioner.

Acting  
Commissioner.

U.K.S.I. 1976  
No. 2145

(2) Section 66A(3) and (5) of the Virgin Islands (Constitution) Order, 1976 and section 25 shall apply to a person appointed under subsection (1).

**23.** The Commissioner may lease such premises and acquire such equipment as are necessary for the efficient operation of his office.

Premises and  
supplies.

#### **PART IV MISCELLANEOUS**

**24.** (1) The Commissioner shall, within six months after the end of each financial year, furnish

Laying of annual  
reports.

- (a) a full report on the performance of his functions during that financial year, which shall include a general survey and statistics in relation to complaints received by him, the results of mediations and investigations conducted under this Act, steps taken to implement his recommendations and such other matters or developments as he thinks fit;
- (b) a copy of the statement of accounts required under section 17(2) and the auditor's report on that statement of accounts,

to the Governor who shall cause them to be laid before the Legislative Council within a period of three months after their receipt.

**25.** Before commencing the duties of his office, the Commissioner shall take an oath, to be administered by the Governor, that he will faithfully and impartially exercise the functions of his office and that he will not, except in accordance with section 26(3), disclose any information received by him as Commissioner.

Oath of office  
and secrecy.

Commissioner  
and staff to  
maintain secrecy.

**26.** (1) The Commissioner and every person appointed under section 20, 21 or 22 shall, subject to subsections (2) and (3), maintain secrecy in respect of all matters that

- (a) arise from any investigation or complaint made to the Commissioner; and
- (b) come to their actual knowledge in the exercise of their functions.

(2) Subsection (1) shall not apply so as to prevent the Commissioner or any person appointed under section 20, 21 or 22 from

- (a) disclosing in the course of proceedings for an offence under this Act, any matter relevant to those proceedings;
- (b) reporting evidence of any crime to such authority as he considers appropriate;
- (c) disclosing to a person any matter referred to in subsection (1) which, in the opinion of the Commissioner or the person so appointed
  - (i) may be ground for a complaint by that person; or
  - (ii) is necessary to be disclosed to that person for the purposes of investigating a complaint or deciding whether an investigation should be undertaken, continued or discontinued.

(3) Subject to subsection (4), the Commissioner may disclose in any report made by him under this Act such matters as in his opinion ought to be disclosed in order to establish grounds for his conclusions and recommendations.

(4) The Commissioner shall not disclose in any report made by him under this Act

- (a) the nature or substance of any consultation with the Governor or a Minister pursuant to section 11(2) or whether or not any such consultation was requested or has taken place; or
- (b) any matter in respect of which the Governor certifies that its disclosure might prejudice security, defence or international relations (including relations with an

international organisation) in respect of the Territory or would otherwise be contrary to the public interest.

(5) A person who fails to comply with subsection (1) or (4) commits an offence and is liable, on summary conviction, to a fine not exceeding one thousand dollars or to imprisonment for a term not exceeding six months, or both.

**27.** Except on the trial of any person in respect of his sworn testimony, no statement made or answer given by that or any other person in the course of an inquiry by or any proceedings before the Commissioner is admissible in evidence against any person in any court or at any inquiry or in any other proceedings, and no evidence in respect of proceedings before the Commissioner shall be given against any person.

Protection of witnesses.

**28.** No proceedings shall lie against the Commissioner, or against any person appointed under section 20, 21 or 22, for any act done or omitted to be done in the performance or purported performance of any function, or the exercise or purported exercise of any power, under this Act, unless it is shown that he acted in bad faith.

Immunity.

**29.** A person who

Offences.

- (a) without lawful excuse, willfully obstructs, hinders or resists the Commissioner or any other person in the performance of his functions under this Act;
- (b) without lawful excuse, refuses or willfully fails to comply with any lawful requirement of the Commissioner or any other person under this Act; or
- (c) willfully makes any false statement to or misleads or attempts to mislead the Commissioner or any other person in the exercise of his functions under this Act,

commits an offence and is liable on summary conviction to a fine not exceeding one thousand dollars or to imprisonment for a term not exceeding six months, or both.

**30.** The Governor may make rules for the guidance of the Commissioner in the exercise of his functions.

Rules.

## **SCHEDULE**

(Section 5(4)(b))

### **MATTERS NOT SUBJECT TO INVESTIGATION**

1. Action taken under any law relating to extradition or fugitive offenders.
2. Action taken for the purpose of investigating crime or of protecting the security of the Territory.
3. The commencement or conduct of civil or criminal proceedings before any court or before any international court or tribunal.
4. Action taken in respect of appointments or removals, pay, discipline, pension or other personnel matters in relation to service in any office or employment in a department of Government or public authority.

Passed by the Legislative Council this 17<sup>th</sup> day of April, 2003.

REUBEN VANTERPOOL,  
Speaker.

OLEANVINE MAYNARD,  
Ag. Clerk of the Legislative Council.



**2003**  
**ACTS**  
**&**  
**STATUTORY INSTRUMENTS**  
**&**  
**IMPERIAL LEGISLATION**  
**OF**  
**THE VIRGIN ISLANDS**

nominated in the  
consent to such  
a member of the  
..... electoral

.....  
Signature of Candidate

of , 20

.....  
Signature of Witness”.

day of April, 2003.

N VANTERPOOL,  
Speaker.

VINE MAYNARD,  
Legislative Council.

**No. 8 of 2003**

**VIRGIN ISLANDS**

**IMMIGRATION AND PASSPORT (AMENDMENT) ACT,  
2003**

**ARRANGEMENT OF SECTIONS**

*Section*

1. Short title.
2. Section 16 amended.

**No. 8 of 2003 Immigration and Passport  
(Amendment) Act, 2003**

**Virgin  
Islands**

**I Assent  
THOMAS MACAN  
Governor  
18th September, 2003**

**VIRGIN ISLANDS**

**No. 8 of 2003**

An Act to amend the Immigration and Passport Ordinance  
(Cap. 130).

[Gazetted 9th October, 2003]

ENACTED by the Legislature of the Virgin Islands as follows:

Short title.

**1.** This Act may be cited as the Immigration and  
Passport (Amendment) Act, 2003.

Section 16  
amended.  
Cap. 130

**2.** Section 16 of the Immigration and Passport  
Ordinance is amended by inserting after subsection (4), the  
following subsection:

“ (4A) Where in the exceptional circumstances of  
any case, the Governor in Council considers it fit to  
do so, it may, in its own discretion and without  
requiring the submission of an application, grant a  
certificate referred to in subsection (1) to any person  
who, in its opinion, has made significant and  
consistent contributions to the economic and social  
development of the Territory over a period of at least  
fifty years.”

Passed by the Legislative Council this 11th day of September,  
2003.

V. INEZ ARCHIBALD,  
Speaker.

DENNISTON FRASER,  
Clerk of the Legislative Council.

**VIRGIN ISLANDS**

**AUDIT ACT, 2003**

**ARRANGEMENT OF SECTIONS**

*Section*

**PRELIMINARY**

1. Short title.
2. Interpretation
3. Application

**PART I**

**APPOINTMENT OF THE AUDITOR GENERAL**

4. Appointment of Auditor General.
5. Terms of appointment of Auditor General.
6. Determination of appointment of Auditor General.
7. Auditor General not to hold other office.
8. Appointment of Acting Auditor General.
9. Auditor General's staff.
10. Exercise of powers and performance of duties on behalf of the Auditor General.

**PART II**

**DUTIES OF THE AUDITOR GENERAL**

11. Duties of the Auditor General - annual audit.
12. Duties of the Auditor General - supplementary audit.
13. Other duties of the Auditor General.
14. Principles to be followed by the Auditor General.
15. Auditor General to report offences.
16. Disclosure of information.
17. Auditor General to provide annual estimate of cost of running office.
18. Limit on the Auditor General undertaking work outside his duties.

**PART III**

**POWERS OF THE AUDITOR GENERAL**

19. Powers of the Auditor General.
20. Auditor General may submit special report.
21. Auditing of accounts of bodies corporate, etc.

**PART IV**

**MISCELLANEOUS**

22. Repeal.
23. Transitional provision.
24. Amendment of Interpretation Act.

**No. 13 of 2003  
Islands**

**Audit Act, 2003**

**Virgin**

**I Assent**

**THOMAS MACAN,**

**Governor**

**17<sup>th</sup> October, 2003**

**VIRGIN ISLANDS**

**No. 13 of 2003**

An Act to prescribe the powers and duties of the Auditor General and to provide for other matters connected therewith.

[Gazetted 6<sup>th</sup> November, 2003]

ENACTED by the Legislature of the Virgin Islands as follows:

**PRELIMINARY**

- |                         |   |
|-------------------------|---|
| Short title.            | <b>1.</b> This Act may be cited as the Audit Act, 2003.   |
| Interpretation.         | <b>2.</b> In this Act, unless the context otherwise requires,<br><br>"Auditor General" means the person appointed as such under section 4;                                      |
| U.K. S.I. 1976 No. 2145 | "Constitution" means the Virgin Islands (Constitution) Order, 1976;   |
| Cap. 175                | "financial year" has the meaning assigned to it by section 2 of the Finance Ordinance; and<br><br>"Minister" means the Minister responsible for the administration of this Act. |

Application.

**3.** This Act binds the Crown.

**PART I  
APPOINTMENT OF THE AUDITOR GENERAL**

Appointment of Auditor General.

**4.** Whenever the office of Auditor General is vacant, the Governor shall, acting after consultation with the Public Service Commission, appoint to hold that office a person the Governor considers to be suitably qualified.

Terms of appointment of Auditor General.

**5.** The person holding the office of Auditor General holds that office on terms of appointment from time to time determined in accordance with sections 19 (1) (d) and 65 of the Constitution.

U.K. S.I. 1976 No. 2145

Determination of appointment of Auditor General.

**6.** (1) The appointment of a person to hold the office of Auditor General shall not be revoked by the Governor except on the grounds of disability, neglect of duty or misconduct after the Governor has consulted the Public Service Commission.

(2) Subsection (1) does not prohibit

(a) a person being appointed to hold the office of Auditor General for a specified period; or

(b) the appointment of a person to hold the office of Auditor General from providing that the appointment is to determine when the person reaches a specified age, being an age not less than sixty years and not more than seventy years.

Auditor General not to hold other office.

**7.** The person holding the office of Auditor General ceases to hold that office if he becomes the holder of any other office of emolument under the Crown.

Appointment of Acting Auditor General.

**8.** (1) Where

(a) the office of Auditor General is vacant, or

(b) the Governor is satisfied that the person

holding the office of Auditor General is unable to perform the duties of the office,

the Governor may appoint a public officer to be the Acting Auditor General.

(2) A person appointed to be the Acting Auditor General

- (a) holds the office on such terms and conditions as the Governor may determine; and
- (b) while holding office
  - (i) shall perform all the duties of the Auditor General; and
  - (ii) may exercise all the powers of the Auditor General.

Auditor General's staff.

**9.** The Governor may, at the request of the Auditor General and after consultation with the Public Service Commission, appoint such number of public officers as the Auditor General may consider necessary to assist the Auditor General in the performance of his duties.

Exercise of powers and performance of duties on behalf of the Auditor General.

**10.** (1) A duty of the Auditor General, other than the duty to issue an audit report to the Minister in accordance with section 66(3) of the Constitution, may be performed by

- (a) a member of staff of the Auditor General authorised to do so by the Auditor General; or
- (b) a person appointed to do so by the Auditor General.

(2) A person authorised or appointed to perform a duty under this Act is not subject to the direction or control of any other person other than the Auditor General when performing that duty.

(3) A power of the Auditor General may be exercised

by

- (a) a member of staff of the Auditor General authorised to do so by the Auditor General; or
- (b) a person appointed to do so by the Auditor General.

## **PART II DUTIES OF THE AUDITOR GENERAL**

Duties of the Auditor  
General – annual audit.  
U.K. S.I. 1976 No. 2145

**11.** (1) The Auditor General, acting in accordance with section 66(2) of the Constitution, shall undertake an audit of the accounts of the Legislative Council and all Government departments and offices, including the Public Service Commission, for each financial year.

(2) The audit shall be undertaken in accordance with good auditing practices and standards generally accepted as applicable to the auditing of the accounts of governments.

(3) At the conclusion of each audit the Auditor General shall submit a report on the audit to the Minister.

(4) The report shall include

- (a) a certificate stating that the audit of the accounts for the financial year has been completed;
- (b) an opinion as to whether those accounts present properly
  - (i) the assets and liabilities of the Legislative Council and all Government departments and offices, including the Public Service Commission, at the end of the financial year; and
  - (ii) the receipts and payments of the Legislative Council and all Government departments and

offices, including the Public Service Commission, during the financial year; and

- (c) such other information as the Auditor General considers necessary or appropriate to assist in a consideration of the audited accounts for that financial year.

Duties of the Auditor General – supplementary audit.

**12.** (1) The Auditor General shall submit to the Minister a supplementary audit report in respect of each annual audit.

(2) The report shall contain

- (a) details of any instance when a public officer or other person did not fully comply with a requirement by the Auditor General;
- (b) details of any instance the Auditor General considers significant where
  - (i) money was not collected, paid or accounted for in accordance with the law; or
  - (ii) other property was not received, held, issued, sold, transferred, destroyed, or accounted for in accordance with the law; and
- (c) such other comments or observations as the Auditor General considers relevant to the audit including, in particular, comments or observations on
  - (i) any matter relating to the performance of his duties or the exercise of his powers;

- (ii) the records that are being kept or should be kept; and
- (iii) whether resources are being used with proper regard to economy, efficiency and effectiveness.

(3) The Auditor General shall submit the report to the Minister within six months after the conclusion of the relevant annual audit.

(4) The Minister shall, within three months after the receipt of the report, lay the report before the Legislative Council.

Other duties of the Auditor General.

**13.** The Auditor General shall perform such other duties as are prescribed by any other law.

Principles to be followed by the Auditor General.

**14.** In performing his duties under this Act, the Auditor General shall, in particular, satisfy himself

- (a) that funds have been used for purposes approved by law and for no other purposes;
- (b) that each payment and receipt was made or received in accordance with the law;
- (c) that adequate instructions have been given to ensure
  - (i) that money is collected, paid and accounted for in accordance with the law, and
  - (ii) that property is received, held, issued, sold, transferred, destroyed, and accounted for in accordance with the law,

and that those instructions are being complied with; and

- (d) that adequate records are being kept
  - (i) of the collection and payment of money; and
  - (ii) of the receipt, custody, issue, sale, transfer or destruction of property.

Auditor General to report offences.

**15.** If in the course of carrying out his duties it appears to the Auditor General that an offence has been committed, he shall report that fact to the Financial Secretary and the Attorney General.

Disclosure of information.

**16.** (1) The Auditor General shall not disclose information obtained in the course of performing his duties or exercising his powers.

(2) A person performing a duty on behalf of the Auditor General or exercising a power of the Auditor General shall not disclose information obtained in the course of performing the duty or exercising the power.

(3) Subsections (1) and (2) do not apply to a disclosure

- (a) required or permitted by this or any other enactment;
- (b) lawfully required or permitted by a court;
- (c) which, in the opinion of the Auditor General, should be made known to the Financial Secretary and the Attorney General in accordance with section 15; or
- (d) which the Police may require in the course of conducting investigations into an offence.

(4) A person, other than a public officer, who contravenes subsection (2) commits an offence and is liable on summary conviction to a fine not exceeding ten thousand dollars.

Auditor General to provide annual estimate of cost of running office.

**17.** (1) Prior to the start of each financial year the Auditor General shall prepare and submit to the Minister and the Financial Secretary an estimate of the money that needs to be approved by the Legislative Council for the expenses of his office during that financial year.

(2) Where the Auditor General is of the opinion that the amount proposed for the expenses of his office in the Government's estimates submitted to the Legislative Council is insufficient to allow him to carry out his duties, he may submit a report in respect of the insufficiency to the Speaker of the Legislative Council.

(3) The Speaker shall send a copy of the report to each member of the Legislative Council.

(4) The Auditor General shall at the same time as submitting the report to the Speaker submit a copy of the report to the Minister and the Financial Secretary.

(5) The members of the Legislative Council shall, in discussing the Government's estimates, take into account the report submitted by the Auditor General.

Limit on the Auditor General undertaking work outside his duties.

**18.** The Auditor General shall not undertake work outside his duties except with the written approval of the Governor.

### **PART III POWERS OF THE AUDITOR GENERAL**

Powers of the Auditor General.

**19.** (1) The Auditor General has all the powers necessary to enable him to perform his duties.

(2) In particular, the Auditor General has power to require a public officer

(a) to conduct, on behalf of the Auditor General, an inquiry, examination or audit and to report his findings to the Auditor

General;

- (b) to give the Auditor General access to property that is in the public officer's possession or under his control as a result of the officer's duties;
- (c) to search and provide extracts from Government records or records to which the Government has access; or
- (d) to give or provide to the Auditor General any explanation or information the Auditor General considers necessary to enable him to perform his duties.

(3) A public officer shall comply with a requirement under subsection (2).

Auditor General may submit special report.

**20.** (1) The Auditor General may at any time prepare and submit a special report to the Governor if he is satisfied that there is a matter that should be brought to the attention of the Governor.

(2) The Governor shall, within three months of the receipt of the special report, cause the report to be laid before the Legislative Council.

(3) The Auditor General shall at the same time as submitting the special report to the Governor submit a copy of the special report to the Minister and the Financial Secretary.

Auditing of accounts of bodies corporate, etc.

**21.** (1) Where by virtue of any enactment the Auditor General is appointed to audit the accounts of a body corporate or other body established by such enactment, he

- (a) shall have, in relation to the body corporate or other body and its members, officers and employees, the same discretion and powers as are conferred upon him under this Act in relation to the accounts of the body corporate or other body; and
- (b) may authorise any person who appears to him suitable to inspect, examine or audit the books,

accounts and other records of the body corporate or other body and submit a report to him upon the completion of the inspection, examination or auditing.

(2) Any person authorised under subsection (1)(b) shall be subject to the provisions of section 16(2) and (4).

(3) Notwithstanding subsection (1) or anything to the contrary contained in any enactment, the Auditor General may, in the public interest, audit the accounts of any body corporate, or other body established or funded, in whole or in part, by the Government, and in the performance of that duty the Auditor General shall have the same discretion and powers as are conferred upon him by this Act.

(4) Where the Auditor General audits the accounts of a body corporate or other body under subsection (3), he may, upon the completion of the audit, prepare and submit a report to the Governor who shall, within three months of the receipt thereof, cause the report to be laid before the Legislative Council.

(5) The fee for any inspection, examination or audit effected in accordance with this section shall be determined by the Auditor General and be charged upon the funds of the body corporate or other body concerned.

## **PART IV MISCELLANEOUS**

Repeal.  
Cap. 173

**22.** The Audit Ordinance, 1970 is repealed.

Transitional  
provision.

**23.** (1) The person, if any, who immediately before the commencement of this Act held the position of Chief Auditor under the Audit Ordinance, 1970 holds as from that commencement the office of Auditor General as if the person had been appointed to that office in accordance with this Act.

U.K. S.I. 1976 No. 2145

(2) Until the Governor otherwise determines in accordance with section 19 (1) (d) of the Constitution or his salary or other remuneration is otherwise prescribed by or under a law enacted in accordance with section 65(1) of the Constitution, the terms and conditions of service of a person to whom subsection (1) applies are the terms and conditions

applicable to that person immediately before the commencement of this Act.

(3) Subsection (2) is subject to section 65(3) of the Constitution.

Amendment of  
Interpretation Act.  
Cap. 136

**24.** Section 43 of the Interpretation Act is amended by deleting the words "Chief Auditor" and the definition assigned thereto and substituting the following in the appropriate alphabetical order:

““Auditor General” means the Auditor referred to in section 66 of the Constitution and appointed under section 4 of the Audit Act, 2003;”.

Passed by the Legislative Council this 30<sup>th</sup> day of September, 2003.

V. INEZ ARCHIBALD,  
Speaker.

DENNISTON FRASER,  
Clerk of the Legislative Council.

**VIRGIN ISLANDS**  
**AIRPORTS ACT, 2003**  
**ARRANGEMENT OF SECTIONS**

*Section*

**PART I**  
**PRELIMINARY**

1. Short title and commencement.
2. Interpretation.
3. Act binds Crown.

**PART II**  
**COMMERCIAL OPERATION OF AIRPORTS**

4. Limited liability company to be established to operate airports.
5. Objects of the Company.
6. Management of the Company.

**PART III**  
**FINANCIAL PROVISIONS**

7. Funds and resources of the Company.
8. Application of the funds of the Company.
9. Fixing of rates and fees.
10. Guarantee of loans.
11. Exemption from taxes.
12. Vesting of certain property rights and liabilities in the Company.
13. Certain assets to be free of interest or capital obligations.
14. Accounts and audit.
15. Annual report.

**PART IV**  
**STAFF PROVISIONS**

16. Transfer of Government officers and employees to the Company.
17. Transfer of Government contracts of employment and service to the Company.
18. Appointment of authorised officers.

**PART V  
POWERS OF AUTHORISED OFFICERS**

- 19. Power to arrest.
- 20. Power to search vehicles.
- 21. Power to seize and destroy animals.

**PART VI  
MISCELLANEOUS PROVISIONS**

- 22. Noise control.
- 23. Environmental considerations.
- 24. Regulations.
- 25. Limitation of Cap. 103.

SCHEDULE 1  
SCHEDULE 2

No. 16 of 2003

Airports Act, 2003

Virgin Islands

I Assent

**Sgd. Thomas Macan**

THOMAS MACAN  
Governor

*2 March, 2004*

*L.S.*

**VIRGIN ISLANDS**

**No. 16 of 2003**

An Act to make provision for operating airports in the Virgin Islands as commercial undertakings and other matters connected therewith.

[Gazetted \_\_\_\_\_, 2004]

ENACTED by the Legislature of the Virgin Islands as follows:

**PART I  
PRELIMINARY**

1. This Act may be cited as the Airports Act, 2003 and shall come into force on such date as the Governor may, by Proclamation published in the *Gazette*, appoint. Short title and commencement.

2. (1) In this Act, Interpretation.

“airport” means any area of land or water designed, equipped, set apart or commonly used for affording facilities for the landing and departure of aircraft, and includes any area or space, whether on the ground, on the roof of a building or elsewhere, which is designed, equipped or set apart for affording facilities for the landing and departure of aircraft capable of descending or climbing vertically;

“animal” means every kind of animal, bird or reptile;

“authorised officer” means the Managing Director, a person that is designated as an authorised officer under section 18 or a member of the Royal Virgin Islands Police Force;

“Board” means the Board of Directors of the Company referred to in section 6(1);

“Company” means the company established pursuant to section 4 to manage, control and supervise the international airport;

“designated airport” means an airport in respect of which an Order under section 4(1) is in force;

“financial year” means such period of twelve calendar months as the Board determines to be the financial year of the Company;

“installations” includes plant and appliances;

“international airport” means the Terrance B. Lettsome International Airport;

“Managing Director” means the officer for the time being holding, or acting in, the office of Managing Director of the Company;

“Minister” means the Minister to whom responsibility for civil aviation is assigned;

“Minister of Finance” means the Minister to whom responsibility for finance is assigned;

“prohibited area” means an area within an airport that is declared to be a prohibited area under the Regulations;

“Regulations” means regulations made under section 24;

“restricted area” means an area within an airport that is declared to be a restricted area under the Regulations;

“vehicle” includes motor vehicles, motor cycles, bicycles, trucks and all other conveyances for the transportation of persons and goods.

Cap. 285

(2) A reference in this Act to the Companies Act includes a reference to any enactment repealing and replacing that Act.

Act binds the Crown.

3. This Act binds the Crown.

**PART II  
COMMERCIAL OPERATION OF AIRPORTS**

4. (1) The Government shall form a company for the purpose of carrying on the business of operating the international airport and any other airport that the Executive Council may, by Order, determine, as commercial undertakings. Limited liability company to be established to operate airports.

(2) The Company shall be a company limited by shares and registered under the Companies Act. Cap. 285

(3) Notwithstanding section 5 of the Companies Act, the Government shall be the sole shareholder of the Company and shares in the Company shall be held by, and in the name of, the Financial Secretary for and on behalf of the Government.

(4) The Company shall ensure that each airport it operates is licensed under article 103 of the Air Navigation (Overseas Territories) Order 2001. U.K.S.I. 2001  
No. 2128

5. The objects of the Company shall include Objects of the Company.

- (a) to acquire, own, operate, control, manage, develop, administer and maintain the international airport and any extension thereof, as a commercial undertaking, in a manner which recognises its role as an international airport and for the benefit of the economy of the Territory;
- (b) to acquire, own, operate, control, manage, develop, administer and maintain any designated airport in the Territory as a commercial undertaking and for the benefit of the economy of the Territory;
- (c) to provide and maintain on a commercial basis, facilities and services for air transport and such other facilities and services as are necessary or desirable for, or in connection with, the international airport or any designated airport;
- (d) to collect such dues and charges as the Company may be authorised by an enactment to collect;
- (e) to use, develop and manage on a commercial basis, all lands vested in, transferred or leased to, the Company;
- (f) generally to carry out the provisions of this Act;
- (g) to do anything that is incidental to or connected with the objects of the Company.

6. (1) The Company shall be managed by a Board of Directors who shall determine policy and direct and control the affairs of the Company in accordance with the provisions of the Air Navigation (Overseas Territories) Order 2001, this Act, the Companies Act, and the Memorandum and Articles of Association of the Company.

(2) The Board shall consist of

- (a) a non-executive Chairman;
- (b) two executive directors, one of whom shall be the Managing Director; and
- (c) at least two non-executive directors.

(3) The members of the Board of Directors shall hold office in accordance with the provisions of the Articles of Association of the Company.

(4) The Articles of Association of the Company may make provision for the appointment and removal of alternate directors.

### PART III FINANCIAL PROVISIONS

7. The funds and resources of the Company shall comprise

- (a) such rates, fees, dues and other charges as are payable to the Company;
- (b) such monies as may be appropriated by the Legislative Council for the purposes of the Company;
- (c) monies paid to the Company by way of grants, rent, interest and other income derived from the investment of the Company's funds;
- (d) monies derived from the disposal of or dealing with real or personal property held by the Company;
- (e) monies borrowed by the Company; and
- (f) any other monies or other property lawfully payable, accruing or made available to, or vesting in, the Company.

8. The funds of the Company shall be applied in accordance with its Memorandum and Articles of Association and in the payment of the following: Application of the funds of the Company.

- (a) the interest and other charges related to the repayment of any loan payable by the Company;
- (b) the sums required to be paid towards the repayment of the principal amount of any loan made to the Company;
- (c) the salaries, remuneration, allowances, pensions, gratuities, provident fund and other superannuation benefits of the officers and staff employed in or in connection with the activities carried on by the Company;
- (d) the working and establishment expenses of the Company, including expenses relating to the maintenance of the property and installations of the Company and the discharge of the functions of the Company properly chargeable to revenue;
- (e) such sums as the Company may deem appropriate to set aside for the purposes of the future removal, replacement or renewal of property or installations due to obsolescence and depreciation;
- (f) the cost, or any portion thereof, of any new works, property or installations, not being a replacement or renewal of property or installations, as the Company may determine to be properly charged to revenue;
- (g) any other expenditure authorised by the Company and properly chargeable to revenue.

9. (1) Subject to article 106 of the Air Navigation (Overseas Territories) Order 2001, the Company may with the approval of the Executive Council, by Order, fix the rates, fees, dues and other charges for or in connection with any service provided by or at the international airport or a designated airport. Fixing of rates and fees.  
U.K.S.I. 2001  
No. 2128

(2) The tax and fees specified in Schedule 1 and the rates, fees, dues and other charges imposed under subsection (1) shall be collected and retained by the Company for its own use. Schedule 1

Guarantee of loans.

10. (1) The Minister of Finance, acting for and on behalf of the Government, may, with the approval of the Legislative Council, guarantee, in such manner and on such terms and conditions as the Executive Council thinks fit, the payment of the principal of, and any interest and other charges on, any sums borrowed by the Company.

(2) A guarantee given under this section shall be given in writing in the name of the Government, and may be signed for or on behalf of the Government by the Minister of Finance or any person authorised in writing to do so by the Minister of Finance.

Exemption from taxes.

11. Notwithstanding any other enactment, the Company is exempt from the payment of

- (a) customs duties, fees, taxes or port wharfage on goods imported for its own use;
- (b) taxes in respect of lands owned or leased by the Company;
- (c) stamp duty; and
- (d) income tax and any other tax imposed on the income or profits of the Company.

Vesting of certain property rights and liabilities in the Company.

12. (1) Subject to section 13, upon the commencement of this Act, all property including lands and buildings, and all interests therein of whatever nature, belonging to the Crown, and used or acquired exclusively for the purposes of the international airport and its operations shall be transferred to and be vested in the Company on such terms and conditions as the Government, the Company and any other interested party may agree upon in writing.

(2) Where a question arises as to whether any property, lands or buildings to which subsection (1) applies were used or acquired exclusively for the purposes of the international airport, a certificate to that effect under the hand of the Minister shall be conclusive.

Certain assets to be free of interest or capital obligations.

13. All assets transferred to and vested in the Company by the Crown, whether under section 12 or otherwise, shall be free of any interest or capital obligations, except such as are being financed by loans raised by the Government or unless the Government, the Company and any other interested party agree otherwise in writing.

**14. (1) The Company shall**

- (a) keep proper books of account of its income and other receipts and expenditure; and
- (b) ensure that
  - (i) all monies received are properly brought to account;
  - (ii) all payments out of its monies are correctly made and properly authorised; and
  - (iii) adequate control is maintained over its property and installations and over the incurring of liabilities by the Company.

(2) The books of account kept under subsection (1) shall be maintained in such form and manner that they

- (a) are sufficient to record and explain the Company's transactions;
- (b) enable the Company's financial position to be determined with reasonable accuracy at any time; and
- (c) are sufficient to enable the Company's financial statements to be prepared and audited in accordance with this section.

(3) Within three months after the end of each financial year, the Company shall prepare and approve accounts containing

- (a) a statement of the assets and liabilities of the Company at the end of the financial year;
- (b) a statement of the revenue and expenditure of the Company during the financial year;
- (c) such other financial statement for the financial year as may be specified by the Minister; and
- (d) proper and adequate explanatory notes to the financial statements.

(4) The accounts of the Company shall, within six months after the end of each financial year, be audited by such person as may be appointed in respect of each financial year by the Board.

Annual report.

15. (1) Within three months of the completion of the audit of the Company's accounts in respect of any financial year, the Company shall submit to the Minister to be forwarded to the Executive Council,

- (a) a copy of its audited accounts; and
- (b) a written report of its operations and activities for that financial year together with a copy of the audited financial statements.

(2) Within three months of receiving the Company's audited accounts, report and audited financial statements, the Minister shall lay them in the Legislative Council.

#### PART IV STAFF PROVISIONS

Transfer of  
Government  
officers and  
employees to the  
Company.  
Schedule 2

16. (1) Subject to subsection (2), every officer or employee of the Government who, immediately before the coming into force of this Act, is holding a post specified in Schedule 2 and is assigned duties at the international airport, shall, upon the coming into force of this Act, be deemed to be transferred from the service of the Government to the service of the Company upon terms and conditions not less favourable in aggregate than those which were attached to the appointments held by such officers and employees under the Government.

(2) Every officer and employee who is deemed to have been transferred under subsection (1) shall, within six months of the coming into force of this Act, have the option of electing

- (a) to continue in the service of the Company, in which case such service shall be retrospective from the date of his transfer and he shall be entitled to such pension, gratuity and other allowances and rights, if any, as he would have received had he been retired from the service of the Government on the abolition of his office on the date of his transfer to the Company;

- (b) to be transferred to another department of the Government, subject to a suitable vacancy existing, with his service with the Company counting as service with the Government in respect of his pension, gratuity and other allowances and rights, if any; or
- (c) to be deemed to have retired from the service of the Government on the abolition of his office on the date he ceases to be in the service of the Company.

(3) Where any officer or employee referred to in this section fails to elect as provided under subsection (2), he shall be deemed to have elected under subsection (2)(a) and he shall be treated accordingly.

(4) The Company shall reimburse the Government with the cost of any pension, gratuity and other allowances and rights, if any, arising from the period which any such officers or employees who elect not to continue with the Company did serve with the Company.

(5) Nothing in this section shall be deemed to affect the right of the Company

- (a) to terminate the employment of any officer or employee transferred to the service of the Company, or
- (b) to vary the rate of pay or conditions of service of an officer or employee,

in the manner and to the extent that the Government could have done had he continued in the service of the Government.

(6) Where any officer or employee has elected to continue in the service of the Company under subsection (2) or has been deemed to so continue under subsection (3), he shall not be entitled to be paid any pension, gratuity or other allowance that may have accrued to him whilst in the service of the Company, until the time when he would have qualified for a pension, gratuity or other allowance under the Pensions Act had he continued in the service of the Government. Cap. 161

17. (1) Where, immediately before the coming into force of this Act, the Government had

- (a) a contract of employment with a person, other than an officer or employee referred to in section 16, who is assigned responsibility for the management, control and supervision of, or duties at, the international airport; or

Transfer of Government contracts of employment and service to the Company.

- (b) with any person a contract for the provision of a service at the international airport which has not been discharged,

then, upon the coming into force of this Act, such contract shall continue to have effect in accordance with its terms as if it was originally made between such person and the Company, and all the rights, powers, duties and liabilities which accrued under or in connection with such contract shall be enforceable by or against the Company as if it were originally made between that person and the Company.

Appointment of authorised officers.

18. (1) Subject to subsection (2), the Company may designate such of its officers or employees as it thinks fit as authorised officers for the purposes of this Act.

(2) The Company shall not designate a person as an authorised officer unless that person is authorised, in writing, by the Minister, on the recommendation of the Board, to perform the functions of an authorised officer under this Act.

(3) The Company shall prepare guidelines, subject to the approval of the Minister, setting out the qualifications of an authorised officer and no person shall be designated as such officer except in accordance with those guidelines.

(4) The powers conferred on an authorised officer under this Act and the Regulations shall only be exercised by that officer in respect of the international airport or a designated airport.

(5) An authorised officer, other than a member of the Royal Virgin Islands Police Force, shall be provided with a suitable identification badge which he shall, in the course of the execution of his powers under this Act and the Regulations, carry on his person and produce upon request by any person.

#### PART V POWERS OF AUTHORISED OFFICERS

Power to arrest.

19. Without prejudice to any other powers conferred on an authorised officer under any other enactment, an authorised officer may, within the precincts of the international airport or a designated airport, exercise the powers of arrest under section 22 of the Police Act as though references to a member of the Force or a police officer in that section were references to an authorised officer.

Cap. 165

20. (1) Without prejudice to any other powers conferred on an authorised officer under any other enactment, an authorised officer may search any vehicle that is entering or leaving the international airport or a designated airport or any prohibited or restricted area within any such airport. Power to search vehicles.

21. (1) An authorised officer may Power to seize and destroy animals.

- (a) cause to be seized and impounded any animal found straying or tethered at the international airport or a designated airport; or
- (b) shoot and dispose of any animal found straying within the perimeter fence of the runway of the international airport or a designated airport.

(2) This section does not apply in respect of any animal which has arrived by air or is intended for despatch by air at the international airport or a designated airport and which is restrained by leash or confined in such other manner as to be under reasonable control.

#### PART VI MISCELLANEOUS PROVISIONS

22. (1) The Noise Control and Abatement Act, 1996 shall not apply to aircraft landing at and taking off from the international airport or a designated airport. Noise control. No. 1 of 1996

(2) The Minister may direct the Company, in writing, to implement such measures as he considers necessary for limiting, or mitigating the effects of, noise or vibrations emanating from the international airport or a designated airport.

23. The Company shall take all reasonable steps to ensure that the operations of the international airport and a designated airport are carried out in such manner as to ensure that those operations have a minimal adverse impact on the environment. Environmental considerations.

24. (1) The Governor may make regulations for the security of, and the safety of persons and property at, the international airport or designated airports and in particular may make regulations in respect of any or all of the following matters: Regulations.

- (a) declaring any building or part of a building or any area of land at any such airport to be a prohibited or restricted place or area;

- (b) regulating and restricting the admission of persons, whether as passengers or otherwise, and of animals to any part of any such airport;
- (c) regulating and restricting the use of vehicles of any class or description on any part of any such airport;
- (d) the issue of permits for any purposes relating to the use of any such airport or any part thereof and conditions of issue of such permits and conditions to be observed by the holders of such permits;
- (e) making the contravention of, or failure to comply with, the Regulations a summary offence punishable by a fine not exceeding five thousand dollars or imprisonment for a term not exceeding two years or both such fine and imprisonment.

(2) The Company may, with the approval of the Minister, make rules

- (a) in respect of the conduct of persons at the international airport or a designated airport or in any part thereof;
- (b) appointing parking places for vehicles at the international airport or a designated airport and imposing tolls in respect of vehicles of any class or description entering or departing from any such airport;
- (c) regulating and restricting advertising within the international airport or a designated airport;
- (d) making the contravention of, or failure to comply with, the Rules a summary offence punishable by a fine not exceeding one thousand dollars or imprisonment for a term not exceeding six months or both such fine and imprisonment.

(3) Regulations in relation to the use of motor or other vehicles on roadways in the international airport or a designated airport shall have effect notwithstanding that such roadways may be roads for the purposes of the Road Traffic Act or any regulations made thereunder.

Cap. 218

(4) Any person who contravenes, or fails to comply with, the Regulations may, in addition to any punishment to which he is liable for contravention of, or failure to comply with, the Regulations, be deprived by order of a Magistrate, of the further use of the relevant airport and its facilities for such time as in the opinion of the Magistrate, may be necessary to ensure the safety of the airport or the public.

(5) Any person who, being a person deprived of the use of any airport and its facilities pursuant to subsection (4), comes within the premises of the airport during the period for which he has been deprived of such use commits an offence and is liable on summary conviction to a fine not exceeding one thousand dollars or to imprisonment for a term not exceeding six months or to both such fine and imprisonment.

25. (1) The Aerodromes Ordinance shall not apply to the international airport or a designated airport. Limitation of  
Cap. 103.

(2) Notwithstanding subsection (1), regulations made under the Aerodromes Ordinance that are in force immediately prior to the date of commencement of this Act shall, to the extent that they are not inconsistent with the provisions of this Act, continue to apply to the international airport and a designated airport until regulations are made under this Act.

#### SCHEDULE 1

(Section 9(2))

#### Tax and Fees to be collected and retained by the Company

Enactment	Fee
Colonial Air Navigation (Aerodrome Charges) Regulations (S.R.O. 1975 No. 39)	(a) Landing fees under regulation 3 and Schedule A
	(b) Parking fees under regulation 4 and Schedule D

SCHEDULE 2

(Section 16(1))

**Government Employees Transferred to the Company**

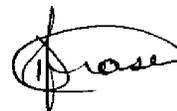
**Staff transferred from the Department of Civil Aviation**

No. of Employees	Post
1	Airport Manager
1	Chief Fire Officer
3	Senior Fireman
16	Fireman
1	Airport Security Manager
6	Security Supervisor
35	Security Officer
4	Watchman
3	Flight Information Display System
1	Head Cleaner
6	Cleaner
1	Handyman
1	Maintenance Operative
1	Foreman Mechanic
1	Tractor Operator
1	Electrician

Passed by the Legislative Council this 23<sup>rd</sup> day of December, 2003.



V. INEZ ARCHIBALD,  
Speaker.



DENNISTON FRASER,  
Clerk of the Legislative Council.

## LEGAL REPORT

This Act makes provision for the operation as commercial undertakings of the Terrance B. Lettsome International Airport (hereinafter referred to as "the international airport") and such other airports as the Executive Council may determine (hereinafter referred to as "designated airports").

By section 1, the Act will come into force on such date as the Governor may, by Proclamation, appoint. By section 3, the Act will bind the Crown.

Section 4 will require the Government to form a limited liability company under the Companies Act (Cap. 285) (hereinafter referred to as "the Company") for the purpose of carrying on the business of operating the international airport and designated airports as commercial undertakings. The Government will be the sole shareholder of the Company and shares in the Company will be held by, and in the name of, the Financial Secretary for and on behalf of the Government. Airports that are under the control of the Company will cease to be Government aerodromes as defined in the Air Navigation (Overseas Territories) Order 2001 (U.K.S.I. 2001 No. 2128) and will therefore need to be licensed by the Governor under article 103 of that Order. Consequently, the Governor through the Department of Civil Aviation will become the regulatory authority for the Company.

Some of the objects of the Company are set out in section 5. By section 6, the Company will be managed by a Board of Directors in accordance with the provisions of the Air Navigation (Overseas Territories) Order 2001, the Act, the Companies Act and the Memorandum and Articles of Association of the Company. The Board will consist of a non-executive Chairman, two executive directors including the Managing Director and at least two non-executive directors. The Articles of Association of the Company will govern the tenure of the members of the Board and the appointment and removal of alternate directors.

Section 7 will provide for the funds and resources of the Company, which will include rates, fees, dues and charges payable to the Company and monies appropriated to the Company by Legislative Council. The purposes to which the funds of the Company may be applied are set out in section 8.

Section 9 will enable the Company, with the approval of the Executive Council, to fix the rates, fees, dues and other charges for or in connection with any service provided by or at the international airport or a designated airport. This power will be subject to article 106 of the Air Navigation (Overseas Territories) Order 2001, which empowers the Governor to prescribe the maximum charges that the Company will be able to charge. Landing fees and parking fees which are now being collected at the international airport, will be collected and retained by the Company for its own use.

Section 10 will enable the Government, with the approval of Legislative Council, to guarantee sums borrowed by the Company. Section 11 will exempt the Company from customs duties, land taxes, stamp duty and income tax.

Section 12 will provide for the vesting of the international airport in the Company and section 13 will allow for the allocation between the Company and the Crown of responsibility for interest or capital obligations in relation to assets transferred to and vested in the Company by the Crown.

Sections 14 and 15 will provide for the preparation and auditing of the Company's accounts and the transmission of the Company's annual reports to the Executive Council and the Legislative Council.

Section 16 will make provisions for the transfer of the Government officers and employees listed in Schedule 2 to the Company. Government contracts of employment and service that relate to the international airport will also be transferred to the Company by section 17.

Section 18 will empower the Company to appoint authorised officers, who will, under Part V of the Bill, have certain powers within the precincts of the international airport or a designated airport, such as the power to arrest persons, to search vehicles and to seize and destroy animals.

Part VI of the Bill, which comprises sections 22 to 25, will make certain miscellaneous provisions in relation to noise control at the international airport or a designated airport, the duty of the Company to minimise the adverse impact that its operations might have on the environment, the making of regulations and the exemption of the international airport and designated airports from the provisions of the Aerodromes Ordinance (Cap. 103).

The Act was introduced in the Legislative Council on the 6<sup>th</sup> day of November, 2003 and passed through its remaining stages on the 23<sup>rd</sup> day of December, 2003.

In my opinion, His Excellency the Governor may properly assent to this Act in the name and on behalf of Her Majesty.

  
Attorney General  
7<sup>th</sup> January, 2004

Attorney General's Chambers  
Central Administration Complex  
Road Town, Tortola  
British Virgin Islands

VIRGIN ISLANDS

FINANCIAL INVESTIGATION AGENCY ACT, 2003

ARRANGEMENT OF SECTIONS

1. Short title and commencement.
  2. Interpretation.
  3. Establishment of the Agency, the Board and the Steering Committee.
  4. Functions of the Agency, the Board and the Steering Committee.
  5. Directions of the Board.
  6. No order for evidence.
  7. Immunity of officers from suit.
  8. No criminal or civil liability for providing information.
  9. Confidentiality.
  10. Duty to take oath.
  11. Annual report.
  12. Funds and resources.
  13. Annual budget.
  14. Accounts and audit.
  15. Annual meeting between Executive Council and Board.
  16. Exemption from taxation, etc.
  17. Appointment of staff.
  18. Secondment of public officers and police officers to the Agency.
  19. Regulations.
  20. Commission to issue guidelines.
  21. Consultation on proposed guidelines.
  22. Commission to make guidelines available.
  23. Review of guidelines.
  24. Consequential amendments and revocation.
- SCHEDULE 1  
SCHEDULE 2

I Assent

**Sgd. Thomas Macan**

L.S.

Governor

16 January, 2004

VIRGIN ISLANDS

NO. 19 OF 2003

An Act to provide for the establishment of a body to be known as the Financial Investigation Agency, the functions and powers of that body and for other matters connected therewith.

[Gazetted \_\_\_\_\_, 2004]

ENACTED by the Legislature of the Virgin Islands as follows:

Short title and commencement.

1. This Act may be cited as the Financial Investigation Agency Act, 2003 and shall come into operation on such day as the Governor may, by Proclamation published in the *Gazette*, appoint.

Interpretation.

2. In this Act, unless the context otherwise requires,

“Agency” means the Financial Investigation Agency established by section 3;

“Board” means the Board of the Agency referred to in section 3(2);

“Chairman” means the Chairman of the Board referred to in section 3(2);

No. 12 of 2001

“Commission” means the Financial Services Commission established under section 3(1) of the Financial Services Commission Act, 2001

“Director” means the Director of the Agency referred to in section 3(3);

“financial offence” means an offence under any financial services legislation;

No. 12 of 2001

“financial services legislation” means any legislation listed in Schedule 2 of the Financial Services Commission Act, 2001;

actions of the  
Agency, the  
Board and the  
Steering  
Committee.

4. (1) In the exercise of its functions under subsection (2), the Agency shall be responsible for receiving, obtaining, investigating, analysing and disseminating information which relates or may relate to

- (a) a financial offence or the proceeds of a financial offence; or
- (b) a request for legal assistance from an authority in a foreign jurisdiction which appears to the Agency to have the function of making such requests.

(2) Without limiting subsection (1) and notwithstanding any other law to the contrary, the Agency

- (a) shall receive all disclosures of information required to be made pursuant to any financial services legislation which is relevant to its functions, including information from any foreign financial investigation agency;
- (b) may, upon receipt of the disclosures referred to in paragraph (a), order in writing any person to refrain from completing any transaction for a period not exceeding seventy-two hours;
- (c) may, upon receipt of a request (whether through the Governor, Attorney General, Commission or otherwise) from a foreign financial investigation agency or a law enforcement authority, including the Commissioner of Police, order any person to freeze a person's bank account for a period not exceeding five days if satisfied that the request relates to the proceedings of a financial offence;
- (d) may require the production of such information, excluding information subject to legal professional privilege, that the Agency considers relevant to the performance of its functions;
- (e) shall retain a record of all information that it receives for a minimum of five years after the information is received;
- (f) shall, subject to such conditions as may be determined by the Director, provide information to the Commissioner of Police where the information may relate to the commission of a financial offence;

- (g) may provide information relating to the commission of a financial offence to any foreign financial investigation agency, subject to any conditions as may be considered appropriate by the Attorney General;
- (h) may, subject to section 19 of the Virgin Islands (Constitution) Order, 1976 and subsection (3) (b), enter into an understanding, in writing, with a foreign financial investigation agency which the Governor considers necessary or desirable for the discharge or performance of the functions of the Agency;
- (i) shall inform the public and financial and business entities of their obligations under measures that have been or might be taken to detect, prevent and deter the commission of financial offences.

U.K. S.I. 1976  
No. 2145

(3) The Board shall be responsible for making the policy of the Agency and, in addition to any powers conferred by or under this Act, shall,

- (a) subject to section 13, approve the budget of the Agency;  
and
- (b) exercise supervisory functions over the Agency in relation to the power specified in subsection (2)(h).

(4) Any person failing or refusing to provide the information required under subsection (2)(d) commits an offence and is liable on summary conviction to a fine not exceeding twenty thousand dollars or to imprisonment for a term not exceeding two years or to both.

(5) The Steering Committee shall be responsible for steering the conduct of investigations of the Agency and shall, in addition to any powers conferred by or under this Act,

- (a) on its own volition or upon the request of the Board or the Commission, investigate or cause the investigation of any matter referred to in any financial services legislation or which is the subject of a request for legal assistance pursuant to an enactment;
- (b) perform, subject to subsection (3), any of the functions referred to in subsection (2).

(6) A person who is aggrieved by an order under subsection (2)(c), may apply to a Judge in Chambers to discharge the order of the Agency and shall, if he so applies, serve notice on the Agency to join in the proceedings, but the order shall remain in force until the Judge determines otherwise.

(7) The Board may appoint to the service of the Agency, such investigating officers as it thinks fit, who shall have all the powers of police officers and shall, without prejudice to the generality of this subsection, be subject to such specific or general directions of the Governor, the Attorney General or any other authority in accordance with any relevant law.

(8) Where, in the performance of its functions, the Agency becomes aware of evidence that a criminal offence has or may have been committed in the Territory, the Agency shall report the matter to an appropriate officer of the Police Force, and that officer or such other officer as the Commissioner of Police may designate shall from that time take over the investigation.

(9) Where an investigation has been taken over by the Police Force under subsection (8), the Agency shall not participate further in the investigation unless ordered to do so by the Governor or the Attorney General, or requested to assist in the investigation by the Commissioner of Police.

Directions of the  
Board.

5. The Board may, without prejudice to section 4 (3), issue directions in writing of a general nature as to the policy to be followed by the Agency in the performance of its functions as appear to the Board to be necessary or expedient in the public interest and the Agency shall give effect to those directions.

No order for  
evidence.

6. Notwithstanding the provisions of any other enactment, no order for the provision of information, documents or evidence may be issued against the Agency, the Board or Steering Committee or any member thereof, the Director, officers or personnel of the Agency or any person engaged pursuant to this Act.

Immunity of  
officers from  
suit.

7. No action shall lie against the Agency, the Director, officers or personnel of the Agency or any person acting under the direction of the Agency or the Director for anything done or omitted to be done in good faith in the discharge or purported discharge of any functions, duties or powers under this Act.

No criminal or  
civil liability for  
providing  
information.

8. (1) No proceeding for breach of banking or professional confidentiality may be instituted against any person or against any director or employee of a financial or business entity who in good faith transmits information or submits reports in accordance with any financial services legislation, or the Criminal Justice (International Co-operation) Act, 1993 or the Drug Trafficking Offences Act, 1992 or any other enactment relating to the provision of mutual legal assistance.

No. 8 of 1993  
No. 5 of 1992

(2) No civil or criminal action may be brought nor any professional sanction taken against any person who, or against any director or employee of a financial or business entity that, in good faith transmits information or submits reports to the Agency.

9. (1) Any person who obtains information in any form as a result of his connection with the Agency shall not disclose that information to any person except so far as it is required or permitted under this Act or any other enactment. Confidentiality.

(2) Any person who communicates any information in breach of subsection (1) commits an offence and is liable on summary conviction to a fine not exceeding ten thousand dollars or to a term of imprisonment not exceeding one year, or to both.

10. (1) The members of the Board, the Director and the staff of the Agency shall, prior to assuming office with the Agency, subscribe to the Oath of Confidentiality set out in Schedule 2. Duty to take oath. Schedule 2

(2) The Oath of Confidentiality referred to in subsection (1) shall be taken before a Magistrate, Additional Magistrate, Registrar of the High Court or a Justice of the Peace.

(3) The Director shall keep a record of all Oaths of Confidentiality taken pursuant to this section.

11. (1) The Director shall Annual report.

(a) from time to time advise the Board on the work of the Agency and, in particular, on matters that could affect public policy or the priorities to be set by the Agency;

(b) prepare and submit to the Board on or before the 30<sup>th</sup> day of June in each year an annual report reviewing the work of the Agency during the previous year

(2) The Chairman shall forward a copy of every annual report to the Executive Council, which shall cause the report to be laid on the table of the Legislative Council before the end of the year immediately following the year to which the annual report relates.

12. (1) The funds and resources of the Agency shall consist of such monies as may be appropriated by the Legislative Council for the purposes of the Agency and any assets obtained by the Government under an asset sharing agreement. Funds and resources.

(2) The Agency shall open and maintain with a reputable bank licensed and operating in the Territory and approved by Executive Council, an account to be known as “the Asset Sharing Fund”.

(3) Monies provided to the Agency by Legislative Council and proceeds arising out of an asset sharing agreement shall be paid into the Asset Sharing Fund.

(4) The Asset Sharing Fund shall be for the exclusive use of the Agency.

(5) Where there is a surplus on the budget approved for the Agency’s expenditure for any financial year, such surplus shall be paid into a reserve account to be established by the Agency, unless otherwise agreed upon with the Executive Council.

Annual budget.

13. (1) The Board shall, not later than three months before the commencement of each financial year, prepare in respect of the financial year, and submit for the approval of the Executive Council, estimates of the expected expenditure and expected income of the Agency.

(2) The Board shall seek the views of the Minister concerning the estimates referred to in subsection (1) before submitting the estimates for the approval of the Executive Council.

(3) Notwithstanding that the Appropriation Act in respect of a financial year has not come into force by the beginning of that financial year, the Minister may authorise the withdrawal from the Consolidated Fund of such monies not exceeding the amount appropriated to the Agency for the immediately preceding financial year as may be necessary to carry on the operations of the Agency until such time as the Appropriation Act comes into force.

(4) Any monies withdrawn from the Consolidated Fund under subsection (3) shall, upon the coming into force of the Appropriation Act referred to in that subsection, be set off against the amount appropriated to the Agency by that Appropriation Act.

Accounts and  
audit.

14. (1) The Agency shall keep proper accounts and other records in relation thereto, and shall prepare in respect of each financial year a statement of accounts.

(2) The accounts of the Agency for each financial year shall be audited by the Auditor General or such other auditor as may be appointed by the Board with the prior written approval of the Minister.

1<sup>st</sup> January and ending on 31<sup>st</sup> December in each year.

(4) As soon as the accounts have been audited, the Agency shall submit a copy thereof to the Minister together with a copy of any report made by the Auditor General or other auditor.

(5) The Minister shall lay on the table of the Legislative Council before the end of the immediately subsequent year a copy of every such audited accounts, together with a copy of any report made by the Auditor General or other auditor on the accounts.

15. (1) The Executive Council and the Board shall in each year meet for the Board

Annual meeting between Executive Council and Board.

- (a) to apprise the Executive Council of the operations of the Agency; and
- (b) to discuss with the Executive Council issues relating to
  - (i) the operation, management and performance of the Agency;
  - (ii) the initiatives and future direction of the Agency;
  - (iii) Government policy with respect to the Agency;
  - (iv) international developments which may affect the operations of the Agency; and
  - (v) such other matters as either party may consider essential for strengthening the role of the Agency.

(2) The meeting referred to in subsection (1) shall be arranged by the Chairman after consultation with the Chief Minister.

16. The Agency is exempt from the payment of all taxes, levies and licence fees on its income and operations and from the payment of all taxes, duties and rates on its property and documents.

Exemption from taxation, etc.

17. (1) The Board may appoint such officers, employees and agents as it considers necessary and proper for the administration, management and performance by the Agency of its functions under this Act.

Appointment of staff.

(2) Appointments under this Act shall be on such terms as to remuneration, expenses, pensions and other conditions of service as the Board

(2) Appointments under this Act shall be on such terms as to remuneration, expenses, pensions and other conditions of service as the Board thinks fit.

(3) The Board may, by Rules, establish and maintain such schemes or make such other arrangements as it thinks fit for the payment of pensions and other benefits in respect of its officers and employees.

18. (1) A public officer may, with his own consent and the approval of the Director of Human Resources, be seconded to the Agency.

(2) A member of the Police Force may, with his own consent and the approval of the Commissioner of Police, be seconded to the Agency.

(3) A person who is seconded to the Agency shall draw the full pay of the post to which he is seconded and is eligible for any increment that is normally payable in that post.

(4) The pay of a person who is seconded to the Agency shall be paid by the Agency.

(5) During the period that a person is seconded to the Agency, he shall be deemed to remain on

- (a) the establishment of the Government department from which he is seconded, in the case of a public officer, or
- (b) the establishment of the Police Force, in the case of a member of the Police Force,

and he shall be eligible for promotion *in absentia* on the basis of the performance evaluation reports submitted under subsection (6).

(6) The Board shall cause the performance evaluation reports of a person who is seconded to the Agency to be forwarded to

- (a) the Director of Human Resources and the head of the Government department from which he is seconded, in the case of a public officer; and
- (b) the Commissioner of Police, in the case of a member of the Police Force.

Secondment of public officers and police officers to the Agency.

(7) The service of a person who is seconded to the Agency shall,

- (a) in the case of a public officer, count as service with the Government department from which he is seconded for the purposes of the Pensions Act; or Cap. 161
- (b) in the case of a member of the Police Force, count as service with the Police Force for the purposes of Part VI of the Police Act. Cap. 165

(8) A person who is seconded to the Agency is eligible for leave applicable to the post to which he is seconded and while on such leave he shall be paid the pay of that post.

(9) Where a member of the Police Force is permanently appointed to a post on the establishment of the Agency, he shall retain his rank as a member of the Police Force and the Board may, with the approval of the Commissioner of Police, promote him in rank as if he were a member of the Police Force.

(10) Where a member of the Police Force is seconded or permanently appointed to a post on the establishment of the Agency, he shall continue to have the powers and immunities conferred upon members of the Police Force by law.

19. (1) The Executive Council may, on the advice of the Agency, make such regulations as it thinks necessary or expedient for carrying out or giving effect to this Act. Regulations.

(2) Without prejudice to the generality of subsection (1), such regulations may in particular

- (a) require financial and other institutions as may be prescribed to establish and maintain procedures relating to the keeping of records and the making of reports and training;
- (b) create criminal offences and penalties triable summarily for failing to comply with the regulations;
- (c) provide that in determining whether a person has complied with the regulations the trial court shall take account of any relevant guidelines issued by the Agency;
- (d) prescribe all matters required or permitted by this Act to be prescribed.

Commission to  
ue guidelines.

20. (1) Subject to section 21, the Commission shall from time to time issue, in respect of a financial institution to which this Act applies, guidelines

- (a) setting out the features of a transaction that may give rise to suspicion that the transaction is or may be relevant to the enforcement of this Act;
- (b) setting out the procedures for reporting a suspicious transaction orally.

(2) Suspicious transaction guidelines shall be issued in such manner as the Commission shall from time to time determine.

(3) The Commission may from time to time issue an amendment or revocation of any suspicious transaction guidelines.

(4) Without limiting subsection (1), suspicious transaction guidelines issued under this section may relate to one or more kinds of financial institution and such guidelines may make different provisions for different kinds of financial institutions and different kinds of transactions.

Consultation of  
proposed  
guidelines.

21. (1) The Commission shall, before issuing any suspicious transaction guidelines,

- (a) consult with such other agencies and entities as the Board may by Order designate and shall have regard to any representations made by such agencies and entities;
- (b) publish in the *Gazette* and in a newspaper circulating in the Territory, notice of its intention to issue the guidelines, which notice shall contain an invitation to financial institutions that are likely to be affected by the proposed guidelines, and industry organisations that are representative of those financial institutions, to express to the Commission, within such reasonable period as is specified in the notice, their interest in being consulted in the course of the development of the guidelines; and
- (c) consult with, and invite representations from, those financial institutions and industry organisations which express such an interest, and shall have regard to any such representations.

- (2) Nothing in subsection (1) prevents the Commission from
  - (a) adopting any additional means of publicising the proposal to issue any suspicious transaction guidelines or of consulting with interested parties in relation to such a proposal; and
  - (b) taking a final decision on matters arising from consultations.

(3) This section also applies in respect of any amendment or revocation of any suspicious transaction guidelines.

22. On request by any financial institution in respect of which any suspicious transaction guidelines are for the time being in force, or by any industry organisation that represents any such financial institution, the Commission shall, without charge,

Commission to make guidelines available.

- (a) make those guidelines, and all amendments to those guidelines, available for inspection, by that financial institution or, as the case requires, that industry organisation, at the Commission's offices; and
- (b) provide copies of those guidelines, and all amendments to those guidelines, to that financial institution, or, as the case requires, that industry organisation.

23. (1) The Commission shall from time to time review any suspicious transaction guidelines for the time being in force.

Review of guidelines

(2) Section 21 applies, with all necessary modifications, in relation to any such review as if the review were a proposal to issue suspicious transaction guidelines.

24. (1) Section 27(2) of the Proceeds of Criminal Conduct Act, 1997 is repealed.

Consequential amendments and revocation.  
No. 5 of 1997  
S.I. 1998 No. 11

(2) The Reporting Authority (Constitution and Procedure) Order, 1998 is revoked.

(3) A reference in any enactment to the Reporting Authority established under section 27(2) of the Proceeds of Criminal Conduct Act, 1997 repealed by subsection (1) and the Reporting Authority (Constitution and Procedure) Order, 1998 revoked by subsection (2), shall be construed as a reference to the Steering Committee.

## SCHEDULE 1

(Section 3 (4))

### PROVISIONS RELATING TO THE MEETINGS OF THE BOARD, THE ADMINISTRATION AND PROCEEDINGS OF THE AGENCY AND THE DIRECTOR OF THE AGENCY

Meetings of the Board. 1. (1) The Board shall meet at least once every quarter at such place and time as may be designated by the Chairman.

(2) At every meeting of the Board, the Chairman shall preside.

(3) The quorum of the Board shall be four.

(4) At any meeting for the conduct of its business, the Board shall take its decision by a majority vote of the members present and in the event of a tie the Chairman shall have a casting vote.

(5) The Chairman shall at any time convene a special meeting of the Board upon receipt of a request signed by at least three members calling upon him to do so, and such meeting shall be held not later than fourteen days after receipt of the request.

(6) No act or proceeding of the Board shall be invalid by reason only of the existence of a vacancy among its members or of any defect in the appointment of a member.

(7) Notwithstanding anything contained in this paragraph, the Chairman may, in any matter he considers exceptional, make arrangements for a decision of the Board to be taken on such matter through a process of consultation without the need for an actual meeting.

(8) Subject to the provisions of this act, the Board shall establish its own rules of procedure for the purposes of the conduct of its meetings.

Official seal of the Agency.

2. (1) The Agency shall have an official seal for the authentication of documents issued by the Agency and the application of the seal of the Agency shall be authenticated by the signature of the Chairman or a person authorised to do so by the Board.

(2) A document purported to be executed under the seal of the Agency, or signed on its behalf, shall be received in evidence and, unless the contrary is proved, shall be taken to be so executed or signed.

3. Anything permitted or required to be done by the Agency may be done by any member of the Board or any employee of the Agency who is authorized for that purpose by the Agency either generally or specifically. Things required to be done.
4. The Board may establish committees which may include persons who are not members of the Board or the Steering Committee. Ad hoc committees.
5. (1) The Director shall, subject to the provisions of this paragraph, be appointed by the Board and hold and vacate his office in accordance with the terms of his appointment and shall, on ceasing to hold office, be eligible for re-appointment. Appointment of Director.
- (2) The Director shall not be appointed or re-appointed for a period exceeding five years.
6. (1) The Director shall not, while holding office as such, hold any other officer or employment, whether remunerated or not, without the prior approval of the Board.
- (2) Subject to subparagraph (1), a person may not be appointed or remain Director who
- (a) is a member of the Legislative Council;
  - (b) is a public officer; or
  - (c) is director, officer or employee of, or has a controlling interest in, any financial institution.
7. The Board may appoint a Deputy Director or any person eligible to be appointed as Director to act temporarily in the place of the Director whenever the Director is absent or is unable to act. Deputy Director and Acting Director.
8. The Director may at any time by notice in writing to the Chairman resign his office. Resignation of Director.
9. If the Board is satisfied that the Director
- (a) has become bankrupt or made arrangements with his creditors,
  - (b) is incapacitated by physical or mental illness,
  - (c) has been convicted of an offence and sentenced to a penalty of a fine or imprisonment, or
- Vacancy of office of Director.

(d) is otherwise unable or unfit to discharge the functions of Director,

the Board may declare the office of Director vacant and shall notify that fact in such manner as the Board thinks fit, and thereupon that office shall become vacant.

Remuneration of Director.

10. The Director shall receive such remuneration whether by way of salary, allowance or fees, as the Board may determine and, if a person ceases to be the Director and it appears to the Board that there are special circumstances which make it right that the person should receive compensation, the Board may direct a sum of such amount as the Board may determine to be paid to that person.

Director responsible for administration of Agency.

11. The Director shall have charge of the day-to-day management and operation of the agency and shall be accountable therefor.

## SCHEDULE 2

(Section 10(1))

### OATH OF CONFIDENTIALITY

I, \_\_\_\_\_, being a Board member / the Director / an officer / an employee / an agent / an adviser\* of the Financial Investigation Agency solemnly swear / affirm\* that I shall keep confidential all information which comes to my knowledge in my capacity as a Board member / the Director / an officer / an employee / an agent / an adviser\* of the Agency and I shall not divulge such information except as authorized by and in accordance with law.

So help me God! (omit if affirming)

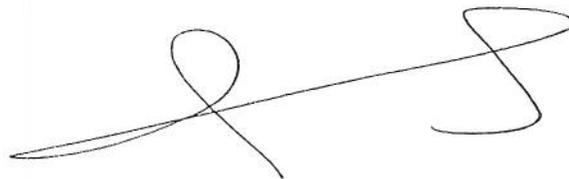
Sworn / Affirmed before me, a Magistrate / Additional Magistrate / Registrar of the High Court / Justice of the Peace\* this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
(Name of person swearing / affirming)

\_\_\_\_\_  
(Magistrate / Additional Magistrate/  
Registrar of the High Court/  
Justice of the Peace)\*

\* Delete as appropriate

Passed by the Legislative Council this 30<sup>th</sup> day of December, 2003.

A handwritten signature in black ink, consisting of a large loop on the left and a long, sweeping stroke that ends in a hook on the right.

V. INEZ ARCHIBALD,  
Speaker.

A handwritten signature in black ink, featuring a large, stylized 'D' that loops around the first part of the name.

DENNISTON FRASER,  
Clerk of the Legislative Council.

**VIRGIN ISLANDS**  
**PUBLIC FINANCE MANAGEMENT ACT, 2004**  
**ARRANGEMENT OF SECTIONS**

*Section*

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8. Administration of Development Fund.
9. Establishment of Repairs and Renewal Fund.
10. Administration of Repairs and Renewal Fund.
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12. Administration of special funds.
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PUBLIC MONEY AND PUBLIC STORES**

37. Abandonment of claims, etc. and write-off of public money and public stores.
38. Disposal of certain stores to charitable organisations, etc.

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45. Financial Instructions.
46. Enforcement.
47. Repeal.
48. Transitional provisions.

I Assent  
THOMAS MACAN  
Governor  
11<sup>th</sup> March, 2004

**VIRGIN ISLANDS**

**No. 2 of 2004**

An Act to make better provision for the management of public money and public stores, to repeal the Capital Fund Ordinance (Cap. 174) and the Finance Ordinance (Cap. 175) and to provide for other matters connected therewith.

[Gazetted 1<sup>st</sup> April, 2004]

ENACTED by the Legislature of the Virgin Islands as follows:

**PART I  
PRELIMINARY**

- |  |                      |
|--|----------------------|
| 1. This Act may be cited as the Public Finance Management Act, 2004. | Short title.         |
| 2. This Act binds the Crown.   | Act binds the Crown. |
| 3. (1) In this Act,  | Interpretation.      |

“accountable officer” means a public officer who is concerned in or responsible for

- (a) the collection, receipt, custody, investment or payment of public money; or
- (b) the acquisition, custody, issue or disposal of public stores;

“Accountant General” means the person for the time being carrying out the duties of the public office of Accountant General;

“accounting officer” means a public officer appointed to be an accounting officer in accordance with section 21(1);

“Appropriation Act” means an Act to apply a sum out of the Consolidated Fund to the service of a financial year and includes a Supplementary Appropriation Act;

No. 13 of 2003

“Auditor General” means the Auditor appointed under section 4 of the Audit Act, 2003;

“authorised investments” means investment

- (a) in a bank, either at call or subject to notice not exceeding twelve months;
- (b) in a manner authorised for the investment of property in the hands of trustees by a law in force in the Territory or elsewhere; or
- (c) in such other manner as the Legislative Council may, by resolution, authorise;

U.K.S.I. 1976  
No. 2145

“Consolidated Fund” means the Fund established by section 59 of the Virgin Islands (Constitution) Order, 1976;

“Development Fund” means the Fund established by section 7(1);

“Development Fund vote” means the total sum appropriated out of the Development Fund

- (a) for a specific development scheme, project or programme, or
  - (b) generally for the purpose of development,
- by an Appropriation Act;

“expenditure vote” means a Development Fund vote or a supply vote;

“Financial Instructions” means instructions issued by the Financial Secretary under section 45;

“financial year” means the period from the 1<sup>st</sup> day of January in any one year to the 31<sup>st</sup> day of December in such year inclusive of both such days or such other period as the Minister may by notice published in the *Gazette*, appoint;

“public money” means revenue or other money raised or received on account, or for the purpose, of the Government and includes stamps, investments,

securities and negotiable instruments that are the property of the Government;

“public stores” means chattels that are

- (a) the property of the Government;
- (b) in the possession of the Government; or
- (c) under the control of the Government;

“receiver of revenue” means a person appointed under section 21(4)(a);

“Regulations” means regulations made under section 44(1);

“special fund” means a fund created in accordance with section 11(1);

“statutory expenditure” means expenditure charged on the Consolidated Fund by a law that is not an Appropriation Act;

“Supplementary Appropriation Act” means an Act the purpose of which is to appropriate money to supplement the appropriation made by an Appropriation Act;

“supply vote” means the total sums appropriated out of the Consolidated Fund for and applied to a purpose by an Appropriation Act;

“trust fund” means

- (a) subject to section 13(1), a trust fund established by an enactment other than an Appropriation Act; or
- (b) a fund of money held by the Government pursuant to
  - (i) a deed of trust; or
  - (ii) a trust instrument, expressed or implied; or
  - (iii) an arrangement governing the use of the money so held.

(2) References in this Act to money raised or received for the purpose of Government does not include money received on deposit, or money held on trust, by the Government.

**PART II**  
**PUBLIC FINANCE**

Minister may limit expenditure.

**4.** Notwithstanding the issue of a warrant under the hand of the Minister in accordance with section 60(1) of the Virgin Islands (Constitution) Order, 1976, the Minister may limit or suspend at any time any expenditure, other than

- (a) statutory expenditure, or
- (b) expenditure arising out of the Governor's exercise of his power to issue a warrant under the proviso of section 60(1) of the Virgin Islands (Constitution) Order, 1976 or under any other enactment,

with or without cancellation of the warrant if in his opinion the financial exigencies of the public interest so require.

Establishment of Contingencies Fund.

**5.** (1) There is established a Contingencies Fund to meet any urgent and unforeseen need for expenditure for which no other provision exists.

(2) There is to be paid into the Contingencies Fund

- (a) money from time to time appropriated to the Fund by a supply vote to meet such contingencies; and
- (b) the amount comprised in any supplementary estimate approved by the Legislative Council in accordance with section 63(2) of the Virgin Islands (Constitution) Order, 1976.

(3) The Contingencies Fund

- (a) does not form part of the Consolidated Fund;
- (b) shall be kept in a separate account by the Accountant General; and
- (c) shall comprise not more than one half per cent of the total sum appropriated in an Appropriation Act for the relevant year.

Administration of Contingencies Fund.

**6.** (1) If the Minister is satisfied that due to exceptional circumstances an urgent need for expenditure has arisen

- (a) for which no money has been appropriated or for which the sum appropriated is insufficient;

- (b) for which funds cannot be provided under section 24(1); and
- (c) which cannot be deferred without serious detriment to the public service,

the Minister may, by Contingencies Warrant signed by him, authorise an advance from the Contingencies Fund to meet that need.

(2) The Financial Secretary may, with the approval of the Minister, invest money standing to the credit of the Contingencies Fund in authorised investments.

(3) An investment made under subsection (2) and interest received from such an investment are part of the Contingencies Fund.

7. (1) There is established a Development Fund.

Establishment of Development Fund.

(2) There shall be paid into the Development Fund

- (a) money appropriated to the Fund by a supply vote; and
- (b) any money received by the Government by way of a grant or loan
  - (i) for a specific development scheme, project or programme; or
  - (ii) generally for the purpose of development.

(3) The Development Fund

- (a) does not form part of the Consolidated Fund; and
- (b) shall be kept in a separate account by the Accountant General.

8. (1) Money shall not be withdrawn from the Development Fund except upon the authority of a Development Warrant signed by the Minister.

Administration of Development Fund.

(2) The Minister shall not issue a Development Warrant to meet expenditure for development unless the expenditure has been approved by a Development Fund vote.

(3) Notwithstanding the issue of a Development Warrant, the Minister may at any time limit or suspend expenditure from the Development Fund with or without cancellation of the Warrant if he is satisfied that the financial exigencies or the public interest so require.

(4) The Financial Secretary may, with the approval of the Minister, invest money held in the Development Fund in authorised investments.

(5) The Financial Secretary shall not invest money in the Development Fund in contravention of any condition imposed on a grant or loan of money forming part of the Development Fund.

(6) An investment made under subsection (4) and interest received from such an investment are part of the Development Fund.

(7) Except as provided by subsection (4), money in the Development Fund received by way of a grant or loan shall be used by the Government for the purpose for which it was received unless the donor or lender of the money agrees that it may be used for some other purpose.

Establishment of  
Repairs and  
Renewal Fund.

**9.** (1) There is established a Repairs and Renewal Fund.

(2) There shall be paid into the Repairs and Renewal Fund money appropriated to the Fund by a supply vote.

(3) The Repairs and Renewal Fund

(a) does not form part of the Consolidated Fund;

(b) shall be kept in a separate account by the Accountant General; and

(c) shall comprise not more than one quarter per cent of the total sum appropriated in an Appropriation Act for the relevant year.

Administration  
of Repairs and  
Renewal Fund.

**10.** (1) Money shall not be withdrawn from the Repairs and Renewal Fund except upon the authority of a Repairs and Renewal Warrant signed by the Minister.

(2) The Minister shall not issue a Repairs and Renewal Warrant unless he is satisfied that it is necessary to do so to meet expenditure for the repair or renewal of public stores or other Government property.

(3) Notwithstanding the issue of a Repairs and Renewal Warrant, the Minister may at any time limit or suspend expenditure from the Repairs and

Renewal Fund with or without cancellation of the Warrant if he is satisfied that the financial exigencies or the public interest so require.

(4) The Minister shall include an estimate of the expenditure to be made from the Repairs and Renewal Fund during a financial year in the estimates of the revenue and expenditure of the Government for that year.

(5) The Financial Secretary may, with the approval of the Minister, invest money standing to the credit of the Repairs and Renewal Fund in authorised investments.

(6) An investment made under subsection (5) and interest received from such an investment are part of the Repairs and Renewal Fund.

**11.** (1) The Minister may, with the approval of the Legislative Council, establish special funds for specific purposes. Establishment of special funds.

(2) There shall be paid into a special fund

- (a) revenue exclusively relating to or derived from the subject matter of the fund; and
- (b) any money appropriated for that purpose by a supply vote.

(3) A special fund

- (a) does not form part of the Consolidated Fund; and
- (b) shall be kept in a separate account by the Accountant General.

(4) The money in a special fund shall not be expended except for the specific purpose for which the fund was established.

(5) The Minister may declare, in writing, that a special fund is to be wound up and closed, and thereupon

- (a) after the liabilities of the fund have been paid, the fund shall be taken to have been closed accordingly; and
- (b) any balance standing to the credit of the fund shall be paid into the Consolidated Fund.

**12.** (1) The Minister shall appoint a public officer to be the accounting officer in respect of a special fund. Administration of special funds.

(2) A special fund shall be administered in accordance with such instructions as the Financial Secretary may issue.

(3) The Financial Secretary may, with the approval of the Minister, invest money standing to the credit of a special fund in authorised investments.

(4) An investment made under subsection (3) and interest received from such an investment are part of the special fund.

Trust funds.

**13.** (1) A trust fund established by an enactment other than an Appropriation Act is not a trust fund if the enactment that established it provides for the payment of money into the fund

- (a) out of the Consolidated Fund; or
- (b) from money which would otherwise have been paid into the Consolidated Fund,

unless the enactment that established the fund specifically provides that the fund is a trust fund for the purposes of this Act.

(2) A trust fund

- (a) does not form part of the Consolidated Fund; and
- (b) shall be kept in a separate account by the Accountant General.

Administration of trust funds.

**14.** (1) A trust fund shall be administered in accordance with the enactment, deed of trust, trust instrument or agreement which created it.

(2) If in relation to a trust fund

- (a) there is no enactment, deed of trust, trust instrument or agreement relating to the administration of the fund; or
- (b) the enactment, deed of trust, trust instrument or agreement contains provisions for the administration of the fund that are, in the opinion of the Financial Secretary, inadequate,

the Financial Secretary shall appoint a public officer to be the accounting officer of the fund and give instructions for the administration of the fund.

(3) The Financial Secretary may, with the approval of the Minister, invest money in a trust fund in authorised investments.

(4) An investment made under subsection (3) and interest received from such an investment are part of the trust fund.

(5) Nothing in this section authorises the terms of a trust to be altered or contravened.

**15.** (1) There is established a Reserve Fund.

Establishment of Reserve Fund.

(2) There shall be paid into the Reserve Fund money appropriated to the Fund by a supply vote.

(3) The Reserve Fund

(a) does not form part of the Consolidated Fund; and

(b) shall be kept in a separate account by the Accountant General.

**16.** (1) Money shall not be withdrawn from the Reserve Fund except upon the authority of a Reserve Warrant signed by the Minister.

Administration of Reserve Fund.

(2) The Minister shall not issue a Reserve Warrant unless the expenditure has been approved by an Appropriation Act or a resolution of the Legislative Council.

(3) Notwithstanding the issue of a Reserve Warrant, the Minister may at any time limit or suspend expenditure from the Reserve Fund with or without cancellation of the Warrant if he is satisfied that the financial exigencies or the public interest so require.

(4) The Financial Secretary may, with the approval of the Minister, invest money standing to the credit of the Reserve Fund in authorised investments.

(5) An investment made under subsection (4) and interest received from such an investment are part of the Reserve Fund.

### **PART III CONTROL AND MANAGEMENT OF PUBLIC FINANCE**

**17.** (1) It is the duty of the Minister to supervise the finances of the Government to ensure that a full account of them is made to the Legislative Council.

Power and duties of the Minister.

(2) For the purposes of subsection (1), the Minister has, subject to this Act, the supervision and direction of every matter relating to the financial affairs of the Government.

Financial Secretary to be given information, etc.

**18.** A public officer shall provide the Financial Secretary or a person appointed by the Financial Secretary with any information, document or record he requires that

- (a) relates to public money, public stores or other Government property; and
- (b) is in the officer's possession or under his control.

Inspection of public money, stores and property.

**19.** A public officer shall allow the Financial Secretary or a person appointed by the Financial Secretary to inspect any public money, public stores and other Government property in the officer's possession or under his control.

Powers of Accountant General.

**20.** (1) It is the duty of the Accountant General

- (a) to compile and manage the accounts of the Government; and
- (b) to manage the Treasury Department.

(2) For the purposes of subsection (1), the Accountant General may, with the written approval of the Financial Secretary, give instructions, not inconsistent with this Act, the Regulations or any Financial Instructions, for the management of public money and public stores.

(3) The Accountant General shall, in particular, ensure

- (a) that money owed to the Government is promptly paid;
- (b) that money received or paid by the Government is brought promptly and properly to account;
- (c) that money is not paid out by the Government unless it is properly payable; and
- (d) that adequate provisions exist for the safe custody of public money and public stores.

(4) The Accountant General shall report in writing to the Financial Secretary

- (a) any apparent defect in a department's control of public money or public stores; or
- (b) any breach or non-observance of this Act, the Regulations, any Financial Instructions or any instructions issued by the Accountant General.

**21.** (1) The Minister shall appoint by name and in writing an accounting officer in respect of each expenditure vote to control and account for the expenditure of money applied to that vote by an Appropriation Act. Accounting officers.

(2) An accounting officer is personally accountable for

- (a) public money received, collected or disbursed by the department or service for which the vote for which he is the accounting officer is provided; and
- (b) public money received, held or disposed of on account of that department or service.

(3) An accounting officer appointed in respect of a trust fund or any other fund established by or by virtue of this Act is personally accountable for the money in the fund and money received, collected or disbursed by the fund.

(4) An accounting officer

- (a) may, with the written approval of the Financial Secretary, appoint a public officer under the accounting officer's control to be the receiver of revenue for the collection of an item of revenue for which the accounting officer is accountable; and
- (b) if he does so, shall define in writing to the Financial Secretary's satisfaction the extent to which the powers and duties conferred and imposed on the accounting officer in respect of the receipt and collection of public money is to be exercised or performed on his behalf by that receiver of revenue.

(5) The appointment of a receiver of revenue under subsection (4) does not abate the personal accountability of the accounting officer who made the appointment.

(6) Without prejudice to subsection (4), an accounting officer may, and shall if required to do so by the Financial Secretary,

- (a) define in writing the extent to which the powers and duties conferred and imposed upon him in respect of public money may be exercised or performed on his behalf by a public officer under his control; and
- (b) give directions necessary to ensure the proper exercise or performance of those powers and duties.

Accountable officers to comply with instructions, etc.

**22.** An accountable officer shall comply with this Act, the Regulations, Financial Instructions and instructions given by the Accountant General under section 20(2).

Revenue etc. to be paid into Consolidated Fund.

**23.** Except as otherwise provided in the Virgin Islands (Constitution) Order, 1976 and this Act, revenue and other money received for the purpose of the Government shall be paid into the Consolidated Fund in accordance with the Regulations, Financial Instructions and instructions given by the Accountant General under section 20(2).

Re-allocation within supply vote.

**24.** (1) If, in the opinion of the Minister, the exigencies of the public service make it necessary or expedient to increase the sum assigned to a purpose within a supply vote, he may direct, by means of a Re-allocation Warrant, that there be applied in aid of the purpose for which the sum assigned may be deficient, a sum out of any surplus arising on a sum assigned to another purpose within the same supply vote.

(2) A Re-allocation Warrant issued under subsection (1) shall be laid before the Legislative Council by the Minister before the expiration of six months after the end of the year to which it relates.

(3) The Minister shall not issue a Re-allocation Warrant if the effect of the re-allocation would be to avoid the terms and conditions attached to a grant or loan to the Government.

Investment of money in Consolidated Fund.

**25.** (1) The Financial Secretary may, with the approval of the Minister, invest money in the Consolidated Fund in an authorised investment.

(2) An investment made under subsection (1) and interest received from such an investment are part of the Consolidated Fund.

Statutory payments.

**26.** (1) The Minister may issue a warrant to authorise the Accountant General to meet any statutory expenditure that has become due.

(2) The Minister shall not issue a warrant under subsection (1) until the Minister has been informed by the Financial Secretary that he is satisfied that the sum is lawfully payable.

(3) Subject to subsection (1), the disbursement of money provided in a financial year to meet expenditure on statutory expenditure is under the control of, and shall be accounted for by, the Accountant General.

**27.** (1) An appropriation by the Legislative Council of public money for the service of a financial year ceases to have effect at the close of that financial year.

Appropriation and warrants to lapse at end of financial year.

(2) A warrant issued under this Act during a financial year ceases to have effect at the close of that financial year.

**28.** The Accountant General may, with the written approval of the Minister, pay out of the Consolidated Fund

Refunds, etc.

- (a) money paid into the Consolidated Fund in error; and
- (b) money necessary to pay a refund, rebate or drawback in accordance with an enactment.

**29.** (1) Money in the Consolidated Fund shall be kept with such bank as may be specified by the Minister.

Consolidated Fund money to be kept with specified bank.

(2) Subsection (1) does not apply to money invested in accordance with section 25.

**30.** A public or official account shall not be opened at a bank without the written authority of the Minister.

Bank accounts.

**31.** (1) The Minister may, by Imprest Warrant signed by him, authorise the Accountant General to issue imprests from the Consolidated Fund to public officers for a purpose for which money has been appropriated from the Fund.

Imprests.

(2) Subject to subsection (4), a public officer to whom an imprest has been issued pursuant to subsection (1) shall retire the imprest before

- (a) the end of the financial year in which the imprest was issued; or
- (b) if some earlier date is specified in the Imprest Warrant, that earlier date.

(3) If a public officer to whom subsection (2) applies fails to retire an imprest in accordance with that subsection, the Accountant General may recover the amount of the imprest by deduction from the salary or other emoluments of the public officer.

(4) A public officer to whom an imprest has been issued to travel on duty outside the Territory shall retire the imprest in the manner and at the time instructed by the Financial Secretary.

(5) If a public officer to whom subsection (4) applies fails to comply with the instructions of the Financial Secretary, the Accountant General may recover the amount of the imprest by deduction from the salary or other emoluments of the public officer in such manner as the Financial Secretary directs.

(6) For the purpose of this section, a member of the Legislative Council is a public officer.

Restriction on borrowing.

**32.** The Government or any person acting on behalf of the Government has no power to borrow money except in accordance with an enactment or on the authority of a resolution of the Legislative Council.

Guarantees.

**33.** The Government or any person acting on behalf of the Government has no power to give a guarantee involving the Government in any financial liability unless the guarantee is given in accordance with an enactment or under the authority of a resolution of the Legislative Council.

Deposits.

**34.** (1) In this section, “deposits” means money, not being money raised or received for the purposes of the Government, which has been deposited

- (a) with the Accountant General; or
- (b) with any other public officer authorised to receive the money by the Accountant General.

(2) Deposits

- (a) do not form part of the Consolidated Fund; and
- (b) except as provided by subsection (4), shall not be applied for a purpose of Government.

(3) The Financial Secretary may, with the approval of the Minister, invest deposits in authorised investments.

(4) Interest received in respect of deposits invested in accordance with subsection (3) is to be paid into the Consolidated Fund.

**PART IV  
AUDIT AND EXAMINATION OF  
PUBLIC ACCOUNTS**

**35.** (1) The Accountant General shall, within four months after the end of a financial year or such longer period as the Minister may approve in writing, transmit to the Auditor General accounts showing the financial position of the Legislative Council and all Government departments and offices, including the Public Service Commission, at the end of that financial year. Annual accounts.

(2) Where, pursuant to subsection (1), the Minister grants a longer period for the Accountant General to transmit the accounts to the Auditor General, he shall within thirty days of such decision, inform Executive Council in writing of that fact.

**36.** Where the Minister causes a report of the Auditor General to be laid in the Legislative Council in pursuance of section 66(3) of the Virgin Islands (Constitution) Order, 1976, the Minister shall cause a copy of the relevant annual accounts referred to in section 35, to be attached to the report of the Auditor General. Annual accounts to be laid in Legislative Council.

**PART V  
ABANDONMENT OF CLAIMS AND WRITE-OFF OF  
PUBLIC MONEY AND PUBLIC STORES**

**37.** The Financial Secretary may, with the approval of the Executive Council, Abandonment of claims, etc. and write-off of public money and public stores.

(a) abandon or remit a claim by or on behalf of the Government; or

(b) write-off a loss of public money or public stores.

**38.** (1) Subject to subsection (2), the Minister may give serviceable public stores not required for Government purposes to institutions or organisations in the Territory established solely or principally for educational, scientific, cultural or charitable purposes. Disposal of certain stores to charitable organisations, etc.

(2) The approval of the Executive Council is required if the value of the public stores referred to in subsection (1) exceeds five thousand dollars.

**PART VI**  
**SURCHARGES AND SET OFFS**

Power to surcharge.

**39.** (1) The Financial Secretary may surcharge a person who is or was a public officer, a sum determined by the Financial Secretary if it appears to the Financial Secretary that the person

- (a) failed to collect money owing to the Government which it was his duty to collect;
- (b) was responsible for
  - (i) the improper payment of public money;
  - (ii) an expenditure of money in excess of the amount authorised; or
  - (iii) a payment of public money not properly payable;
- (c) was responsible for a deficiency in public money; or
- (d) was responsible for
  - (i) the loss or destruction of, or
  - (ii) damage to,  
  
public stores or other Government property.

(2) Before surcharging a person under subsection (1), the Financial Secretary shall give the person a period of fourteen days to provide a satisfactory explanation for the person's action.

(3) The Financial Secretary, in determining an amount for the purpose of subsection (1), shall

- (a) take due account of the person's ability to pay the surcharge without undue financial hardship; and
- (b) determine a sum that does not exceed
  - (i) the loss suffered by the Government; or
  - (ii) twenty-five per cent of the gross annual salary or pension of the person,

whichever is the lesser amount.

**40.** The Financial Secretary shall notify the person surcharged, the Minister, the Auditor General and the Accountant General, of the surcharge made under section 39. Notification of surcharge.

**41.** (1) A person aggrieved by a surcharge made against him may appeal to the Minister within Appeals against surcharge.

- (a) one month from the date on which he is notified of the surcharge in accordance with section 40; or
- (b) any longer period the Minister may allow after consulting the Financial Secretary.

(2) The Minister may, after making any investigation he considers necessary,

- (a) confirm the surcharge; or
- (b) direct that the person surcharged be released wholly or in part from the surcharge.

**42.** (1) Subject to subsection (2), the Accountant General shall, on being notified of a surcharge in accordance with section 40, recover the amount of the surcharge from the person surcharged in the manner determined by the Financial Secretary under subsection (3). Recovery of surcharge.

(2) A surcharge cannot be recovered

- (a) until after the end of the period allowed under section 41 for the lodging of an appeal; or
- (b) if the person surcharged appeals under section 41, until the amount of the surcharge has been confirmed or otherwise determined in accordance with that section.

(3) The amount of a surcharge is to be recovered by deducting each half-month from the salary, wages or pension of the person surcharged such amount as is determined by the Financial Secretary except that

- (a) each half-monthly deduction shall not exceed twenty-five per cent of the gross half-monthly salary, wages or pension of the person surcharged; and
- (b) the number of deductions shall not exceed twenty-four.

(4) Notwithstanding subsection (3), if the person surcharged is due to be paid money by the Government, other than by way of salary, wages or pension, the Financial Secretary may require the amount of the surcharge to be deducted from that money in whole or in part.

(5) The ability the Government has to surcharge a person does not prejudice any other legal remedy the Government may have against that person or any other person to recover the loss the Government has suffered.

Power to set off.

**43. (1) If**

- (a) the Government owes money to a person on account of a contract or otherwise, including money due by way of salary, wages or other emoluments, and
- (b) that person owes money to the Government,

the Financial Secretary may direct that there is to be set off against any payment made by the Government to that person the money due from that person to the Government.

(2) Where an amount is set off in accordance with subsection (1)

- (a) the amount due from the Government and referred to in subsection (1)(a) is to be dealt with and accounted for as if it had been paid in full by the Government to the person whom it was owed; and
- (b) the amount due to the Government and referred to in subsection (1)(b) is to be dealt with and accounted for as if that amount had been paid in full to the Government by the person from whom it was owed.

**PART VII  
MISCELLANEOUS**

Regulations.

**44. (1)** The Executive Council may, on the advice of the Financial Secretary, make such regulations as are necessary or expedient for the proper carrying out of the purposes of this Act, including regulations for

- (a) the care and custody of, and accounting for, any stores, supplies, plant, equipment, machinery, tool, vessel, vehicle, livestock or thing being the property, or in the possession or under the control, of the Government;

- (b) the appointment of a Tenders Board and for the procurement of goods and services by the Government, whether by tender, direct purchase or otherwise;
- (c) the disposal by auction, sale, transfer or otherwise, of any stores, supplies, plant, equipment, machinery, tool, vessel, vehicle, livestock or thing being the property, or in the possession or under the control, of the Government;
- (d) the giving on loan or hire of any stores, supplies, plant, equipment, machinery, tool, vessel, vehicle or thing being the property, or in the possession or under the control, of the Government;
- (e) the appointment of an Accident Investigation Board to enquire into the causes and costs of accidents involving damage to any plant, equipment, machinery, vessel, vehicle or other thing being the property, or in the possession or under the control, of the Government and to assess the extent of any blame or negligence on the part of the drivers or operators responsible for, or in control of, such plant, equipment, machinery, vessel, vehicle or thing.

(2) Regulations made under subsection (1) shall be subject to an affirmative resolution of the Legislative Council.

**45.** (1) The Financial Secretary may, from time to time after consultation with the Minister, issue financial instructions, not inconsistent with this Act or the Regulations, to public officers on how they are to handle public money, public stores and other Government property.

Financial  
Instructions.

(2) The Financial Instructions may, in particular, direct public officers on

- (a) how public money is to be collected, spent and accounted for;
- (b) how public stores are to be acquired, issued, looked after, accounted for and disposed of; and
- (c) what records, examinations, inspections and departmental checks shall be made.

(3) The Financial Secretary shall ensure that the Financial Instructions are brought to the notice of public officers affected by them.

Enforcement.

S.R.O. 29 of  
1969

**46.** Without prejudice to the institution of criminal proceedings or the imposition of a surcharge against him, disciplinary proceedings under the Public Service Commission Regulations, 1969 may be taken against a public officer who contravenes this Act, the Regulations, the Financial Instructions or any instructions issued by the Accountant General under section 20(2).

Repeal.  
Cap. 174  
Cap. 175

**47.** The Capital Fund Ordinance and the Finance Ordinance are repealed.

Transitional  
provisions.

**48.** (1) Money standing to the credit of the Capital Fund established by the Capital Fund Ordinance immediately before the commencement of this Act is to be taken on that commencement to be money standing to the credit of the Development Fund established by this Act.

(2) Any instructions given by the Financial Secretary in respect of financial matters and in effect immediately before the commencement of this Act have effect on that commencement as if they were Financial Instructions given by the Financial Secretary under this Act in so far as they are not inconsistent with the provisions of this Act.

Passed by the Legislative Council this 26<sup>th</sup> day of February, 2004.

V. INEZ ARCHIBALD,  
Speaker.

DENNISTON FRASER,  
Clerk of the Legislative Council.

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**No. 10 of 2004**

**VIRGIN ISLANDS**  
**EDUCATION ACT, 2004**  
**ARRANGEMENT OF SECTIONS**

*Section*

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**THIRD SCHEDULE**

PROCEDURE OF TECHNOLOGICAL AND VOCATIONAL  
EDUCATION AND TRAINING COUNCIL

**FOURTH SCHEDULE**

CONSTITUTION OF COMMITTEES APPOINTED BY THE  
TECHNOLOGICAL AND VOCATIONAL EDUCATION AND  
TRAINING COUNCIL

**No. 10 of 2004****Education Act, 2004****Virgin  
Islands**

**I Assent**  
**THOMAS MACAN**  
**Governor**  
**5<sup>th</sup> August, 2004**

**VIRGIN ISLANDS****No. 10 of 2004**

An Act respecting education and for related matters.

[Gazetted 19<sup>th</sup> August, 2004]

ENACTED by the Legislature of the Virgin Islands as follows:

**PRELIMINARY**

Short title and  
commencement.

**1.** This Act may be cited as the Education Act, 2004 and shall come into operation on such date as the Governor may, by Proclamation published in the Gazette, appoint and the Governor may appoint different dates for different provisions or Parts of the Act.

Interpretation.

**2.** In this Act unless the context otherwise requires -

"adult education" means continuing education, that is to say, training activities organised on a part-time basis suitable to the requirements of a person over compulsory school age and designed to enhance knowledge, skills, attitudes or cultural awareness, but does not include tertiary education;

"Chief Education Officer" means the public officer holding such post in the Public Service of the Territory;

"class", in relation to a particular student and a particular subject, means the teaching group in which a

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student is regularly taught that subject or, where there are two or more groups, such one of them as may be designated by the principal of the school;

"compulsory school age" means from five years of age to sixteen years of age;

"early childhood education" means education and care suited to the requirements of a child under five years of age provided either within a primary school or in an early childhood education facility specially designed for that purpose;

"denominational school" means an educational institution established, managed and maintained by a religious community at its own expense;

"distance education" means an educational process in which a significant proportion of the teaching is conducted through one medium or a combination of media by persons removed in space or time from the learners;

"educational programme" means a course of study whether conducted in a school or otherwise that is designed to meet the specified learning needs of an individual or group of persons;

"Minister" means the Minister responsible for Education;

"ministry" means the Department of Education;

"parent", in relation to any child, includes a guardian and every person who is liable to maintain or has the custody of any child and a person living as husband with the mother of a child whether or not he is the father and a person living as wife with the father of a child whether or not she is the mother;

"Permanent Secretary" means the Permanent Secretary responsible for the ministry;

"primary education" means full-time education suited to the requirements of students of primary school age;

"primary student" means a student who at the beginning of the school year has attained the age of five years or

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will attain that age within six months of the beginning of the school year, but has not attained the age of fourteen years, and who has not yet gained admission to a secondary school;

"principal" means the head of a school under this Act;

"private school" means a school that is owned, managed and financed by an individual, religious community or body, trust, or incorporated or unincorporated body, and which is attended by twelve or more students continuously for more than eight hours per week and is registered under this Act;

"public school" means a school that is wholly or mainly maintained at the public's expense and to which the general public has, subject to this Act and regulations, unconditional access;

"school" means any early childhood education facility, primary or secondary school, or any school for special or adult education, any training centre or tertiary institution or any institution of higher education as may be prescribed;

"school guidance counsellor" means a public officer holding such post in the Public Service of the Territory;

"school hours" means the period prescribed during which attendance is required at school under this Act;

"school year" means such period not exceeding twelve months as may be prescribed as a school year;

"secondary education" means full-time education suited to the requirements of students of secondary school age;

"student" means a person of any age for whom education is provided under this Act;

"teachers college" means any school or institution established for the purpose of training teachers;

"technical college" or "technical institution" means a school or other institution that provides for studies, training or research in technology, science, commerce or art;

"tertiary education" means

- (a) education suitable to the requirements of persons over compulsory school age who are not enrolled for secondary education in any school or, if enrolled in secondary education, have completed a course of secondary education; and
- (b) college or university education and instruction normally available at institutions for teacher training, vocational training and technological training.

Statement  
of purpose.

**3.** The purpose of this Act is to provide for the orderly and co-ordinated development of a relevant, varied and comprehensive educational system in the Virgin Islands characterised by excellence.

## **PART 1**

### **ADMINISTRATION OF THE EDUCATION SYSTEM**

#### **DIVISION 1**

#### **RESPONSIBILITIES AND POWERS OF THE MINISTER**

Responsibilities  
of the Minister.

**4.(1)** The Minister is responsible for the overall administration of this Act, and shall, subject to available resources, exercise the powers conferred on him under this Act so as to ensure

- (a) the establishment of a varied, relevant and comprehensive educational system that is characterised by excellence;
- (b) the promotion of the education of the people of the Virgin Islands by the establishment of institutions for the purpose of fostering the spiritual, emotional, cultural, moral, intellectual, physical, social and economic development of the community;
- (c) the framing of an educational policy designed to give effect to the purposes of this Act;

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- (d) the effective execution of the educational policy of the Government; and
  - (e) the establishment of a co-ordinated educational system organised in accordance with this Act.

(2) Without prejudice to the generality of subsection (1) the Minister is responsible to ensure the establishment and pursuit of the goals and objectives that

- (a) encourage the development of the basic knowledge and skills in all persons, including
  - (i) the skills of literacy, listening, speaking, reading, writing, numeracy, mathematics, analysis, problem solving, information processing, and computing;
  - (ii) critical and creative thinking skills for today's world;
  - (iii) an understanding of the role of science and technology in society together with scientific and technological skills;
  - (iv) appreciation and understanding of creative arts;
  - (v) physical development and personal health and fitness; and
  - (vi) the creative use of leisure time;
- (b) develop self-worth through a positive educational environment;
- (c) promote the importance of the family and community;
- (d) provide opportunities to reach maximum potential;
- (e) promote the recognition, understanding and respect for the Constitution, laws and national symbols of the Territory;
- (f) develop an understanding of the principle of gender equality;

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- (g) promote understanding of the history, language, culture, rights and values of the Virgin Islands and their changing role in contemporary society;
  - (h) increase awareness and appreciation of the natural environment of the Territory;
  - (i) promote a Caribbean identity through regional co-operation;
  - (j) develop an understanding of the historical and contemporary role of business and commerce in society;
  - (k) prepare the people of the Virgin Islands for participation in the local and global society.

(3) In addition to the responsibilities referred to in subsections (1) and (2) and the several duties imposed on the Minister under this Act, the Minister is responsible for

- (a) devising a system of education designed as far as possible to ensure that the intellectual and vocational abilities, aptitudes and interests of students find adequate expression and opportunity for development;
- (b) establishing public schools and determining their location and classification;
- (c) making, subject to this Act, provision for the admission and transfer of students in public schools and assisted private schools;
- (d) establishing and maintaining or assisting in the establishment and maintenance of schools, institutions or other facilities for tertiary, adult and continuing education and special education as the Minister considers necessary, including -
  - (i) teachers colleges for the training of teachers; and
  - (ii) technical colleges and training centres considered necessary for fulfilling the

requirements of technological and vocational education;

- (e) taking such other action as the Minister considers necessary for ensuring that the requirements of teachers in public schools are satisfied;
- (f) conducting, managing and assisting schools in accordance with this Act and regulations;
- (g) rendering, to such students or class of students, subject to such conditions as may be prescribed, such forms of assistance as may be necessary for enabling the students to take full advantage of the educational facilities available;
- (h) evaluating the work of public schools and assisted private schools with particular reference to the curriculum to be followed therein, and making provision for the examination and testing of students and the award of certificates;
- (i) the referral of children who have been identified by the Chief Education Officer as having learning difficulties to appropriate medical, educational, social services or other agencies where they exist for remedial treatment or assistance;
- (j) providing educational opportunities for meeting the demands for higher education and in particular taking such steps as may be necessary for the carrying out of the Government's obligation to the Caribbean Examinations Council, the University of the West Indies or any other institution of higher learning; and
- (k) actively encouraging the formation, functioning and development of student councils in all schools and a National Student Council.

Powers of  
Minister.

**5.(1)** For the purpose of the performance of his responsibilities and duties under this Act, the Minister may

- (a) require attendance of persons of compulsory school age at schools established and conducted under this Act;

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- (b) regulate the operation of public schools, assisted private schools, and private schools;
  - (c) make provision for the professional training of teachers for the entire system of education, and lay down standards that are applicable to the recruitment of teachers, their training, professional development and conditions of service;
  - (d) designate the grades or classes and special programmes to be offered in public schools and assisted private schools;
  - (e) prescribe forms and notices as required for the administration of this Act;
  - (f) constitute committees or other bodies to offer advice from time to time on educational and related matters;
  - (g) prescribe lists of textbooks and practices in all public schools and assisted private schools so as to ensure conformity with national standards of education provided that in the case of assisted private schools textbooks for religious education shall be determined by the denomination establishing the school;
  - (h) determine the level of assistance to assisted private schools and regulate such assistance;
  - (i) establish or disestablish public schools including schools for technical education and inaugurate classes or discontinue classes in those schools when necessary;
  - (j) prescribe, in accordance with this Act, curriculum for public schools and assisted private schools; and
  - (k) provide for any other matter or do all such things as may be expedient from time to time for the carrying out of the Minister's responsibilities for education and training.

(2) In the exercise of the powers conferred by subsection (1) (c), (g) and (j), the Minister shall consult such organisations representing the teaching profession as the Minister considers appropriate.

Annual report.

6. The Minister shall table in the Legislative Council an annual report on the state of education within three months of the end of the school year for which the report is made.

## DIVISION 2

### RESPONSIBILITIES OF THE CHIEF EDUCATION OFFICER

Duties of Chief  
Education Officer.

7.(1) The Chief Education Officer is, subject to section 4 and the directions of the Minister, responsible for the general administration of this Act.

- (2) The Chief Education Officer shall
- (a) ensure that schools are administered in a proper and efficient manner;
  - (b) develop administrative principles and procedures for implementing general policies and administering the school system;
  - (c) after prior consultation with the Permanent Secretary, delegate authority to professional staff of the Ministry for administering various aspects of the system of education including the registration and administration of private schools;
  - (d) develop and direct training of all professional personnel;
  - (e) initiate, subject to the provisions of this Act, curriculum innovation and reform and the establishment of appropriate procedures for evaluating the instructional programme of schools and other educational institutions;
  - (f) advise the Minister on matters affecting education in the Territory;
  - (g) ensure that school premises, property and stock are protected against improper use;
  - (h) initiate, organise and conduct courses of induction and training for untrained teachers;

- (i) submit reports on matters relating to the discipline of teachers;
- (j) arrange for the approval of such leave to teachers as may be granted them in accordance with regulations made under section 173;
- (k) consider and assess the confidential reports of teachers;
- (l) furnish such returns as may be prescribed or required;
- (m) ensure the observance of the provisions of this Act and regulations made thereunder pertaining to the conduct of schools and other educational institutions; and
- (n) perform such other duties under this Act as the Minister may from time to time assign to the Chief Education Officer.

Delegation of authority by Minister.

**8.(1)** The Minister may delegate in writing to the Chief Education Officer any responsibility or duty conferred on the Minister by this Act or regulations, but this does not preclude the Minister from exercising any or all of the duties so delegated where the Minister considers it necessary.

(2) In cases of emergency and after consultation with the Permanent Secretary and the Chief Education Officer, the Minister may give general or special directions in writing to any public officer in the Ministry respecting the Minister's duties under this Act and the public officer shall carry out the Minister's directions.

(3) Where by this Act or any enactment made under this Act the Chief Education Officer is required, or permitted or otherwise to perform any duty, the Chief Education Officer may, with the agreement of the Permanent Secretary, authorise in writing an education officer or another public officer who is accountable to him to perform the duty.

Chief Education Officer accountable to Minister through the Permanent Secretary.

**9.** Unless specified otherwise in writing by the Minister, the Chief Education Officer shall be accountable to the Minister through the Permanent Secretary of the Ministry for the performance of his duties and the administration of this Act; but this does not preclude the Chief Education Officer from having direct access to the Minister.

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**DIVISION 3**
**ESTABLISHMENT AND FUNCTIONS OF THE EDUCATION  
ADVISORY BOARD**

Establishment  
of Education  
Advisory Board.

**10.(1)** The Minister shall establish a body to be called the Education Advisory Board.

(2) The Education Advisory Board shall consist of at least ten members including

- (a) one representative nominated by the H. Lavity Stoutt Community College;
- (b) five members nominated by the Minister in his discretion from among persons representing
  - (i) expert educational opinion;
  - (ii) parent teacher associations;
  - (iii) technological, vocational or business education;
  - (iv) organisations concerned with community development; and
  - (v) the religious community;
- (c) one representative nominated by the School Principals Conference;
- (d) one representative nominated by the duly recognised organisation representing teachers;
- (e) one representative nominated by the University of the West Indies School of Continuing Studies; and
- (f) one representative nominated by the B.V.I. Chamber of Commerce and Hotel Association.

(3) The representatives nominated by the Minister and the organisations specified in subsection (2) (b), (c), (d) and (f) shall be appointed by the Minister by instrument in writing with the approval of Executive Council.

(4) The Education Advisory Board shall appoint a chairman and a vice-chairman from among its members.

(5) The appointment of a member of the Education Advisory Board shall be for a period not exceeding two years, but the member shall be eligible for reappointment.

First Schedule.

(6) The provisions of the First Schedule shall apply in respect of the constitution and procedure of the Education Advisory Board and otherwise in relation thereto.

Functions of  
Advisory Board.

**11.**(1) The Education Advisory Board shall advise the Minister on matters

- (a) connected with education as it thinks fit;
- (b) respecting the performance of any of his responsibilities or the exercise of his powers under this Act and regulations as the Minister refers to it; and
- (c) relating to the promotion of education as the Minister refers to it.

(2) Any advice given to the Minister, whether accepted by the Minister or not, shall be deemed confidential and so held to be by each member of the Education Advisory Board.

Powers of the  
Board to hold  
public hearing.

**12.**(1) Prior to advising the Minister on any matter concerning the promotion of education, the Education Advisory Board may, where it thinks advisable and with the approval of the Minister

- (a) hold a public hearing into the matter;
- (b) appoint one or more members to hold a public hearing into the matter; or
- (c) solicit written memoranda from the public on the matter.

(2) The Minister may require the Education Advisory Board to hold a public hearing respecting any matter affecting the promotion of education and when so required, the Education Advisory Board may adopt the procedure outlined in subsection (1) which it considers most appropriate.

Minister not bound by advice of Board.

**13.(1)** The Minister is not bound to accept the advice of the Education Advisory Board, and where he considers it advisable, he may refer a matter back to the Education Advisory Board for reconsideration.

(2) Where after reconsideration, pursuant to subsection (1) the Education Advisory Board adheres to the advice it had previously given, the Minister may reject the advice or adopt it either wholly or with such modification, additions or adaptations as he thinks fit.

Special Committees.

**14.(1)** Notwithstanding section 10, the Minister may appoint such special committees as he considers necessary to advise him with respect to any specific matter that may arise from time to time.

(2) A special committee shall comprise such members as the Minister appoints and has such duties as the Minister specifies.

(3) The Minister may refer any matter to a special committee appointed under subsection (1) notwithstanding that the Education Advisory Board considered or has power to consider that matter.

## PART 2

### RIGHTS AND RESPONSIBILITIES OF STUDENTS AND PARENTS

#### DIVISION 1

#### STUDENTS' RIGHTS AND RESPONSIBILITIES

Right to education.

**15.** Subject to available resources, all persons are entitled to receive an educational programme appropriate to their needs in accordance with the provisions of this Act and regulations.

Responsibility to students.

**16.(1)** The Chief Education Officer shall provide to every person of compulsory school age who resides in the Territory an educational programme consistent with the requirements of this Act and regulations.

(2) For the purposes of providing the educational programme to the student, the Chief Education Officer shall -

- (a) enrol the student in an educational programme, offered by a public school;
- (b) direct the student to attend an educational programme offered by another school where it is reasonable to do so.

(3) Except in the case of a student who is transferred under section 58 (1) (d), where a student is directed to attend an educational programme pursuant to subsection (2) (b) the Government is responsible for such fees and costs, if any, consequent to the student's attendance at the educational programme.

Free tuition.

**17.(1)** Tuition fees consequent to the student's attendance in an educational programme at a public school under section 28 shall not be charged to the student or the parents of the student.

(2) Notwithstanding subsection (1) -

- (a) tuition fees may be payable in such amounts, for such purposes and by such persons or classes of persons who are not citizens of any Member State or Associated Member State of the Caribbean Community as the Minister may prescribe by Order published in the Gazette;
- (b) other charges may be imposed at a public school or assisted private school with the approval of the Minister.

Student responsibilities.

**18.** Every student enrolled in a public school or assisted private school shall -

- (a) observe the code of conduct and other rules and policies of the Ministry and of the school;
- (b) attend classes regularly and punctually;
- (c) participate in the educational programmes in which the student is enrolled;
- (d) be diligent in pursuing the prescribed curriculum; and
- (e) observe standards approved by the Chief Education Officer or the principal, as the case may be, with respect to -
  - (i) cleanliness and tidiness of the person;
  - (ii) general deportment;
  - (iii) attire;

- (iv) courtesy; and
- (v) respect of the rights of other persons.

Students  
accountable to  
teacher,  
principal and  
Ministry.

**19.(1)** Every student is accountable -

- (a) to the teacher for his conduct on the school premises during school hours and during such hours as the teacher is in charge of the student in class or while engaged in authorised school activities conducted outside of school hours; and
- (b) to the principal for his general deportment and conduct at any time that he is under the supervision of the school and members of the teaching staff, including the time spent in travelling between the school and his place of residence.

(2) Every student shall be under the general direction and control of -

- (a) the driver of a school bus, if the driver is an employee of or on contract with the Ministry; and
- (b) any person under whose supervision students are placed on the authority of the Chief Education Officer,

in respect of the student's general behaviour and deportment on a school bus, or while under supervision, as the case may be.

Rights of the  
student.

**20.** Every student has the right to be treated with respect and dignity and in a fair and reasonable manner.

## **DIVISION 2**

### **PARENTS' RIGHTS AND RESPONSIBILITIES**

Rights and  
responsibilities  
of parents.

**21.(1)** Subject to section 23, parents of students attending public schools and assisted private schools are entitled -

- (a) to be informed of the progress, behaviour and attendance of their children;
- (b) upon reasonable notice to the principal and teacher, to observe the instruction of their children if the

parental visitation does not impede the instruction of other children;

- (c) to appeal decisions that significantly affect the education, health or safety of their children; and
- (d) to be consulted in the development of any special education programmes prepared for their children.

(2) A parent of a student attending a school may, and at the request of a teacher or principal shall, consult with the teacher or principal with respect to the student's educational programme or conduct.

(3) Every parent shall inform the principal in writing of any medical or other condition peculiar to their child -

- (a) on admission of the child; or
- (b) as soon as the parent becomes aware of such medical or other condition.

(4) The information provided under subsection (3) shall constitute part of the student's record pursuant to section 23 of this Act.

Choice of education.

**22.** Subject to the provisions of this Act, parents may choose for their children a home educational programme in accordance with section 89, or any other educational programme provided by a private or public school for their children.

Students' records and reports.

**23.(1)** Every principal shall establish and maintain a student record for each student enrolled in the school managed by the principal in accordance with the guidelines established by the Chief Education Officer.

(2) Every school shall provide to the parents of a student a periodic or termly report of the student's academic performance and conduct.

(3) The report referred to in subsection (2) shall be in such form and contain such information as the Chief Education Officer may determine.

(4) The following persons may examine and copy a student's record or request a certified copy of a student's record:

- (a) the parents of a student who is below eighteen years of age;

- (b) a student who is eighteen years of age or older; and
- (c) the parents on behalf of a student who is eighteen years of age or older.

(5) Subject to subsection (2), a student's record is privileged for the information and use of school and departmental officials as required for the performance of their functions and is not available to any other person or institution without the written permission of the parent or, where the student is eighteen years of age or older, the student.

(6) Persons who contribute information to a student's record are exempt from any liability with respect to the provision of that information if those persons, in providing the information, acted -

- (a) in good faith;
- (b) within the scope of their duties and responsibilities; and
- (c) with reasonable care.

(7) If, on examining a student's record, a person authorised under this section is of the opinion that the student's record contains inaccurate or incomplete information, that person may request the principal to rectify the record.

(8) Where the principal refuses to rectify the record when so requested under subsection (7), the person who has requested the rectification may, within fourteen days of the refusal, refer the matter to the Chief Education Officer who shall review the request and provide direction to the principal.

(9) Where the person who has referred a matter to the Chief Education Officer under subsection (8) or the relevant principal is dissatisfied with its disposition by the Chief Education Officer, that person or principal may appeal the matter to the Education Appeal Tribunal pursuant to this Act within fourteen days of the disposition.

(10) Any person who discloses information from a student's record in contravention of subsection (5) or tampers with a certified copy of a student's record referred to under this section commits an offence and is liable on summary conviction to a fine of not more than one thousand dollars.

Damage to  
school property.

**24.(1)** Every student in a public school or assisted private school shall take good care of any property placed at the student's disposal and

where such property is to be returned, the property shall be returned in good condition at the end of the school activities on a day and time determined by the principal.

(2) If a student fails to comply with subsection (1), the Chief Education Officer may claim the value of the property from the parents of the student if a minor or from the student if the student is eighteen years of age or over.

(3) If the property of a public school or assisted private school is destroyed, damaged, lost, or converted by the intentional or negligent act -

- (a) of a student who is a minor, the student and the student's parents are liable in respect of the act of the student; or
- (b) of two or more students who are minors acting together, the students and their parents are jointly and severally liable in respect of the act of the students.

(4) If the property of a public school or assisted private school is destroyed, damaged, lost or converted by the intentional or negligent act of one or more students who are eighteen years of age or older -

- (a) the single student is liable in respect of his sole act; and
- (b) the students who acted together are jointly and severally liable in respect of their act.

Parent Teacher Association.

**25.(1)** Parents and teachers may, in accordance with regulations made under this Act, form associations to be known as Parent Teacher Associations.

(2) The Minister shall encourage and assist in the formation of-

- (a) Parent Teacher Associations; and
- (b) a National Council of Parent Teacher Associations.

(3) Parent Teacher Associations may be established in public and assisted private schools.

(4) The objects of Parent Teacher Associations shall include the promotion of the interests of the school by bringing parents, members of the community, students and teachers into close co-operation.

(5) Parent Teacher Associations may, subject to this Act and regulations, make rules for the regulation and control of their business.

(6) On the formation of a Parent Teacher Association, the names of the members of the executive shall be forwarded to the Chief Education Officer and subsequently after every election of a new executive.

School  
Committees.

**26.**(1) Subject to subsection (2), where a Parent Teacher Association does not exist, the principal, in consultation with his staff, may establish a school committee comprising such number of parents, teachers and members of the community as the principal determines.

(2) A school committee shall not come into existence without the written approval of the Chief Education Officer.

(3) A school committee shall be an advisory committee to the school for which it is established.

(4) A school committee shall -

- (a) advise the school administration when requested by the principal or whenever it considers it necessary on any matter relating to the school;
- (b) perform any duty or function referred to it by the Chief Education Officer; and
- (c) actively pursue the formation of a Parent Teacher Association.

(5) On the formation of a Parent Teacher Association, the principal shall dissolve the school committee forthwith.

Wishes of parents  
to be considered  
in education of  
students.

**27.** The Minister shall, in the performance of his responsibilities and duties under this Act, have regard to the general principle, that, so far as is compatible with the provision of efficient instruction and training and the avoidance of unreasonable public expenditure, the wishes of parents formally conveyed to him are to be considered in the education of students.

### DIVISION 3

#### ADMISSION AND ATTENDANCE OF STUDENTS

Compulsory  
school  
attendance  
and age limit.

**28.(1)** Every child shall attend school from the first day of the school calendar in the school year following that in which he attains the lower age of the compulsory school age until the last day of the school calendar in the school year in which he attains sixteen years of age or at the end of which he obtains a school leaving certificate or diploma, whichever occurs first.

(2) Notwithstanding subsection (1), if the Minister is satisfied that it has become necessary or expedient to raise or lower the compulsory school age, the Minister may, by Order, subject to affirmative resolution of the Legislative Council within sixty days of the making of the Order, direct that subsection (1) has effect as if for references therein there were substituted a reference to any age prescribed in the Order.

(3) A child shall not be retained as a student in -

- (a) a primary school after attaining the age of fourteen years;
- (b) a secondary school after the end of the school year in which he shall have reached the age of nineteen years,

without the written permission of the Minister.

Mode of  
admission.

**29.(1)** A child shall not be admitted to a primary school unless at the time of such admission -

- (a) the child is accompanied by a parent or a responsible person eighteen years of age or over who has been authorised in writing by a parent to represent him;
- (b) the person accompanying the child brings a birth certificate giving the information required for the Student's Register;
- (c) the child shall have attained the lower age of the compulsory school age or will attain that age within six months of the beginning of the school year; and
- (d) a certificate issued by a registered medical practitioner or the Public Health authorities is

produced indicating that the child has been immunised as may be prescribed by regulations.

(2) A child shall not without the written permission of the Chief Education Officer, be admitted to a primary school other than in September, or the beginning of the primary school year.

Prohibition of discrimination.

**30.** Subject to the provisions of this Act, a person who is eligible for admission to a public school or an assisted private school as a student shall not be refused admission on any discriminatory grounds including race, place of origin, political opinions, colour, creed, sex, mental or physical handicap.

Age limit for secondary schools.

**31.(1)** Subject to subsections (2) and (3), a child without the written permission of the Chief Education Officer shall not be admitted as a student to a public secondary school or assisted private secondary school before the child has reached the age of eleven years.

(2) A child below eleven years of age may be admitted to a secondary school on the written approval of the Chief Education Officer on the grounds of exceptional ability and consistently high academic performance as evidenced by -

- (a) outstanding performance in termly and annual class examinations with a Grade A average or its equivalent in each examination;
- (b) the child's assessment results at the key stages as provided for in section 151; and
- (c) the written recommendations of teachers who have taught the child.

(3) A child below eleven years of age who prior to the child's residence in the Territory attended or gained admission to a secondary school or the equivalent of a secondary school may on the written approval of the Chief Education Officer be admitted to a public secondary school or an assisted private secondary school.

(4) A student shall not without the written permission of the Chief Education Officer, be retained in a public secondary school or an assisted private secondary school after the end of the school year in which he shall have reached the age of nineteen years.

Students' Register.

**32.(1)** The principal of every school shall maintain a register of students which shall be known as the Students' Register.

(2) The Students' Register shall include -

- (a) upon admission of a student to a school -
  - (i) the name, telephone number (if any), address and date of birth of such student;
  - (ii) the date of admission;
  - (iii) the name and residence of the student's parent;
  - (iv) the name of the last school, if any, which the student attended;
  - (v) where appropriate, the date the student left the school from which he transferred as far as it can be ascertained;
  - (vi) the standard, class or form of the student at the date of leaving the school from which he was transferred;
  - (vii) the standard, class or form to which the student is admitted; and
- (b) upon the departure of a student from a school -
  - (i) the date of the student's departure;
  - (ii) the standard, class or form of the student on the date of departure; and
  - (iii) where appropriate, the school or other location to which the student is being transferred.

(3) Notwithstanding subsection (2), the Students' Register shall include such other information as may be prescribed in writing by the Chief Education Officer from time to time.

Transfer of students.

**33.(1)** Subject to the approval of the Chief Education Officer, a student who seeks admission from one school to another shall not be admitted to that other school except -

- (a) on presentation of a letter of transfer signed by the current principal; and

- (b) after consultation between the current principal and the receiving principal concerning the availability of a place in the receiving school.

(2) A principal shall furnish on request to every student a letter referred to in subsection (1) (a).

(3) Letters of transfer shall be retained by the principal of the admitting school and copies thereof shall be submitted by the principal for information to the Chief Education Officer.

(4) In the event that a dispute arises between two or more principals when a student seeks to transfer from one school to another, the Chief Education Officer shall make a final determination.

Effect of contagious diseases.

**34.(1)** Subject to section 35, a student suffering from or exposed to a contagious disease shall not be admitted to or permitted to remain in any school.

(2) Where the principal discovers or has reason to suspect the presence of a contagious disease the principal shall immediately report the same to the parents of the student concerned, the Chief Education Officer, and the Director of Health Services.

Readmission of student on production of medical certificate.

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**35.(1)** A student who has been refused admission to a school on the ground that the student is suffering from or exposed to a contagious disease shall not be re-admitted except upon production of a medical certificate from a medical practitioner registered under the Medical Act to the effect that such student is free from such disease and is unlikely to be a source of infection to other persons in the school.

(2) The medical certificate required by subsection (1) shall be issued free of charge by any Government medical officer issuing the same.

Temporary or permanent closing of schools.

**36.(1)** Where -

- (a) as a result of the total or partial destruction by hurricane, earthquake, fire, flood or other natural disaster of all or any of the buildings used in connection with any public school or assisted private school; or
- (b) as a result of the outbreak of any infectious or contagious disease; or
- (c) for any other reason,

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attendance at any public school or assisted private school has fallen to such extent that in the opinion of the Minister justifies the temporary or permanent closing of the institution, the Minister may, notwithstanding anything contained in this or any other enactment, direct that the school be temporarily or permanently closed, as the case may be, and the school shall, with effect from the date of the direction, be closed.

(2) Where a school is permanently closed, the Minister shall provide an alternative facility for the students affected by the closure.

(3) The powers conferred on the Minister by this section are in addition to any powers conferred upon the Minister in any other enactment.

(4) Without affecting subsection (1), the Minister may delegate to the Chief Education Officer the power conferred on the Minister by that subsection to temporarily close a school referred to in subsection (1).

(5) Notwithstanding subsections (1) and (3), the principal of a school may, in an emergency and where it is impractical to obtain the prior approval of the Minister or Chief Education Officer, close a school temporarily and inform the Minister or Chief Education Officer as soon as practicable thereafter.

Zoning of  
schools.

**37.(1)** The Minister may by Order introduce a scheme of zoning for the admission and transfer of students to public schools and assisted private schools, whether primary or secondary.

(2) The scheme of zoning shall link the place of residence of the student and the location of the school of attendance.

(3) Residency of a student shall be determined by the residency of the student's parents.

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**DIVISION 4**
**COMPULSORY SCHOOL ATTENDANCE AND SCHOOL  
GUIDANCE COUNSELLING**

Duty of parent  
to enforce  
attendance.

**38.** Subject to section 39, the parent of every child of compulsory school age shall ensure that the child receives an education by regular attendance at school.

Valid excuses  
from attendance.

**39.(1)** Subject to subsections (2) to (6), a child of compulsory school age shall be excused from school attendance if -

- (a) the Minister is satisfied after consultation with the Chief Education Officer that the child is receiving satisfactory instruction at home or else where;
- (b) the child is excluded from attendance at school under any provision of this Act or regulations;
- (c) the child is unable to attend school because of sickness, danger of infection, infirmity, sudden or serious illness of a parent or other related cause;
- (d) the child is suffering from a physical or mental disability that, in the opinion of a registered medical practitioner, makes the student incapable of being educated by ordinary methods of instruction;
- (e) the child is granted permission by the principal of the school to be temporarily absent from school for good and sufficient reason;
- (f) the child is a participant in observances, celebrations, or activities recognised by a religious denomination;
- (g) the child has been suspended by a school in accordance with the provisions of this Act and has not been given permission to enrol in another school;
- (h) the child is engaged in work experience or other educational programmes authorised or approved by the principal;

- (i) the child is representing the Territory in an educational, cultural or sporting event or in any other official capacity.

(2) The parent of the child of compulsory school age who wishes the child to be exempted from school attendance under subsection (1) (a), (c), (d), (e) and (f) shall apply for a certificate of exemption from such attendance in accordance with subsection (3).

(3) An application under subsection (2) shall be made -

- (a) in the case of paragraphs (a) and (d) to the Chief Education Officer; and
- (b) in the case of paragraphs (c), (e) and (f) to the principal of the school,

and the Chief Education Officer or the principal, as the case may be, may grant or refuse a certificate.

(4) A certificate granted under subsection (3) exempts the child to whom it relates from attendance at school to the extent specified in the certificate.

(5) A parent who is dissatisfied with a refusal under subsection (3) may appeal to the Minister, who may overrule the refusal.

(6) The decision of the Minister on appeal under subsection (5) is final.

(7) Section 47 does not apply in the case of a child with respect to whom a certificate has been granted under this section or to a child who is exempted under subsection (1) (b), (g) or (h).

School attendance officers.

**40.** The Minister may, by Order, designate school attendance officers to assist in the enforcement of the compulsory attendance provisions of this Act.

Responsibility of school attendance officer.

**41.** A school attendance officer shall be responsible for the enforcement of compulsory school attendance in respect of all children of compulsory school age within the district or area to which he is assigned.

Power to enter premises and question children.

**42.** For the purposes of section 41 a school attendance officer who has reasonable cause to believe that a person is in contravention of this Act or regulations and upon presentation of his credentials, may at any time -

- 
- (a) enter premises and make such inquiries as are necessary to determine whether section 38 is being complied with or whether anyone is in contravention of sections 47 and 48 in relation to a child of compulsory school age whom the school attendance officer has reasonable cause to believe to be frequenting, visiting, residing or employed on the premises;
  - (b) stop and question any child who appears to be of compulsory school age but is not at school concerning -
    - (i) his age;
    - (ii) his name and address;
    - (iii) the school at which he is registered;
    - (iv) the reason for his absence from school; and
    - (v) any other matter relevant to the inquiries referred to in paragraph (a).

Offences against school attendance officers.

**43.(1)** A person commits an offence if that person -

- (a) assaults, obstructs, or uses insulting, abusive or indecent language to -
  - (i) a school attendance officer in the execution of his duties; or
  - (ii) any other person executing a duty imposed on that person by this Act or regulations, in relation to the attendance of any child at school;
- (b) being a parent, fails, without reasonable cause, having been requested by a school attendance officer to give any information concerning -
  - (i) the name, age, residence, parent, enrolment and the attendance of any child at school;
  - (ii) any other matter, relevant to the attendance of any child at school; or

- (c) gives to any school attendance officer, knowing it to be false or misleading, any information concerning any matter mentioned in paragraph (b).

(2) Subsection (1) applies, notwithstanding that the child in relation to whom the offence is committed is not of compulsory school age.

(3) A person who is convicted of an offence under subsection (1) is liable on summary conviction to a fine not exceeding one thousand five hundred dollars or to a term of imprisonment not exceeding six months or both.

Power to deliver absent student.

**44.** A school attendance officer may, at the request of the parent, apprehend and deliver to the school from which he is absent or to his parent, any student found absent from school without having been excused under section 39.

Duties of school attendance officer.

**45.** A school attendance officer shall -

- (a) report monthly to the Chief Education Officer;
- (b) perform his duties under the direction and supervision of the Chief Education Officer;
- (c) inquire into every suspected case of unlawful failure to attend school within his knowledge or when requested to do so by the Chief Education Officer or the principal of a school;
- (d) give -
  - (i) written warning of the consequences of failure to attend school to the parent of the child who is not attending school; and
  - (ii) written notice to the parent to cause the child to attend school forthwith; and
- (e) report monthly or whenever necessary to the relevant principals regarding cases of non-attendance reported to him under section 46 (a).

Reports by principals.

**46.** Every principal of a school shall -

- (a) report in accordance with such regulations as may be prescribed to the school attendance officer, the

names, ages and residences of all children of compulsory school age who have not attended school as required;

- (b) furnish the Chief Education Officer with such other information as the Chief Education Officer requires for the enforcement of compulsory school attendance; and
- (c) report in accordance with section 57 to the Chief Education Officer every case of suspension and expulsion.

Liability of parent.

**47.(1)** A parent of a child of compulsory school age, who neglects or refuses to cause the child to attend school, unless the child is excused under section 39, commits an offence and is liable on summary conviction to a fine not exceeding one thousand five hundred dollars.

(2) The court may, instead of imposing a fine, require a person convicted of an offence under subsection (1) to enter into a bond not exceeding one thousand five hundred dollars, with one or more sureties to be approved by the court, on condition that the person shall, before the expiration of five days, cause the child to attend school as required.

Compulsory school age and offences.

**48.(1)** Subject to subsection (3), a person who employs a child of compulsory school age during the school year commits an offence and is liable on summary conviction to a fine not exceeding two thousand five hundred dollars.

(2) If a body corporate contravenes subsection (1), in addition to the said body corporate, every director and officer of the body corporate, who authorises, permits or acquiesces in such contravention commits an offence and is liable on summary conviction to the same penalty as the corporation.

(3) Notwithstanding subsection (1), a person or body corporate may employ a student over fourteen years of age -

- (a) during the vacation period of the school year as specified by the Minister;
- (b) during the school year -
  - (i) on weekends; or

(ii) after school hours during the week for not more than two hours and not beyond 6:00 p.m.; or

(c) if the employment of the student is part of the school programme to prepare students for future employment.

(4) Except with the permission of the principal or under the supervision of a teacher deputed by the principal for the purpose, a child of compulsory school age shall not be admitted, on payment or otherwise, to any cinema show or other similar form of entertainment on any day and at any time at which attendance at school is by this Act or regulations required.

(5) A child of compulsory school age shall not be allowed to loiter on the licensed premises of any person or body corporate who carries on any business in connection with the sale, storage or conveyance of intoxicating liquor within the meaning of the relevant provision of the Liquor Licences Act.

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(6) Any person or body corporate, as the case may be, who contravenes any of the provisions of subsections (4) and (5), commits an offence and is liable on summary conviction to a fine not exceeding two thousand five hundred dollars or to a term of imprisonment not exceeding six months or to both.

Legal  
proceedings.

**49.(1)** Prosecutions under sections 47 and 48 may be instituted by the Chief Education Officer.

(2) In prosecutions under sections 47 and 48 a statement as to the attendance or non-attendance at school of any child, signed or purporting to be signed by the principal of the school, shall be *prima facie* evidence of the facts stated therein.

(3) In any prosecution under this section, a birth certificate or a copy thereof purporting to be certified under the hand of the person in whose custody such records are held is evidence of the age of the person named in the certificate or copy.

(4) In the absence of any certificate or copy mentioned in subsection (3), or in corroboration of any such certificate or copy, the court may receive and act upon any other documents or information relating to age that it considers reliable.

(5) In any prosecution under sections 47 and 48, the court may draw inferences as to the age of a person from the person's appearance,

demeanour or from statements made by the person in direct examination or cross-examination.

Responsibilities of school guidance counsellors.

- 50.** A school guidance counsellor is responsible for -
- (a) supporting the students in enhancing their efforts and ability to learn;
  - (b) guiding students in developing a realistic concept of self and society;
  - (c) counselling students in order to help them resolve or cope constructively with their problems and developmental concerns;
  - (d) consulting, in corroboration with parents, teachers, administrators, school psychologist, social workers, medical professionals and community health personnel, to plan and implement strategies to help students be successful in the education system;
  - (e) assisting in co-ordinating all efforts for helping students and their parents in obtaining required services through referrals between the relevant school and community agency; and
  - (f) assisting students generally in their personal, social, academic and career development.

Referral to counselling.

**51.** A principal of a school may, in consultation with any teacher he considers relevant or on the recommendation of a teacher, refer a student for counselling to a school guidance counsellor, where in his opinion or in the opinion of the relevant teacher, a student through his behaviour, attitude or demeanour, or failure to diligently pursue the prescribed curriculum, is in need of counselling.

Power to enter premises for counselling purposes.

**52.(1)** For the purposes of sections 50 and 51 a school guidance counsellor may offer counselling services to students and parents either on school premises or any other premises that he considers suitable including the home of the student or parent.

(2) A school guidance counsellor may enter any premises or home for the purposes of subsection (1).

Offences against school guidance counsellors.

**53.(1)** A person commits an offence if that person assaults, obstructs, or uses insulting, abusive or indecent language to a school guidance counsellor in the execution of his duties.

(2) A person who is convicted of an offence under subsection (1) is liable on summary conviction to a fine not exceeding one thousand five hundred dollars or to a term of imprisonment not exceeding six months or both.

## DIVISION 5

### DISCIPLINE, SUSPENSION AND EXPULSION OF STUDENTS

School rules to govern discipline.

**54.**(1) The Minister may in consultation with the Chief Education Officer prescribe rules to govern the attire, conduct and discipline of students attending a public or an assisted private school.

(2) The rules established under subsection (1) shall be circulated to the parents of the students of the school.

(3) The rules that affect students shall be posted in conspicuous places within the school and shall be brought to the attention of the students of the school at the commencement of each school year.

(4) The rules established pursuant to this section shall be applied without discrimination to all students and shall be consistent with this Act and the regulations.

(5) Any rules of a public school or an assisted private school other than those prescribed under subsection (1), shall not come into effect unless approved by the Chief Education Officer, and shall comply with subsections (2) and (3).

(6) Discipline of students shall be administered in accordance with this Act and the rules prescribed under this section.

Corporal punishment.

**55.**(1) In the enforcement of discipline in public schools, assisted private schools and private schools degrading or injurious punishment shall not be administered.

(2) Corporal punishment may be administered where no other punishment is considered suitable or effective, and only by the principal or deputy principal and one senior teacher appointed in writing by the principal for that purpose, in a manner that is in conformity with guidelines issued in writing by the Chief Education Officer.

(3) Whenever corporal punishment is administered an entry shall be made in a punishment book that shall be kept in each school for

such purpose with a statement of the nature and extent of the punishment and the reasons for administering it.

(4) A person other than those mentioned in subsection (2) who administers corporal punishment to a student on school premises commits an offence and is liable to a fine not exceeding one thousand dollars on summary conviction.

Suspension for  
minor offences.

**56.(1)** A principal may suspend a student for a period not exceeding two school days for any breach by the student of the duties specified in section 18.

(2) When a student has been suspended, the principal shall -

- (a) make every effort possible to inform the student's parents of the suspension and the reason for it; and
- (b) meet as soon as possible with the student and the parents of the student to review the circumstances surrounding the suspension and to determine appropriate corrective action, which may include counselling for the student and the parents.

(3) If there is no resolution within two school days, the principal shall decide either to reinstate or to suspend the student in accordance with section 57.

Suspension for  
major offences.

**57.(1)** The principal of any public school or assisted private school may suspend a student for a period of more than two days but not exceeding ten school days for -

- (a) gross misconduct that may be considered a risk or danger to members of staff or other students;
- (b) breach of the school rules that imposes a penalty of suspension;
- (c) persistent breach of school rules other than those specified in paragraph (b);
- (d) a refusal by the student to be inspected, examined, immunised or treated by a duly qualified medical practitioner or nurse acting in accordance with any scheme or school health programme in operation in the Territory;

- (e) destroying or damaging without lawful excuse the property of the school;
- (f) assaulting the principal, a member of staff or other employee of the school, a student or any other person lawfully present in the school;
- (g) possession of any article made or adapted for use for causing injury or intended by the student for such use by him or by some other person; and
- (h) possession or use of alcohol, tobacco or illegal drugs and substances.

(2) A student who is suspended under subsection (1) (d) shall only be re-admitted on the production of a medical certificate signed by a duly qualified medical practitioner.

(3) For the purposes of subsections (1) (d) and (2), "duly qualified" in respect of a medical practitioner, means registered under the provisions of the Medical Act 2000.

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(4) When a principal suspends a student under this section the principal shall report in writing to the parents of the student and state the reason or reasons for the suspension and shall submit a copy to the Chief Education Officer and the Board of Management if one exists.

Action by Chief  
Education Officer.

**58.(1)** The Chief Education Officer may, after the receipt of the report under section 57 (4) order, after consultation with the Board of Management if one exists, that -

- (a) the student be placed on a suspension that exceeds ten school days and that ends at the end of the term or semester or school year, whichever occurs first;
- (b) the term of suspension be extended for a specified number of days to enable proper enquiries to be made;
- (c) the student to be reinstated after due investigation and, if the circumstances warrant this, on a date to be fixed by the Chief Education Officer;
- (d) the student be transferred to another school including a special school; or
- (e) the student be expelled.

(2) The parents of a suspended student who is a minor or the representative of a suspended student who is eighteen years of age or over may make representations to the Chief Education Officer with respect to the suspension within seven days of the suspension by the principal.

(3) The Chief Education Officer shall make a decision within ten days of the representations being made to him and the student shall remain suspended during that period.

(4) A student or a parent of a student or the relevant principal may appeal within fourteen days of receipt of a decision by the Chief Education Officer to the Education Appeal Tribunal established pursuant to this Act.

(5) The Chief Education Officer shall inform the student, the parents of the student and the relevant principal of the right of appeal under subsection (4) at the time of notifying them of his decision under subsection (3).

School security officers.

**59.** The Minister may by Order designate school security officers to assist the principal and teachers of any school, whenever he considers it necessary, in ensuring that students uphold the rules and regulations of the school.

Responsibilities and duties of school security officers.

**60.(1)** A school security officer is responsible for -

- (a) checking the identification (ID) cards of students upon arrival at school;
- (b) ensuring that students who are out of class after five minutes of the bell having been rung for the completion of one period and the commencement of another have valid reasons or a pass from the principal, assistant principal or relevant teacher for being out of class;
- (c) referring and escorting students without a valid reason for being out of class to the principal, and taking note of such incidents in a log book provided by the school;
- (d) discouraging students from entering the school premises from undesignated areas and leaving campus without permission;

- 
- (e) ensuring that such incidents referred to under paragraph (d) are immediately reported to the principal;
  - (f) patrolling the school premises as a deterrent to any illegal and immoral conduct, including but not limited to gambling, drug and alcohol use, loitering, sexual misconduct, vandalism, and pranks of a potentially dangerous nature, among others;
  - (g) referring students who are not in proper uniform to the principal or assistant principal;
  - (h) assisting with the parting of fights and any other disturbances on the school premises;
  - (i) finding the relevant facts relating to any incidents referred to under paragraph (h) or any incidents that cause disruption or violate school rules and regulations and referring those findings to the principal; such findings to be noted in a log book provided by the school;
  - (j) reporting any student who is in violation of any school rules or regulations to the principal or assistant principal and taking note of any such violation in the log book provided by the school;
  - (k) assisting with all emergency evacuation exercises; and
  - (l) performing any other duties assigned by the principal or assistant principals of the relevant school and the Chief Education Officer or his designate.

(2) For the purposes of subsection (1), while on school premises, a school security officer shall be directly supervised by and report to the principal of the school or his designate.

(3) A security officer shall not be assigned to duties under this section unless he has successfully completed a programme of training as may be prescribed.

Offences against school security officer.

**61.(1)** A person commits an offence if that person assaults, obstructs, or uses insulting, abusive or indecent language to a school security officer in the execution of his duties.

(2) A person who is convicted of an offence under subsection (1) is liable on summary conviction to a fine not exceeding one thousand five hundred dollars or to a term of imprisonment not exceeding six months or both.

Power of staff to restrain student.

**62.**(1) A member of the staff of a school may use, in relation to any student at the school, such force as is reasonable in the circumstances for the purpose of preventing the student from doing, or continuing to do, any of the following, namely:

- (a) committing any offence;
- (b) causing personal injury to, or damage to the property of, any person (including the student); or
- (c) engaging in any behaviour prejudicial to the maintenance of good order and discipline at the school or among any of its students, whether that behaviour occurs during a teaching session or otherwise.

(2) Subsection (1) applies where a member of the staff of a school is -

- (a) on the premises of the school; or
- (b) elsewhere at a time when, as a member of its staff, he has lawful control or charge of the student concerned;

but it does not authorise anything to be done in relation to a student that constitutes the giving of corporal punishment within the meaning of section 55.

(3) Subsection (1) shall not be taken to prevent any person from relying on any defence available to him otherwise than by virtue of this section.

(4) In this section and section 63 -

"member of the staff", in relation to a school, means any teacher who works at the school and any other person who, with the authority of the principal, has lawful control or charge of students at the school;

"offence" includes anything that would be an offence, but for the operation of any presumption that a person under a particular age is incapable of committing an offence.

Offences  
against staff of  
school.

**63.**(1) A person commits an offence if that person assaults, obstructs, or uses insulting, abusive or indecent language to a member of the staff of a school in the execution of his duties.

(2) A person who is convicted of an offence under subsection (1) is liable on summary conviction to a fine not exceeding one thousand five hundred dollars or to a term of imprisonment not exceeding six months or both.

### **PART 3**

#### **ADMINISTRATION OF SCHOOLS**

##### **DIVISION 1**

##### **MANAGEMENT OF PUBLIC PRIMARY SCHOOLS**

Establishment  
and maintenance of  
public primary  
schools.

**64.** Primary schools that are public schools may be established and maintained in accordance with this Act and regulations.

Management of  
public primary  
schools.

**65.** All primary schools that are public schools shall be under the control of the Minister.

Board of  
Management.

**66.**(1) The Minister may by notice, if the Minister considers it necessary, appoint a Board of Management for any primary school that is a public school where it appears to him to be desirable to do so in the interest of economy, efficiency, and for the participation of the community in the management of education.

(2) Notwithstanding subsection (1), the Minister may appoint one Board of Management to administer more than one primary school if the Minister is satisfied that the general interest of education in the area in which these institutions are situated will be best served by a single Board.

(3) When the Minister exercises his power to appoint one Board to administer more than one primary school under subsection (2), the membership of the Board of Management may exceed the number

prescribed for one Board of Management under section 67 (1), but may not exceed fifteen members and the principals of the relevant schools shall be *ex officio* members of that Board of Management.

Members of a  
Board of  
Management.

**67.(1)** A Board of Management appointed under section 66 shall include the following members:

- (a) the principal who shall be an *ex officio* member;
- (b) one member who shall be a representative nominated by the Parent Teacher Association of the school, provided that if no such association exists the Minister may appoint a parent after consultation with the principal;
- (c) one member who shall be a representative nominated by the staff at an authorised staff meeting;
- (d) not less than four members appointed by the Minister acting in his discretion from among persons representing -
  - (i) expert educational opinion;
  - (ii) the religious community;
  - (iii) organisations concerned with business;
  - (iv) organisations concerned with community development; and
  - (v) such other areas of national interest as the Minister considers appropriate.

(2) The persons named in subsection (1) (b), (c) and (d) shall be appointed by the Minister by instrument in writing.

Second Schedule.

(3) The provisions of the Second Schedule shall apply in respect of the procedure and functions of the Board of Management established under subsection (1) and otherwise in relation thereto.

Functions of a Board of Management for a primary school.

**68.(1)** Subject to subsection (2), a Board of Management appointed under section 66 shall -

- (a) control and manage -
  - (i) the expenditure of any grants for the repair and maintenance of the school;
  - (ii) the rebuilding or extension of the school;
  - (iii) other matters relating to the organisation of the school as may be referred to it by the Minister;
- (b) be responsible for the efficient maintenance of the school under its control and management and for the keeping of the buildings in a good state of repair and sanitation;
- (c) review, modify if necessary, and approve the school plan prepared by the school administration for each school operated by it;
- (d) establish policies for the administration, management and operation of the school including a student attendance policy;
- (e) prepare reports, information, and perform any duties as may be required under this Act, its regulations and guidelines, or by the Minister;
- (f) arrange for the examination and investigation of -
  - (i) student progress;
  - (ii) order among and discipline of students;
  - (iii) the system of instruction;
  - (iv) mode of keeping school records; and
  - (v) conditions of buildings and premises;
- (g) in consultation with the Chief Education Officer and the principal and staff, establish a procedure for resolving disputes between schools, parents and teachers; and

- (h) generally exercise any other function conferred on it by this Act or the regulations.

(2) In the performance of its functions under subsection (1) (a), (b), (c) and (d), the Board of Management shall consult the Chief Education Officer.

Submission of reports, statements and estimates.

**69.** Every Board of Management shall, after consultation with the principal, submit to the Chief Education Officer -

- (a) within one month after the end of the school year a report containing information on -
- (i) the discipline of students;
  - (ii) the attainment levels of the students;
  - (iii) the application of the curriculum;
  - (iv) the condition of the school and the maintenance of its property;
  - (v) student attendance; and
  - (vi) generally, any matter which directly or indirectly affects the school and its development;
- (b) not later than the 31<sup>st</sup> day of July in each year, or such later date as the Minister approves in writing, a statement detailing the expenditure of any grant made to the Board of Management; and
- (c) on or before the 31<sup>st</sup> day of July in each year, its estimate of expenditure for the school under its control in respect of the next financial year for the approval of the Minister.

Special or general directions.

**70.** Subject to this Act and regulations made thereunder, a Board of Management shall act in accordance with any special or general directions of the Minister concerning the exercise and performance of its functions under this Act.

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**DIVISION 2**
**MANAGEMENT OF PUBLIC SECONDARY SCHOOLS**

Application of  
Division.

**71.** This Division shall apply to any public secondary school established under this Act.

Management of  
public secondary  
schools.

**72.** Subject to this Act public secondary schools are under the management and control of the Minister.

Establishment of  
Board of  
Management.

**73.(1)** The Minister may by notice, if the Minister considers it necessary, appoint a Board of Management for each public secondary school established under this Act where it appears to the Minister to be desirable to do so in the interest of economy, efficiency, and for the participation of the community in the management of education.

(2) Notwithstanding subsection (1), the Minister may appoint one Board of Management to administer more than one secondary school if the Minister is satisfied that the general interest of education in the area in which these schools are situated will be best served by a single Board.

(3) A Board of Management appointed under subsection (1) shall include the following members:

- (a) the principal who shall be an *ex officio* member;
- (b) one member who shall be a representative nominated by the Parent Teacher Association of the school provided that if no such association exists, the Minister may appoint a parent after consultation with the principal;
- (c) one member who shall be a representative nominated by the staff at an authorised staff meeting;
- (d) not less than five members appointed by the Minister acting in his discretion from among persons representing -
  - (i) expert educational opinion;
  - (ii) the religious community;
  - (iii) organisations concerned with business;

- (iv) organisations concerned with community development; and
- (v) such other areas of national interest as the Minister considers appropriate;
- (e) one member elected by the student council, if one exists.

(4) The persons named in subsection (3) (b), (c) and (d) shall be appointed by the Minister by instrument in writing.

(5) When the Minister exercises his power to appoint one Board to administer more than one secondary school under subsection (2), the membership of the Board of Management may exceed the number prescribed for one Board of Management under subsection (3), but may not exceed fifteen members and the principals of the relevant schools shall be *ex officio* members of that Board of Management

Second Schedule.

(6) The provisions of the Second Schedule shall apply in respect of the procedure and functions of a Board of Management established under subsection (1) and otherwise in relation thereto.

Functions of Board of Management for secondary schools.

**74.(1)** Subject to subsection (2), the functions of a Board of Management in relation to the school for which it is established are -

- (a) to be responsible to the Minister for the management, control, operation and maintenance of the school;
- (b) to receive, disburse and account for the expenditure of such sums as may from time to time be allocated to it by the Ministry for the operation of such school;
- (c) to review, modify if necessary, and approve the school plan prepared by the school administration for each school operated by it;
- (d) to establish policies for the administration, management and operation of its schools, including a student attendance policy;
- (e) to prepare reports, provide information, and perform any duties as may be required under this Act, its regulations and guidelines, or by the Minister;

- (f) to arrange for the examination and investigation of -
  - (i) student progress;
  - (ii) order among and discipline of students;
  - (iii) the system of instruction;
  - (iv) mode of keeping school records; and
  - (v) conditions of buildings and premises;
- (g) in consultation with the Chief Education Officer and the principal and staff, establish a procedure for resolving disputes between schools, parents and teachers;
- (h) to make recommendations to the Minister with regard to any matter directly or indirectly affecting the school or the development of secondary education generally;
- (i) to appoint where necessary committees consisting wholly or partly of members of the Board of Management; and
- (j) to perform such other functions in relation to the school as the Minister requires or as may be prescribed by this Act or regulations.

(2) In the performance of its functions under subsection (1) (a), (c) and (d), the Board of Management shall consult the Chief Education Officer.

(3) For the purpose of performing its function under subsection (1) (b) the Board of Management shall appoint an Accounting Officer who shall be paid from the funds received from the Ministry under subsection (1) (b).

Funds and resources of a Board of Management.

- 75.** The funds and resources of a Board of Management are -
- (a) moneys allocated for the purposes of the Board of Management by the Ministry;
  - (b) moneys or property payable to or vested in the Board of Management in respect of any matter incidental to their functions;

- (c) moneys derived from fund-raising activities; and
- (d) moneys and other property derived by way of gift, bequest, trust, or donation, or in any other manner.

Accounts and  
audit.

**76.(1)** Every Board of Management established pursuant to sections 66 and 73 shall keep proper accounts of its transactions, and the accounts shall be audited annually by the Auditor General or any person authorised by him in that behalf.

(2) The Auditor General shall, at the request of the Minister or on his own initiative, carry out at any time an investigation into or a special audit of the accounts of a Board of Management.

(3) The members and employees of a Board of Management shall -

- (a) grant to the Auditor General or any authorised member of the staff of the Auditor General referred to in subsection (1), access to all books, documents, money and property of the Board; and
- (b) give to any person referred to in paragraph (a) such information as might be within the knowledge of the members and employees of the Board of Management in relation to the operation of the Board of Management.

Annual report,  
statement of  
accounts of  
estimates.

**77.(1)** Every Board of Management under this Division shall, after consultation with the principal, submit to the Minister -

- (a) a report in accordance with section 69;
- (b) not later than the 31st day of August in each year, or such later date as the Minister approves, a statement of its accounts, audited in accordance with section 76, for the financial year ending that year; and
- (c) on or before the 31st day of July in each year, its estimates of revenue and expenditure in respect of the next financial year for the approval of the Minister.

(2) The Minister shall, within six months of receiving the documents referred to in subsection (1) (a) and (b), cause copies thereof to be laid in the Legislative Council.

Minutes of Board receivable in evidence.

**78.** Minutes of meetings of any Board of Management established pursuant to sections 66 and 73 are, if duly signed by the chairman, or deputy chairman, receivable in evidence in all legal proceedings without further proof and every meeting of a Board of Management in respect of which minutes have been signed shall be deemed to have been duly convened and held, and all members present at the meeting shall be deemed to have been duly qualified to act.

### DIVISION 3

#### MANAGEMENT OF ASSISTED PRIVATE SCHOOLS

Management of assisted private primary schools.

**79.(1)** Every primary school that is an assisted private school shall be administered by a Board of Management appointed by the Minister, which shall consist of not more than nine persons appointed as follows:

- (a) four persons including the chairman nominated by the proprietor or denomination which owns the school;
- (b) the principal of the school who shall be an *ex officio* member;
- (c) one member nominated by the academic staff from among its members;
- (d) one member nominated by a recognised local community group;
- (e) one member nominated by the Minister; and
- (f) one parent nominated by the Parent Teacher Association where such an association exists.

(2) The quorum shall be four members and shall include the chairman or the vice-chairman of the Board of Management.

Management of assisted private secondary schools.

**80.(1)** Every secondary school that is an assisted private school shall be administered by a Board of Management of not more than twelve members appointed by the Minister in the following manner:

- (a) three members including the chairman nominated by the proprietor or denomination which owns the school;

- (b) the principal of the school who shall be an *ex officio* member;
- (c) one member nominated by the Minister;
- (d) two members nominated in the following manner:
  - (i) one by the academic staff; and
  - (ii) one by the student council;
- (e) two members nominated as follows:
  - (i) one by the *alumni* of the school;
  - (ii) one by the Parent Teacher Association where such an association exists; and
- (f) three members nominated by the Board of Management for their particular expertise.

(2) The quorum shall be five members and shall include the chairman or vice-chairman of the Board of Management.

(3) The procedure of a Board of Management established under sections 79 and 80 is set out in the Second Schedule and otherwise in relation thereto.

Second Schedule.

Denomination or proprietor may add duties.

**81.(1)** In addition to the functions conferred by the denomination or the proprietors of an assisted private school, a Board of Management established under sections 79 and 80 shall -

- (a) if the school for which the Board of Management is established is a primary school, perform the functions established under section 68; and
- (b) if the school for which the Board of Management is appointed is a secondary school, perform the functions established under section 74.

(2) The proprietor of a denominational school that has become an assisted private school, whether primary or secondary, shall not direct, request or encourage the Board of Management established under sections 79 and 80 to perform functions and duties inconsistent with the provisions of this Act or regulations.

Appointment of  
joint Board of  
Management.

**82.(1)** Notwithstanding sections 79 and 80, the Minister may appoint a Board of Management to administer more than one assisted private school if -

- (a) these assisted private schools have the same proprietors;
- (b) the proprietors agree to the appointment of a Board of Management;
- (c) the proprietors agree to the composition of the membership of the Board of Management under subsection (2); and
- (d) the Minister is satisfied that the general interest of education in the area in which these assisted private schools are situated will be best served by a single Board of Management.

(2) Where a Board of Management is appointed to administer more than one assisted private school, the membership of that Board of Management may exceed the number prescribed for one Board of Management, and in the appointment of additional members consideration shall be given to the different categories of persons to be represented on the Board of Management.

#### **DIVISION 4**

#### **MANAGEMENT OF TERTIARY INSTITUTIONS**

Establishment  
and management  
of tertiary  
institution.

**83.(1)** The Minister may establish and maintain, in accordance with this Act and regulations, colleges, technical institutions, universities, and any other institution of higher education at such places as the Minister may determine.

(2) A technical institution or other tertiary institution may be established as a department or part of a public secondary school.

(3) Where a tertiary institution is independently established the Minister may by Order provide for -

- (a) its curriculum;
- (b) the criteria for admission of students;

- (c) the payment of fees;
- (d) the appointment of the staff, including their terms and conditions of employment;
- (e) its management;
- (f) regulations regarding the -
  - (i) professional behaviour of instructors, lecturers and tutors; and
  - (ii) conduct and discipline of students and trainees.

#### **PART 4**

### **THE STAGES AND FORMS OF EDUCATION**

#### **DIVISION 1**

#### **STAGES AND FORMS**

Stages and forms of public education.

**84.(1)** Subject to subsection (2), the system of public education shall be in the following stages:

- (a) primary education;
- (b) secondary education; and
- (c) tertiary education.

(2) The Minister may, as resources permit, include as part of the system of public education -

- (a) early childhood education;
- (b) education to meet the requirements of students who are gifted or have exceptional ability;
- (c) special education in accordance with the provisions of this Act;
- (d) adult and continuing education; and

- (e) distance education.

## DIVISION 2

### EARLY CHILDHOOD EDUCATION SERVICES

Establishment of early childhood education services.

**85.**(1) Subject to satisfying the provisions of Division 2 of Part 5, a private school specified in section 99 may provide an Early Childhood Education Services Programme suitable to the needs of children under five years of age.

(2) A private school that provides early childhood education services may charge the parents of children attending the programme fees in respect of the programme.

Programmes and policies.

**86.** A private school offering early childhood education services shall develop and maintain policies and programmes consistent with the early childhood education services, policies, programmes and plans prescribed by the Minister.

Council on early childhood education services.

**87.**(1) The Minister may, when the Minister considers it necessary, establish a Council on Early Childhood Education to advise him on policies to guide the implementation of this Division.

(2) Where a Council on Early Childhood Education is established, the Minister may by Order provide for its -

- (a) membership;
- (b) procedures for the conduct of its business; and
- (c) powers and functions.

Regulations.

**88.**(1) The Minister may make regulations generally for the proper carrying out of the purposes of this Division.

(2) Without limiting subsection (1), the Minister may make regulations -

- 
- (a) prescribing the academic and professional qualifications of teachers or other persons employed in early childhood education services;
  - (b) respecting the records to be submitted to the Minister by a private school engaged in early childhood education services;
  - (c) concerning the safety standards that shall be satisfied by a private school;
  - (d) respecting the health requirements of the environment and of the persons employed in early childhood education services;
  - (e) concerning the buildings, premises, equipment and furnishings to be used in delivering early childhood education services;
  - (f) prescribing the ratio of staff to students required by the private school;
  - (g) respecting the needs of children of specified ages attending the programme offered by the private school;
  - (h) respecting teacher training and curriculum development; and
  - (i) respecting the need for insurance or some other form of indemnification.

### DIVISION 3

#### HOME EDUCATION

Home education.

**89.(1)** A parent of a student may provide, at home, a home education programme for the student if the parent complies with this section and the programme meets the goals and objectives outlined in section 4 (2).

(2) The parent shall, prior to the commencement of a home education programme for the student and on an annual basis thereafter for as long as the home education programme is offered, register the student with the Chief Education Officer.

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(3) An educational plan for each student who is receiving home education shall be prepared and provided to the Chief Education Officer subject to the following conditions:

- (a) the initial educational plan shall be prepared and provided to the Chief Education Officer three months prior to the commencement of the home education programme;
- (b) the educational plan shall be for a minimum period of three school years and shall cover every year of the home education programme;
- (c) the educational plan shall include a description of the learning activities for the student that will comply with the goals and objectives set out in section 4 (2); and
- (d) the educational plan shall be based on the national curriculum as established by the Minister under Part 8.

(4) The parent of a home education student may request that tests be administered to the student subject to the requirements of the regulations and to payment of fees prescribed by the regulations for any tests that are administered.

(5) A student in a home education programme may attend courses offered by the Ministry subject to any terms and conditions established by the regulations.

(6) Subject to regulations made under this Act, the parent of a home education student may receive, for the student, educational resource materials and use of school facilities and equipment.

(7) For the purposes of this Division, the Chief Education Officer shall -

- (a) provide for the assessment of the student's achievement on a regular basis and communicate the results to the parent;
- (b) advise the parent if, in the opinion of the Chief Education Officer, the student is not making reasonable progress in the programme; and

- (c) provide the parent with recommendations that will assist the student in improving the level of achievement.

Termination of programme.

**90.**(1) Notwithstanding section 89 (1), the Chief Education Officer shall, in writing, terminate the home education programme if the Chief Education Officer is of the opinion, after considering the abilities of the student, that -

- (a) the home education programme no longer meets the requirements of section 4 (2); or
- (b) the student has failed to meet standards of student achievement, as measured by achievement testing, comparable to those of students in public schools.

(2) The Chief Education Officer shall, in conjunction with the notice of termination, direct the student to attend a school established by or registered under this Act effective on the date specified in the notice of termination.

(3) Where the parent disagrees with the decision of the Chief Education Officer made under subsection (1), the parent may appeal to the Education Appeal Tribunal established pursuant to this Act within fourteen days of the decision and the decision of the Tribunal shall be final.

## DIVISION 4

### SPECIAL EDUCATION

Special education.

**91.**(1) The Chief Education Officer is responsible for providing special education programmes for students of compulsory school age who by virtue of intellectual, communicative, behavioural, physical or multiple exceptionalities are in need of special education.

(2) A student who is entitled to a special education programme shall have the programme delivered in the least restrictive and most enabling environment to the extent that resources permit and it is considered practicable by the Chief Education Officer in consultation with professional staff of the school and the Ministry and the parents, having due regard for the educational needs and rights of all students.

(3) A special education programme may take the form of an individual education plan in that the plan is tailored to the specific or individual needs of the student.

(4) Where it has been determined that a student eighteen years of age or older requires an individual education plan, the costs of developing, providing and maintaining that plan may be apportioned between the student or the parent of the student, as the case may be, and the Ministry in such manner as may be prescribed by regulations.

Determination  
of special  
educational  
needs.

**92.**(1) Where a determination cannot be made under subsection (2), the following procedures shall be followed:

- (a) the student shall be referred to the Chief Education Officer for a determination of the assessments that may be required to be performed;
- (b) the parent of the student shall receive written information concerning the procedures outlined in this section;
- (c) prior written informed consent by a parent for the administration to the student of the psychological and other specialised tests that are not routinely used by teachers shall be obtained;
- (d) where possible, the assessment shall be multi-disciplinary;
- (e) the results of the assessment reports shall be provided and explained to the parent;
- (f) a parent and, where appropriate, the student shall be consulted prior to the determination of and during the implementation of the special education programme; and
- (g) the parents shall be provided with information concerning the right of appeal to the Education Appeal Tribunal.

(2) The principal in consultation with professional staff and parents or, where a child is not in attendance at a school, the Chief Education Officer, in consultation with professional staff and parents, shall determine whether a student is a student with special educational needs, and if so, what special education programme is appropriate to meet the needs of that student.

(3) Parents may, in writing addressed to the Chief Education Officer, request for their children a determination in accordance with this section.

(4) A principal may invite a parent to be a member of a school based team that is established for the provision of a special education programme for a student.

(5) The school based team referred to in subsection (4), shall comprise persons selected on the basis of their expertise by the principal of a school to advise on a programme specified to the needs of a particular student or group of students.

(6) Where there is more than one parent for a child, consultation with one parent shall be deemed to be compliance with any consultation requirements of this section; and where legal custody rests with one parent consultation shall be with that parent.

Special needs  
appeals.

**93.(1)** If a disagreement arises respecting a decision concerning -

- (a) the identification of a student as a student with special educational needs;
- (b) the individual education plan established for a student;
- (c) a request by a parent for a determination pursuant to section 92 (3);
- (d) the implementation of the individual education plan in an environment other than the regular class;
- (e) the non-implementation of an individual education plan in a school where the student would normally attend; or
- (f) the apportionment of costs, between the Ministry and the parents of the student for the provision of an individual education plan,

the parent, student, or Board of Management may, within fourteen days of the decision, appeal the matter to the Education Appeal Tribunal established pursuant to this Act.

(2) A decision under subsection (1), shall be communicated in writing to the parents, student or Board of Management, as the case may be.

(3) When an appeal is made to the Education Appeal Tribunal, the student shall be enrolled in the programme determined in accordance with section 92 until the Education Appeal Tribunal makes its decision.

Council on  
Special  
Education.

**94.**(1) The Minister may establish a Council on Special Education to advise him on guidelines for the implementation of this Division.

(2) Where a Council on Special Education is established the Minister may by Order provide for its -

- (a) membership;
- (b) procedures for its business; and
- (c) powers and functions.

## **PART 5**

### **CATEGORIES OF SCHOOLS**

Organisation  
of schools.

**95.** For the purposes of this Act, the school system shall be organised in the following categories:

- (a) public schools;
- (b) private schools;
- (c) assisted private schools; and
- (d) denominational schools.

## **DIVISION 1**

### **PUBLIC SCHOOLS**

Status of  
public schools.

**96.** All public schools existing at the commencement of this Act shall be deemed to have been established by this Act and shall continue as public schools under this Act.

## **DIVISION 2**

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## PRIVATE SCHOOLS

Interpretation.

**97.** The words "school" or "institution" where used in this Division to refer to the subject of rights or obligations, mean the person operating the school or institution to which the provision concerned applies.

Body without legal personality.

**98.(1)** In the case of a body not endowed with legal personality, the provisions of this Act shall apply as if the body were endowed with legal personality.

(2) The obligation to comply with the provisions of this Act lies with the persons responsible for the administration of the body.

(3) In the case of a school or an institution established by partnership, the obligation lies with both the partnership and the partners.

Applicability.

**99.** This Act applies to every private school dispensing all or some of the educational services belonging to one or more of the following categories:

- (a) early childhood educational services;
- (b) primary school education;
- (c) organisations, schools or other institutions providing special education;
- (d) secondary school education;
- (e) secondary school instructional services in vocational education;
- (f) secondary school adult education services;
- (g) secondary school adult education services in vocational education;
- (h) instructional services in general education at the tertiary level; and
- (i) instructional services in vocational training at the tertiary level.

References and object.

**100.(1)** Section 99 (a) to (d), (f) and (h) refers to education or instruction intended mainly to develop students' abilities in subjects

preparing them for studies at the primary, secondary, post-secondary, tertiary or university level, as the case may be.

(2) Section 99 (e), (g), and (i) refers to vocational education or vocational training which is intended mainly to develop students' abilities so as to prepare them for an occupation, a trade or a profession.

Permit.

**101.**(1) Subject to section 103, a person may not operate a private school to which this Act applies unless that person is the holder of a permit issued by the Minister, for the school and the educational services or categories of educational services mentioned in section 99.

(2) A person who contravenes subsection (1) commits an offence and is liable on summary conviction to a fine not exceeding one thousand dollars or to a term of imprisonment not exceeding six months, and, in the case of a continuing offence is liable to a further fine not exceeding two hundred dollars for each day during which the offence continues after the first conviction.

Presumption.

**102.** Any person or body dispensing for profit or non-profit purposes, educational services for his own account and in the case of a body for its own account, shall be deemed to be operating a private school.

Existing private schools.

**103.**(1) A person who, at the commencement of this Act, is keeping a private school, shall, within one year of the commencement of this Act or of such further period as the Minister may by notice allow, comply with section 101.

(2) A person who contravenes subsection (1) commits an offence and is liable on summary conviction to a fine not exceeding one thousand dollars or to a term of imprisonment not exceeding six months, and, in the case of a continuing offence is liable to a further fine not exceeding two hundred dollars for each day during which the offence continues after the first conviction.

Private schools register.

**104.**(1) The Chief Education Officer shall keep in such manner as may be prescribed, a register of private schools to be known as the Private Schools Register, in which shall be entered the particulars of every private school in respect of which a permit has been issued by the Minister.

(2) The Chief Education Officer shall annually certify a copy of the Private Schools Register and the copy so certified shall be published in the Gazette on such date as the Minister may determine.

(3) The Chief Education Officer shall certify any amendment to the Register and the amendment shall be published in the Gazette.

Application for registration.

**105.**(1) An application for a permit to establish a private school shall be made in the prescribed form by or on behalf of the proprietor of the private school and shall contain the prescribed information.

(2) The Minister shall, upon the receipt of an application made in accordance with subsection (1) cause the private school to be inspected.

Requirements  
for registration.

**106.** Where a private school in respect of which an application is made under section 105 has been inspected, the Minister shall, subject to any condition that the Minister may specify, cause the school to be registered if the Minister is satisfied that -

- (a) the premises are suitable for the activities intended by the private school;
- (b) the furniture is adequate and suitable having regard to the number and ages of the students attending the private school;
- (c) the accommodation provided is adequate and suitable having regard to the number, ages and sex of the students attending the private school;
- (d) efficient and suitable instruction equivalent to that provided in an equivalent public school is being or will be provided at the private school having regard to the ages and sex of the students attending the school;
- (e) the code of conduct and rules of the school are comparable to those established for public schools and assisted private schools;
- (f) there is adequate land for the recreation of the students;
- (g) the proprietor or principal has not been convicted of or pleaded guilty to, an offence under this Act, or a criminal offence committed in relation to the operation of a private school in the three years preceding the application;
- (h) that the private school will have at its disposal the adequate human and material resources required for dispensing the educational services for which the permit is issued and sufficient financial resources for that purpose; and

- (i) the applicant is a fit and proper person and has paid the fee fixed by regulations.

Refusal.

**107.**(1)The Minister may refuse to issue a permit if, during the three years preceding the application, a permit held by the applicant was revoked.

(2)Where an application for a permit to establish a private school has been refused, the applicant shall be notified in writing -

- (a) of the refusal and of the reasons for refusal; and
- (b) of his right of appeal under section 119.

Limitation on instruction.

**108.** Notwithstanding section 101, the Minister may refuse to issue a permit authorising, in a primary school or in general education at the secondary school level, instructions limited to certain subjects or classes, or the Minister may subject the issue of such a permit to the conditions that he determines.

Number of students.

**109.**(1)The Minister may determine the maximum number of students who may be admitted to educational services or categories of educational services provided by the private school.

(2)The capacity of the facilities at the disposal of a school is the capacity determined by the applicant for a permit and approved by the Minister.

(3)Where the applicant fails to determine such capacity, the Minister may refuse to issue the permit.

Content of permit.

**110.** The permit to establish a private school shall state -

- (a) the name of the proprietor who shall be the holder;
- (b) the name and address of the school;
- (c) the address of the buildings or premises at its disposal;
- (d) the educational services or categories of educational services the institution is authorised to dispense;
- (e) where applicable, the authorisations and conditions determined under sections 106, 108 and 109; and

- (f) the maximum number of students who may be admitted under section 109.

Vocational education.

**111.** In respect of vocational education, the permit to establish a private school shall specify, where it concerns -

- (a) secondary school instructional services in vocational education or adult vocational education, the vocational education programmes that the school is authorised to dispense;
- (b) supplementary vocational training, the fields for which the permit is granted; or
- (c) general or vocational education at the tertiary level, the programmes that the school is authorised to dispense.

Duration and renewal of permits.

**112.**(1) On first issuance, a permit is valid for a period of three years.

(2) The Minister shall renew for five years, and subsequently for the same period, a permit held by a person who -

- (a) applies therefor in writing to the Minister within the time limit prescribed by regulations and furnishes, within that time limit, the information and documents prescribed by such regulations;
- (b) meets the conditions set out in section 106; and
- (c) has complied with the provisions of this Act and its regulations for the period of validity preceding the renewal.

(3) Notwithstanding subsections (1) and (2), the Minister may issue or renew a permit for a different period or without a date of expiry where the Minister on the approval of the Executive Council considers it expedient.

Modification.

**113.**(1) The Minister may, at the request of a permit holder, modify the permit upon payment of the fees fixed by regulations.

(2) To modify the educational services mentioned in a permit, the holder shall meet the conditions for the issue of a permit that apply to the educational services for which the request is made.

Transfer. **114.** A permit may not be transferred except with the written authorisation of the Minister.

Information. **115.(1)** The holder of a permit shall inform the Minister -

- (a) of any change that renders the information provided for the issue, renewal or modification of a permit inaccurate or incomplete;
- (b) whenever the school or institution fails to provide all or some of the educational services mentioned in its permit.

(2) Every legal person or body holding a permit shall inform the Minister of any amalgamation, sale, charge or transfer affecting it, as well as of any change in the name of the school or institution.

Visits to private schools.

**116.(1)** The Minister or the Chief Education Officer or any other person authorised in writing by the Minister or the Chief Education Officer may for the purpose of making enquiries, carrying out inspections and discharging such other duties as are imposed on him by this Act or regulations, enter the premises of any private school during the hours of operation of that school.

(2) The proprietor of a private school shall during school hours, keep the school open to visits by the persons mentioned in subsection (1).

(3) A person who in respect of any person specified under subsection (1) -

- (a) obstructs that person in the performance of his duties;
- (b) makes a false representation to that person; or
- (c) refuses to furnish any information which that person may require under this Act or regulations,

commits an offence and is liable on summary conviction to a fine not exceeding one thousand dollars.

Notice to comply.

**117.** Where the Minister is satisfied that a private school registered under this Act has ceased to be conducted in accordance with this Act or regulations, the Minister may serve on the proprietor of the school a notice of that fact, requiring him within the time specified in the

notice to conduct the school in accordance with this Act or regulations, as the case may be.

Cancellation of registration.

**118.** Where a proprietor who is served with a notice under section 117 fails, within the time specified in the notice or within such further time as the Minister allows, to comply with the notice, the Minister shall -

- (a) cancel the permit and the registration of the private school; and
- (b) in writing inform the proprietor -
  - (i) that the permit has been revoked and the registration has been cancelled and of the reasons for the revocation and cancellation; and
  - (ii) of his right to appeal under section 119.

Appeal.

**119.(1)** The proprietor of a private school who is refused a permit and registration pursuant to sections 106 and 107 or whose registration is cancelled under section 118 (a) may, within thirty days of being notified of the refusal or cancellation, appeal to the Education Appeal Tribunal established pursuant to this Act against the refusal or cancellation, as the case may be.

(2) In the case of a refusal, a proprietor may appeal on any of the following grounds:

- (a) that the reasons given for the decision do not disclose any failure to meet any of the requirements for registration set out in section 106;
- (b) that the inspection of the school carried out pursuant to section 105 (2) was not adequate for determining whether the school meets the requirements set out in section 106; or
- (c) that there is no evidence available to support the decision.

(3) In case of a cancellation, a proprietor may appeal on any of the following grounds:

- (a) that no notice was served on the proprietor under section 117;

- (b) that the time specified in the notice served under section 117 or the further time allowed to the proprietor under section 118 to comply with the notice is unreasonable;
- (c) that the proprietor has complied with the notice served under section 117; or
- (d) that there is no evidence available to support the decision.

(4) Where an appeal is brought under this section against a cancellation of registration or a refusal to grant a permit, the Minister may not enforce the refusal or cancellation until the appeal is determined or withdrawn.

(5) The determination of an appeal by the Education Appeal Tribunal shall be final and binding upon the parties to any such decision.

(6) Where an appeal is dismissed or withdrawn, cancellation of the registration of the private school shall take effect from the date of the making of the order by the Education Appeal Tribunal dismissing the appeal, or the date of withdrawal of the appeal.

Registration and closure.

**120.**(1) Where the registration of a private school is cancelled pursuant to section 118, the proprietor of the school may, if the proprietor has complied with the notice served on him under section 117, apply to the Minister for the re-registration of the school.

(2) The requirements of section 106 shall apply to an application under subsection (1).

(3) From the date on which the cancellation of the registration of a private school takes effect, the school shall remain closed until it is re-registered.

(4) Where the Minister is satisfied that the notice served under section 117 has been complied with, the Minister may re-register the private school subject to any condition which the Minister may specify.

Returns.

**121.** The proprietor of a private school shall furnish the Minister with returns in the manner and containing the information required by this Act and regulations.

Health and sanitation.

**122.**(1) The Public Health Department shall require the same health and sanitary arrangements for private schools as are required for public schools and assisted private schools.

(2) The Minister may, on the advice of the Director of Health Services, require the closure of any private school or classroom at the school, or the exclusion of certain students for a specified time with a view to preventing the spread of disease or any danger to health.

Disqualification of teachers.

**123.**(1) A teacher employed in a private school shall possess at least the minimum qualifications required of a teacher employed in an equivalent public school.

(2) The Chief Education Officer may declare any person who does not possess the minimum qualification required under subsection (1) to be unfit for employment as a teacher in a private school and that person shall not be so employed.

(3) An appeal from a decision of the Chief Education Officer made pursuant to subsection (2) shall lie to the Education Appeal Tribunal established pursuant to this Act within fourteen days of the decision.

(4) The decision of the Education Appeal Tribunal shall be final and binding on the parties to any such decision.

Prohibition of discrimination.

**124.** A private school that denies admission to a child or expels a student on account of the race, political affiliation, place of origin, colour or creed of the parents of the student commits an offence and is liable on summary conviction to a fine not exceeding ten thousand dollars.

### DIVISION 3

#### ASSISTED PRIVATE SCHOOLS

Creation of assisted private schools.

- 125.** Subject to section 126, an assisted private school is either -
- (a) a school whose property is owned by a private proprietor, denominational body, a trust, an individual or any incorporated or unincorporated body and which has agreed to receive public funds for one or more of the following purposes:
    - (i) maintenance of the school;
    - (ii) provision of school furniture or equipment;

- (iii) the building of an extension to the school or the rebuilding thereof;
  - (iv) payment of the salaries of the staff; and
  - (v) any other purpose approved by the Minister; or
- (b) a school whose property is jointly owned by the Crown and a private proprietor or a denominational body -
- (i) and the management is jointly shared between the Minister and the private proprietor or denominational body; and
  - (ii) is in receipt of public funds for any of the purposes specified in paragraph (a); or
- (c) a school that is owned by the Crown and the Minister agrees that it should become an assisted private school for the purposes of its management.

Agreement to establish assisted private schools.

**126.**(1) An assisted private school comes into existence by mutual agreement between the Minister and the proprietor of the school.

(2) An agreement under subsection (1) shall -

- (a) be in writing;
- (b) exist for one or more schools;
- (c) be for a period of years; and
- (d) subject to this Act and regulations, specify the terms, conditions, the rights, responsibilities and liabilities of the respective parties.

(3) Any party to the agreement may terminate the agreement by giving the other at least three years notice.

Publication of list of assisted private schools.

**127.**(1) The Minister shall publish in the Gazette by the 31<sup>st</sup> day of July of each year, a list of all assisted private schools and shall cause the list to be circulated to all public and assisted private schools.

(2) Where the Minister and the proprietor of a private school agree, a list published by virtue of subsection (1) shall detail the respective

rights, responsibilities and obligations of the Government and the assisted private school.

Religious education in assisted private schools.

**128.**(1) Subject to subsection (2) where an assisted private school is owned or managed by a denominational body, the denominational body shall be responsible for organising and providing religious instruction or education to students that belong to its religious faith in accordance with a curriculum prescribed by that body.

(2) Where an assisted private school admits students who do not subscribe to the religious beliefs of the denominational school, no student, except with his own consent or, if he is a person under the age of eighteen years, the consent of his parent, shall be compelled or be required to receive religious education or instruction or take part in or attend any religious ceremony or observance prescribed under subsection (1).

Grants to assisted private schools.

**129.**(1) Where the proprietor or the Board of Management of any assisted private school requires financial assistance for the purpose of improving or extending the buildings of the assisted private school or erecting a new school in substitution for any discontinued assisted private school, the proprietor or the Board of Management may apply to the Minister for a grant from the Government.

(2) If upon consideration of an application for financial assistance under this section, the Minister is satisfied that the purpose for which the assistance is required ought to be carried out, the Minister may arrange to obtain a grant from the Government for that purpose.

#### DIVISION 4

#### DENOMINATIONAL SCHOOLS

Status of denominational school.

**130.** Except where a denominational school agrees to become an assisted private school, it shall not lose its status whether or not it is in receipt of a Government grant or subsidy or other form of financial assistance designed to meet in whole or in part the cost of the management and maintenance of the school.

Regulations for denominational schools.

**131.** The Minister may make regulations respecting -

- (a) the registration of denominational schools;
- (b) the capacity of the facilities used by the denominational school;

- (c) the educational services or categories of educational services the denominational school dispenses;
- (d) the number and frequency of inspections by the Minister or Chief Education Officer to denominational schools;
- (e) the annual returns of statistics to be furnished by the denominational school to the Minister;
- (f) the health and sanitary requirements to be maintained by the denominational school; and
- (g) the buildings, premises, equipment and furnishings to be used by the denominational school.

## PART 6

### TECHNOLOGICAL AND VOCATIONAL EDUCATION AND TRAINING

Establishment of  
Technological and  
Vocational  
Education and  
Training Council.

**132.**(1)The Minister may establish a Technological and Vocational Education and Training Council whose membership shall be as follows:

- (a) the Permanent Secretary for Education or his designate who shall be an *ex officio* member;
- (b) the Permanent Secretary of the Ministry responsible for Labour or his designate who shall be an *ex officio* member;
- (c) one representative of the H. Lavity Stoutt Community College;
- (d) the Chief Education Officer who shall be an *ex officio* member;
- (e) the following persons appointed by the Minister by instrument in writing:
  - (i) two members appointed on the recommendations of the associations which represent employers;

- (ii) three members with expertise in technological and vocational education and training; and
- (iii) two members appointed on the recommendations of the duly recognised organisations representing employees.

(2)The Minister shall, by instrument in writing, appoint one member as chairman, and one member as deputy chairman.

(3)In the case of the inability of any member to act, the Minister may appoint a person to act temporarily in the place of that member.

Third Schedule.

(4)The Third Schedule has effect with respect to the procedure of the Technological and Vocational Education and Training Council and otherwise in relation thereto.

Functions of Council.

**133.** The functions of the Technological and Vocational Education and Training Council are -

- (a) to advise the Minister on policy relating to technological and vocational education and training;
- (b) to prepare plans for technological and vocational education and training in accordance with national policies and economic needs;
- (c) to monitor and make recommendations to ensure that agreed plans for technological and vocational education and training are implemented;
- (d) to advise on the co-ordination of technological and vocational education and training at all levels of the educational system;
- (e) to recommend standards for technological and vocational education and training;
- (f) to recommend training priorities, qualifications and accreditation;
- (g) to advise the Minister on the scheme of examinations which may be adopted to test students;

- (h) to determine the facilities and resources required to ensure satisfactory standards of technological and vocational education and training and the welfare of students, trainees and staff of training institutions;
- (i) to advise the Minister on the allocation of resources for technological and vocational education and training;
- (j) to advise the Minister on the making of grants and loans for the support and provision of technological and vocational education and training;
- (k) to make recommendation to the Minister on the making of regulations respecting technological and vocational education and training; and
- (l) to carry out such other functions relating to technological and vocational education and training as the Minister may require.

Directions. **134.** The Minister may give directions of a general or specific nature to the Technological and Vocational Education and Training Council and it shall comply with those directions.

Appointment and functions of committees. **135.(1)**The Technological and Vocational Education and Training Council may appoint committees to perform, in relation to technological and vocational education and training -

- (a) such of its functions as it delegates in writing; and
- (b) such other functions as are specified in section 136.

Fourth Schedule. (2) The provisions of the Fourth Schedule shall apply in respect of the procedure and function of committees and otherwise in relation thereto.

Additional functions of committee. **136.** The additional functions of a committee appointed by the Technological and Vocational Education and Training Council are as follows:

- (a) to undertake research or assist persons in undertaking research into matters relating to technological and vocational education and training;

- (b) to advise the Technological and Vocational Education and Training Council on specified aspects of technological and vocational education and training;
- (c) to advise the Technological and Vocational Education and Training Council on the training facilities to be provided at institutions for persons employed or seeking training in technological and vocational education and training;
- (d) to advise on or make arrangements for giving selection criteria in respect of persons wishing to obtain technological and vocational education and training;
- (e) to make recommendations respecting arrangements for tests and other methods of ascertaining the standards of efficiency to be recommended by the committee for persons seeking technological and vocational education and training; and
- (f) to recommend the terms applicable to persons wishing to pursue technological and vocational education and training.

Training schemes.

**137.(1)**The Technological and Vocational Education and Training Council may, with the approval of the Minister and subject to section 134, formulate schemes for regulating training in any occupation.

(2)A term of any contract for training registered before the date of the coming into force of the scheme may not be revoked or varied by means of a scheme.

(3)A scheme may contain, in respect of any occupation to which it relates -

- (a) the qualifications, including the age and educational standards required for trainees;
- (b) the practical training that employers are required to provide for their trainees;
- (c) the theoretical training that is required to be provided by, or at the expense of, employers for their trainees, or that trainees are required to

undergo, and the manner in which the training is to be provided or undergone;

- (d) the proficiency tests or examinations that trainees are required to take;
- (e) the maximum number of ordinary working hours including overtime, trainees may be required or permitted to work during any day, week or other specified period;
- (f) the days on which, the hours in any day before or after which, and the intervals during which, no trainee can be required or permitted to work;
- (g) the minimum wages and other conditions that apply to trainees;
- (h) the minimum remuneration and other conditions that apply in respect of any period during which a trainee is unable, by reason of any condition of training, or other circumstances, to render service to his employer during working hours; and
- (i) any other matter that, in the opinion of the Technological and Vocational Education and Training Council, with the approval of the Minister, is necessary for the effective operation of the scheme.

(4) Different conditions of training may be specified in a scheme in respect of different classes of employers, trainees or occupations and the Technological and Vocational Education and Training Council may, in determining the different conditions for any scheme, apply any method of differentiation it thinks fit.

(5) A scheme may be amended by a subsequent scheme or by an Order made by the Minister on the recommendation of the Technological and Vocational Education and Training Council.

System for monitoring.

**138.** Subject to the approval of the Minister, the Technological and Vocational Education and Training Council shall establish an effective system for monitoring the implementation of the technological and vocational education and training strategy and plan prepared under section 141.

Annual  
report.

**139.**(1)The Technological and Vocational Education and Training Council shall, not later than three months after the end of the school year, submit to the Minister a report containing -

- (a) an account of the activities of the Technological and Vocational Education and Training Council throughout the preceding financial year in such detail as the Minister directs; and
- (b) a statement of the accounts of the Technological and Vocational Education and Training Council for that financial year audited in accordance with regulations enacted for that purpose.

(2)A copy of the report of the Technological and Vocational Education and Training Council referred to in subsection (1) shall be printed and laid before the Legislative Council within three months after receipt of the report by the Minister, and published in the Gazette.

National  
policy.

**140.** Subject to the approval of the Minister, the Technological and Vocational Education and Training Council shall prepare a national policy for technological and vocational education and training to meet the needs of society and the economy.

Plans for  
technological  
and vocational  
education.

**141.**(1)Subject to the approval of the Minister, the Technological and Vocational Education and Training Council shall prepare a strategy and plan for technological and vocational education and shall update it each year.

(2)The strategy and plan referred to in subsection (1) shall identify outputs and priorities and recommend allocation of resources to implement the plan in the most cost effective manner.

(3)The strategy and plan shall only be implemented in public and assisted private schools on the written direction of the Minister to the Chief Education Officer.

Regulations  
by the Minister.

**142.** The Minister may make regulations -

- (a) on the recommendation of the Technological and Vocational Education and Training Council -
  - (i) prescribing the form and terms of any contract of training;

- 
- (ii) prescribing the procedure for the registration and transfer of contracts for training, and for the notification of the expiration or termination of such contracts;
  - (iii) for the holding of tests in respect of any specified occupation, and for the granting of a certificate of proficiency to any person who enters for, and passes, any such test, notwithstanding that that person is not a trainee;
  - (iv) for the appointment of an Executive Director and other members of staff to manage its affairs; and
  - (v) respecting technological and vocational education and training generally and for matters related thereto;
- (b) establishing an employment and training fund for the purposes of promoting and supporting training and the upgrading of skills for the labour force;
  - (c) establishing and regulating the accounting and auditing of any funds received by the Technological and Vocational Education and Training Council;
  - (d) respecting the criteria and eligibility for receiving grants or loans;
  - (e) respecting the procedures for the evaluation of proposals for grants or loans;
  - (f) establishing procedures for monitoring the performance and outcome of training required to satisfy the conditions for award of grants or loans;
  - (g) respecting the procedures regarding training schemes; and
  - (h) respecting the supervision of trainees by employers.

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**PART 7****PROFESSIONAL DUTIES AND RESPONSIBILITIES  
OF TEACHERS AND PRINCIPALS**

Qualifications of  
teachers.

**143.** A person may not be employed as a teacher, principal or deputy principal in a public or assisted private school unless that person holds a valid qualification as established in regulations made by the Minister.

Rights of  
teachers.

**144.** Every teacher has the right to -

- (a) be treated in a fair and reasonable manner;
- (b) be provided with an adequate working environment;
- (c) be provided with sufficient and appropriate equipment to carry out assigned professional duties;
- (d) be provided with adequate physical facilities to enable the performance of the assigned professional duties;
- (e) be protected as far as reasonably possible from molestation, abuse, assault and battery in the process of carrying out assigned professional duties whether within or outside the school when the teacher is engaged in authorised activities;
- (f) be afforded, if necessary, legal or psychological support, or both in the event of injury while in the execution of assigned duties;
- (g) compensation for injury, damage to, or loss of material possessions while in the execution or as a consequence of the execution of assigned duties provided that the personal injury, damage or loss was not caused by the negligence of the teacher;
- (h) reasonable access to professional training and development whether basic or otherwise;
- (i) be provided with adequate clothing, tools and equipment when engaged in hazardous activities;
- (j) be a member of a representative body, union or association and to participate in the lawful activities

of the representative body, union or association of which the teacher is a member; and

- (k) participate in the preparation of the school plan.

Exercise of  
general  
professional  
duties.

**145.** A teacher shall -

- (a) carry out his professional duties under the reasonable direction of the principal; and
- (b) perform in accordance with any directions which may reasonably be given to him by the principal from time to time such additional duties as may reasonably be assigned to him.

Duties of  
teachers.

**146.(1)** Every teacher in a public school and an assisted private school shall -

- (a) encourage students in the pursuit of learning and teach them diligently and faithfully;
- (b) teach courses of study that are prescribed, approved, or authorised pursuant to this Act or regulations;
- (c) report on the progress, behaviour, and attendance of students to their parents in accordance with the provisions of this Act or regulations;
- (d) under the direction of the principal, maintain order and discipline among students while they are in school, on school grounds, or attending or participating in activities sponsored or approved for the school not inconsistent with this Act or regulations;
- (e) review with students their assessments and progress and advise students of the expectations for them;
- (f) maintain whatever registers, records, or other forms as may be required by the principal, Chief Education Officer, or this Act and make those registers, records, or other forms available for inspection by the Chief Education Officer or by any person authorised by the Chief Education Officer;
- (g) observe the standards of the school as established by the staff and principal;

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- (h) upon reasonable notice from the principal, admit a parent of a student to the classroom for the purpose of observing;
- (i) report promptly to the principal an apparent outbreak of contagious or infectious diseases in the school, any unsanitary condition of the school building or surroundings and any other conditions or circumstances that may reasonably threaten the health or safety of students or other employees of the school;
- (j) notify the principal of any absence by the teacher from school and the reason for the absence;
- (k) upon the direction of the principal, co-operate with student teachers and their instructors in the classroom for the purpose of observing and practice teaching, and render assistance to the student teachers and submit reports on the teaching ability of the student teachers;
- (l) perform assigned duties as outlined in the school emergency plan developed by the school administration and the teachers to protect the health and, safety of students;
- (m) report to the principal and to the proper government official responsible for child welfare that a student is in need of protection when there are reasonable grounds to believe that the child is being abused and is in need of protection as required by the Juvenile Act;
- (n) attend staff and other relevant meetings;
- (o) plan and prepare courses and lessons;
- (p) teach students assigned to him according to their educational needs and set work to be carried out by the students in school and elsewhere and mark the same;
- (q) assess, record and report in a manner approved by the principal on the development, progress and attainment of students;

- 
- (r) provide guidance and advice to students on education and social matters and on their further education and future careers, including information about sources of more expert advice on specific questions;
  - (s) participate in the implementation of a policy for the pastoral care of the students;
  - (t) make arrangements under the direction of the principal for parents to be given regular information about the school curriculum, the progress of their children and other matters affecting the school;
  - (u) promote effective relationships with persons and bodies outside the school;
  - (v) advise and assist the Board of Management in the exercise of its functions, including attending meetings and making such reports to it in connection with the discharge of his functions as may be required;
  - (w) make and participate in implementing arrangements for the effective supervision of students during the school day, and the security of school buildings and their contents and of the school grounds;
  - (x) participate to such extent as may be appropriate having regard to other duties, in the teaching of students at the school, including provision of cover for absent teachers; and
  - (y) perform any other duties that may be prescribed by regulations made by the Minister under this Act.

(2) A teacher who fails to perform any or a combination of the professional duties specified in subsection (1) is liable to disciplinary action by the Teaching Service Commission in accordance with prescribed regulations respecting discipline.

Duties of Deputy  
Principal.

**147.**(1) A person appointed deputy principal in a school, in addition to carrying out the professional duties of a school teacher, including those duties particularly assigned to him by the principal, shall -

- (a) assist the principal in managing the school or such part of it as may be determined by the principal;

- (b) undertake any professional duty of the principal which may be delegated to him by the principal; and
- (c) undertake, in the absence of the principal to the extent required by him, or other authority, the professional duties of the principal.

(2) A deputy principal who fails to perform any or a combination of the professional duties specified in subsection (1) and section 146 (1) is liable to disciplinary action by the Teaching Service Commission in accordance with the prescribed regulations made for that purpose by the Commission.

General  
responsibilities  
of principals.

**148.(1)** Subject to the provisions of this Act, the principal of each school shall -

- (a) furnish such returns as may be prescribed by the Minister by regulations;
- (b) ensure the observance of the provisions of the Education Act and any regulations;
- (c) promote satisfactory relationships with parents and the community served by the school;
- (d) develop and implement procedures for parental and community involvement in the school and promote co-operation between the school and the community it serves;
- (e) maintain order and discipline in the school, on the school grounds, and during activities sponsored or approved for the school;
- (f) supervise, direct and advise teachers and other staff assigned or rendering services to the school including volunteers;
- (g) maintain any records and complete any returns and forms required pursuant to this Act and regulations;
- (h) ensure the proper maintenance and care of school property;

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- (i) requisition necessary materials, supplies, and equipment for the school and arrange for distribution of them;
- (j) attend meetings of the Board of Management, the Parent Teacher Association or school committee for the school when requested by the relevant body to do so;
- (k) report promptly to the Chief Education Officer, the Director of Health Services, and other appropriate health personnel an apparent outbreak of any contagious or infectious disease in the school, any unsanitary condition in the school building or surroundings and any other dangerous or unsafe condition in the school;
- (l) report to the Chief Education Officer and to the proper government official responsible for student welfare that a student is being abused and is in need of protection when there are reasonable grounds to believe that the student is in need of protection as required by the Juvenile Act;
- (m) prepare the school's operations and maintenance budget for review and approval by the Board of Management, if such a body exists;
- (n) be responsible for the preparation and implementation of the school plan;
- (o) keep parents informed of the progress and development of students;
- (p) ensure that instruction in the school is consistent with the courses of study prescribed pursuant to this Act or regulations;
- (q) include in the activities of the school, cultural heritage traditions and practices;
- (r) formulate with the assistance of the staff the overall aims and objectives of the school and policies for their implementation;
- (s) deploy and manage all teaching and non-teaching staff of school and allocate particular duties to them

- 
- (including such duties of the principal as may properly be delegated to the deputy principal or other members of the staff) in a manner consistent with their conditions of employment;
- (t) ensure that the duty of providing cover for absent teachers is shared equitably among all teachers in the school (including the principal), taking into account their teaching and other duties;
  - (u) maintain relationships with organisations representing teachers and other persons on the staff of the school;
  - (v) organise and implement the prescribed curriculum for the school, having regard to -
    - (i) the needs, experience, interests, aptitudes and stage of development of the students;
    - (ii) the resources available to the school; and
    - (iii) his duties under this Act and regulations;
  - (w) keep under review the work and organisation of the school;
  - (x) encourage the professional development of teachers, evaluate the standards of teaching and learning in the school, and ensure that proper standards of professional performance are established and maintained;
  - (y) maintain good order and discipline among the students and safeguard their health and safety both when they are authorised to be on the school premises and when they are engaged in authorised school activities elsewhere;
  - (z) perform any other related duties which may be prescribed by regulations made by the Minister.

(2) A principal who fails to perform any or a combination of the professional duties specified in subsection (1) is liable to disciplinary action by the Teaching Service Commission in accordance with prescribed regulations respecting discipline.

## PART 8

### CURRICULUM AND ASSESSMENT OF STUDENTS

National curriculum.

**149.**(1)The Minister shall establish a national curriculum for public schools and assisted private schools.

(2)A curriculum established under subsection (1) shall be balanced and broadly based and shall, in addition to the goals and objectives specified in section 4 (2) -

- (a) promote the spiritual, emotional, moral, cultural, social, intellectual and physical development of students and of society; and
- (b) prepare students for the opportunities, responsibilities and experiences of adult life.

(3)The Minister may revise the national curriculum whenever the Minister considers it necessary and expedient to do so.

Core and foundation subjects.

**150.**(1)The curriculum for every public school and assisted private school shall comprise core and foundation subjects and specify in relation to each of them -

- (a) attainment targets that include the knowledge, skills and understanding that students of different abilities and maturities are expected to have by the end of each key stage;
- (b) programmes of study that include the matters, skills and processes that are required to be taught to students of different abilities and maturities during each key stage; and
- (c) assessment arrangements that include the arrangements for assessing students at or near the end of each key stage for the purpose of ascertaining what they have achieved in relation to the attainment targets.

(2)Subsection (1) shall not apply in the case of a school engaged in the delivery of special education.

Key stages of assessment.

**151.**(1)The key stages in relation to a student are as follows:

- (a) the period beginning with his attainment of compulsory school age and ending at the same time as the school year in which the majority of students in his class attain the age of seven;
- (b) the period beginning at the same time as the school year in which the majority of students in his class attain the age of eight and ending at the same time as the school year in which the majority of students in his class attain the age of ten;
- (c) the period beginning at the same time as the school year in which the majority of students in his class attain the age of eleven and ending at the same time as the school year in which the majority of students in his class attain the age of thirteen; and
- (d) the period beginning at the same time as the school year in which the majority of students in his class attain the age of fourteen and ending at the same time as the school year in which the majority of students in his class attain the age of sixteen.

(2) For each key stage in subsection (1) the Chief Education Officer shall ensure that arrangements are made for the assessment of students to ascertain what they have achieved, in relation to the attainment targets.

(3) The assessments may be made by the Ministry or by a body or organisation designated or contracted to do so by the Minister.

(4) The Minister shall determine the frequency of the assessments.

(5) The Minister shall, within ninety days of receiving the results of the assessments, publish the results together with a commentary thereon by the Chief Education Officer.

Determination  
of attainment  
targets.

**152.**(1) The Minister shall by notice published in the Official Gazette establish -

- (a) the core subjects and other foundation subjects;
- (b) the attainment targets;
- (c) the programmes of study; and

- (d) the assessment arrangements

that the Minister considers appropriate.

(2) A notice issued under subsection (1) may not require that -

- (a) any particular period or periods of time should be allocated during any key stage to the teaching of any programme of study or any matter, skill or process forming part of it; or
- (b) provision of any particular time should be made in school timetables for the periods to be allocated to such teaching during any such stage.

Subject panels.

**153.**(1) For the purpose of creating and revising the national curriculum from time to time, the Minister may constitute subject panels to develop syllabuses for the core and foundation subjects.

(2) A subject panel shall comprise the following:

- (a) members of the teaching profession with expertise in the subject;
- (b) officials of the Ministry; and
- (c) other persons, including parents, having relevant knowledge or experience in the subject;

(3) Subject panels shall consist of not less than five or more than nine members appointed by the Minister after consultation with the Chief Education Officer, of whom -

- (a) one shall be appointed as chairman; and
- (b) another may be appointed as deputy chairman.

(4) The Chief Education Officer or other official designated by him shall co-ordinate the work of the subject panels and ensure the testing and implementation of the recommended syllabuses into the school system.

Collective  
worship and  
religious  
education.

**154.**(1) Subject to subsections (2) and (5), the school day in every public or assisted private school shall begin with collective worship by all students in attendance at the school, and the arrangements made shall provide for a single act of worship which shall be Christian in character

attended by all students unless the school premises are so constructed as to make it impracticable to assemble for that purpose.

(2)The collective worship required by subsection (1) shall not, in any public school and assisted private school, be distinctive of any particular religious denomination.

(3)Subject to section 155, religious education shall be part of the curriculum of every public school and assisted private school.

(4)It shall not be a condition of admission or attendance of any student in a public school or assisted private school that a student -

- (a) participates in religious education or attends or abstains from attending any place of religious instruction or worship;
- (b) if his parent objects, attends any religious observances or receives any education in religious subjects at a school or elsewhere; or
- (c) attends a school or an activity in any place on any day specially set apart for religious worship by the religious body to which he belongs.

(5)Where the parent of any student attending a public school or assisted private school requests that the student be excused from attendance at collective worship, any religious observance or any education or instruction in religious subjects at the school or elsewhere, then, until the request is withdrawn, the student shall be excused.

Religious  
education in  
public schools.

**155.**(1)The religious education given to any student in attendance at a public school pursuant to section 154 (3) shall be given in accordance with an agreed syllabus adopted for the school and shall not include any catechism or formulary that is distinctive of any particular religious denomination.

(2)In respect of public schools the Minister may constitute a standing advisory council on religious matters connected with the religious instruction to be given in accordance with an agreed syllabus and in particular, as to methods of teaching, the choice of books, and the provision of lecturers or teachers.

## PART 9

**INSPECTION AND REVIEW OF THE  
EDUCATION SYSTEM**

**DIVISION 1**

**INSPECTION OF SCHOOLS**

Inspection of  
schools.

**156.**(1) The Chief Education Officer, an Education Officer, or a public officer authorised in writing by the Chief Education Officer or any other person authorised in writing by the Minister shall, at the times and in the manner prescribed, inspect public schools, assisted private schools, and private schools.

(2) Any person who, pursuant to subsection (1) inspects a school shall -

- (a) give such assistance and guidance to the teachers employed at the school as might promote the good conduct and efficiency of the school;
- (b) advise the principal of the school on matters relating to its welfare and development; and
- (c) give to the Minister, the Board of Management, or, in the case of a private school, the proprietor, a report on the school.

Schools to be  
opened for  
inspections and  
visits.

**157.**(1) The principal of a public school, an assisted private school and the proprietor or principal of a private school shall keep the school open at all times during school hours to visits and inspections -

- (a) by the Minister;
- (b) by the Chief Education Officer; or
- (c) by any other person authorised in writing by the Minister or the Chief Education Officer to visit or inspect the school.

(2) Any person who, pursuant to subsection (1), inspects a school may at the request of the Chief Education Officer examine the students in the subjects of instruction taught at the school.

Offences.

**158.** A person who -

- (a) prevents a person empowered or authorised under this Act or regulations from visiting or inspecting

public schools, assisted private schools or private schools; or

- (b) assaults or obstructs a person empowered or authorised under this Act or regulations to visit or inspect a public school, an assisted private school or a private school during a visit or inspection of such schools,

commits an offence and is liable on summary conviction to a fine not exceeding one thousand five hundred dollars and in the case of a second or subsequent conviction to a term of imprisonment not exceeding six months.

## DIVISION 2

### REVIEW OF THE EDUCATION SYSTEM

Appointment of  
Education Review  
Committee.

**159.**(1) Every five years or as soon as practicable thereafter, the Executive Council on the recommendation of the Minister, shall appoint an Education Review Committee of not more than five members to review and report on the education system of the Virgin Islands in accordance with section 160.

(2) The Education Review Committee shall comprise -

- (a) a member having relevant knowledge or expertise in education who shall be chairman;
- (b) one member from either -
  - (i) a Parent Teacher Association; or
  - (ii) a Board of Management;
- (c) one member from organisations concerned with either -
  - (i) community development; or
  - (ii) industry and commerce; or
  - (iii) professional services;
- (d) one member representing the teaching profession; and

Review and report  
of Education  
Review  
Committee.

- (e) such other member as the Executive Council in its discretion thinks fit.
- 160.**(1)The Education Review Committee shall review and report on -
- (a) the physical conditions and the maintenance of public and assisted private schools;
  - (b) the suitability of the curriculum, in public and assisted private schools;
  - (c) the performance of students at -
    - (i) the assessments held in accordance with section 151 (1) and (2);
    - (ii) annual examinations set and marked by individual schools; and
    - (iii) examinations set by the Caribbean Examinations Council;
  - (d) the organisation of the Ministry as it relates to and its delivery of education services;
  - (e) the teaching service, and the number, quality and performance of teachers; and
  - (f) any other matter which in the opinion of the Education Review Committee would enhance the quality and delivery of education in the Virgin Islands.

(2)The report of the Education Review Committee shall be submitted to the Minister who shall cause it to be laid before the Legislative Council of the Virgin Islands.

(3)After the report of the Education Review Committee has been laid before the Legislative Council of the Virgin Islands it shall be printed and sold to the public.

## PART 10

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## APPEALS

Establishment of  
Education Appeal  
Tribunal.

**161.**(1) For the purposes of determining appeals under this Act, the Minister shall appoint an Education Appeal Tribunal.

(2) The Minister shall appoint to the Education Appeal Tribunal -

- (a) fit and proper person as chairman;
- (b) a maximum of five other persons; and
- (c) a secretary who shall be a public officer.

(3) The chairman and the members of the Education Appeal Tribunal shall be appointed for a period not exceeding three years and in the manner specified by the Minister.

(4) The Minister may solicit and consider nominations for the membership of the Education Appeal Tribunal from groups interested in education in the Virgin Islands.

(5) The chairman and the members of the Education Appeal Tribunal shall swear an oath of non-disclosure in the form prescribed by the Minister for information gained during an appeal in accordance with this Part.

Composition of  
Tribunal.

**162.**(1) An appeal referred to the Education Appeal Tribunal shall be heard by the chairman and two or more members chosen by the chairman.

(2) Subject to section 161 (2) (a), where possible, the qualifications of the members of the Education Appeal Tribunal shall be appropriate to the matter under consideration by the Tribunal.

(3) The chairman may call upon such experts or consultants as are considered necessary to advise the Education Appeal Tribunal.

Mediation.

**163.** Prior to the consideration of an appeal by the Education Appeal Tribunal, the chairman may appoint a mediator to attempt to settle the matter under appeal.

Procedure of  
Tribunal.

**164.**(1) In considering the matter being appealed, the Education Appeal Tribunal may make any investigation it considers necessary.

(2) The Education Appeal Tribunal shall set the time, place, and date for a hearing of the appeal and shall notify the parties to the appeal of the time, place, and date of the hearing.

(3) A decision shall not be made by the Education Appeal Tribunal without giving the parties to the appeal an opportunity to make representations either orally or in writing or both.

(4) Parties to an appeal shall pay their own costs unless otherwise directed by the Tribunal.

(5) Unless the Education Appeal Tribunal decides otherwise, appeals shall be held in camera and may be heard in any place.

Powers of the  
Tribunal.

**165.** The Education Appeal Tribunal, in deciding a matter being appealed, may make an order doing one or more of the following:

- (a) confirming or varying the decision that is under appeal;
- (b) identifying a student as a student with special educational needs;
- (c) determining that an individual education plan be prepared for a student;
- (d) directing the Chief Education Officer to implement an individual education plan in a particular environment including, but not limited to, a regular class;
- (e) directing the Chief Education Officer to enrol a student in a school named by the Education Appeal Tribunal;
- (f) directing a determination to be made in accordance with section 93;
- (g) defining the contents of a student record when the appeal under consideration is pursuant to section 23; and
- (h) reinstating to school a student who has been expelled or placed on an indefinite suspension.

Matters to be  
considered.

**166.** In the determination of an appeal, the Education Appeal Tribunal shall consider -

- (a) the educational interests of the student who is the subject of the appeal;
- (b) the impact of a decision on the total school or class population; and
- (c) any other factor that appears to be relevant to the matter in dispute.

Final decision.

**167.** The decision of the Education Appeal Tribunal shall be final and binding upon the parties to the appeal.

Enforcement of order.

**168.**(1) A copy of an order made by the Education Appeal Tribunal shall be filed with the Registrar of the High Court.

(2) On the filing of a copy of an order with the Registrar of the High Court, the order has the same force and effect as if the order were an order of that Court.

Copy to the Minister and parties.

**169.** A copy of the decision of the Education Appeal Tribunal shall be sent to the Minister and the parties to the appeal.

## PART 11

### MISCELLANEOUS

Vendors on school premises.

**170.**(1) A person may not sell or offer for sale any services, goods, food, beverages or any other item on school premises or at school functions, including sports days without the written permission of the Chief Education Officer.

(2) A person who wishes to sell or offer for sale services, goods, food, beverages or any other item on the premises of a public school or assisted private school or at any school function, including sports days shall apply in writing to the Chief Education Officer through the principal of the particular school, for permission to do so.

(3) Where an application is made under subsection (2), the applicant shall submit together with his application -

- (a) a food handlers certificate (referred to as “certificate of health”) issued by the Director of Health Services under regulation 5 of the Public Health (Food Hygiene) Regulations; and

S.I. No. 56 of 1972.

Cap. 200.

(b) a trade licence issued under the Business, Professions and Trade Licences Act.

(4) Where an application is made under subsection (2), the Chief Education Officer may after interviewing the applicant and consulting the principal and having considered the suitability of the proposed services, goods, food, beverages or any other item to be sold, grant permission to the applicant, on such terms and conditions as the Chief Education Officer thinks fit.

(5) A person who sells or offers for sale food or drink on school premises or at school functions, including sports days shall ensure that the area used by him is in a clean state and that all wrapping or other kinds of litter are collected and disposed of.

(6) The sale of food and drink is not to be permitted during lesson periods.

(7) The Chief Education Officer may revoke the written permission given to any vendor who contravenes any of the conditions stated in the permit.

(8) A person who sells or offers for sale food, drink or any other item on the school premises or at school functions, including sports days or within the entrance or exit of a public school or assisted private school during school hours without the written consent of the Chief Education Officer commits an offence and is liable on summary conviction to a fine not exceeding one thousand five hundred dollars or to a term of imprisonment not exceeding one year or both.

Prohibition of sale of alcoholic beverages and tobacco.

**171.** (1) The sale, consumption, offer or exposure for sale of any alcoholic beverage or tobacco on the premises of any school, whether public or private or at a school function is prohibited.

(2) A person who sells, consumes, offers or exposes for sale any alcoholic beverage or tobacco on the premises of any school whether public or private or at a school function commits an offence and is liable on summary conviction to a fine not exceeding one thousand five hundred dollars or to a term of imprisonment not exceeding one year or both.

Loitering etc. on school premises.

**172.**(1) A person who -

(a) is found loitering, wandering or otherwise trespassing on the premises of any school;

(b) creates a disturbance on the premises of any school;

- (c) while on the premises of any school -
  - (i) uses threatening or insulting language or in any manner interferes with any student or member of the staff of the school; or
  - (ii) assaults, insults or abuses a student or member of the staff of the school;
  - (iii) disrupts any lawful activity conducted on the premises of the school;
- (d) in a public place causes or makes a noise that disturbs or is likely to disturb any lawful activity carried out on the premises of the school; or
- (e) causes any damage to any school building or other property found on the premises of, or forming part of the compound of the school,

commits an offence and is liable on summary conviction to a fine not exceeding two thousand dollars or to a term of imprisonment not exceeding one year or both.

(2) A person who commits an offence under subsection (1), may be arrested by any member of the Police Force, with or without a warrant.

(3) A prosecution for an offence under this section in relation to a public school or an assisted private school may be brought in the name of the Chief Education Officer.

Regulations.

**173.**(1) Subject to the provisions of this Act, the Minister may make regulations generally as he considers necessary or expedient for carrying out the purposes of this Act.

(2) Without restricting the generality of subsection (1), the Minister may make regulations -

- (a) respecting the management and conduct of public schools and assisted private schools;
- (b) concerning the control and management and conduct and registration of private schools and in particular in respect of -

- 
- (i) the size of the classrooms and their equipment, the number of students that may occupy each classroom and the necessary sanitary and safety facilities to be provided;
  - (ii) the registers and other records to be kept by proprietors of private schools and the particulars to be furnished to the Ministry by the proprietors;
  - (iii) the suitability of premises;
  - (iv) the suitability of the curriculum and courses and methods of instruction;
  - (v) generally for more effectively carrying out the provisions of this Act respecting private schools;
- (c) prescribing the standard to which the premises of schools are to conform;
  - (d) respecting the purposes for which the premises of a public school may be used;
  - (e) prescribing the financial or other assistance and the conditions subject to which such assistance is given to any school, or class of schools specified in such regulations;
  - (f) respecting the admission of students to public schools and assisted private schools, the discipline of such students, the keeping by public schools and assisted private schools of a school record of each student, the particulars to be included in the record and the disposal of the record;
  - (g) respecting the establishment of an Examination Certification Board;
  - (h) respecting the conduct and operation of school guidance counsellors;
  - (i) respecting the qualification, conduct and operation of school security officers;

- 
- (j) respecting the admission of persons to teachers' colleges and the conditions of admission;
  - (k) respecting -
    - (i) the admission or transfer of students to public secondary schools and assisted private secondary schools; and
    - (ii) the qualifying examinations for admission;
  - (l) respecting the management and accounting by principals and teachers of public schools and assisted private schools of -
    - (i) moneys or property payable to or vested in the school;
    - (ii) moneys derived from fund-raising activities;
    - (iii) moneys and other property derived by way of gift, bequest, trust, or donations, or in any other manner whatsoever;
  - (m) respecting special or home education;
  - (n) prescribing -
    - (i) the division into which students of teachers' colleges are to be classified and the conditions for the selection of students for those divisions and for their admission to or continuation, in or removal from, teachers' colleges in those divisions;
    - (ii) the courses and curricula for students of the various divisions in teachers' colleges;
  - (o) providing for the certification and registration of teachers completing courses of training;
  - (p) respecting the terms of employment including grading, discipline, promotion, and leave and payment of salaries and other remuneration to teachers;

- 
- (q) respecting the establishment, administration, organisation, inspection and classification and discontinuance of schools;
  - (r) respecting the award of scholarships, bursaries, grants and other financial assistance for tertiary education and specifying the value and other conditions subject to which scholarships, grants, and bursaries may be held or other financial assistance given;
  - (s) prescribing the school year, hours of school, terms and vacations of public schools and assisted private schools;
  - (t) prescribing the cases in which, and the matters for which, fees may be charged in public schools;
  - (u) respecting the inspection of public schools, assisted private schools and private schools;
  - (v) respecting the constitution, rights, powers and responsibilities of Student Councils;
  - (w) embodying any collective agreement arrived at between the Ministry and the representative body representing teachers concerning the conditions of service of teachers represented by that body, or between the Ministry and any other body representing members of the teaching profession in respect of such members;
  - (x) respecting remuneration, allowances or stipends that may be paid to the members of any Board, Council or Committee under this Act;
  - (y) respecting the establishment, procedure and functions of an Accreditation Commission and other matters relating thereto; and
  - (z) prescribing anything that by this Act is to be prescribed.

Repeal and  
savings.  
Cap. 116

Cap.116 Vol. VI  
(1991 Ed.)

**174.**(1) Subject to subsection (2), the Education Act is repealed.

(2) The Education Regulations and any other subsidiary legislation passed pursuant to the Education Act, shall continue in force until revoked by the Minister under this Act, and shall be so construed with whatever modification or adaptation that may be necessary so as to give effect to the provisions of this Act.

## FIRST SCHEDULE

[Section 10 (6)]

### EDUCATION ADVISORY BOARD

- |                               |   |
|-------------------------------|---|
| Definition.                   | <b>1.</b> In this Schedule, "Board" means the Education Advisory Board appointed under section 10 of this Act.  |
| Tenure.                       | <b>2.</b> The appointment of a member of the Board is, subject to this Schedule, for a period not exceeding two years, but the member shall be eligible for re-appointment.   |
| Chairman and Deputy Chairman. | <b>3.</b> The Board shall elect a chairman and a deputy chairman from among its members.  |
| Temporary appointment.        | <b>4.</b> In the absence or in the case of the inability to act of a member, the Minister may appoint any person from the group that member represents to act temporarily in place of such member.  |
| Resignation of members.       | <b>5.(1)</b> Any member of the Board, other than the chairman may at any time resign from the Board by instrument in writing addressed to the Minister and transmitted through the chairman and from the date of the receipt by the Minister of such instrument such member shall cease to be a member of the Board.<br><br>(2) The chairman may at any time resign his office as a member of the Board by instrument in writing addressed to the Minister, and such resignation shall take effect from the date of the receipt of such instrument by the Minister, if the date is not specified therein. |
| Forfeiture of membership.     | <b>6.</b> Any member of the Board who fails to attend three consecutive meetings without excuse acceptable to the Board shall cease to be a member.   |
| Filling of vacancies.         | <b>7.</b> If any vacancy occurs in the membership of the Board such vacancy shall be filled by the appointment of another member who may, subject to this Schedule hold office for the remainder of the period for which the previous member was appointed, but such appointment shall be made in the same manner and from the same category of persons, if any, as the appointment of the previous member.   |
| Publication of membership.    | <b>8.</b> The names of all members of the Board as first constituted and every change in the membership shall be published in the Gazette.  |



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**SECOND SCHEDULE**

[Sections 66, 73, 79 and 80]

**CONSTITUTION, PROCEDURE, AND FUNCTIONS OF  
BOARDS OF MANAGEMENT**

Interpretation.

**1.** In this Schedule "Board" means a Board of Management appointed under sections 66, 73, 79 and 80 of the Education Act.

Chairman and  
Deputy  
Chairman.

**2.(1)** Except in cases of Boards established under sections 79 and 80 of the Act, a Board shall elect a chairman and a deputy chairman from among its members.

(2) The membership of a Board as first constituted and any changes therein shall be notified in the Gazette.

Filling of  
vacancies.

**3.** If any vacancy occurs in the membership of a Board such vacancy shall be filled by the appointment of another member in the manner indicated in sections 66, 73, 79 and 80, and such person shall hold office for the remainder of the period for which the previous member was appointed, provided however, that such appointment shall be made in the same manner and from the same category of persons, if any, as the appointment of the previous member.

Employment of  
member.

**4.(1)** A member of a Board may not be appointed to any office or employment under the Board of which he is a member or any other Board.

(2) A person is not eligible for appointment to any office or employment under a Board within one year from the date on which the person last held office or acted as a member of that Board.

Duration of  
membership.

**5.(1)** Every member of a Board shall hold office for a term of three years unless, before the end of the term the member dies, resigns, is removed from office for any cause by the Minister or the appointing authority under sections 79 and 80 of the Act or ceases to be a member in accordance with subparagraph (4).

(2) Every member is eligible for reappointment for a further term.

(3) Any member of a Board who fails to attend three consecutive meetings of the Board without excuse acceptable to the Board shall cease to be a member thereof.

(4) A member of a Board may at any time resign his office by instrument in writing addressed to the Minister and transmitted through

the chairman in cases of Boards established in public schools and through the denomination or proprietor in cases of Boards established in assisted private schools provided that the resignation shall be effective from the date of receipt by the Minister of such instrument, if a date is not specified therein.

(5) The chairman may at any time resign office by instrument in writing addressed to the Minister in cases of Boards established in public schools and the denomination or proprietor in cases of Boards established in assisted private schools provided that the resignation shall be effective from the date of receipt by the Minister of such instrument, if a date is not specified therein.

Meetings.

**6.(1)** A Board shall meet at least once in every school term and at such other times as may be necessary or expedient for the transaction of its business and such meetings shall be held at such places and times on such days as the chairman may determine.

(2) The chairman may at any time summon a meeting of a Board and shall summon a meeting within seven days -

- (a) if a request for that purpose is addressed to him by any three members of a Board; or
- (b) on a direction to that effect addressed to him by the Minister.

(3) The chairman, or in his absence the deputy chairman, shall preside at any meeting of a Board.

(4) At any meeting of a Board, in case of the absence or inability to act of both the chairman and the deputy chairman, the members of the Board shall elect one of their members to preside at that meeting.

Quorum.

**7.** At any meeting of a Board a quorum shall be the minimum number constituting a majority of the total members of the Board.

Decisions.

**8.** The decisions of a Board shall be by a majority of the votes of the members present and constituting a quorum, but in any case in which the voting is equal the chairman, deputy chairman or other member presiding at the meeting shall in addition to an original vote, have a casting vote.

Minutes.

**9.(1)** Minutes in proper form of each meeting of a Board shall be kept by the secretary or such person as the Board may appoint for the purpose and shall be confirmed by the Board at its next meeting and

signed by the chairman or other person presiding at that meeting, and the secretary of the Board.

(2) A copy of the Minutes of each meeting as recorded by the secretary or such person as is referred to in subparagraph (1) shall be submitted to the Minister within one month of the confirmation of the minutes.

Attendance of  
Chief Education  
Officer.

**10.**(1) The Chief Education Officer may attend any meeting of a Board or a committee or subcommittee thereof or may be represented at any such meeting by a public officer authorised by him in that behalf.

(2) The Chief Education Officer or his representative may take part in the proceedings of any such meeting but shall not be entitled to vote or otherwise take part in the decision-making process of any such meeting.

Appointment of  
committees.

**11.**(1) A Board may appoint a committee for any of the purposes of the Board which in its opinion would be better regulated or managed by means of a committee, with or without restrictions or conditions, as it thinks fit.

(2) The number of members of a committee appointed under this paragraph and their terms of office shall be fixed by the Board.

(3) A committee appointed under this paragraph may include persons who are not members of the Board but the chairman and at least two-thirds of the members of every committee shall be members of the Board.

(4) Any committee appointed by a Board under this paragraph may, subject to any restrictions imposed by the Board, appoint a subcommittee of its members as it may determine.

(5) Any subcommittee appointed under this paragraph shall be constituted in such manner as, subject to any restrictions imposed by the Board, may be determined by the appointing committee; but the chairman and at least two-thirds of the members of every subcommittee shall be members of the Board.

(6) Subject to any restrictions imposed by the Board where a committee appointed by the Board appoints a subcommittee in the exercise of the powers conferred on it by subparagraph (4), it may delegate to the subcommittee, with or without restrictions or conditions as it thinks fit, any of its functions.

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Power to  
delegate.

**12.** Without prejudice to paragraph 11, a Board, after consultation with the Minister, may delegate to any committee such of its functions as it considers appropriate subject to such restrictions or conditions as it thinks fit.

### THIRD SCHEDULE

[Section 132]

#### PROCEDURE OF TECHNOLOGICAL AND VOCATIONAL EDUCATION AND TRAINING COUNCIL

- Definition. **1.** In this Schedule, "Council" means the Technological and Vocational Education and Training Council established under section 132 of this Act.
- Duration of appointment. **2.** A member of the Council holds office for a term of three years unless he dies, resigns or has his appointment revoked before the end of that term, but
- (a) a person who is appointed to fill a vacancy created by the death, resignation or removal from office of a member shall hold office only for the unexpired portion of the term of that former member; and
- (b) every member is, on the expiration of the term of his appointment, eligible for re-appointment for a further term.
- Leave of absence. **3.** The Minister may grant leave of absence to a member of the Council and may appoint a person to act temporarily in the place of that member.
- Resignation of member. **4.** A member of the Council other than the chairman may resign office by instrument in writing addressed to the Minister transmitted through the chairman and, from the date of the receipt of the instrument by the Minister if no date is specified therein, that member ceases to be a member of the Council.
- Resignation of chairman. **5.** The chairman may at any time resign his office by instrument in writing addressed to the Minister and, from the date of the receipt of such instrument by the Minister if no date is specified therein, he ceases to be chairman and to be a member of the Council.
- Quorum. **6.** Four members of the Council shall form a quorum.
- Decisions. **7.** Decisions of the Council shall be made by a majority of the members present and voting, and where the voting is equal the chairman, in addition to his original vote, has a casting vote.

- 
- Frequency of meetings.
- 8.** The Council is required to meet at such times as may be expedient for the transaction of business and such meeting shall be held at such places and times and on such days as the Council determines.
- Special meeting.
- 9.** The chairman or, in the event of his being absent from the Territory or for any reason is unable to act, the deputy chairman, is required to call a special meeting within seven days after receiving a requisition to do so by any four members of the Council.
- Minutes.
- 10.** Minutes of each meeting are to be duly kept by the Secretary or other person appointed by the Council for the purpose, and are to be confirmed by the Council at its next meeting and signed by the chairman or other person presiding at that meeting and the Secretary.
- Co-opting of other persons.
- 11.** The Council may co-opt other persons to attend any of its meetings for the purpose of assisting or advising it respecting any matters with which it is dealing, but a co-opted member does not have a right to vote.
- Procedure.
- 12.** Subject to this Schedule, the Council may regulate its own procedure.
- Documents.
- 13.** All documents made by, and all decisions of, the Council are to be signified under the hand of the chairman or any member authorised to act in that behalf, or by the Secretary.

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**FOURTH SCHEDULE**

[Section 135]

**CONSTITUTION OF COMMITTEES APPOINTED BY THE  
TECHNOLOGICAL AND VOCATIONAL EDUCATION  
AND TRAINING COUNCIL**

- Definition. **1.** In this Schedule -
- (a) “Council” means the Technological and Vocational Education and Training Council appointed under section 132 of this Act; and
- (b) “committee” means a committee appointed by the Technological and Vocational Education and Training Council under section 135 of this Act.
- Composition. **2.(1)** A committee shall comprise not more than five persons.
- (2) The Council shall, in respect of a committee, appoint one member of that committee to be chairman.
- Acting member. **3.(1)** A member of a committee may, with the permission of the chairman of that committee, appoint a person to act for him in case of his absence from a particular meeting.
- (2) A person appointed to act as a member of a committee in pursuance of subparagraph (1) may not appoint a person to act for himself nor may that person be appointed to act for more than one member.
- Duration of membership. **4.** A member of a committee shall hold office for a period not exceeding three years, but is eligible for re-appointment.
- Vacancy. **5.** Where a vacancy occurs in respect of a committee, the Council may appoint a person to fill that vacancy for the unexpired portion of the period in respect of which the vacancy occurs.
- Revocation of membership. **6.** The Council may revoke the appointment of a member of a committee who -
- (a) is absent from three consecutive meetings of the committee without leave of the Council;
- (b) is absent from the Territory for three months or more without notifying the Council;

- 
- (c) is unable to perform his duties as a member of the committee; or
- (d) fails to comply with a direction given by the Council.
- Secretary. **7.** The Council may assign a person to be the secretary of a committee.
- Frequency of meetings. **8.** A committee shall meet as often as the chairman decides, but at intervals not exceeding three months.
- Quorum. **9.** A quorum of a committee consists of three members one of whom shall be the chairman.
- Decisions. **10.** Decisions of a committee are to be by a majority of votes, and where voting is equal, the chairman, in addition to his original vote, has a casting vote.
- Co-opting. **11.** A committee may co-opt persons to attend any of its meetings for the purpose of assisting or advising it with respect to any matter with which it is dealing, but a co-opted person is not entitled to vote and shall not be counted for the purpose of constituting a quorum.
- Establishment of subcommittees. **12.** A committee may establish a subcommittee to assist in the performance of its functions and may co-opt to serve on any such subcommittee, any person whose assistance and advice the committee considers necessary for the purpose for which the subcommittee is established.

Passed by the Legislative Council this 22nd day of July, 2004.

V. INEZ ARCHIBALD,  
Speaker.

DENNISTON FRASER,  
Clerk of the Legislative Council.

**VIRGIN ISLANDS**  
**PHYSICAL PLANNING ACT, 2004**  
**ARRANGEMENT OF SECTIONS**

*Section*

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I Assent

THOMAS MACAN  
Governor  
28<sup>th</sup> October, 2004

**VIRGIN ISLANDS**

**No. 15 of 2004**

An Act to make provision for the orderly and progressive development of land in both urban and rural areas and for the protection of the environment and improvement of the amenities thereof, for the grant of permission to develop land and for other powers of control over the use of land; to confer additional powers in respect of the acquisition and development of land for planning purposes; and for other matters connected therewith.

[Gazetted 17<sup>th</sup> December, 2004]

ENACTED by the Legislature of the Virgin Islands as follows:

**PART I**

**PRELIMINARY**

- 1. (1) This Act may be cited as the Physical Planning Act, 2004. Short title and commencement.
  - (2) This Act shall come into force on such date as the Governor may, by Proclamation published in the *Gazette*, appoint.
  - 2. (1) In this Act, unless the context otherwise requires, Interpretation.
- “adjoining land” means that portion of land extending a distance of one hundred feet landward from the spring high water mark or, where the land to that distance includes a cliff, to a distance of fifty feet landward from the seaward edge of the cliff top;

“advertisement” means any word, letter, model, sign, placard, board, notice, awning, blind, balloon, device or representation, whether illuminated or not, in the nature of, and employed wholly or partly for the purposes of, advertisement, announcement or direction, or calling attention to any person, matter, object or event, and (without prejudice to the preceding provisions of this definition) includes any hoarding, billboard, wall, fence, or similar structure used, adapted, designed, or intended for use, for display of advertisement and references to the display of advertisements shall be construed accordingly;

“agriculture” includes horticulture, fruit growing, seed growing, dairy farming, the breeding and keeping of livestock (including any creature kept for the production of food, wool, skins or fur or for the purpose of its use in farming the land), the use of land as grazing land, meadow land, for the cultivation of crops, as market gardens and nursery grounds, but does not include the use of land for fish-farming and “agricultural” shall have a corresponding meaning;

“amenity order” means an order made under section 55;

“Appeals Tribunal” means the Appeals Tribunal established under section 65;

“Authority” means the Planning Authority established under section 6;

“beach” means that area of the coastal zone from the seaward limit of the foreshore running inland to the vegetation line or other natural barrier whichever is closer to the landward limit of the foreshore, and a beach may consist of sand, stones, gravel, shingle, coral fragments or boulders;

“builder” means a person engaged as a contractor or otherwise in the erection, construction, alteration, improvement, maintenance, repair or demolition of buildings or works incidental to any of the foregoing;

“building” includes any erection, structure, chattel or movable structure in, on, over or under any land and any part of a building so defined (but does not include plant or machinery comprised in a building), an erection or structure permanently attached to the seabed or temporarily so attached for the purpose only of the exploitation of minerals in, on or under the seabed;

“building operations” includes the demolition of buildings or parts thereof, rebuilding operations, structural alterations of or additions to buildings and other operations normally undertaken by a person carrying on business as a builder;

“building or work” means waste materials, refuse and other matters deposited on land, and references to the construction of buildings or works shall be construed accordingly;

“Chief Planner” means the person so appointed under section 7;

“clearing”, in relation to land, means the removal of buildings or parts thereof from the land, the removal of materials from the land, the leveling or grading of the surface of the land, the removal of vegetation and the carrying out of such other operations in relation to the land as may be prescribed;

“coastal waters” means

- (a) the sea, bays, sounds, lagoons and estuaries,
- (b) any pond or other body of water that is within the adjoining land or adjacent to the landward limit of the adjoining land, and
- (c) any body of water that is connected permanently or intermittently with the sea and which contains a measurable quantity of sea water,

and includes the sea-bed and the land below and along the banks, or otherwise adjacent to, the waters mentioned in paragraphs (a), (b) and (c);

“coastal zone” means all lands and waters of the Territory contained within the area bounded by the outer limit of the territorial sea and by the landward limit of the adjoining land, and includes coastal waters;

“compliance notice” means a notice issued under section 39;

“Court” means the High Court;

“Crown land” means land which belongs to and is vested in the Crown;

“development” means the carrying out of building, engineering, mining, earth moving or other operations, in, on, over or under land, the making of a material change in the use of a building or other land, the sub-division of land, or the use of land or of the external part of a building or structure for the purposes of display of advertisement which is not ordinarily used for that purpose, provided that the following shall not be deemed to constitute development:

- (a) the carrying out of works for the maintenance, improvement or other alteration of a building, if the works affect only the interior, and do not materially affect the external appearance, of the building;
- (b) the carrying out by the Government of works for the maintenance or improvement of a road if the works are carried out on land within the boundaries of the road;
- (c) the carrying out by the Government or by a statutory agency of works for the purpose of inspecting, repairing or renewing sewers, water mains, electric mains, pipes, cables or other apparatus, including the excavation of any road or other land for that purpose;
- (d) the use of a building or other land within the curtilage of a dwelling house for purposes incidental to the enjoyment of that dwelling house as such;
- (e) the use of land for the purposes of agriculture or forestry, but not including
  - (i) any building or engineering operation on the land;
  - (ii) the operation of a saw-mill on the land; or
  - (iii) the carrying out of any works or excavation on the land for the purposes of accommodation of livestock (not being livestock kept for the domestic needs or personal enjoyment of the occupants of the land), or for the storage of slurry or sewage sludge, within one hundred yards of the cartilage of a residential building, not being a residential building within an agricultural unit;
- (f) the erection of gates, fences, walls or other means of enclosure, not exceeding four feet in height where adjacent to a road or the sea, or six feet in any other case, and not constructed of asbestos, fiber glass or sheet metal
- (g) the enlargement, improvement or other alteration of a dwelling house, provided that
  - (i) the square footage of the enlargement does not exceed one tenth of the square footage of the ground floor of the house at the date of the development or of the

house at the commencement of this Act, whichever is larger;

- (ii) the enlargement is an integral part of the existing house;
  - (iii) the enlargement complies with the requirements of any planning regulations for the time being in force; and
  - (iv) written notice of intention to carry out such work is given to the Authority through the Chief Planner;
- (h) in the case of buildings or other land that are used for a purpose of a class specified in an Order made by the Minister under this section, the use thereof for any other purpose of the same class;

“development permission” means permission for development given under the provisions of Part IV;

“dwelling house” means premises constructed for use for the purpose of human habitation but does not include a building containing one or more flats, apartments, condominiums or townhouses, or a flat, apartment, condominium or townhouse contained in such a building;

“engineering operations” include the laying out, building and maintenance of roads, drains, runways and bridges, the preparation of land for carrying out of development, the clearing of land, the excavation of land, the dredging of watercourses or channels, the filling in of any cavity or excavation on land, the reclamation of land and the placing or assembly of a pen, cage, tank, pond or other structure in any part of inland or coastal waters or in, on, over or under any land for the purpose of fish-farming;

“environment” means all or any of

- (a) the media of land, water, and air, including all layers of the atmosphere,
- (b) organic and inorganic matter and living organisms including human beings,
- (c) the interacting systems that include components referred to in paragraphs (a) and (b),

within the territorial jurisdiction and control of the Territory;

- “environmental impact assessment” means the process of collection, analysis, evaluation and review of information on the likely effects of a proposed development on the environment and the means to overcome adverse effects;
- “environmental impact statement” means a document or series of documents which contains or contain the information on the likely effects of the proposed development on the environment and the means to overcome adverse effects, required by section 26;
- “environmental protection area” means an area so designated in a development plan under section 12, or declared an environmental protection area by Order made under section 58;
- “environmental protection area order” means an order made under section 58;
- “fish-farming” means the breeding, rearing or keeping of fish or shellfish which involves the placing or assembly of a pen, cage, tank, pond or other structure in any part of inland or coastal waters or in, on, over or under any land for the purpose of fish-farming;
- “foreshore” means that portion of the land of the Territory which lies between the mean low watermark and the mean high watermark of the sea;
- “industrial development” means the development of land for the manufacture or partial manufacture of goods, articles or substances of any kind, or the assembly of manufactured goods or the turning into manufactured goods of articles which are partially manufactured or of substances in their natural state, or the repairing, finishing, cleaning, washing, packing or canning, adapting for sale or breaking up of any article;
- “interim preservation order” means an order made under section 52;
- “land” means any corporeal hereditament including a building and other things permanently affixed to land and includes the foreshore, sea-bed and land covered by water within the boundaries of the territorial waters of the Territory;
- “lawful use” does not include use of any building or other land which was commenced in contravention of the provisions of this Act or of earlier planning control;
- “list” means a list of buildings or sites of special architectural, cultural, historic or archaeological interest provided for under Part VI;

“listed building” means a building or part thereof which is included in a list made in accordance with section 48;

“listed site” means a site which is included in a list made in accordance with section 48;

“means of access” includes any means of access whether private or public, for vehicles or for pedestrians, and includes a street or road;

“mineral” means any substance in liquid, solid or gaseous form occurring naturally in, on or under land or on, in or under the sea-bed and formed by or subject to a geological process, including natural gas, petroleum and related substances such as asphalt, and including coal, salt, sand, gravel, quarry and pit material, gold, silver and rare and precious metals, but does not include water;

“mining operation” means

- (a) the carrying out in relation to any mineral, of any activity with a view to working, carrying away, treating or converting that mineral;
- (b) the search or exploration for any mineral with a view to carrying out any activity mentioned in paragraph (a) and the carrying out of any work necessary for such search or exploration;
- (c) the deposit of waste or refuse materials in consequence of or incidental to any activity mentioned in paragraph (a) or (b);

“Minister” means the Minister responsible for physical planning;

“mortgage” includes any charge or lien on any property for securing money or money’s worth;

“national development plan” means any development plan prepared under Part III and includes any modification or amendment thereof, and “plan” shall mean a development plan where the context so admits;

“owner”, in relation to land, means a person who is for the time being

- (a) the estate owner in respect of the freehold interest in the land;  
or

- (b) entitled to a tenancy of the land granted for a term of years certain of which not less than ten years remain unexpired;

“permitted development” means development which is authorised by Order made by the Minister under subsection (2) of section 20;

“plant” includes any flower, shrub, tree and any herb, grass lichen, moss or other vegetation;

“plant preservation order” means a plant preservation order made under section 54;

“prescribed”, except in relation to matters expressly required or authorized by this Act to be prescribed in some other way, means prescribed by regulations;

“preservation order” means an order made under section 53;

“regulations” means regulations made under this Act;

“resources” means any social, cultural, historical, technological, biological, physical or chemical elements and processes, renewable or non-renewable, tangible or intangible, of economic or aesthetic importance which compose the surroundings of mankind;

“road” means any road whether public or private and includes a street, square, court, alley, lane, bridge, footpath, trace, passage or highway, whether thoroughfare or not, and a reference in this Act to a “road” shall be construed as a reference not only to the carriageway or that part of a road which is usually reserved for use by wheeled vehicles, but also to the total road reserve;

“road reserve” means all lands reserved for use for the purposes of bridges, sidewalks, footways, kerbs, verges, culverts, drainage or other roadworks and the adjoining reserves accessory to a road in addition to the carriageway or that part of a road which is usually reserved for use by wheeled vehicles;

“sea” means the Caribbean Sea, the Atlantic Ocean, and all areas subject to tidal action through any connection with the Caribbean Sea or the Atlantic Ocean;

“sea-bed” means the floor and subsoil of the sea between mean low watermark and the seaward limits of the territorial waters of the Territory;

“stop order” means an order made under section 44;

“sub-division” means the division of a parcel of land, other than buildings held under one ownership, into two or more parts whether such division is by conveyance, transfer, assignment, vesting order, plan of survey, plan of sub-division, or any other instrument for the purpose of sale, gift, partition, succession, lease, mortgage or for any other purpose and such sub-division constitutes development whether or not the use for which the sub-divided land is intended constitutes development and “sub-divide” shall be construed accordingly;

“unauthorised development” means any development for which a grant of development permission has not been obtained and which is not permitted development authorized by Order made by the Minister under subsection (2) of section 20, or development which is not in accordance with the conditions or limitations subject to which development permission was granted;

“use”, in relation to land, does not include the use of land by the carrying out of building or other operations on the land;

“waste material” includes garbage, refuse, spoil, mineral tailings, sludge, effluent and anything of whatever kind which has the appearance of being material abandoned, discarded or intended to be abandoned or discarded by the owner or former owner thereof, or the only value of which appears to be as scrap or for the utilization of parts thereof or the extraction of the residue of the substance of which it formerly formed part.

(2) For the avoidance of doubt, it is declared that

- (a) the use as two or more separate premises, for the purpose of dwelling, of any building previously used as one dwelling house involves a material change in the use of that building and of each part thereof so used;
- (b) the use for the display of an advertisement, of any land or of the external part of a building, which is not ordinarily used for that purpose, shall be deemed to involve a material change in the use of that land or part of the building;
- (c) the deposit of any waste material on land involves a material change in the use of the land, notwithstanding that the deposit is on a site which has been previously so used, if either the superficial area thereof or the height of the deposit is thereby extended or exceeds the level of any similar deposit on adjacent land.

3. This Act binds the Crown.

Act binds the  
Crown.

Objects and purposes of Act.

4. (1) The objects and purposes of this Act are
- (a) to foster the awareness that all persons and organisations owning, occupying and developing land have a duty to use that land with due regard for the wider interests of both present and future society as a whole;
  - (b) to maintain and improve the quality of the physical environment within which patterns of human settlement are situated in the Territory;
  - (c) to achieve orderly, economical and beneficial development and use of land and patterns of human settlement;
  - (d) to assist in the orderly, efficient and equitable planning, allocation and development of the resources of the Territory taking account of all relevant social, economic and environmental factors so as to ensure that the most efficient, equitable and environmentally sustainable use is made of land in the interests of all the people of the Territory;
  - (e) to provide for the orderly sub-division of land and the provision of services in relation to land;
  - (f) to protect and conserve the cultural heritage of the Territory as it finds expression in the natural and the built environment; and
  - (g) to facilitate a continuous improvement in the quality of life of all the people in the Territory.

(2) In implementing, applying and interpreting this Act, all persons shall have regard to, use their best efforts to further and give a broad and purposive interpretation to, the matters set out in subsection (1).

## **PART II**

### **ADMINISTRATION**

Duties of Minister.

5. (1) The Minister is responsible for securing the objects and purposes set out in section 4 and in the exercise of the powers conferred on him, may do all things necessary for the purpose of carrying out his responsibilities under this Act.

(2) In addition to the several duties imposed on him by this Act, the Minister is responsible for the framing and implementation of comprehensive

policies with respect to the use and development of all land in the Territory in accordance with a development plan prepared under the provisions of Part III and shall in the framing and implementation of such policies have regard to the need to secure consistency.

(3) In exercising his functions, the Minister shall be guided by the principle that the provisions of this Act shall be applied uniformly, fairly and equally to all persons.

(4) Nothing in this section shall be construed as imposing upon the Minister either directly or indirectly any form of duty or liability enforceable in proceedings before any court.

6. (1) There is established a body to be known as the Planning Authority.

Planning  
Authority.

(2) The constitution and procedures of the Authority shall be in accordance with Schedule 1.

Schedule 1

(3) The Authority shall

- (a) advance the purposes of this Act as set out in section 4;
- (b) institute, complete, maintain and keep under review a study of matters pertinent to planning the use and development of the land of the Territory;
- (c) prepare or cause to be prepared development plans in accordance with Part III;
- (d) regulate development by the means provided by this Act, having regard to the need to secure consistency and conformity with the development plan;
- (e) prepare, and submit to the Minister subject reports on matters which the Authority or the Minister may from time to time consider necessary or desirable having regard to the provisions of section 4; and
- (f) do all other things necessary for carrying out the purposes and provisions of this Act as may be authorised by the Act.

(4) The Authority shall remain at all times responsible for the proper performance of its functions under this section, and may, for the purpose of such performance, as it thinks fit,

- (a) consult with or obtain advice from other authorities, persons or bodies of persons;
- (b) engage other persons to carry out work on its behalf;
- (c) delegate any of its functions under section 11 to any of the persons referred to in paragraph (a) or (b).

(5) Without restricting the generality of subsection (4), the Authority may delegate any of its duties to the Chief Planner.

(6) The Authority shall

- (a) be responsible for the implementation of the policies framed by the Minister under section 5; and
- (b) act in accordance with directions of a general or special nature which may be given from time to time by the Minister as to the policy to be followed in the exercise of its functions.

Chief Planner.

**7.** (1) A Chief Planner whose office shall be a public office shall be appointed by the Governor to exercise and perform the duties specified in subsections (2), (3) and (4).

(2) The Chief Planner shall be responsible to the Authority for the administration and operation of the system of planning for which this Act provides.

(3) The Chief Planner shall sign and issue all development permissions, refusals of development permission, compliance notices and other documents authorised by the Authority to be issued under the provisions of this Act.

(4) The Chief Planner has the powers conferred upon him by this Act and the duties that he is required by this Act or by the direction of the Authority to perform.

Exercise of functions of Chief Planner.

**8.** (1) Functions assigned to the Chief Planner by or under this Act may be exercised by any planning officer authorised by the Chief Planner in writing, either generally or specially, in that behalf.

(2) If authorised for the purpose by the Chief Planner in writing, any person exercising a function assigned to a planning officer by or under this Act shall be deemed, for the purpose of the exercise of that function, to be the proper officer for the exercise of that function, and shall be deemed to have the powers of a planning officer for the purposes of that function.

(3) Neither the Chief Planner nor any planning officer of the Authority, shall engage in any work, employment, contract, interest, activity or other involvement which is, or is likely to become, in conflict with his duties under this Act.

**9.** (1) No personal liability shall attach to the Minister, any member of the Authority, the Chief Planner or any other officer in respect of any thing done or omitted to be done, in good faith, in the implementation of the provisions of this Act. Limitation of personal liability.

(2) Any sums of money, damages or costs which may be recovered against the authority or any of its members or officers for anything done or omitted to be done in the implementation of the provisions of this Act shall be paid out of the Consolidated Fund.

### **PART III**

#### **NATIONAL PHYSICAL DEVELOPMENT PLANS**

**10.** (1) The Authority may, and if required by the Minister shall, submit to the Minister proposals for the preparation of a development plan. Proposal for development plan.

- (2) A proposal for the preparation of a development plan shall include
- (a) a reasoned statement of the need for the plan;
  - (b) the main headings of the proposed contents of the plan;
  - (c) a suggested timetable for the preparation of the plan;
  - (d) proposals for obtaining representations from persons likely to be affected by or likely to wish to submit representations and views on the proposed plan during the course of its preparation;
  - (e) proposals for obtaining representations on the plan by sectoral agencies; and
  - (f) such other matters as are required by the Minister or are considered by the Authority to be necessary for a decision to be made on the proposal.

(3) Where the Minister rejects a proposal submitted under this section, he may require the Authority to submit a fresh or modified proposal for the same plan or a new proposal for a different plan.

Scope and preparation of development plan.

**11.** (1) The Authority shall prepare or cause to be prepared and thereafter keep under review a development plan for the Territory as a whole, which shall be called a National Physical Development Plan.

(2) The Authority may prepare or cause to be prepared and thereafter keep under review a development plan for any specified part of the Territory, which shall be called by the name of the part of the Territory to which it relates.

(3) A development plan shall comprise a written statement and such maps, plans, drawings, diagrams and other graphic representations as the Authority considers necessary to illustrate and explain the plan with the degree of particularity the Authority considers to be appropriate to different parts of the Territory and to the nature of the development plan.

(4) Without restricting the generality of subsection (3), a development plan shall include

- (a) a statement of the principal aims and objectives with respect to the development and other use of land in the area;
- (b) a report on the existing conditions of the area, including
  - (i) the principal physical, social, economic and environmental characteristics of the area and the principal purposes for which land is used;
  - (ii) the size, composition and distribution of the population of the area;
  - (iii) the communications, transport systems and traffic in the area;
  - (iv) the public services and the physical and social infrastructure provided in the area;
  - (v) any other matters which may affect the development and other use of land in the area or which the Minister may direct;
- (c) a statement of the policies, proposals, and programmes for the future development and use of land in the area, including principles for regulating the use and development of land and

measures for the maintenance and improvement of the environment;

- (d) a reasoned justification of the policies and proposals for the future development and use of land in the area having regard to
  - (i) the report of the existing conditions of the area under paragraph (b);
  - (ii) an examination of the likely environmental effects of the proposals;
  - (iii) any specific policies of the Government which may affect the pattern of development in the area;
  - (iv) the current economic policies of the Government for the development of the Territory;
  - (v) the relationship between the proposals in the plan and other previously approved development plans which may affect the area;
  - (vi) the financial and other resources which are likely to be available for carrying out the proposals of the plan; and
- (e) a schedule setting out the stages by which the proposals of the plan may be implemented.

(5) A development plan may

- (a) define the sites of proposed roads, public and other buildings and works, or the allocation of land for agricultural, residential, industrial or other purposes of any class, and the conditions under which such development should be carried out;
- (b) designate any area as being an area which should not be developed due to its susceptibility to aircraft hazard or to flooding, erosion, subsidence, instability or other condition of the physical environment;
- (c) make proposals for the preservation of buildings, sites or other features of special architectural, cultural, historic or archaeological interest;

Schedule 2

- (d) provide for any of the matters set out in Schedule 2 as the Authority considers appropriate to the nature and scope of the proposed plan;
- (e) subject to the provisions of section 62, designate as a comprehensive planning area any area which in the opinion of the Authority needs to be planned as a whole for one or more of the purposes of development, redevelopment, improvement or conservation.

(6) As soon as may be practicable after the designation of land as a comprehensive planning area under subsection (5) (e), the Authority shall prepare or cause to be prepared a detailed plan for the relevant area showing the manner in which it is to be developed.

Environmental protection area.

**12.** (1) The Authority may, and if so directed by the Minister shall, cause a survey to be made of the whole or any part of the Territory with a view to determining whether any area of the Territory ought to be designated an environmental protection area in a development plan.

(2) Before finally determining whether to recommend to the Minister that any area should be designated an environmental protection area in a development plan, the Authority shall

- (a) take such steps as in its opinion will ensure that adequate publicity is given to its proposals in the area to which the proposals relate;
- (b) provide persons living and working in the area and any other persons interested in the area with an opportunity of making representations and comments on the proposals;
- (c) consult the Ministers responsible for national parks, marine parks and protected areas and any other person, body or authority who appears to be interested in or to have special knowledge on environmental matters; and
- (d) take account of the representations and comments received on the proposals.

(3) In determining whether it is desirable to designate any area as an environmental protection area in a development plan, the Authority and the Minister shall have regard to

- (a) the survey prepared under subsection (1);

- (b) any representations or comments submitted by any person, body or authority on the proposals;
- (c) such of the following matters as may be relevant to the area;
  - (i) the flora and fauna of the area;
  - (ii) the natural features and beauty of the area;
  - (iii) any outstanding geological, physiographical, ecological, architectural, cultural, historic or archaeological features of the area which it is desirable to preserve and enhance;
  - (iv) any special scientific interest in the area;
  - (v) any special natural hazards to which the area is or may be subject;
  - (vi) the characteristics, circumstances and interests of the people living and working in the area.

**13.** (1) In consultation and co-ordination with the Chief Agricultural Officer and the Minister responsible for the Protection of Trees and Conservation of Soil and Water Ordinance, the National Parks Ordinance, the Marine Parks and Protected Areas Ordinance and the Fisheries Act, 1997, the Authority may prepare or cause to be prepared an environmental protection area management plan with respect to an area designated to be an environmental protection area in a development plan.

Environmenta  
l protection  
area  
management  
plan.  
Cap. 86  
Cap. 243  
Cap. 85  
Act No. 4 of  
1997

(2) The purpose of a plan prepared under this section shall be to set out the policies and measures for the preservation, enhancement and management of the special features of the environmental protection area, including as may be relevant to the area to which the plan applies, policies and measures for

- (a) the preservation of marine and terrestrial flora and fauna, including the regulation of hunting and fishing;
- (b) the protection of water supplies, water catchment areas and mineral resources;
- (c) the prevention of erosion, landslides and flooding;
- (d) the control of fires;

- (e) the control of pollution;
- (f) the designation of special resource and use areas in the coastal zone;
- (g) the use and development of land so as to sustain the local economy of the environmental protection area;
- (h) the designation of permitted and prohibited land uses, development and other activities;
- (i) the prohibition, restriction or regulation of access to any area and the prevention of squatting;
- (j) the development of facilities for residents and visitors for the enjoyment of the special features of the environmental protection area;
- (k) the development of facilities for educational visits, study and research of the special features of the environmental protection area.

Act No. 12 of 1990  
 Cap. 261  
 Act No. 4 of 1997  
 Cap. 85

(3) In consultation and co-ordination with the Ministers responsible for the administration of the British Virgin Islands Ports Authority Act, the Power-Craft Ordinance, the Fisheries Act, 1997 and the Marine Parks and Protected Areas Ordinance, the Authority may designate in an environmental protection area, any area of the foreshore or the sea-bed as a special resource and use area, that is to say, an area where public use of certain lands and waters of the foreshore or sea-bed needs to be controlled or protected to ensure the safety and welfare of the public and for the preservation of the coastal environment, namely, areas

- (a) designated as protected swimming and surfing areas where other potentially conflicting uses are prohibited;
- (b) designated for
  - (i) anchoring,
  - (ii) mooring,
  - (iii) beaching,
 of ships, yachts, motor-boats, boats and other water-craft, including restrictions on the numbers and kinds of ships, yachts, motor-boats, boats and other water-craft that may be

anchored, moored, or beached in any particular bay or other coastal area at one time;

- (c) where the use of equipment for
  - (i) wind-surfing,
  - (ii) water-skiing, or
  - (iii) any other water-related sport, including sport-fishing,is prohibited.

(4) Prohibited and permitted activities in special resource and use areas designated pursuant to this section shall be as specified in the development plan, or as prescribed.

**14.** (1) During the preparation of a development plan and before finally determining its content for submission to the Minister, the Authority shall take such steps as in its opinion will ensure Public participation.

- (a) that adequate publicity is given in the area to which the plan relates to the matters which it proposes to include in the plan;
- (b) that persons who may be expected to desire an opportunity of making representations to the Authority with respect to those matters are made aware that they are entitled to an opportunity of doing so; and
- (c) that such persons are given an adequate opportunity of making such representations.

(2) The Authority shall consider any representations made to it within the prescribed period.

**15.** (1) Where the Authority has prepared a draft development plan, it shall submit a copy to the Minister and deposit a copy at the offices of the Authority and at such other place or places as the Authority considers to be most effective for bringing it to the notice of persons residing, working or owning property in the area to which the draft development plan proposals relate, or who are likely to be affected by the proposals in the draft development plan. Consideration of draft development plan.

(2) The Authority shall give notice in the *Gazette* and at least one local newspaper circulating in the Territory of the depositing of a draft development plan, and of the places where it may be examined, and shall give such other

publicity to and written or oral explanation of the draft development plan as, in its opinion, is best calculated to inform all persons affected or likely to be affected by the proposals in the draft development plan, and all persons of the right to make representations with regard to the proposals in the draft development plan.

(3) Any person may, within eight weeks of the publication in the *Gazette* and in a local newspaper of the notice referred to in subsection (2) make either oral or written representations on the draft development plan to the Authority.

(4) Where the Authority submits a draft development plan to the Minister, it shall be accompanied by a statement of the steps taken by the Authority to comply with the provisions of this section and section 14 and the particulars of the consultations held with other persons with respect to the proposals in the draft development plan.

(5) After the expiration of the period prescribed for making representations on a draft development plan, the Authority shall meet and consider the draft development plan and the representations and comments made, and shall forward the same together with its own recommendations and comments to the Minister.

Approval of  
development  
plan.

**16.** (1) The Minister, after considering a draft development plan which has been submitted to him under section 15 and all comments, representations and recommendations made in relation to the draft plan, shall

- (a) adopt the draft plan and submit it for the approval of the Executive Council;
- (b) require further work on, or revision of, the draft plan; or
- (c) require further consultations on the draft plan in whole or in part.

(2) Where the Minister determines that before a draft development plan is adopted, further work on, or revision of, or consultation on, the draft plan is required, he may require the Authority to undertake such further work, revision or consultation as may be necessary and to give such publicity to the matter as will enable persons likely to be affected or interested to make representations or comment to the draft plan.

(3) Unless the Minister otherwise directs, the provisions of section 15 shall apply to any modification, work or revision undertaken by the Authority under this section and to the re-submission of the draft plan or any modification thereof.

(4) Where a draft development plan (called a National Physical Development Plan) is approved by the Executive Council under subsection (1) (a) with or without modifications, the approved Plan shall be subject to an affirmative resolution of the Legislative Council.

**17.** (1) Where a development plan for a specified part of the Territory has been approved by the Executive Council, or a National Physical Development Plan has been approved by the Legislative Council, as the case may be, a copy of the plan shall be deposited at the Land Registry, and at public libraries and post offices in the parts of the Territory to which the plan relates, and the substance of the plan shall be publicized in the area or areas to which it applies, in such manner as the Authority may direct.

Deposit of approved plan.

(2) Notice of the approval by the Executive Council of a development plan for a specified part of the Territory or the approval by the Legislative Council of a National Physical Development Plan, as the case may be, shall be published in the *Gazette* and the plan shall come into effect on the date of such publication.

(3) Copies of a plan shall be available for inspection and purchase, at all reasonable times at the offices of the Authority, at such price as may be prescribed.

**18.** (1) The Minister may at any time when he considers it appropriate, require the Authority to review or to prepare proposals for the modification or revocation of any plan, or part thereof.

Modification or revocation of a plan.

(2) Without prejudice to subsection (1), it shall be the duty of the Authority to keep under review the operation of any plan in light of changing circumstances in the Territory and in the area to which it applies, and the Authority may prepare proposals for the modification or revocation of any plan as it sees fit and shall submit the same to the Minister.

(3) The provisions of this Part with respect to the participation in, preparation, consideration and approval of, a development plan shall apply *mutatis mutandis* to the participation in, preparation, consideration and approval of, the modification or revocation of a plan.

(4) The modification or revocation of an approved development plan for a specified part of the Territory shall be submitted by the Minister for the approval of the Executive Council.

(5) The modification or revocation of an approved National Physical Development Plan shall be subject to an affirmative resolution of the Legislative Council.

(6) Notice of the modification or revocation of an approved plan shall be published in the *Gazette* and at least one local newspaper circulating in the Territory.

Legal status  
of  
development  
plans.

**19.** (1) Where two or more development plans have been approved which apply in whole or in part to the same area and there is any conflict or discrepancy between them, then

- (a) the plan drawn to the larger scale shall have precedence;
- (b) if the plans are drawn to the same scale, the later plan shall be deemed to have modified the earlier plan, unless there is an express provision to the contrary.

(2) Where a development plan has been approved,

- (a) it may be the reason for the compulsory acquisition of land designated in that approved development plan as a comprehensive planning area;
- (b) it shall be the duty of all public officers to have due regard to, and so far as is practicable be guided by, the plan in formulating and preparing any project of public investment and development in the Territory;
- (c) the Authority shall, in considering any application for development permission, give principal consideration to and be guided by the plan.

(3) Where a plan has been prepared but is not yet approved, subsection (2) (b) and (c) shall apply as if the plan had been approved.

(4) An approved development plan remains in effect until the date of the publication of a notice in the *Gazette* announcing its revocation.

## **PART IV**

### **MANAGEMENT OF DEVELOPMENT OF LAND**

Permission  
required to  
develop land.

**20.** (1) No person shall carry out any development of land except under and in accordance with the terms of a development permission granted in that behalf prior to the commencement of such development, on an application made in accordance with the regulations made under section 80, unless the development is permitted development authorised under subsection (2).

(2) The Minister may by Order grant permission to any class of development (hereinafter referred to as “permitted development”) specified in the Order either unconditionally or subject to such conditions or limitations as may be specified in the Order, without the requirement for the making of an application for grant of express development permission.

(3) Every Order made under subsection (2) shall be subject to an affirmative resolution of the Legislative Council.

(4) No department of Government, statutory body, or other agency of Government having responsibility for the issuing of any licence, permit, approval, consent or other document of authorisation pursuant to any other written law in connection with any matter related to or affecting the development of land, shall issue such licence, permit, approval, consent or other document of authorisation unless it has established that express development permission with respect to the proposed development has been granted under this Act, or is not required.

(5) A notice of the grant of development permission shall be displayed prominently and maintained on any land on which development as defined in this Act is taking place, unless that development is permitted development authorised by an Order made by the Minister under subsection (2).

(6) This Act does not exempt any development from the requirements imposed upon such development by any other written law.

**21.** (1) The Authority may grant development permission expressed to be an outline development permission subject to the conditions and limitations therein, the effect of which shall be to grant approval in principle to erect buildings but not to permit the commencement of building operations until detailed development permission has been granted in respect of the details of the development or part thereof, for which outline development permission was granted, and those details shall not form part of the grant of outline development permission.

Types of development permission.

(2) Where the Authority is of the opinion that an application for outline development permission ought not to be considered separately from further information required under section 23 (1) (a) and (b), it shall within thirty days of the receipt of the application notify the applicant that it is unable to entertain the application and shall invite the applicant to submit the required further information under that section.

(3) Notwithstanding subsection (1) and without restricting the generality of subsection (2), the Authority shall not entertain applications for outline development permission for development for which it is determined that environmental impact assessment is required under section 26, or for development which is subject to the provisions of Part VI.

(4) The Authority may grant development permission expressed to be a detailed development permission the effect of which is to permit the carrying out of operations in, on, over or under any land, the making of a material change in the use of any building or land or the sub-division of land, subject to the terms and conditions of the grant of detailed development permission.

Applications for development permission.

**22.** An application for a grant of development permission shall

- (a) be submitted to the Authority through the Chief Planner;
- (b) be made in such manner as may be prescribed under section 80;
- (c) include such information as may be required by the regulations or by directions given by the Authority or the Chief Planner; and
- (d) be accompanied by the prescribed fee.

Requirement for further information.

**23.** (1) Within such time as may be prescribed by the Chief Planner by notice in writing, an applicant for development permission shall

- (a) furnish the Chief Planner with such further information as may be specified in the notice;
- (b) at his own expense, cause an environmental impact statement provided for under section 26, or economic feasibility study, to be prepared of the proposed development and submitted to the Chief Planner.

(2) Where any further information required under subsection (1) (a) and (b) is furnished, the application shall be treated as having been made on the date when the information was received and the sixty day period provided for the determination of applications in section 29 (2) shall not commence until the date of receipt of the further information.

(3) Where an applicant does not furnish the Chief Planner with the further information required under subsection (1) (a) and (b) within the period prescribed in the notice or such longer period as may be granted by the Chief Planner, the Authority may decline to determine the application and may return the application to the applicant with a notice to that effect, or the Authority may refuse to grant development permission, as it thinks fit.

**24.** Every application for permission to develop land (other than an application submitted by the owner of the land) shall be accompanied by a certificate signed by the applicant that he has notified the owner of the land to which the application relates, or the owner's duly authorised representative, of the application and that the owner or his duly authorised representative does not object to the application. Certificate of Non – Objection.

**25. (1)** The Chief Planner may, and with respect to applications for certain classes of development which the Minister may by Order designate as likely to derogate from the amenities of the public or of adjacent or nearby properties shall, by written notice served on an applicant for a grant of development permission, require the applicant to do one or more of the following Publicity for applications.

- (a) publish details of his application at the times, places and in the manner specified in the notice;
- (b) give details of his application to the persons or authorities specified in the notice;
- (c) affix a notice in a secure manner and in a prominent position on the land to which the application relates notifying passers-by that an application to develop land has been submitted to the Authority and giving details of the application;
- (d) invite comments and representations on the application to be submitted to the Authority in writing within twenty-eight days of the publication or provision of the details of the application or of the affixing of the notice on the land, as the case may be.

(2) Without restricting the generality of subsection (1), the notice referred to in that subsection shall be served by the Chief Planner in respect of any application

- (a) for permission to carry out development of a listed site, or for consent to carry out works which will demolish, alter, or add to, in whole or in part a listed building or, destroy, damage, remove or disturb the features of special interest of a listed site, as the case may be, or to carry out similar development or works to a building or site to which an interim preservation order or a preservation order applies;
- (b) for permission to develop land in an environmental protection area;

- (c) for which it is determined by the Authority that environmental impact assessment is required;
- (d) for permission to carry out mining operations or mineral processing;
- (e) for permission to deposit, store or otherwise deal with toxic or hazardous waste;
- (f) for permission to develop any manufacturing process which will involve either directly or as waste, the production of toxic or other hazardous substances;
- (g) for permission to carry out development for keeping of poultry, pigs , goats or other livestock;
- (h) for permission to carry out development of the purposes of an auto-repair shop, garage, or gas-station;
- (i) for permission to carry out development for the purposes of a slaughter house, premises for the plucking of poultry or the processing of fish;
- (j) for permission to carry out development for the purposes of a casino, gambling hall, bingo hall, recreation club, music hall, dance hall, discotheque, theatre, cinema or sports hall, premises for the sale and consumption of intoxicating liquor, or premises for the sale of food.

(3) The Authority shall take into account any report, representation or comment submitted or made to it under this section.

(4) The Authority shall not determine an application for development permission falling within subsection (2), or otherwise prescribed, until all comments and representations received within the period specified in subsection (1) (d) have been considered.

Environmental  
impact  
assessment.  
Schedule 3

**26.** (1) Unless the Authority otherwise determines, environmental impact assessment shall be required in respect of any application for development permission to which Schedule 3 applies.

(2) The Authority may require environmental impact assessment of any development, other than a development set out in Schedule 3, where it is of the opinion that significant adverse environmental impact could result.

(3) On receipt of an application for development permission, the Authority shall determine whether environmental impact assessment of the proposal is required having regard to

- (a) the nature of the development activity proposed;
- (b) the geographical extent, scale and location of the proposed development;
- (c) the extent and significance of the changes to the environment likely to be caused by the proposed development;
- (d) the extent of general knowledge about the nature of the proposed development and its likely impact on the environment;
- (e) any development plan for the area;
- (f) any other matter as may be prescribed.

(4) Where it determines that environmental impact assessment is required, the Authority shall, within thirty days of the receipt of an application for development permission, issue a written notice notifying the applicant or the person responsible that environmental impact assessment is required of the development proposal and setting out the terms of reference for the preparation of an environmental impact statement on the development proposal and the period within which the environmental impact statement shall be submitted to the Authority.

(5) Where the Authority issues a notice under subsection (4), the applicant, or as the case may be, the person responsible, shall submit to the Authority an environmental impact statement on the development proposal in such form and containing such information as may be prescribed, and the applicant or, as the case may be, the person responsible, shall comply with this requirement.

(6) In this section, “person responsible” includes any person at whose order or on whose behalf the development will be or is being undertaken.

(7) The Minister may make regulations prescribing the qualifications, skills, knowledge and experience which shall be possessed by persons preparing environmental impact statements and may cause a register of persons so qualified to be compiled and a person who is on such a register shall be deemed to be approved by the Minister to prepare environmental impact statements in respect of the Territory.

Consultation  
on  
applications.

**27.** (1) The Chief Planner may consult in writing any public officer or other person who appears to him to be able to provide information relevant to an application for development permission to enable the Chief Planner to advise the Minister or the Authority, as appropriate, with regard to the application and shall consult any authority as may be prescribed under section 80.

(2) An authority which receives a request in writing from the Chief Planner for its comments on an application for development permission shall reply to that request within twenty-eight days or such other period as may be agreed between the Chief Planner and the authority.

(3) Where the Chief Planner has not received a reply to a written request for comments on an application from an authority within the time specified or agreed, he may proceed to determine the application notwithstanding the absence of a reply from that authority .

(4) The Authority shall not determine the application for development permission until all comments requested and received in respect of the proposed development have been considered.

(5) Any public officer or other person such as is mentioned in subsection (1), or his representative, may be invited by the Authority to attend and speak at any meeting called to consider the relevant application.

Material  
planning  
considerations  
with respect  
to  
applications.

**28.** (1) In considering an application for development permission, the Authority shall give principal consideration to

- (a) an approved National Physical Development Plan for the whole Territory, if any;
- (b) an approved development plan applicable to the land to which the application relates, if any.

(2) In addition to the considerations referred to in subsection (1), the Authority shall take into account any of the following matters as appear to it to be relevant in order to make a proper decision on an application:

- (a) representations made with regard to the application or the probable effect of the proposed development;
- (b) views expressed by any authority consulted under section 27;
- (c) any statement of policy issued by the Minister;
- (d) any information, study or report provided by the applicant in response to a notice served under section 23;

- (e) the likely impact of the proposed development on the natural or built environment;
- (f) the likely impact of the proposed development on public health and safety;
- (g) the susceptibility of the land to any natural or man-made hazards;
- (h) the social and economic costs and benefits likely to accrue to the community as a result of the proposed development;
- (i) policies on the use of land for agricultural purposes which have been issued by the Minister responsible for agriculture;
- (j) the suitability of land for the purposes intended;
- (k) the quality and economy of the proposed development and of its design;
- (l) the proposals made in the application for the means of access to, from and within the development, and for the provision of utility services to development;
- (m) the availability of water, electricity and waste disposal services;
- (n) road traffic consideration;
- (o) the area of land required for the proposed development;
- (p) such other planning matters as the Chief Planner may advise as being relevant to the determination for the particular application.

(3) Advice given to the Authority by the Chief Planner under this section shall be in the form of a report on each application, summarising any relevant factors recommended to be taken into account in respect of that application and the suggested appropriate decision to be given on the application.

(4) The Authority may, in addition to the matters set out in subsection (2), take into account any other material planning considerations notwithstanding that the Chief Planner has not advised the Authority on such planning considerations.

Determination of applications.

**29.** (1) The Authority may

- (a) grant development permission unconditionally;
- (b) grant development permission subject to such conditions as it thinks fit; or
- (c) refuse development permission.

(2) Within sixty days of receipt of an application for development permission the Chief Planner shall notify the applicant in writing, of the determination of the application, providing in the case of paragraph (b) or (c) of subsection (1)

- (a) a statement of the reasons for the determination;
- (b) information on the applicant's right of appeal under Part VIII.

(3) Where no decision has been made within sixty days of receipt of the application the Chief Planner shall notify the applicant of the progress made on the application and the extended date by which the decision is likely to be made.

(4) The extended date referred to in subsection (3) shall not be longer than a period of thirty days from the expiration of the sixty-day period referred to in that subsection.

(5) Where no decision has been made by the extended date referred to in subsection (3), the application shall be referred to the Minister and shall be treated in the same manner as an application referred to the Minister under section 38.

Applications inconsistent with development plan.

**30.** (1) If it appears to the Authority that an application is inconsistent in some material respect with an approved development applicable to the area in which the development is proposed, but nevertheless it considers that permission should be granted, the Authority shall

- (a) publish a notice in the *Gazette* and at least one local newspaper circulating in the Territory notifying the public
  - (i) that an application which departs from an approved development plan has been received;
  - (ii) of the places where the application may be inspected by persons interested; and

- (iii) that a public inquiry to examine the application will be held at a place specified in the notice, and at a time not being less than twenty-eight days from the date of the notice;
- (b) invite comments and representations on any such application to be submitted to the Authority either orally at the public inquiry or in writing within a specified period not being less than twenty-eight days from the date of the notice; and
- (c) take into account any report, representation, or comment submitted to it under this section, including the findings of the public inquiry held under this section.

(2) Where the Authority has concluded its consideration of the comments received and the findings of the public inquiry held in respect of an application, it shall advise the Minister of its findings and recommendations thereon, giving its reasons therefor in writing, and shall determine the application in accordance with the views of the Minister, which shall be given to the Authority in writing together with the reasons therefor.

**31.** (1) Without prejudice to the generality of section 29 (1) (b), the Authority may impose conditions on a grant of development permission which relate to any matter referred to in section 28 or which arrange for

Conditions of development permission.

- (a) regulating the manner in which the development authorised by the permission is to be carried out, including
  - (i) the timing and phasing of the implementation of the development;
  - (ii) the dimensions, design, structure, or external appearance of any buildings or the number or disposition of any buildings on the land which is the subject of the development permission;
  - (iii) the location, design or materials of construction of any means of access from the development to a public road;
  - (iv) the disposal of sewage, effluent or trade waste from the development;
  - (v) the supply of water to the development;

- (vi) the landscaping of the development;
  - (vii) the preservation of trees, vegetation or other natural features of the land where the development is to take place;
  - (viii) the preservation of any buildings or sites of importance to the cultural heritage of the Territory;
  - (ix) the reservation of any part of the land on which the development is to take place for roads, open space or other public or communal purposes reasonably incidental to the development;
  - (x) the nature of the materials to be used in any building or engineering operations in the development;
  - (xi) the routing of any vehicles or vessels to be used for the purpose of or in connection with the development;
  - (xii) the removal of materials or waste from such land or adjacent land used for the purpose and the carrying out of any works required for the reinstatement, restoration, or preservation of the land and the environment when the development is completed;
- (b) regulating the development or use of any land under the ownership or control of the applicant (whether or not it is land in respect of which the application was made, provided that where such land is not included in land which is the subject of the development permission it shall be adjacent to the land which is the subject of the development permission) including the discontinuance of any existing uses of the land or requiring the carrying out of works including the demolition of any buildings on such land or the removal of plant and machinery from the land so far as appears to the Authority expedient for the purposes of or in connection with the development authorised by the permission;
- (c) requiring the removal of any buildings or works authorised by the permission, or the discontinuance of any use of land so authorised at the expiration of a specified period, and the carrying out of any works required for the reinstatement of the land at the expiration of that period;

- (d) regulating the use which may be made of any building or use of land authorised by the development permission notwithstanding an order made under section 20 (2);
- (e) controlling or prohibiting the display on the land comprising the development, of any advertisement, including the size, shape, colour or location of any such advertisement;
- (f) requiring continuous environmental monitoring of the development authorized by the development permission;
- (g) regulating the hours of work during which the development authorised by the permission may operate;
- (h) the retention of any existing development or use of land to which the application relates, for a specified period;
- (i) the payment of money or money's worth or the conveyance of land to the Crown in lieu of works required under the development permission;
- (j) the entering into a performance bond by the applicant with the Minister to guarantee the implementation of any of the conditions subject to which the grant of development permission is made.

(2) A condition may, in the case of development for commercial purposes, be imposed under this section requiring the developer to carry out any works or other development on land (including public roads) in the ownership or under the control of the Crown, even if the effect of the imposition of such a condition would be to require the developer to carry out works or development at his own cost for the public benefit.

(3) A development permission granted subject to any such condition as is referred to in subsection (1) (c) is in this Act referred to as “permission granted for a limited period only”.

(4) The Authority shall not, by virtue of anything said in or following discussions or negotiations which may have taken place between any proposed developer and the Chief Planner or any person acting on his behalf as to any proposed or contemplated development, be bound to grant development permission in relation to any such development nor, if development permission is granted in respect of any such development, shall anything so said in any way preclude the Authority from granting it subject to any conditions that the Authority may consider proper.

(5) No claim to compensation or damages shall lie against the Government, the Minister, the Authority, the Chief Planner or other public officer in respect of, or arising out of, or in connection with, any refusal of permission for development in relation to which subsection (4) applies, nor shall any such claim lie in respect of, or arising out of, or in connection with, the grant of any such permission subject to such conditions as the Minister or the Authority considers proper.

(6) No claim to compensation or damages shall lie against the Government, the Minister, the Authority, the Chief Planner or any other public officer in connection with or arising out of the grant by the Authority of development permission subject to conditions.

Development agreements.

**32.** (1) On the advice of the Authority and the Chief Planner, and with the agreement of any other Government authority who may be a party to the agreement, the Minister may enter into an agreement containing such terms and conditions as he thinks fit with an applicant for development permission or with any other person interested in that land for the purpose of regulating the development of the land proposed by the application.

(2) Without restricting the generality of subsection (1), terms and conditions may be included in an agreement

- (a) covering any matter in respect of which conditions may be imposed on a grant of development permission;
- (b) providing for contribution (whether of works, money or land) by the applicant towards the provision of services, facilities (including their future maintenance) and amenities in the area in which the proposed development is to be carried out;
- (c) for the provision of security by the applicant for ensuring due compliance with the agreement.

(3) An agreement made under this section with any person interested in land may be enforced by the Minister against persons deriving title under that person in respect of that land as if the Minister were possessed of adjacent land and as if the agreement had been expressed to be made for the benefit of such land.

(4) An agreement made under this section shall not be entered into except by an instrument executed as a deed.

Performance bonds.

**33.** (1) Where the Authority requires in a condition imposed on a grant of development permission under section 31, or where the Minister requires as a term of an agreement made under section 32, that an applicant or, as the case may

be, a person with whom the Minister makes an agreement, provide a bond as security for the performance of any condition subject to which permission to develop land was granted or for the performance of the agreement, the Authority or the Minister, as the case may be, shall require a charge on the land to which the permission or agreement relates as appears expedient and proper to ensure that the bond is enforced.

(2) The Minister may enforce a bond entered into by an applicant for permission to develop land under section 31, or by a person with whom the Minister has made an agreement under section 32, by all appropriate legal and equitable remedies.

(3) The charge provided for by subsection (1) shall be registered on the land Register under the Registered Land Ordinance. Cap. 229

(4) A charge securing the performance of conditions of a development permission or of the terms of an agreement under section 32 may not be discharged prior to the performance of the conditions of the permission or the terms of the agreement except by agreement made by deed between the Minister and the person or persons against whom it is enforceable.

(5) A person against whom a performance bond is enforceable may, when the performance is satisfied, apply to the Authority for the performance bond to be released.

(6) Where an application is made to the Authority under subsection (5), the Authority may determine

- (a) that the performance bond shall continue to have effect without modification;
- (b) that the performance bond shall continue to have effect with modifications; or
- (c) that the performance bond shall be released.

(7) On receipt from the Authority of a statutory declaration in the prescribed form that the property has been released from the charge, the Registrar of Lands shall enter a memorandum of satisfaction and release on the land Register, and thereupon the charge shall be deemed to have ceased accordingly.

(8) Where the Registrar of Lands enters a memorandum of satisfaction in whole, he shall furnish the person against whom it was enforceable with a copy of it.

Lapse of development permission.

**34.** (1) An outline development permission shall be granted subject to a condition that if detailed development permission covering the same development has not been applied for within one year of the grant of outline development permission, or such longer period as may be specified in the grant of outline development permission or as may be authorised by the Authority in any particular case, that outline development permission shall lapse and cease to have any force or effect.

(2) Where in accordance with the provisions of this section an outline development permission has expired, an application for detailed development permission in respect of that expired outline development permission may be refused without any liability to pay compensation.

(3) A detailed development permission may be granted subject to a condition that it shall lapse and cease to have effect if the development to which it relates has not been completed within three years of the grant of detailed development permission, or such longer period as may be authorised by the Authority in any particular case.

(4) Detailed development permission may provide for different parts of the development to commence at different times, and in such a case the provisions of subsection (3) shall apply to those separate parts of the development as if a grant of detailed development permission was made for each separate part or stage of the development.

(5) The Authority may serve written notice on a person who has commenced, but has not completed, within the time prescribed therefore, the development for which he has obtained permission, requiring that person to complete the development within the time specified in such notice, and stating that if the development is not completed within that period, the development permission will cease to have effect after the expiration of a further period specified in the notice.

(6) Upon expiration of the further period specified in a notice served under subsection (5) the grant of development permission shall cease to be valid or to have any effect and any further development or work carried out with respect to that development permission shall be a breach of planning control.

Supplementary provisions as to grant of development permission.

**35.** (1) Without prejudice to the provisions of this Part as to the lapse or modification or revocation of any grant of development permission such grant shall, except in so far as the grant otherwise provides, ensure for the benefit of the land concerned and of all persons for the time being entitled to an interest in the land.

(2) Where a grant of development permission is made for a limited period only in accordance with section 31 (1) (c), at the expiration of that period,

the use of the land for the purpose for which it was used before the grant of such permission for a limited period, may be resumed without express grant of development permission only if that use was a lawful use.

(3) Where a grant of development permission is made for the erection of a building, the grant shall specify the purposes for which the building may be used.

(4) Grant of development permission may include permission, with or without conditions, to retain on land buildings or works constructed or carried out thereon before the date of the application or for the continuance of any use of land instituted before that date (whether without permission granted under this Part or in accordance with permission granted for a limited period only).

(5) A condition in a permission granted under subsection (4), shall require the applicant to pay a sum of money to the Accountant General (to be paid into the Consolidated Fund) in respect of the buildings or works constructed or carried out before the date of the application or in respect of any use of land instituted before that date.

**36.** (1) The Chief Planner, acting on behalf of the Authority, may approve in writing a variation to a grant of development permission which he considers to be minor, in that it does not alter or affect the terms and conditions of the grant of development permission in any material respect, and in such event, the Chief Planner shall inform the Authority of the action which he has taken in that particular case.

Minor variation of development permission.

(2) A request for approval of variations to grant of development permission shall be submitted to the Chief Planner for his decision.

(3) The approval of a minor variation shall be recorded in the register of planning decisions.

(4) Where the Chief Planner is requested to approve a variation under this section but is of the opinion that the variation proposed is not a minor one, he shall refer the request to the Authority for determination and shall inform the applicant of that fact in writing.

**37.** (1) Subject to the provisions of this section, if it appears to the Authority, after consideration of such advice as may be given by the Chief Planner, that it is desirable that any grant of development permission ought to be modified or revoked, the Authority may, with the consent of the Minister, by written notice to the person entitled to the benefit of the permission, revoke or modify the development permission to such extent as it considers desirable.

Modification or revocation of development permission.

(2) The power conferred on the Authority by this section may be exercised

- (a) where the grant of permission relates to the carrying out of building or other operations, at any time before those operations have been completed;
- (b) where the grant relates only to the making of a material change in the use of a building or other land, at any time before the change of use has taken place;
- (c) where the grant relates only to a sub-division of land at any time before the registration of the deed of sub-division under the Registered Land Ordinance has taken place.

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(3) The modification or revocation of a grant of development permission for the carrying out of building or other operations shall not affect so much of the operations as has been previously carried out.

(4) A notice of the modification or revocation of a grant of development permission under this section shall include

- (a) a statement of the reasons for the modification or revocation;
- (b) such directions as the Authority considers necessary for the bringing to an end of any development to which the notice relates;
- (c) information as to any claim for compensation that may arise in consequence of the modification or revocation, and the procedure for making any claim for compensation;
- (d) information as to the right of appeal under Part VIII; and
- (e) such other matters as may be prescribed.

(5) Upon the service of a notice under subsection (1), to the extent to which the modification or revocation so requires, the grant of the development permission concerned shall cease to be valid or to have effect, and any further development or work carried out contrary to such notice shall be a breach of planning control.

(6) Notwithstanding subsection (5), the Authority, after considering any representations made in respect of such a notice, may at any time cancel or withdraw that notice.

(7) An appeal shall lie, under Part VIII against the issue of a notice by the Authority under subsection (1), or against the refusal of the Authority to cancel or withdraw such notice under subsection (6).

(8) Pending the determination of any such appeal referred to in subsection (7), the notice concerned shall be deemed to be suspended in its operation, save that any further development or work carried out shall be a breach of planning control.

**38.** (1) The Minister may direct the Chief Planner to refer to him

Reference of application to Minister.

(a) any application for development permission;

(b) all such applications of any class specified by the Executive Council to be so referred.

(2) The Chief Planner shall refer to the Minister for his decision any application for development permission to which a direction made under subsection (1) relates.

(3) Where an application is referred to the Minister under this section, the provisions of this Part shall apply with necessary modifications as they apply to any application for development permission which falls to be determined by the Authority.

(4) In determining an application referred to him under this section, the Minister may consult with any body or person he sees fit.

(5) A determination of the Minister under this section shall be on such terms and conditions as the Minister may determine and may be accompanied by a written statement of the reasons for the determination of the application.

(6) The decision of the Minister on any application referred to him under this section shall be final.

(7) The Executive Council shall, by Order in the *Gazette* prescribe the types of developments to which this section applies.

## PART V

### COMPLIANCE

**39.** (1) Where it appears to the Authority that a breach of planning control has taken place, that is to say,

Compliance notice.

- (a) that any development of land has been carried out without the grant of development permission required under Part IV, or
- (b) that any conditions or limitations subject to which development permission was granted, have not been complied with,

the Authority may, if it considers it expedient to do so having regard to any development plan applicable to the land where the breach of planning control is alleged to have taken place, and to other material planning considerations such as are set out in sections 28 and 40, serve a compliance notice in accordance with subsection (2) requiring the breach to be remedied.

(2) A copy of the compliance notice shall be served on the owner and on the occupier of the land to which it relates, and may be served on

- (a) any other person having a material interest in the land, that is to say, an interest which in the opinion of the Authority is materially affected by the notice;
- (b) the authorised representatives of the persons referred to in paragraph (a); and
- (c) any other person carrying on, or who is in control of a person carrying on, activities on the land which are alleged to constitute the breach of planning control.

(3) The fact that the Authority fails to serve a compliance notice on any one or other of the persons mentioned in subsection (2) shall not invalidate any action or proceedings against any other of such persons.

(4) A compliance notice shall take effect on the date specified in it as the date on which it will take effect (in this Part referred to as “the specified date”).

(5) A copy of a compliance notice shall be served not later than fourteen days from the date of issue and not less than twenty-eight days before the specified date.

(6) A compliance notice shall state clearly

- (a) which breaches of planning control referred to in paragraphs (a) and (b) of subsection (1) are alleged to have taken place;
- (b) the particulars of development which appear to constitute the breach;

- (c) the person or persons on whom it is served in accordance with subsection (2);
- (d) the steps which the Authority requires to be taken to remedy the breach and the time within which they must be taken;
- (e) the powers of the Authority, in case of default in compliance with the notice, to enter upon the land and take the steps specified in accordance with paragraph (d);
- (f) the penalties which may be incurred if the steps specified in accordance with paragraph (d) are not taken; and
- (g) the opportunities which are available to the person or persons on whom the copy of the compliance notice was served, to appeal the notice

(7) The steps which the Authority may require to be taken by a person on whom a compliance notice has been served, to remedy the breach to which the compliance notice relates, may be one or more of the following

- (a) to submit an application for development permission for retention of the unauthorised development;
- (b) to cease any specified operations on the land which are alleged to be in breach of planning control;
- (c) to restore the land as near as may be to the appearance and state that it had before the breach took place, including replacement of soil or water, planting or replanting of trees and other vegetation;
- (d) to comply with any limitation or condition in a grant of development permission;
- (e) to demolish, remove or modify a building or works in whole or in part;
- (f) to carry out any building or other operations on the land to which the notice relates;
- (g) to discontinue any use of land or buildings;
- (h) to remove anything placed on the land without development permission;

- (i) to remove any advertisement or to display it in the place permitted by a grant of development permission;
- (j) to remove any unauthorised marks of identification in, on, or over land which have as their purpose the identification of a boundary of a sub-division alleged to constitute a breach of planning control;
- (k) to remove or prevent any damage to the land or amenities or the area which has been or is likely to be caused by the development which constitutes the breach of planning control;
- (l) to do or to refrain from doing or to take or to refrain from taking any actions similar to those listed in paragraphs (a) to (k) which would assist in the ending of the unauthorised development.

(8) The Authority may

- (a) withdraw a compliance notice (without prejudice to its power to issue another one in respect of the same breach of planning control) and shall if it does so, serve a notice of withdrawal on every person who was served with a copy of the compliance notice and the compliance notice shall cease to have effect as from its date of withdrawal;
- (b) modify a compliance notice and if it does so, the provisions of this section shall apply to any modification of a compliance notice made under this section as they apply to the compliance notice.

(9) The powers conferred by subsection (8) may be exercised whether or not the notice has taken effect.

Material planning considerations with respect to compliance notices.

**40.** In considering whether or not a compliance notice shall be served and the terms of any such notice, the Authority shall, in addition to the matters specified in section 28, take into account such of the following matters as may be relevant in the circumstances of the particular case

- (a) any development plan applicable to the land where the breach of planning control is alleged to have taken place;
- (b) any statement of policy issued by the Minister which is relevant to the development;

- (c) the nature and extent of the development which constitutes the alleged breach;
- (d) the extent or likely extent of damage to the natural or built environment;
- (e) the extent to which the development constitutes a nuisance or a threat to public health and safety;
- (f) any objections and representations made by persons in the neighbourhood;
- (g) the length of time the breach of control has continued;
- (h) the benefits to the community (if any) resulting from the development;
- (i) any possible alternative measures which could be taken to remedy the unauthorised development;
- (j) the effect of the development on any public works;
- (k) whether it is necessary, desirable and convenient having regard to the public interest to serve or confirm a compliance notice;
- (l) any other material planning considerations.

**41.** (1) Where it appears to the Chief Planner that a breach of planning control has taken place, he may serve on the person or persons referred to in subsection (2) of section 39 a written notice requiring that

Notice to apply for development permission.

- (a) the development cease forthwith; and
- (b) an application for development permission be submitted in respect of the development.

(2) The Chief Planner shall send a copy of a notice served under subsection (1) to the Authority within three days of its service.

**42.** (1) Any person on whom a compliance notice is served may, within the period specified in subsection (4) of section 39, apply to the Authority for development permission in accordance with Part IV.

Permission for retention of buildings or continuance of use.

- (a) for the retention on the land of any building or works to which the compliance notice relates; or
- (b) for the continuance of any use of the land to which the compliance notice relates.

(2) Where the Authority grants development permission in respect of an application made in conformity with a notice issued under section 41, the Authority may grant development permission with retrospective effect to the date when the development commenced, or such other date as the Authority considers to be appropriate in the particular case.

Suspension of effect of compliance notice.

**43.** Where, before the specified date,

- (a) an application is made to the Authority for permission for the retention on the land of any buildings or works to which the compliance notice relates, or for the continuance of any use of the land to which the compliance notice relates, or
- (b) notice of an appeal is given under section 66 by a person on whom the compliance notice was served.

the compliance notice shall be suspended and shall not take effect pending the determination of the application or appeal.

Stop order.

**44.** (1) Where the Authority considers it expedient in the interests of public health, public safety or the integrity of the environment that a breach of planning control should cease before the expiry of the period for compliance with a compliance notice, the Authority may, at the same time that they serve a copy of the compliance notice or afterwards, being at any time before the specified date, serve an order to stop the breach.

(2) A stop order shall refer to, and have annexed to it, a copy of the compliance notice to which it relates and shall prohibit any person on whom the stop order is served from carrying out or continuing any specified activities on the land, being activities either alleged in the compliance notice to constitute a breach of planning control or so closely associated therewith as to constitute substantially the same activities, and shall direct that person to immediately cease and desist from the activities prohibited.

(3) The activities which may be the subject of a stop order shall include the depositing of refuse or waste materials on land or causing environmental damage or activities affecting the health or safety of persons where such activities constitute a breach of planning control alleged in the compliance notice.

(4) A stop order may be served by the Authority on any person who appears to it to have an interest in the land or to be concerned with the carrying out or the continuance of any activities thereon.

(5) A stop order shall

- (a) take effect from the date of its service;
- (b) without prejudice to subsection (7) cease to have effect when
  - (i) the compliance notice to which it relates is withdrawn or quashed;
  - (ii) the compliance period expires;
  - (iii) notice of the withdrawal of the stop order is served under subsection (7).

(6) A stop order shall not be invalid by reason that the compliance notice to which it relates was not served as required by section 39 if it is shown that the Authority took all such steps as were reasonably practicable to effect proper service.

(7) The Authority may at any time withdraw a stop order (without prejudice to their power to serve another) by serving notice to that effect on the person on whom the stop order was served and the stop order shall cease to have effect as from the date of its withdrawal.

(8) It is declared that

- (a) the Authority need not provide any person with an opportunity to make representation prior to the making of a stop order;
- (b) there shall be no right of appeal to the Appeals Tribunal against the making of a stop order;
- (c) an appeal against the compliance notice to which it relates shall not suspend the operation of a stop order;
- (d) a person on whom a stop order is served may appeal to the Court against the making of the stop order within twenty-eight days of the service of the order and the Court may confirm the stop order with or without modification, or quash it in whole or in part;

- (e) the making of an appeal referred to in paragraph (d) shall not suspend the operation of a stop order, and the stop order shall remain in full force and effect pending the determination of the appeal;
- (f) no compensation shall be payable in respect of the prohibition in a stop order of any activity which at any time when the order is in force, constitutes, or contributes to, a breach of planning control.

Injunctions.

**45.** Whether or not the Authority has exercised or is proposing to exercise any other remedy under this Act, the Minister may in any case that he thinks fit, refer the case to the Attorney General who may apply to the Court

- (a) for an injunction to restrain any violation of the provisions of this Act;
- (b) for an order to enforce any compliance notice or stop order issued under this Act.

Action by Authority for non-compliance with compliance notice.

**46.** (1) If a person on whom a compliance notice was served, fails or refuses to take the steps required by the compliance notice to remedy the breach of planning control within the period specified in the compliance notice, the Authority may authorise the Chief Planner to enter the land with such assistance as may be necessary and take those steps in respect of the unauthorized development to enforce the compliance notice as it may see fit.

(2) Where the Authority has exercised any power under subsection (1), the Minister may recover as a civil debt, from the person on whom the notice has been served, those expenses reasonably incurred by the Authority in the exercise of such power.

(3) If the person referred to in subsection (2), having been entitled to appeal under section 66, has failed to make such an appeal he shall not be entitled in any proceedings to dispute the validity of the action taken by the Authority or the Chief Planner upon any ground that could have been entertained on such an appeal.

(4) Nothing in this Part shall be construed as requiring development permission to be obtained for the resumption of a previous use of the land to which the compliance notice relates, being a purpose for which it could lawfully have been used if the development in respect of which a compliance notice was served under section 39 had not been carried out.

47. (1) Compliance with the requirements of a compliance notice shall not discharge the compliance notice.

Continuing operation of compliance notice.

(2) Without restricting the generality of subsection (1), where development is carried out by way of reinstating or restoring buildings or works that have been demolished or altered in accordance with a compliance notice, the compliance notice shall, notwithstanding that its terms are no longer wholly apt for the purpose, be deemed to apply in relation to any buildings or works so reinstated or restored as it applied in relation to such buildings or works before they were demolished or altered, and sections 46 (1), (2) and (3) shall apply accordingly.

(3) Without affecting the operation of section 46, a person who carries out any development on land by way of reinstating or restoring buildings or works that have been demolished or altered in accordance with a compliance notice commits an offence.

## PART VI

### ENVIRONMENTAL PROTECTION

48. (1) In this Part, “building or site of special interest” means

- (a) any building,
- (b) part of a building,
- (c) group of buildings, or
- (d) site,

Compilation of a list in respect of buildings or sites which are of special interest.

which appears, or which is determined in accordance with the provisions of this Part, to be of special architectural, cultural, historic, or archaeological interest.

(2) The Authority may, and if so directed by the Minister shall, cause a survey of the whole or any part of the Territory to be made with a view to determining whether, having regard to the importance of preserving the architectural, cultural, historic and archaeological heritage of the Territory any building, or part thereof, or group of buildings, or site ought to be preserved or protected, as hereinafter provided.

(3) For the purposes of this Part, a group of buildings may be protected if by reason of their proximity and relationship to each other, it is considered desirable that the group as a whole should be preserved.

(4) The Authority shall compile, or cause to be compiled, or adopt the compilation of a list of buildings or sites of special interest in any area, and may amend, add to or delete from any list so compiled and submit that list or amended list to the Minister for his approval.

(5) The list shall identify the buildings or sites of special interest by reference to a map and shall include a description of the special features of architectural, cultural, historic or archaeological interest.

(6) Prior to compiling, adopting or amending any list, the Authority shall consult with the Minister responsible for national heritage and with the National Parks Trust and such other persons or bodies of persons as appear to it appropriate as having special knowledge of, or interest in, buildings or sites of special interest.

Publication of list.

**49.** (1) As soon as may be after the compilation of a list or the amendment of a list, and before submitting the list for the approval of the Minister, the Authority shall

- (a) publish a notice in the *Gazette* and in at least one local newspaper circulating in the Territory, announcing the compilation of the list or amendment of the list and of the place or places where the list may be inspected and the notice shall invite representations to be made to the Authority within twenty-eight days in respect of the matters contained therein;
- (b) serve notice on every owner and occupier of a building or site which has been placed on or excluded from a list of buildings or sites of special interest informing them of that fact.

(2) Without prejudice to the provisions of Part IV with respect to the grant of development permission but subject to this section, so long as a building or site (not being a building or site to which a preservation order applies) is included in a list or amended list under this section, no person shall

- (a) execute or cause or permit to be executed any operations or works for the demolition, alteration or extension of the building, in any manner which would materially affect its character as a building of special interest, or
- (b) execute or cause or permit to be executed any operations or works in, on, under or over the site in any manner which would destroy, damage, remove or disturb the features of the site which are of special interest or otherwise materially affect its character as a site of special interest,

unless no less than sixty days prior to the execution of the works, notification of the proposed works has been give in writing to the Authority.

(3) Nothing in subsection (2) shall render unlawful the execution of any works which are urgently required in the interests of safety or health, or for the preservation of the building, site, or neighbouring property, provided that notice in writing thereof has been given to the Authority as soon as may be after the necessity for the work arises.

**50.** (1) The Authority shall consider all representations received within the period specified in section 49 (1) (a) with respect to a list or the amendment of a list, and shall submit to the minister Approval of a list.

- (a) a summary of the representations received;
- (b) the recommendations of the Authority on the representations; and
- (c) the Authority's views of the items to be included in or excluded from the list, as the case may be.

(2) The Minister, having considered the matters set out in subsection (1), shall determine the items to be included in the list.

(3) As soon as may be after the approval of a list under this section, the Authority on being informed of that fact by the Minister, shall serve a notice in the prescribed form on every owner and occupier of the buildings or sites affected, that the buildings or sites have been included in or excluded from the list, as the case may be.

**51.** (1) Without prejudice to the provisions of Part IV relating to applications for grant of development permission, no person shall, without the prior written consent of the Authority, Listed building consent or listed site consent.

- (a) execute or cause or permit to be executed any works for the demolition, alteration or extension of a listed building in any manner which would materially affect its character as a building of special interest;
- (b) execute or cause or permit to be executed any works in, on, under or over a listed site in any manner which would destroy, damage, remove or disturb the features of the site that are of special interest or would otherwise materially affect its character as a site of special interest.

(2) Nothing in subsection (1) shall render unlawful the execution of works which were urgently required in the interests of safety, health or the preservation of the building or site, provided that written notice of the need for the works had been given to the Authority as soon as reasonably practicable.

(3) An application for the consent of the Authority to execute works which would materially affect the character of a listed building or listed site as a building of special interest, or as a site of special interest, as the case may be, shall be made in the manner prescribed.

(4) Works which would materially affect the character of a listed building or listed site as a building of special interest or as a site of special interest, are authorized if

- (a) prior written consent for their execution has been granted by the Authority;
- (b) the works are executed in accordance with the terms of the consent and of any conditions which may be attached to it.

(5) In considering an application for consent under subsection (3) the Authority shall have particular regard to the desirability of preserving the building or site and any features of special interest which it possesses.

(6) There shall be a right of appeal under section 66 against the refusal of consent to carry out works on a listed building or in, on, under, or over a listed site, but where such an appeal is made, the refusal of listed building consent or listed site consent remains in full force and effect notwithstanding the making of the appeal, pending the determination of the appeal.

Interim  
preservation  
orders in  
respect of  
buildings or  
sites.

**52.** (1) Where it appears to the Authority on its own initiative, or on the representation made to the Authority or to the Minister by a person or body of persons, that it is desirable having regard to the importance of preserving the architectural, cultural, historic or archaeological heritage of the Territory, to make provision for the preservation of any building, group of buildings, or site of special architectural, cultural, historic or archaeological interest in the Territory, (not being a building, group of buildings or site listed under section 48) the Authority may for that purpose make an interim preservation order restricting

- (a) the demolition, alteration or extension of a building, or group of buildings; or
- (b) the destruction, damage, removal or disturbance of the features of a site that are of special interest.

(2) A copy of an interim preservation order shall

- (a) be served on every owner and occupier of the building, group of buildings, or site concerned;
- (b) be affixed in a prominent place on each building or site to which the order applies;
- (c) specify the building, group of buildings or site to which it relates;
- (d) state the effect of the interim order and when it comes into effect; and
- (e) invite the owners and occupiers and any other person with an interest in the building, group of buildings or site to make representations within twenty-eight days of the service or the affixing of the interim preservation order.

(3) An interim preservation order shall be in force for a period of ninety days and shall cease to have any effect at the termination of that period unless it is confirmed by the Minister before the termination of that period.

(4) Where an interim preservation order has been made in respect of a building, group of buildings, or site and while it is in force, any person who executes or causes or permits the execution of

- (a) works for the demolition, alteration or extension of that building or group of buildings,
- (b) works which would destroy, damage, remove or disturb the features of the site that are of special interest,
- (c) any other works other than essential repairs or maintenance on that building, group of buildings or in, on, under or over that site, without first obtaining permission from the Authority,

commits an offence.

(5) In considering whether to grant, with or without conditions, or to refuse consent for the works set out in subsection (4), in addition to any other matters which, under the provisions of this Act, it is required to take into account, the Authority shall have regard to

- (a) the matters mentioned in section 48 (3) and subsection (1) of this section;

- (b) the desirability of allowing such economic activity within the building, group of buildings or site as will facilitate its continued preservation and use;
- (c) the quality of architectural design of any proposed additions to, or new buildings within the cartilage of, the building, group of buildings or site.

(6) Notice of the service of an interim preservation order and of the opportunity for any member of the public to make written representations on, or objections to the interim preservation order within twenty-eight days of the date of the notice, shall be published in at least one local newspaper circulating in the Territory.

(7) After considering the representations of the owners and occupiers and any other representation made under subsection (6) and the comments of the Authority on any such representation, the Minister may confirm with or without modifications or cancel, the interim preservation order.

Preservation orders in respect of buildings or sites.

**53.** (1) An interim preservation order shall from the date of the confirmation, with or without modifications thereto, become a preservation order.

(2) Notice of the making of a preservation order shall be published in the *Gazette* and in at least one local newspaper circulating in the Territory.

(3) A preservation order shall

- (a) be served on every owner and occupier of the building, group of buildings or site to which it applies;
- (b) specify the building, group of buildings or site to which it applies;
- (c) state the effect of the order and when it comes into effect; and
- (d) inform the owner and occupier of the building, group of buildings or site of the opportunities for making an appeal against the order under section 66 (2) (f).

(4) Where an appeal is made against a preservation order, the order shall remain in full force and effect notwithstanding the making of the appeal.

(5) The provisions of section 52 (4) apply to a preservation order as they apply to an interim preservation order.

54. (1) Where the Authority, after consultation with the Minister responsible for the environment, is of the opinion that it is desirable for amenity, environmental, landscape, scientific or similar reasons that any plant or group or species of plants, ought to be preserved, the Authority may make a provisional plant preservation order or a plant preservation order with respect to such plant, group or species of plant. Plant preservation orders.

(2) A provisional plant preservation order shall be in force for a period of ninety days and shall cease to have any effect at the termination of that period unless it is confirmed by the Authority before the termination of that period.

(3) A person who without the permission, with or without conditions, of the Authority, cuts down, tops, lops, digs up or destroys the plant, group or species of plant, to which a provisional plant preservation order or a plant preservation order applies, commits an offence.

(4) No provisional plant preservation order or plant preservation order made under this section shall apply to the cutting down, topping or lopping of plants or trees that are dying or dead or have become dangerous, or the cutting down, topping or lopping of any plants or trees in compliance with any obligation imposed by or under any enactment or so far as may be necessary for the prevention or abatement of a nuisance.

(5) A copy of a provisional plant preservation order shall

- (a) be served on every owner and occupier of the land on which the plant, group or species of plants, to which the order applies is situated;
- (b) specify the plant, or group or species of plant, to which it applies;
- (c) define the position of the plant, group or species of plant, by reference to a map which shall be available for inspection at a place specified in the order;
- (d) state the effect of the provisional plant preservation order and when it comes into effect; and
- (e) inform the owner and occupier and any other person with an interest in the land on which the plant or group or species of plant, is situated, of the opportunities for making an appeal against the provisional plant preservation order under section 66 (2) (g).

(6) Where an appeal is made against a provisional plant preservation order or a plant preservation order, the order shall remain in full force and effect notwithstanding the making of the appeal.

(7) The Authority before determining whether to confirm the provisional plant preservation order shall take into consideration any appeal made in accordance with section 66 (2) (g).

(8) Notice of the confirmation of a provisional plant preservation order shall be published in the *Gazette* and in at least one local newspaper circulating in the Territory.

Amenity orders.

**55.** (1) In any case in which the Authority considers that any land is

- (a) unsightly and injurious to the amenity of the area, and visible to persons using a public road or any other area to which the public has a right of access, or
- (b) likely to be or is offensive to persons residing in the immediate neighbourhood of such land, by reason of any waste, rubbish, derelict or abandoned machinery or articles or materials of any kind, or the dilapidated state of any structure or building thereon,

it may prepare and submit to the Minister a draft amenity order.

(2) An amenity order shall state clearly,

- (a) the land to which it applies, and the owner or occupier thereof;
- (b) any matter that is required to be cleared;
- (c) in the case of an order requiring clearance, the matter which must be destroyed, or the place, being an authorized place for the disposal of rubbish, to which it must be removed, as appropriate;
- (d) if screening is required to be carried out, the requirements to effect the screening;
- (e) in the case of a building, the manner in which the building is required to be repaired, painted or demolished, in whole or in part;

- (f) where the Authority is aware that the occupier of land to which an amenity order relates is not the owner, the action that is required to be taken by the occupier and the action to be taken by the owner;
- (g) the time, not being less than twenty-eight days from the date of service of the order upon the owner or occupier, for compliance with the order;
- (h) the opportunities for making an appeal against the order under section 66 (2) (h).

(3) A draft amenity order prepared by the Authority under subsection (1) shall be accompanied by a statement of the Authority in support of the proposed action.

(4) Where the order is approved by the Minister, copies shall be served on the owner or occupier of the land concerned, or if no such person can be found, may be served by affixing a copy of the order in a conspicuous place on the land concerned.

(5) If any person upon whom an amenity order is served fails to comply with the requirements of the order, within the time specified in that order or any extension thereof approved by the Authority, the Authority may arrange for the work to be carried out at the expense of the person who is in default, and the Minister may recover the cost of so doing as a civil debt from the person in default.

**56.** (1) Subject to this section, provision may be made by regulations for restricting or regulating the display of advertisements so far as appears to the Minister to be expedient in the interest of amenity or public safety, and without restricting the generality of the foregoing, any such regulations may provide

Control of advertisements.

- (a) for regulating the dimensions, appearance and position of advertisements that may be displayed, the sites on which the advertisements may be displayed, and the manner in which they may be affixed to land;
- (b) for the Minister to grant permission for the display of any class of advertisement specified in the regulations, either unconditionally or subject to such conditions or limitations as may be specified in the regulations, without the requirement for the making of an application for express grant of development permission;

- (c) for enabling the Authority to require the removal of any advertisement that is being displayed in contravention of the regulations, or the discontinuance of the use for the display of advertisements of any site that is being used for that purpose in contravention of the regulations, and for that purpose for applying any of the provisions of Part V with respect to compliance notices, subject to such adaptations and modifications as may be specified in the regulations;
- (d) for the constitution, for the purposes of the regulations, of such advisory panels as may be prescribed by the regulations, and for determining the manner in which the expenses of any such panels are to be defrayed.

(2) Regulations made under this section may be made so as to apply to advertisements that are being displayed on the date on which the regulations come into force, or to the use for the display of advertisements of any site that was being used for that purpose on that date.

(3) Regulations made under this section may provide for exempting therefrom

- (a) the continued display of any such advertisement as referred to in subsection (2), and
- (b) the continued use for the display of advertisements of any such site as referred to in subsection (2)

during such period as may be prescribed in that behalf, and different periods may be so prescribed for the purposes of different provisions of the regulations.

(4) Regulations made under this section may direct that any enactment affecting the display of advertisements in force on the day when the regulations made under this section come into operation, shall not apply to the display of advertisements in any area to which the regulations made under this section apply.

(5) Regulations made under this section may make different provisions with respect to different areas, and in particular, may make special provision

- (a) with respect to environmental protection areas;
- (b) with respect to areas defined for the purposes of the regulations as areas of special control, being areas which appear to the Minister to require special protection on the grounds of amenity.

(6) In exercising the powers conferred by this section the Minister shall,

- (a) in the interests of amenity, determine the suitability of sites for the display of advertisements having regard to any development plan applicable to the area and to the general characteristics of the locality including the presence of any feature of architectural, cultural, historic, archaeological, scientific or similar interest and the natural beauty of scenic value of the locality;
- (b) in the interest of public safety, have regard to the safety of persons who may use any road, dock, harbour or airfield and in particular shall consider whether any display of advertisements thereon is likely to hinder or obscure any road or traffic sign or any aid to navigation by air or water.

**57.** (1) Without prejudice to the generality of sections 56 and 79, the Authority may remove or obliterate any billboard, placard, poster, wall painting or other advertisement which in its opinion is displayed in contravention of the regulations.

Supplementar  
y provisions  
as to  
advertisement  
s.

(2) Every billboard, placard, poster, wall painting or other advertisement shall display legibly and prominently and identify at all times

- (a) the name of the person who displayed it or caused it to be displayed;
- (b) the date and permit number of the grant of development permission to use the building or other land for the purposes of the display of advertisement.

(3) Where a billboard, placard, poster, wall painting or other advertisement identifies the person who displayed it or caused it to be displayed, the Authority shall not exercise the power conferred by subsection (1) unless it has first given that person notice in writing that

- (a) in the opinion of the Authority it is displayed in contravention of the regulations;
- (b) the Authority requires him to remove or obliterate it within a period specified in the notice not being less than two days from the date of service of the notice;

- (c) that on the expiry of the period specified in the notice, if steps have not been taken to remove or obliterate it, the Authority intends to take those steps.

(4) Where the Authority has exercised the power conferred by subsection (1), the Minister may recover as a civil debt from the person on whom the notice was served, the expenses reasonably incurred by the Authority in the exercise of the power.

Environmenta  
l protection  
area order.

**58.** (1) Where the Minister is of the opinion that it is desirable to afford special protection to an area designated as an environmental protection area in a development plan on account of the matters set out in section 12 (3), he may by Order declare that area an environmental protection area.

- (2) An Order made under subsection (1) may
  - (a) prohibit any development within the area or any part thereof;
  - (b) designate any part of the environmental protection area as being an area in which, subject to the grant of development permission, only certain development or classes of development may be permitted;
  - (c) authorise the carrying out in the environmental protection area of such works and the doing on the land of such other things as may be expedient for the protection of the area as an environmental protection area;
  - (d) provide for control over use of land within the environmental protection area for purposes of agriculture or forestry;
  - (e) without prejudice to the provisions of Part IV, require that any person who proposes to undertake any activity or enterprise in the environmental protection area (not being an activity or an enterprise involving development) of a description or category as may be prescribed shall, not less than sixty days before commencing, notify the Authority of his proposals and furnish the Authority with such documents and information as it may require;
  - (f) require that environmental impact assessment be undertaken with respect to any proposal to carry out in the environmental protection area any activity, enterprise, works or development referred to in paragraphs (b) to (e);

- (g) restrict or prohibit the entry into the area of any person or the movement of, or any activity carried out by, any person in the area.

**59.** (1) Where the Minister is of the opinion that it is desirable to afford special protection to any beach designated as an environmental protection area in a development plan on account of the matters set out in section 12 (3), he may by Order, declare that beach an environmental protection area. Environmental protection area order for beaches.

(2) An Order made under subsection (1) may

- (a) provide for the preservation of any ponds or wetlands along that beach;
- (b) provide for the protection of the coral reef along that beach;
- (c) provide for any of the matters mentioned in section 58 (2) with any necessary amendments.

(3) Upon the declaration of a beach as an environmental protection area under this section, all permits issued under the Beach Protection Ordinance in relation to that beach shall cease to have effect and no permits shall be issued under that Ordinance in relation to that beach as long as the beach remains an environmental protection area. Cap. 233

## PART VII

### COMPENSATION AND ACQUISITION

**60.** (1) No compensation shall be payable by the Authority or by the Government in consequence of any decision or order given by the Authority or by the Minister Exclusion of compensation

- (a) in respect of the refusal of permission for any development which consists or includes the making of any material change in the use of any building or other land;
- (b) in respect of any decision on an application for permission to display an advertisement;
- (c) for the refusal of permission to develop land where one of the reasons is that the land is unsuitable on account of its liability to flooding or subsidence.

(2) Compensation shall not be payable in respect of the imposition, on the granting of permission to develop land, of any condition relating to

- (a) the density or disposition of buildings on such land;
- (b) the dimensions, design, structure or external appearance of any building or the materials to be used in its construction;
- (c) the manner in which any land is to be laid out for the purposes of the development, including the provision of facilities for the parking, loading, unloading or fuelling of vehicles on the land;
- (d) the location or design of any means of access to a highway or the material to be used in the construction thereof;
- (e) the use of any buildings or other land;
- (f) prohibiting or regulating the sale or sub-division of land;
- (g) prohibited or restricted building operations only pending the coming into operation of a general scheme approved by Government for the development of any area;
- (h) prohibited or restricted building operations permanently on the grounds that by reason of the situation or nature of the land the erection of buildings thereon would be likely to involve danger or injury to health, or excessive expenditure of public money in the provision of roads, sewers, water supply or other public services.

(3) Compensation shall not be payable in respect of a refusal to grant permission to develop in respect of any of the following developments in an area on or near an airfield:

- (a) any excavation on an airfield or within one thousand yards of the perimeter thereof;
- (b) any dwelling-house, building exceeding ten feet in height, works exceeding ten feet in height or deposit of waste material where the deposit exceeds ten feet in height, if the house, building, works or deposit is in an airfield or within two miles of the perimeter thereof; or

- (c) any building or works exceeding thirty-five feet in height within an area of more than two miles and less than three miles from the perimeter of an airfield.

**61.** (1) There shall be at least one public landward access to every beach in the Territory.

Public access and rights of way to beaches.

(2) Where there is no alternative public landward access, traditional public use of a private landward access through an existing private development shall be sufficient grounds for establishing a public way over that access for the purpose of access to the beach by the public.

(3) Where the only landward access to a beach is through an existing private development where traditional public use pursuant to subsection (2) has not been established, the Crown may acquire the right to public use of that landward access by gift, agreement, compulsory acquisition, or in exchange for other property, interest, or financial exemption, or by such other means as the Minister may recommend.

(4) Where a proposed development is likely to adversely affect the public's ability to access a beach from the landward side, any development permission shall require as a condition, a public landward access to the beach through the development at all times free of charge.

(5) For the purposes of this section,

- (a) "traditional public use" means peaceable, open and uninterrupted enjoyment for a period of twenty years or more; and
- (b) public landward access shall be motorable unless the Minister otherwise determines.

**62.** (1) Where any land is designated in a development plan made under Part III as a comprehensive planning area, that land may be acquired compulsorily by the Minister for public purposes within the meaning of the Land Acquisition Ordinance.

Acquisition of comprehensive planning area. Cap. 222

(2) A development plan shall not designate any land as a comprehensive planning area if it appears to the Authority that the acquisition is not likely to take place within seven years from the date on which the plan is approved.

(3) Where any land is designated by a development plan as a comprehensive planning area, then if at the expiration of seven years from the date on which the plan, or the amendment of the plan, by virtue of which the land

was first so designated came into operation, any of that land has not been acquired by the Minister, any owner of an interest in the land may serve on the Minister a notice requiring the interest of the owner in the land to be acquired and if, within six months after the service of that notice the interest of the owner in the land has not been so acquired, the development plan shall have effect, after the expiration of the six months, as if the land in which the interest subsists was not subject to compulsory purchase.

Acquisition of buildings or sites for the purposes of preservation.

**63.** (1) Where it appears to the Minister that reasonable steps are not being taken for the proper preservation of a building or site which is the subject of a preservation order, the Minister may either by agreement with the owner, or compulsorily, acquire the building or site and any contiguous or adjacent land which appears to him to be required for preserving the building or site and its amenities or for affording access to it or for its proper control or management.

(2) The compulsory purchase of a building or site under subsection (1) shall not commence unless, at least two months previously, the Authority has served on the owner of the building or site, and has not withdrawn, a notice to repair,

- (a) specifying the repairs which the Authority considers reasonably necessary for the proper preservation of the building or site;
- (b) explaining the effect of subsection (1).

(3) The Minister shall consult with the Minister responsible for national heritage and with the National Parks Trust before he confirms a compulsory purchase order for the acquisition of a listed building or listed site under this section.

(4) The Minister shall not make or confirm a compulsory purchase order under this section for the acquisition of any listed building or listed site, or a building or site which is the subject of a preservation order, unless he is satisfied that it is expedient to make provision for the preservation of the building or site and to authorise its compulsory acquisition for that purpose.

Acquisition of land for planning purposes.

**64.** (1) Without prejudice to the provisions of sections 61, 62 and 63, the Minister may acquire by agreement or compulsorily any land within the Territory which is suitable for and is required in order to secure one or more of the following purposes:

- (a) the provision of public open space;

- (b) the making of a new road or the widening of an existing road designated in an approved development plan made under Part III;
- (c) for giving in exchange for land appropriated for other planning purposes;
- (d) for a purpose which it is necessary to achieve in the interests of the proper planning of an area in which the land is situated.

(2) In considering whether or not to acquire any land for planning purposes, the Minister shall have regard to

- (a) the provision of any approved development plan so far as material;
- (b) whether planning permission for any development of the land is in force;
- (c) any other considerations such as are set out in section 28 so far as would be material for the purpose of determining an application for development permission on the land.

(3) The Land Acquisition Ordinance shall apply to the compulsory acquisition of land under this Part Cap. 222

## PART VIII

### APPEALS

**65.**(1) There is established an Appeals Tribunal which has the jurisdiction, power and authority conferred upon it by this Part and by any regulations. Establishment of Appeals Tribunal.

(2) It shall be the primary function of the Appeals Tribunal to examine the issues between the parties and to determine the merits of an appeal having regard to the purposes of this Act set out in section 4, the need to secure consistency in the execution of policy, any approved development plan relevant to the issues and any other material planning considerations.

(3) The constitution and procedures of the Appeals Tribunal shall be in accordance with Schedule 4. Schedule 4

Right of appeal.

**66.** (1) Any applicant who is dissatisfied with a decision of the Authority set out in subsection (2), or an owner of land whose interest in that land may be affected by a decision of the Authority set out in subsection (2), may appeal to the Appeals Tribunal against that decision in the manner prescribed in this Part.

(2) An appeal shall lie to the Appeals Tribunal against any decision made by the Authority under this Act

- (a) refusing a grant of development permission;
- (b) imposing conditions on a grant of development permission;
- (c) modifying or revoking a grant of development permission;
- (d) enquiring the completion of a development within a time limit;
- (e) refusing listed building consent or listed site consent under section 51;
- (f) imposing a preservation order, except that no appeal shall lie against an interim preservation order;
- (g) making a provisional plant preservation order or a plant preservation order;
- (h) making an amenity order on any of the grounds mentioned in section 67 (3);
- (i) issuing a compliance notice or as to the terms thereof.

(3) Subject to any provisions to the contrary in this Act, any person wishing to appeal under subsection (2) shall,

- (a) within forty-two days of the decision which is to be appealed against under subsection (2) (a), (b) (c) or (e),
- (b) within forty-two days of the date on which the notice or order which is to be appealed against under subsection (2), (d) (f), (g) or (h) was served,
- (c) within the period specified in the notice as the period at the end of which the notice is to take effect in the case of a notice which is to be appealed against under subsection (2) (i),

send a notice of appeal to the secretary of the Appeals Tribunal who shall forthwith on receipt thereof send a copy of such notice to the Minister and the Authority.

(4) Where notice is given of an appeal to the Appeals Tribunal against a compliance notice within the period ending with the specified date in the compliance notice, or against an amenity order within the period specified in subsection (3), the compliance notice or the amenity order, as the case may be, shall be of no effect pending the determination of the appeal.

**67.** (1) A notice given under section 66 (3) shall set out

Notice of appeal.

- (a) concisely the decision appealed against;
- (b) a description of the land affected by the decision;
- (c) the name of the appellant;
- (d) the interest of the appellant in the land affected by the decision; and
- (e) concisely the grounds on which the appellant wishes to appeal against the decision.

(2) An appeal against a compliance notice may be made on any of the grounds that

- (a) permission was granted under Part IV for the development to which the compliance notice relates;
- (b) no such permission was required in respect thereof; or
- (c) the conditions subject to which such permission was granted have been complied with.

(3) An appeal made against an amenity order may be on any of the following grounds:

- (a) the person upon whom an order has been served is not an owner or occupier of the land to which the order applies;
- (b) the person upon whom the notice has been served has no control over and no authority to remove, destroy or demolish any matter or building referred to in the order;

- (c) the time within which the order must be complied with is not reasonably sufficient for the purpose;
  - (d) the work specified in the order is unreasonable in character or extent or is unnecessary;
  - (e) that having regard to the character and condition of land and buildings in the immediate neighbourhood, the order is unreasonable.
- (4) A notice given under section 66 (3) shall be accompanied by
- (a) a copy of all papers and documents submitted by the appellant or any person acting on his behalf to the Authority;
  - (b) a copy of the decision appealed against; and
  - (c) a plan sufficiently identifying the location and boundaries of the land affected by the decision.
- (5) On receipt of a copy of the notice given under section 66 (3), the Appeals Tribunal shall reject the notice of appeal if
- (a) it appears not to comply with subsection (1);
  - (b) the appellant appears not to have any sufficient interest in the land to justify him appealing against the decision.
- (6) Where a notice of appeal is not rejected under subsection (5), the Appeals Tribunal may direct that the appeal be dealt with by public examination or by written representations and shall, within twenty-eight days of receipt of the notice of appeal, notify the appellant and the Authority accordingly.
- (7) The Appeals Tribunal shall take the following matters into consideration before deciding whether the appeal may be dealt with by written representations or by public examination:
- (a) whether the public interest requires that all persons (including the appellant) who may have a view to express in relation to the matter to which the appeal relates should have an opportunity of having their views taken into account, of submitting evidence and of examining witnesses called by others;

- (b) without prejudice to the generality of paragraph (a), whether it would be reasonably practicable to deal with the appeal by way of written representations;
- (c) the public importance of the matter to which the appeal relates.

(8) Where the Appeals Tribunal decides that a public examination shall be held, it shall notify the appellant and the Authority of that fact and

- (a) the appellant shall serve on the Authority and on the Appeals Tribunal a statement of his case within fourteen days of receipt of such notification, or such longer period not exceeding twenty-eight days of such receipt as the Appeals Tribunal may, upon application in writing, determine, and
- (b) the Authority shall serve on the appellant and on the Appeals Tribunal its response to the appellant's statement of his case within fourteen days of receipt of the statement of case, or such longer period not exceeding twenty-eight days of such receipt as the Appeals Tribunal may, upon application in writing, determine,

and the Appeals Tribunal shall thereafter notify the appellant and the Authority of the time and place at which the public examination shall be held and shall publish a notice in the *Gazette* and in at least one local newspaper circulating in the Territory announcing the public examination and the time and place at which it will be held.

(9) Unless the Appeals Tribunal directs that a public examination shall be held in relation to an appeal, the appeal shall be dealt with by written representations.

**68.** (1) Subject to the provisions of this Act and any regulations, the Appeals Tribunal may determine the procedure to be followed at any public examination directed under section 67 as appears to it convenient to enable the functions referred to in section 65 (2) to be fulfilled without being bound to adopt such procedure as might be appropriate in a court, provided that the Appeals Tribunal shall

Procedure at public examinations.

- (a) at all times have regard to the rules of natural justice in the conduct of the proceedings for the determination of the appeal; and

- (b) ensure, when hearing evidence of one party, that the other party has had an opportunity to consider that evidence and to make comment or representation on it.
- (2) Without prejudice to the generality of subsection (1)
- (a) the Appeals Tribunal may hold a pre-examination review of the issues with the Authority and the appellant and may issue directions in writing to both parties concerning
    - (i) the form and procedure to be adopted at the examination;
    - (ii) the dates and likely duration of the examination;
    - (iii) the Appeals Tribunal's identification of the issues to be examined;
    - (iv) the evidence required;
    - (v) whether third party agencies and persons who made representations or were consulted on the application are required to give evidence;
    - (vi) the incidence of the burden of proof, and the standard of proof required;
    - (vii) the exchange of proof of evidence;
    - (viii) the dates of any proposed site visits, giving both parties an opportunity to be present at the site visits;
    - (ix) any other matters which the Appeals Tribunal considers necessary for the fair and expeditious examination of the appeal;
  - (c) there may be given and received in evidence at a public examination any material which the Appeals Tribunal may consider relevant to the subject matter of the examination whether or not it would be admissible in a court of law;
  - (d) evidence at a public examination may be given on oath or affirmation or as unsworn evidence or partly as sworn evidence and partly as unsworn evidence, as the Appeals Tribunal may think fit;

- (e) any interested party may appear in person or may be represented by another person acting with his authority, whether or not that other person is a legal practitioner.

**69.** (1) A record shall be kept of all public examinations held by the Appeals Tribunal.

Record of proceedings of public examinations.

(2) The record under this section shall contain

- (a) the name and address of any person heard at the public examination and, where any such person was represented by another, the name and address of that representative;
- (b) the name and address of any person giving evidence at the public examination;
- (c) a summary of the evidence given by each person at the public examination;
- (d) an inventory of all exhibits (including models, maps, plans, drawing, sketches, diagrams, photographs, petitions, and written statements) received in evidence at the examination;
- (e) the Appeals Tribunal's findings of fact in relation to any relevant matter;
- (f) a full and clear account of the reasoning of the Appeals Tribunal on which its decision is based; and
- (g) the determination of the Appeals Tribunal as to the manner in which the Appeal should be disposed of.

(3) Every record under this section shall be accompanied by all documents referred to in paragraph (d) of subsection (2).

**70.** (1) Whenever the Appeals tribunal has directed that an appeal to which section 66 relates shall be dealt with by written representations, the secretary to the Appeals Tribunal shall send a copy of the direction to the appellant and to the Authority and each of them shall within thirty days thereafter send to the Appeals Tribunal and to the other of them such written representations as they wish to make in relation to the appeal (hereinafter referred to as "written representations").

Appeals by written representations.

(2) Within twenty-eight days of the receipt of the written representations of the other, or within the thirty days period specified in subsection (1), whichever is the later, the appellant and the Authority shall send to

the Appeals Tribunal and to the other of them in writing such further representations as they may wish to make arising out of the written representations of the other.

(3) The Appeals Tribunal in deciding an appeal by written representations, shall not

- (a) receive any oral evidence; or
- (b) consider any representations in writing other than those provided by subsections (1) and (2) unless it has given the appellant or the Authority (as the circumstances require) a full and sufficient opportunity of answering them in writing.

(4) The record to be kept of the proceedings under this section shall contain

- (a) the names and addresses of the parties;
- (b) a summary of the written representations submitted;
- (c) an inventory of all models, maps, plans, drawings, sketches, diagrams, photographs, petitions, and written statements submitted with the written representations;
- (d) the Appeals Tribunal's findings of fact in relation to any relevant matter;
- (e) a full and clear account of the reasoning of the Appeals Tribunal on which its decision is based; and
- (f) the determination of the Appeals Tribunal as to the manner in which the appeal should be disposed of.

(5) The Appeals Tribunal shall, following the expiration of the period specified in subsection (2), decide the appeal and in doing so shall have like powers to those under section 71 (1).

Decision and notification of appeal.

**71.** (1) The Appeals Tribunal, after hearing an appeal, may

- (a) allow the appeal in part, or in whole and quash the decision, notice or order of the Authority;
- (b) if it allows the appeal in part, do so by varying the decision, notice or order of the Authority in any manner and subject to any conditions or limitations it thinks fit;

- (c) correct any procedural defect or error of law in the decision, notice or order of the Authority appealed against;
- (d) dismiss the appeal and confirm the decision, notice or order of the Authority.

(2) As soon as reasonably practicable after the decision of the Appeals Tribunal, the secretary of the Appeals Tribunal shall send to the appellant, the Authority and the Minister, written notification of the determination of the appeal together with reasons for the determination.

(3) Where an appeal made under section 66 (2) (i) is dismissed, or the compliance notice is varied, the Appeals Tribunal may, if it thinks fit, direct that the compliance notice shall not come into force until a specified date, not being later than twenty-eight days from the determination of the appeal.

**72.** (1) Subject to the provisions of this Act, no appeal shall lie against a decision of the Authority in a matter to which section 66 relates otherwise than as provided for by sections 66 to 71 nor shall any such decision or order be reviewable in any manner by any court.

Appeals to the High Court.

(2) Save as otherwise provided in this section, the decision of the Appeals Tribunal shall be final.

(3) An appeal shall lie to the Court from a decision of the Appeals Tribunal on a point of law but not on any matter of fact and not in any manner upon the merits of the policies applied by the Authority or the Appeals Tribunal in reaching the relevant decision.

(4) An appeal to which subsection (3) relates shall be filed in the Court within twenty-eight days of the notification of the decision of the Appeals Tribunal.

## PART IX

### MISCELLANEOUS

**73.** (1) Subject to subsection (2), the Minister, any member of the Authority, the Chief Planner or any person authorised by him in writing may during reasonable hours enter on any land or in any building

Powers of entry.

- (a) to inspect or survey the land, or any building for the purpose of the preparation of any development plan, or to decide on

whether or not any development plan should be prepared under the provisions of Part III;

- (b) to obtain information relevant to the determination of any application for development permission or for any other consents, or permits provided for under this Act;
- (c) to determine whether any breach of planning control is being or has been undertaken on the land or in any building thereon;
- (d) to determine whether any order or interim order should be made under Part VI or for the exercise of any powers conferred by any such order;
- (e) for the purposes of determining whether or not any compensation is payable under Part VII, or as to the amount thereof;
- (f) to ensure compliance with this Act and any regulations.

(2) Any person who intends to enter on any land or building for the purposes of subsection (1) shall, except where the circumstances are such that giving a written notice would defeat the purpose for which entry is sought, give the owner or occupier not less than twenty-four hours written notice of his intention so to do and the intended purpose of such entry, and if the person entering requires to search and bore for the purpose of examining the nature of the sub-soil, that fact shall be stated in the notice.

(3) Before exercising any powers under this section, the Chief Planner or any other person concerned, shall provide evidence of his identity and authority to the occupier or other person who is or appears to be in control of the land or building concerned.

(4) The powers conferred by this section shall be deemed to extend to permit the Chief Planner or other person concerned to make such examination and inquiries as are necessary to achieve the purposes for which the entry was authorised.

(5) If any damage is caused by reason of the exercise of any right of entry conferred by this section, or in the making of any survey for the purpose for which such right of entry was conferred, or by the wrongful or negligent use of powers conferred, or alleged to have been conferred, by this section, the Authority as soon as may be after such entry, shall in the manner prescribed, pay compensation to the person injured thereby.

**74.** (1) Any notice or other document required or authorised to be given or served under this Act or under any regulation, order, direction or other instrument made under this Act may be served on or given to the person concerned

Service of notices.

- (a) by delivering it to that person;
- (b) by leaving it at the usual or last known place of abode of that person;
- (c) by sending it in a prepaid registered letter addressed to that person at his usual or last known place of abode or business or, where an address for service has been given by that person, to that address;
- (d) in the case of a body corporate, or unincorporated body, by delivering it to the secretary or other officer of that body at its registered or principal office in the Territory, or by sending it in a prepaid registered letter addressed to the secretary or other officer of that body at that office;
- (e) where a facsimile number has been provided by a person, by a facsimile transmission which provides confirmation of receipt.

(2) Where the notice or other document is required to be served on or given to a person as having an interest in premises, or on any person as the owner or occupier of premises and either the name of that person cannot be ascertained after reasonable inquiry, or it appears that any part of the land is unoccupied, the notice shall be deemed to be duly served if it

- (a) is addressed to “the owner of”; or “the occupier of” or “the owner and occupier of”; or “any person having an interest in”; as the case may be, the premises or that part of the land (describing it); and
- (b) is marked in such a manner that it is plainly identifiable as a communication of importance; and
- (c) is sent in a prepaid registered letter to the premises and is not returned to the Authority; or
- (d) is delivered to some adult person on those premises; or
- (e) is affixed securely and prominently to some conspicuous part of the premises.

(3) In any case where a notice or other document has been served by a means other than personal delivery, it shall be deemed to have been served, given or delivered four days after it was left, mailed or affixed, as the case may be, or if it was sent by facsimile transmission, on the day after it was so sent.

Power to  
require  
information.

**75.** For the purpose of enabling the Minister, the Authority or the Chief Planner to make an order or serve a notice or other document under the provisions of this Act, the Chief Planner may require the owner or the occupier of any premises, and any person who either directly or indirectly, receives rent in respect of any land or premise, to state in writing the nature of his interest therein, and the name and address of any other person known to him to have an interest therein, whether as a freeholder, mortgagee, lessee or otherwise

Register of  
planning  
decisions.

**76. (1)** The Chief Planner shall maintain a register of all

- (a) applications for a grant of development permission;
- (b) decisions on applications referred to in paragraph (a) and any conditions attached to development permissions;
- (c) development agreements under section 32;
- (d) performance bonds under section 33;
- (e) notices of modification or revocation of grant of development permission;
- (f) compliance notices, stop orders, and injunctions;
- (g) claims for compensation under section 73 (5);
- (h) decisions on appeals against any decisions, orders or notices made or actions taken under this Act.

(2) Any person who so requests shall be provided by the Chief Planner with a copy of any entry in the register upon payment of the prescribed fee.

(3) The register required to be maintained under subsection (1) shall include an index which shall be in the form of a map and both the register and the index may be kept in an electronic data storage and retrieval system whether by use of a computer or otherwise.

Notifications  
of decisions to  
Registrar of  
Lands.

**77. (1)** The Chief Planner shall notify the Registrar of Lands giving full details, with respect to the parcels of land affected, of every

- (a) decision on applications for grant of development permission and any conditions attached to development permissions;
- (b) development agreement;
- (c) performance bond;
- (d) modification or revocation of a grant of development permission;
- (e) compliance notice;
- (f) listed building or listed site;
- (g) preservation order or interim preservation order;
- (h) plant preservation order;
- (i) amenity order;
- (j) claim for compensation under section 73 (5);
- (k) decision on appeals against decisions, orders or notices made or actions taken under this Act.

(2) The Registrar of Lands shall duly record the matters referred to in subsection (1) on the Land Register.

**78.** Any reference in this Act to any person having a claim for or a right to the payment of compensation, or to appeal against any decision given under this Act, upon the death of that person before the determination of the matter at issue, shall be construed as if such reference were a reference to that person's personal representatives. Death of person having claim or right.

**79. (1)** A person commits an offence if he

- (a) fails to comply with the requirements of section 20;
- (b) fails to comply with the requirements of
  - (i) a compliance notice issued under section 39;
  - (ii) a stop order issued under section 44;
  - (iii) the provisions of sections 49 (2) and 51 (1) regarding listed buildings and listed sites;

Offences and penalties.

- (iv) an amenity order made under section 55;
  - (v) the advertisement regulations made under section 56;
  - (c) assaults, hinders or obstructs the Authority, a public officer or any other person in the exercise of any powers, or the performance of any duties, under this Act;
  - (d) willfully gives false information, relating to any matter in respect of which he is required to give information under this Act;
  - (e) having been required to give information in pursuance of section 75, without reasonable excuse fails to give that information within twenty-eight days of being so required, or such longer period as the Chief Planner may allow in any particular case;
  - (f) fails to comply with any regulations made with respect to the control of any activities in any environmental protection area;
  - (g) contravenes any other provisions of this Act or the regulations made under it.
- (2) A person who commits an offence under subsection (1) is liable
- (a) on summary conviction, to a fine not exceeding twenty-five thousand dollars and on a second or subsequent offence to a fine not exceeding fifty thousand dollars; and
  - (b) on conviction on indictment, to a fine not exceeding fifty thousand dollars, and on a second or subsequent offence, to a fine not exceeding one hundred thousand dollars.
- (3) In determining the amount of any fine to be imposed on a person convicted of an offence under subsection (1), the Court shall in particular have regard to any financial benefit which has accrued or appears likely to accrue to the person in consequence of the offence.
- (4) For the purposes of subsection (1) (a) (v), a person shall be deemed to display an advertisement if
- (a) the advertisement is displayed on the land of which he is the owner or occupier; or

- (b) the advertisement gives publicity to his goods, trade, business or other concerns.

(5) A person shall not be guilty of an offence under subsection (1) (a) (v) by reason only that an advertisement is displayed on land of which he is the owner or occupier, or that his goods, trade, business or other concerns are given publicity by the advertisement, if he proves that it was displayed without his knowledge or consent.

(6) Where an offence under this Act is committed by a body corporate and is proved to have been committed with the consent or connivance of any director, manager, secretary or other similar officer of the body corporate, or of any person who was purporting to act in such capacity, he as well as the body corporate, shall be guilty of that offence and are liable to be proceeded against and punished accordingly.

(7) Proceedings in respect of an offence alleged to have been committed under this Act may be brought, with the approval of the Authority, by the Chief Planner, provided that if it is considered that the gravity of the offence requires that it be tried on indictment, proceedings shall only be brought by the Attorney General.

**80.** (1) The Minister may make regulations for carrying into effect the provisions of this Act. Regulations.

(2) Without prejudice to the generality of subsection (1), the Minister may make regulations for

- (a) development which may be permitted by Order made by the Minister under subsection (2) of section 20, without the requirement of express grant of the development permission;
- (b) the designation of use classes by an Order made by the Minister under paragraph (h) of the definition of “development” in section 2 (1);
- (c) the procedures to be followed and the form of any form, notice, order or other document authorised or required by this Act to be served, made or issued, in connection with
  - (i) applications for a grant of development permission;
  - (ii) consultations on applications for development permission;

- (iii) the modification or revocation of a grant of development permission;
- (iv) compliance notices;
- (v) claims for compensation;
- (d) the procedures for environmental impact assessment and the form of environmental impact statements;
- (e) the regulation of subdivision of land;
- (f) the making up of undeveloped private streets;
- (g) the procedures for the conduct of public enquiries held under section 30;
- (h) the fees payable under this Act;
- (i) the qualifications required of persons signing forms, plans and drawings on behalf of any applicant for development permission and the qualifications required of persons preparing environmental impact statements;
- (j) the control of advertisements;
- (k) public access to and use of beaches;
- (l) the preservation of buildings, sites or plants;
- (m) the form of the register to be maintained under section 76.

(3) For the purpose of subsection (2)(k), the Minister may, by Order published in the *Gazette* and in a local newspaper circulating in the Territory, amend the definition of “beach” under section 2(1) in such manner as he considers fit.

(4) An Order made under subsection (3) shall be subject to a negative resolution of the Legislative Council.

Repeals and savings.  
Cap. 241  
Act No. 1 of 1992

**81.** (1) The Land Development (Control) Ordinance and Land Development (Control) (Validation) Act, 1992 are repealed.

(2) Notwithstanding subsection (1),

- (a) any subsidiary legislation made under the Land Development (Control) Ordinance and in force immediately prior to the coming into force of this Act shall, so far as it is not inconsistent with the provisions of this Act, continue in force as if made under this Act;
- (b) any form used, and any requirement as to the particulars to be entered in any form used for the purposes of the Land Development (Control) Ordinance, shall continue in force as though prescribed under this Act until other forms or particulars are so prescribed;
- (c) where a period of time specified in the Land Development (Control) Ordinance is current at the coming into force of this Act, this Act shall have effect as if the corresponding provision thereof had been in force when the period began to run;
- (d) all grants of development permission, conditions imposed and proceedings taken under the Land Development (Control) Ordinance shall remain valid and the proceedings shall be continued under that Ordinance as if this Act had not been passed.

## SCHEDULE 1

[Section 6 ]

### CONSTITUTION AND PROCEDURES OF THE PLANNING AUTHORITY

1. (1) The Authority shall consist of ten members appointed by the Minister, of whom Membership of Authority.

- (a) the following persons shall be *ex-officio* members:
  - (i) the Chief Planner;
  - (ii) the Director of Public Works Department;
  - (iii) the Director of Disaster Management;
  - (iv) the Chief Conservation and Fisheries Officer;

- (b) six members, one of whom shall be nominated by the Leader of the Opposition, shall be persons not in the public service who shall be appointed from among persons who have knowledge and experience in
  - (i) land development matters;
  - (ii) environmental, coastal and marine matters;
  - (iii) agriculture;
  - (iv) commerce and industry
  - (v) economic and financial matters;
  - (vi) Crown lands;
  - (vii) housing;
  - (viii) infrastructure and utilities;
  - (ix) any other area of public interest that the Minister considers relevant to physical planning.

(2) The Minister shall by instrument in writing appoint a chairman and a deputy chairman of the Authority from amongst the non *ex-officio* members and the deputy chairman shall in the absence of the chairman, perform the functions of the chairman.

(3) A member appointed under sub-paragraph (1) (b) shall hold office for not less than two years nor more than three years in the first instance, as may be specified in the instrument of his appointment, but shall be eligible for reappointment, provided that no such member shall hold office for more than six years consecutively, and appointments shall be made in a manner which staggers the dates of expiration.

(4) In the case of the first appointments to the Authority, the chairman shall be appointed for a term of not less than three years, and of the remaining five non *ex-officio* members three shall be appointed for two years and two for three years.

(5) Every appointment made under sub-paragraphs (1) and (2) shall be notified in the *Gazette* and in one local newspaper circulating in the Territory.

(6) The Chief Planner shall be the chief executive officer of the Authority.

(7) In the event of the temporary incapacity of a member, whether by reason of illness or other sufficient cause, or the temporary absence from the Territory of any member, the Minister may appoint some other person to act as a temporary member for so long as the incapacity or absence continues.

(8) Any member, save an *ex-officio* member, of the Authority may at any time, by notice in writing to the Minister, resign his office.

(9) The Minister may remove from office any member of the Authority for inability, misbehaviour, or on the ground of any employment or interest which is incompatible with the functions of a member of the Authority or for any other good cause.

2. (1) The Authority shall meet at least once in every month and at such other times as may be necessary for the transaction of business, at such places and times and on such dates as the Authority may determine. Meetings of the Authority.

(2) The chairman shall convene a special meeting of the Authority within seven days of receipt of a requisition for that purpose addressed to him in writing and signed by any five members of the Authority, and on any other occasion when he is directed in writing by the Minister so to do.

(3) The chairman shall preside at meetings of the Authority.

(4) The chairman, or in his absence the deputy chairman, and five other members shall form a quorum, provided that where any member is disqualified by virtue of paragraph 4 from taking part in any deliberation or decision at any meeting of the Authority, that member shall be disregarded for the purpose of constituting a quorum or decision.

3. The decision of the Authority with regard to any question shall be determined by a majority of votes of the members present and voting at a meeting of the Authority, and in the event of an equality of votes the chairman shall, in addition to his own original vote, have a casting vote. How decisions to be taken.

4. There shall be an item of business on the agenda of each meeting which shall be named "declaration of interest" and under this item Declaration of interest.

(a) the chairman shall draw the attention of members and officers in attendance, to the law relating to conflict of interest; and

(b) members and officers in attendance shall declare their interest in any item of business on the agenda.

(2) In respect of any item of business on which they have declared an interest, the chairman, or where he has taken the chair, the vice chairman, or where a member has taken the chair, that member, shall vacate the chair for that item of business.

(3) A member or an officer in attendance who has declared an interest in an item of business to be discussed at a meeting shall, when that item of business is reached on the agenda, leave the meeting while that item of business is being discussed and shall take no part directly or indirectly in any decision, deliberation, discussion, consideration or other like activity on that matter.

(4) Where, owing to the number of members who have declared an interest in an item of business at a meeting, the Authority lacks a quorum to transact that item of business, that item of business shall be deferred to the subsequent meeting, and the fact shall be recorded in the minutes and reported to the Minister.

Validity of Authority's actions.

5. The validity of anything done under this Act shall not be affected solely by reason of

- (a) the existence of any vacancy in the membership, or any defect in the constitution of the Authority; or
- (b) an omission or irregularity in respect of any meeting or proceedings of the Authority.

Defraying of expenses.

6. The expenses of the Authority shall be defrayed out of sums provided for the purpose in the annual estimates of revenue and expenditure for the Territory as approved by the Legislative Council and shall be a charge on the Consolidated Fund.

## SCHEDULE 2

[Section 11 (5) (d) ]

### MATTERS FOR WHICH PROVISION MAY BE MADE IN DEVELOPMENT PLANS

#### PART I

#### ROADS

1. Reservation of land for roads and establishment of public rights of way including public rights of way to and over beaches.

2. Closing or diversion of existing roads and public and private rights of way.
3. Construction of new roads and alteration of existing roads.
4. The line, width, level, construction, access to and egress from and the general dimensions and character of roads, whether new or existing.
5. Providing for and generally regulating the construction or execution of works incidental to the making or improvement of any road, including the erection of bridges, culverts, gullies, fencing, barriers, shelters, the provision of artificial lighting, and seats and the planting or protecting of grass, trees and shrubs on or adjoining such road.

## **PART II**

### **BUILDING AND OTHER STRUCTURES**

1. Regulating and controlling, either generally or in particular areas, all or any of the following matters:
  - (a) the size and height of buildings and fences;
  - (b) building lines, coverage and the space about buildings;
  - (c) the objects which may be affixed to buildings;
  - (d) the purposes for and the manner in which buildings may be used or occupied, including in the case of dwelling houses, the letting thereof in separate tenements;
  - (e) the prohibition of building or other operations on any land, or regulating such operations.
2. Allocating any particular land, or all land in any particular area, for buildings of a specified class or classes or prohibition or restricting either permanently or temporarily, the making of any building or any particular class or classes of buildings on any specified land.
3. Limiting the number of buildings or the number of buildings of a specified class which may be constructed, erected or made, on, in or under any area.

## **PART III**

### **COMMUNITY PLANNING**

1. Providing for the control of land by zoning or designating specific uses.
2. Regulating the layout of housing areas, including density, spacing, grouping and orientation of houses in relation to roads, open spaces and other buildings.
3. Determining the provision and sitting of community facilities, including shops, schools, churches, meeting halls, play centres and recreation grounds in relation to the number and sitting of houses.

## **PART IV**

### **AMENITIES**

1. Preservation of buildings, caves, sites and objects of artistic, architectural, cultural, historic or archaeological interest.
2. Allocation of land for burial grounds and crematoria.
3. Allocation of lands
  - (a) for communal parks;
  - (b) for game and bird sanctuaries;
  - (c) for the protection of marine life;
  - (d) for national parks and environmental protection area.
4. Preservation or protection of forests, woods, trees, shrubs, plants and flowers.
5. Protection of coastal zone, designation of marine parks, special resource and special use areas.
6. Prohibiting, restricting or controlling, either generally or in particular place, the exhibition, whether on the ground, or any building or any temporary erection, whether on land or in water, or the air, of all or any particular forms of advertisement or other public notices.

7. Preventing, remedying or removing injury to amenities arising from the ruinous or neglected condition of any building or fence, or by the objectionable or neglected condition of any land attached to a building or fence or abutting on a road or situate in a residential area.

8. Prohibiting, regulating and controlling the deposit or disposal of waste materials and refuse, the disposal of sewage and the pollution of rivers, lakes, ponds, gullies, beaches and the seashore.

## **PART V**

### **PUBLIC SERVICES**

Facilitating the establishment, extension or improvement of works by statutory or other undertakers in relation to power, lighting, water supply, sewerage, drainage, sewage disposal, refuse disposal or other public services.

## **PART VI**

### **TRANSPORT AND COMMUNICATIONS**

1. Facilitating the establishment, extension or improvement of systems of transport whether by land, water or air.

2. Allocating sites for use in relation to transport, and the reservation of land for that purpose.

3. Providing for the establishment, extension or improvement of telegraphic, telephonic wireless or radar communication, the allocating of sites for use in relation to such communication, and the reservation of land for that purpose.

## **PART VII**

### **MISCELLANEOUS**

1. Providing for and regulating the making of agreements for the purpose of a development plan by the Minister with another authority or owners and other persons, and by another authority with such persons and by such persons with one another.

2. Subdivision of land and in particular, but without restricting the generality of the foregoing,

- (a) regulating the type of development to be carried out and the size and form of plots;
  - (b) requiring the allocation of land for any of the public services referred to in Part V or for any other purposes referred to in this Schedule for which land may be allocated;
  - (c) prescribing the character and type of public services or other works which shall be undertaken and completed by any applicant for permission to sub-divide as a condition of the grant of such permission;
  - (d) co-ordinating the sub-division of contiguous properties in order to give effect to any scheme of development appertaining to such properties.
3. Making any provisions necessary for
- (a) adjusting and altering the boundaries and areas of any towns;
  - (b) enabling the establishment of satellite towns and new towns;
  - (c) effecting such exchanges of land or cancellation of existing sub-division plans as may be necessary or convenient for the purposes referred to in sub-sub-paragraphs (a) and (b).

### **SCHEDULE 3**

[Section 26 (1)]

#### **MATTERS FOR WHICH ENVIRONMENTAL IMPACT ASSESSMENT SHALL BE REQUIRED**

1. Hotels of more than twelve rooms;
2. any industrial plant which in the opinion of the Authority is likely to cause significant adverse environmental impact;
3. quarrying and other mining activities;
4. marinas;
5. airports, ports and harbours;

6. dams and reservoirs;
7. hydro-electric projects and power plants;
8. desalination plants;
9. water purification plants;
10. sanitary land fill operations, solid waste disposal sites, toxic waste disposal sites and other similar sites;
11. gas pipeline installations;
12. any development projects generating or potentially generating emissions, aqueous effluent, solid waste, noise vibration or radioactive discharges;
13. any development involving the storage and use of hazardous materials.
14. coastal zone developments;
15. development in wetlands, marine parks, national parks, conservation areas, environmental protection areas or other sensitive environmental areas.

#### **SCHEDULE 4**

[Section 65 (3) ]

#### **CONSTITUTION AND PROCEDURES OF THE APPEALS TRIBUNAL**

1. (1) The Appeals Tribunal shall consist of five members, appointed by the Minister from among persons who possess
  - (a) training and experience in physical planning, architecture, engineering, environmental, coastal and marine matters or law; or
  - (b) such other training and experience as the Minister thinks fit.
- (2) The Minister shall appoint one of the members to be chairman.

Membership  
of Appeals  
Tribunal.

(3) A member shall hold office for a period not exceeding four years and shall be eligible for reappointment.

(4) The names of all members of the Appeals Tribunal as first constituted and every change in the membership thereof shall be published in the *Gazette* and a local newspaper circulating in the Territory.

(5) Any member of the Appeals Tribunal may resign his office at any time by notice in writing to the Minister.

(6) The Minister may remove from office any member of the Appeals Tribunal for inability, misbehaviour, or on the ground of any employment or interest which is incompatible with the functions of a member of the Appeals Tribunal.

Staff of Appeals Tribunal.

**2.** (1) The Minister shall appoint a secretary to the Appeals Tribunal and such other officers as may be necessary to provide assistance to the Appeals Tribunal.

(2) The acts of the Appeals Tribunal shall be authenticated by the signature of the chairman or secretary of the Appeals Tribunal.

Meetings of Appeals Tribunal.

**3.** (1) The Appeals Tribunal shall meet on such occasions as may be expedient for the hearing of appeals and at such places, times and on such days as the Appeals Tribunal may determine.

(2) The chairman shall preside at all meetings of the Appeals Tribunal.

(3) A quorum of the Appeals Tribunal shall consist of a majority of members, that is to say, three members, which shall include the chairman.

(4) The decisions of the Appeals Tribunal shall be by a majority of votes of members present and voting, and in the event of an equality of votes, the chairman shall have a casting vote in addition to his own original vote.

Declaration of interest.

**4.** (1) It shall be the duty of a member of the Appeals Tribunal who is in any way directly or indirectly interested in a matter coming before the Appeals Tribunal to declare the nature of his interest in the matter as soon as it is practicable for him to do so, and he shall remove himself from any meeting of the Tribunal on that matter, and take no part directly or indirectly in any decision, deliberation, discussion, consideration or similar activity of the Appeals Tribunal on that matter.

(2) Where the Appeals Tribunal lacks a quorum in relation to an appeal owing to the number of members, who have declared an interest in that appeal, the Minister shall, for the purpose of that appeal, revoke the appointment of those members and appoint other persons in their stead.

5. For each sitting of the Appeals Tribunal the members, other than *ex-officio* members, shall be paid such remuneration as may be prescribed by the Minister, and such remuneration shall be a charge on the Consolidated Fund. Remuneration.

6. The validity of any proceedings of the Appeals Tribunal shall not be affected by any vacancy among the members thereof or by any defect in the appointment of a member thereof. Validity of proceedings.

7. Subject to the provisions of this Schedule, the procedures of the Appeals Tribunal shall be such as may be determined by the Tribunal. Procedures of Appeals Tribunal.

Passed by the Legislative Council this 14<sup>th</sup> day of October, 2004.

V. INEZ ARCHIBALD,  
Speaker.

DENNISTON FRASER,  
Clerk of the Legislative Council.



**No. 7 of 2005**

**VIRGIN ISLANDS**

**PUBLIC FINANCE MANAGEMENT (AMENDMENT) ACT, 2005**

**ARRANGEMENT OF SECTIONS**

*Section*

1. . Short title.
2. . Section 31A inserted.

I Assent

THOMAS TOWNLEY MACAN  
Governor  
16<sup>th</sup> April, 2005

VIRGIN ISLANDS

No. 7 of 2005

An Act to amend the Public Finance Management Act, 2004 (No. 2 of 2004).

[Gazetted 5<sup>th</sup> May, 2005]

ENACTED by the Legislature of the Virgin Islands as follows:

Short title.

**1.** This Act may be cited as the Public Finance Management (Amendment) Act, 2005.

Section 31A  
inserted.  
No. 2 of 2004

**2.** The Public Finance Management Act, 2004 is amended by inserting after section 31, the following section:

“Advances.

**31A.**(1) Subject to subsection (2), the Minister may, by Advance Warrant under his hand, authorise the Accountant General to make disbursements of moneys forming part of the Consolidated Fund or of other public moneys for the purposes of making advances

- (a) on behalf of, and recoverable from other Governments, administrations and statutory bodies;
- (b) to public officers for such purposes and on such terms and conditions as may be prescribed in the General Orders;

- (c) to meet expenditure in anticipation of the receipt of an instalment of a grant or loan for a specific purpose, whether to the Government or to a statutory body, from a source other than the Government, where the grant or loan has been approved by the source providing it;
- (d) in accordance with a specific agreement, to an agent appointed by the Government to perform a function on its behalf; or
- (e) for such purposes and on such terms and conditions as the Minister, with the approval of the Legislative Council, may determine.

(2) The total amounts disbursed in any financial year for the purpose of making advances by virtue of subsection (1) shall not exceed, in aggregate at any one time after the deduction of repayments, an amount in excess of 1.5% of the total amount appropriated in respect of that financial year.”.

Passed by the Legislative Council this 22nd day of March, 2005.

V. INEZ ARCHIBALD,  
Speaker.

ALVA MC CALL,  
Ag. Clerk of the Legislative Council.

**No. 5 of 2006**

**VIRGIN ISLANDS**  
**REGISTER OF INTERESTS ACT, 2006**  
**ARRANGEMENT OF SECTIONS**

*Section*

1. Short title and commencement.
2. Interpretation.
3. Declaration of interests.
4. Register of interests.
5. Duties of the Registrar.
6. Information.
7. Registrar's report.
8. Report submitted to Legislative Council.
9. Inspection of the Register.
10. Complaints by a Member against another Member.
11. Contempt of the Legislative Council.
12. Computer records.
13. Oath of office and confidentiality.
14. Amendment of Schedule 1.
  - SCHEDULE 1
  - SCHEDULE 2
  - SCHEDULE 3

I Assent

**DAVID PEAREY,**  
Governor.

**VIRGIN ISLANDS**

**No. 5 of 2006**

An Act to give effect to section 66C of the Virgin Islands (Constitution) Order, 1976 (U.K.S.I. 1976 No. 2145) and for matters connected therewith.

[Gazetted 1<sup>st</sup> June, 2006]

ENACTED by the Legislature of the Virgin Islands as follows:

Short title and  
commencement.

1. This Act may be cited as the Register of Interests Act, 2006 and shall come into force on such date, being not more than six months after the enactment of this Act, as the Chief Minister may, by Notice published in the *Gazette*, appoint.

Interpretation.

2. In this Act, unless the context otherwise requires,

“child”, in relation to a Member, means a person who has not attained the age of eighteen years and who is dependent on the Member and includes a child born out of wedlock, an adopted child, a step-child or a child of the family;

“child of the family”, in relation to a Member, means any child, who has been accepted and treated by both the Member and his spouse as a child of their family;

“Committee” means the Standing Select Committee of the Legislative Council charged for the time being with the consideration of matters relating to the Register;

“declaration” means a declaration of interests under section 3;

“interest” means any beneficial interest in property;

“Member” means the Speaker, the Attorney General or an elected member of the Legislative Council and includes a person appointed to act as Attorney General;

“office” means membership of the Legislative Council, and “assumes the functions of an office” means the occasion on which a person makes an oath or affirmation of allegiance under the Virgin Islands (Constitution) Order, 1976;

U.K.S.I. 1976  
No. 2145

“records” includes any documents in whatever form they are held;

“Register” means the Register of Interests established under section 66C(1) of the Virgin Islands (Constitution) Order, 1976;

“Registrar” means the person appointed by the Governor under section 66C(1) of the Virgin Islands (Constitution) Order, 1976, to hold or act in the office of Registrar;

“spouse”, in relation to a Member and for the purposes of a declaration, means the husband or wife of the Member or a person of the opposite sex who is living with the Member in the circumstances of husband and wife on the date on which the duty to make the declaration arose, but does not include a husband or wife

- (a) who is living separate and apart from the Member; and
- (b) who is a party to proceedings for divorce or judicial separation which were instituted at any time before the date on which the duty to make the declaration arose.

3. (1) A Member shall make a declaration in the form set out in Schedule 1 within thirty days after this Act comes into force, and thereafter

Declaration of  
interests.  
Schedule 1

- (a) on the date on which he assumes the functions of his office, and
- (b) on each subsequent anniversary of that date.

(2) A declaration of interests under this section

- (a) shall be made in respect of interests held on the date on which the duty to make the declaration arose; and

- (b) shall, where required by the registration form, include a declaration in respect of the interests held on that date by a child or spouse of the Member.

Register of interests.

4. (1) The Registrar shall maintain and keep the Register in accordance with this Act.

(2) The Register shall contain

- (a) the names, offices and addresses of the Members, and
- (b) the details of declarations made in accordance with this Act,

and shall be in such format as the Committee shall approve.

Duties of the Registrar.

5. (1) The Registrar shall act as the Clerk to the Committee.

(2) Subject to subsections (3) to (5), the Registrar shall enter in the Register the interests declared in each declaration.

(3) Before entering in the Register the interests declared by a Member in a declaration, the Registrar shall, for the purpose of satisfying himself that a full and accurate declaration has been prepared,

Schedule 1

- (a) examine each declaration and ensure that the declaration has been made in the form set out in Schedule 1; and
- (b) obtain from the Member such information as in the opinion of the Registrar, would assist him in examining a declaration furnished to him.

(4) Where the Registrar is satisfied that an entry in the Register has been made as a result of a fraudulent or materially misleading declaration by a Member,

- (a) the Registrar shall
  - (i) mark the entry as cancelled; and
  - (ii) by notice, require the Member to make a new declaration in respect of the interests held at the date the fraudulent or materially misleading declaration was made; and

- (b) the Member shall be required to make the new declaration within twenty-eight days from the date of the notice.

(5) The Registrar shall mark as cancelled any entry which has been incorrectly made.

6. (1) The Registrar may, by notice, require a person to

Information.

- (a) supply to him such information, and
- (b) produce to him such records,

as may be specified in the notice, being information and records the supply and production of which the Committee considers necessary or desirable for the purpose of enabling the Registrar to carry out his functions under this Act.

(2) A notice under subsection (1) shall require the information to be supplied and the records to be produced within such period as may be specified in the notice being not less than fourteen days from the date of the notice.

(3) Where the Registrar gives a notice under subsection (1) to a Member for the purposes of examining the declaration of that Member, the Registrar shall not register the declaration of the Member unless

- (a) the Member complies with the notice; or
- (b) before the end of the period allowed for compliance, the Member shows to the satisfaction of the Registrar that he has reasonable grounds for not complying with it.

(4) A person, other than the Member whose declaration is being examined, who fails without reasonable excuse to comply with a notice under subsection (1) commits an offence and is liable on summary conviction to a fine not exceeding five thousand dollars.

(5) A person, other than the Member whose declaration is being examined, who in purported compliance with a notice under subsection (1) knowingly or recklessly supplies information which is false or misleading in a material particular, commits an offence and is liable on summary conviction to a fine not exceeding ten thousand dollars or to imprisonment for a term not exceeding two years, or both.

Registrar's  
report.

**7. Where a Member**

- (a) fails to make a declaration within a period of three months from the date on which the duty to make that declaration accrued,
- (b) fails to comply with a notice given by the Registrar under section 5(4) and has not, within the period allowed for compliance with the notice, shown that he has reasonable grounds for not complying with it,
- (c) has failed to comply with a notice given by the Registrar under section 6(1) and has not, before the end of the period allowed for compliance with the notice, shown to the satisfaction of the Registrar that he has reasonable grounds for not complying with it, or
- (d) has made a statement which the Registrar is satisfied is false or misleading in a material particular,

the Member shall be in breach of the provisions of this Act, and the Registrar shall, within fourteen days of the knowledge of such breach, submit a report of such breach to the Committee, which shall meet to consider the report within twenty-one days of its submission.

Report submitted  
to Legislative  
Council.

**8. (1)** After the receipt of a report from the Registrar and where the Committee, after hearing the Member and such witnesses as the Committee or the Member desires to call, and after due consideration of the matter, is satisfied that

- (a) the Member is in breach in accordance with section 7(a) and (c), the Committee may require the Member to remedy his failure by making the declaration or complying with the notice of the Registrar within such period not exceeding twenty-eight days as it may determine; or
- (b) the Member is in breach in accordance with sections 7(b) or (d), the Committee shall make a report to the Legislative Council which may be accompanied by a recommendation as to the type of action to be taken.

(2) The Legislative Council shall debate the report submitted by the Committee under subsection (1) at a special meeting to be held within fourteen days of the date of the report.

(3) Where the Legislative Council, after debating the report of the findings of the Committee is satisfied that the Member is in breach as described in section 7(b) or (d), the Legislative Council may impose on the Member a fine not exceeding five thousand dollars or suspend the Member from sitting or voting in the Legislative Council for such period not exceeding two consecutive sittings of the Legislative Council as the Legislative Council may determine, or both.

(4) Where a Member fails to comply with a requirement under subsection (1)(a) within the period determined under that section by the Committee, the Committee shall prepare a report on that failure and present it to the Legislative Council.

(5) The Legislative Council shall debate a report submitted by the Committee under subsection (4) at a special meeting to be held within fourteen days of the date of the report.

(6) Where the Legislative Council, after debating the report of the Committee is satisfied that the Member has failed to comply with a requirement under subsection (1)(a) to remedy his earlier failure within the period determined by the Committee, the Legislative Council may impose on the Member a fine not exceeding five thousand dollars, or suspend the Member from sitting or voting in the Legislative Council for such period not exceeding two consecutive meetings of the Legislative Council as the Legislative Council may determine, or both.

9. (1) The Register shall not be open for inspection except

Inspection of the Register.

- (a) for the purposes of a criminal investigation;
- (b) on an order of a court in any legal proceedings; or
- (c) on the written request of a Member in the form prescribed in Schedule 2 upon the payment of the prescribed fee.

Schedule 2

(2) Where, in respect of a request made by a Member pursuant to subsection (1), the Registrar forms the opinion that

- (a) the purpose of the request is not clearly made out,
- (b) the request is frivolous or vexatious or is not made in good faith, or
- (c) the request is intended for a purpose that is not consistent with the objectives of this Act,

he may decline to grant an inspection of the Register.

(3) The fee referred to in subsection (1) in relation to a Member shall be prescribed under and in accordance with the Statutory Rates, Fees and Charges Act, 2005.

(4) The Registrar shall

- (a) not permit a Member to make a copy or take an extract of the Register or any matter contained therein; and
- (b) notify a Member if any request is made or granted for the inspection of the Register in respect of that Member.

Complaints by a Member against another Member.

**10.** (1) Where a Member wishes to allege that another Member is in breach of this Act in relation to the declaration of interests, the Member shall make such allegation by affidavit to the Registrar, and shall include a written summary of the evidence as to the accuracy of his allegations.

(2) The Registrar shall within fourteen days refer any written allegation made by a Member to the Committee and shall provide to the Member against whom the allegation is made details of the allegation.

(3) The Committee shall, within twenty-one days of a referral of an allegation to it under this section,

- (a) hear the evidence of both Members on oath; and
- (b) permit the Member against whom the allegation is made to make written representations and allow both Members to call such witnesses as the Members deem necessary to give evidence on oath.

(4) After a hearing of the allegations, the Committee, if the allegations are found to be justified, shall report to the Legislative Council.

(5) The Legislative Council shall debate any report submitted by the Committee under subsection (4) at a special meeting within fourteen days of the submission of the report.

(6) Where the Legislative Council, after debating the report of the Committee, is satisfied that the Member is in breach as alleged by the other Member, the Legislative Council may impose on the Member a fine not exceeding five thousand dollars or suspend the Member from sitting or voting in the Legislative Council for such period not exceeding two consecutive meetings of the Legislative Council as the Legislative Council may determine, or both.

**11. (1)** Where a Member fails to comply with any decision made by the Committee or fails to pay any fine imposed by the Legislative Council under this Act, such failure shall constitute a contempt of the Legislative Council for which the Legislative Council may order the Member's suspension from sitting and voting in the Legislative Council for such period as the Legislative Council may determine.

Contempt of the Legislative Council.

(2) In the event of a Member's contempt of the Legislative Council being purged to the satisfaction of the Legislative Council, the Legislative Council may lift the suspension in accordance with the procedure prescribed from time to time in the Standing Orders of the Legislative Council.

**12.** Where any records are held or kept in electronic form, the power of the Registrar to require the supply of information and production of records shall include powers

Computer records.

- (a) to require any person having charge of, or otherwise concerned with the operation of a computer or associated apparatus which is or has been in use in connection with such information or records, to afford to the Registrar such assistance as he may reasonably require; and
- (b) to require the records to be produced or copied in any form which he may reasonably request.

**13. (1)** The Registrar and any person appointed or designated to assist the Registrar in the performance of his duties under this Act

Oath of office and confidentiality.

- (a) shall, before assuming office, subscribe to the oath of confidentiality referred to in Schedule 3;
- (b) shall not, save in accordance with the provisions of this Act or otherwise in relation to any court order, disclose information
  - (i) relating to any declaration or matter in the Register; or
  - (ii) that he has acquired in the course of or in relation to his duties or in the exercise of any powers or performance of duties under this Act.

Schedule 3

(2) The oath of confidentiality referred to in subsection (1)(a) shall be taken before a Magistrate or the Registrar of the High Court.

(3) Where the Registrar or any other person appointed or designated to assist him contravenes subsection (1)(b), he commits an offence and is liable on summary conviction to imprisonment for a term not exceeding six months or to a fine not exceeding two thousand dollars, or both.

Amendment of  
Schedule 1.

**14.** The Registrar may, with the approval of the Committee, amend Schedule 1 by Order.

## **SCHEDULE 1**

[Section 3(1)]

### **REGISTRATION FORM FOR DECLARATION OF INTERESTS**

#### **LEGISLATIVE COUNCIL OF THE VIRGIN ISLANDS**

#### **REGISTRATION OF FINANCIAL INTERESTS**

#### **REGISTRATION FORM**

The main purpose of the Register of Interests is to provide information of any pecuniary interest or other material benefit which a Member receives which might reasonably be thought by others to influence his or her actions, speeches or votes in the Legislative Council, or actions taken in his or her capacity as a Member. For the details of the information which is required to be registered, please refer first to the explanatory notes in each section of the Form.

If there is not enough space in any section of this Form for the information required, additional sheets may be attached to it; but each such sheet should carry the Member's signature.

Subsequent changes or additions to your entry should be notified to the Registrar within one month of any changes occurring.

NAME (Block capitals, please):

CONSTITUENCY:

#### **1. DIRECTORSHIPS**

Do you have any remunerated or unremunerated directorships in any company?

YES/NO (Please delete as appropriate)

If yes, please list the names of the companies, briefly stating the nature of the business of the company in each case.

*Notes: (i) You should include directorships which are individually unremunerated but where remuneration is paid through another company in the same group.*

*(ii) In this category and category 2, "remunerated" should be read as including allowances or benefits.*

## 2. REMUNERATED EMPLOYMENT, OFFICE, PROFESSION, ETC.

Do you have any employment, office, trade, profession or vocation (apart from membership of the Legislative Council or ministerial office) for which you are remunerated or in which you have any pecuniary interest?

YES/NO (Please delete as appropriate)

If yes, please set out the details. Actual amounts of remuneration need not be stated. When registering employment with a company or firm, please briefly indicate the nature of its business.

*Note: Membership of insurance enterprises should be registered under this category. If you register such membership, you should also list your syndicate numbers for the current year and your membership of any syndicates which remain unclosed.*

## 3. CLIENTS

Does any of the paid employment registered in categories 1 or 2 entail the provision to clients of services which depend essentially upon or arise out of your position as a Member of the Legislative Council (see Note (i) below)?

YES/NO (Please delete as appropriate)

If yes, please list all clients to whom you personally provide such services. Please also state in each case the nature of the client's business.

*Notes: (i) The services covered by this category include action connected with any parliamentary proceeding, sponsoring meetings or functions in the Legislative Council's building or offices, making representations to Ministers, fellow Members or public servants, accompanying delegations to Ministers, and the provision of advice on parliamentary or public affairs.*

*(ii) Where you receive remuneration from a company or partnership engaged in consultancy business which itself has clients, you should list any of those clients to whom you personally provide such services or advice, directly or indirectly.*

#### 4. SPONSORSHIP

(a) Did you benefit from any sponsorship before your election, where to your knowledge, the financial support in any case exceeded in aggregate \$2,500.00?

YES/NO (Please delete as appropriate)

If yes, please list your sponsor(s). Where a company is named as sponsor, please indicate briefly the nature of its business, and if known, its directors and shareholders.

(b) Do you benefit from any other form of sponsorship or financial or material support as a Member of the Legislative Council?

YES/NO (Please delete as appropriate)

If yes, please give details, including the name of the person, organisation or company providing the support. Where a company is named, please indicate briefly the nature of the business, and if known, its directors and shareholders.

(c) Do the arrangements registered under category 4(b) involve any payment to you or any material benefit or advantage which you personally receive?

YES/NO (Please delete as appropriate)

*Notes: (i) You should register under this section any financial or material benefit, direct or indirect; for example the provision of free or subsidised accommodation, or the provision of the services of a research assistant free or at a subsidised salary rate.*

*(ii) You should register money given to you by your election campaign committee and money spent by your election campaign committee in connection with your election with your written permission.*

*(iii) The answer to question 4(a) need not contain information in respect of elections which took place prior to the enactment of the Register of Interests Act, 2006.*

#### 5. GIFTS, BENEFITS AND HOSPITALITY (VIRGIN ISLANDS)

Have you, or your spouse to your knowledge, received any gift of a value greater than \$500.00, or any material advantage of a value greater than 1.5 percent of the current salary of an elected Member of the Legislative Council, from any company, organisation or person within the Virgin Islands which in any way relates to your membership of the Legislative Council?

YES/NO (Please delete as appropriate)

If yes, please give details.

*Notes: (i) You should include any hospitality given and services or facilities offered free or at a price below that generally available to members of the public, except that where the advantage is known to be available to all Members of the Legislative Council, it need not be registered.*

*(ii) You should include not only gifts and material advantages received personally by you and your spouse, but also those received by any company or organisation in which you (or you and your spouse jointly) have a controlling interest.*

#### 6. OVERSEAS VISITS

Have you or your spouse made any overseas visits relating to or in any way arising out of your membership of the Legislative Council where the cost of the visit was not wholly borne by yourself or by public funds?

YES/NO (Please delete as appropriate)

If yes, please list relevant visits in chronological order.

Countries visited	Dates of visit	Who paid?
-------------------	----------------	-----------

*Note: You are not required to register visits undertaken on behalf of the Commonwealth Parliamentary Association. Other categories of overseas visits which are exempt from the requirement to register are listed in the guidance pamphlet on Registration and Declaration of Members' Interests.*

#### 7. OVERSEAS BENEFITS AND GIFTS

Have you, or your spouse to your knowledge, received any gift of a value greater than \$500.00 or any material advantage of a value greater than 1.5 percent of the current salary of an elected Member of the Legislative Council, from or on behalf of any foreign Government, organisation or person which in any way relates to your membership of the Legislative Council?

YES/NO (Please delete as appropriate)

If yes, please give details.

*Note: Overseas hospitality and travel facilities should be entered under category 6. Otherwise the notes under category 5 apply here also.*

8. LAND

Do you have any land, other than any home used solely for the personal residential purposes of you or your family.

YES/NO (Please delete as appropriate)

If yes, please indicate below the nature of the land (e.g. Estate, Farm, Smallholding, Woodland, Residential rented/leasehold land, Commercial rented/leasehold land) and give the registration section, block and parcel number, and the street and number (if appropriate) of the land in each case.

Nature of Land	Location
.....	Registration Section No.: Block No.: Parcel No.: Address:
.....	Registration Section No.: Block No.: Parcel No.: Address:
.....	Registration Section No.: Block No.: Parcel No.: Address:

9. SHAREHOLDINGS

Do you have (either yourself or with or on behalf of your spouse or dependent children) interests in shareholdings in any company or other body which has a nominal value (a) greater than \$25,000.00, or (b) less than \$25,000.00 but greater than 1 percent of the issued shared capital of the company or body?

YES/NO (Please delete as appropriate)

If so, please list each company or body, indicating in each case the nature of its business and whether your holding falls under sub-category (a) or (b) above.

10. MISCELLANEOUS

If, bearing in mind the definition of purpose set out in the introduction to this Form, you have any relevant interests which you consider should be disclosed but which do not fall within the nine categories set out above, please list them:

**I declare that the information contained in this declaration is a complete and accurate description of all the interests that I am liable to declare under the Register of Interests Act, 2006.**

SIGNATURE:

DATE:

**SCHEDULE 2**

[Section 9(1)]

**REQUEST TO INSPECT THE REGISTER OF INTERESTS**

**REQUEST FORM**

To the Registrar of Interests

I, \_\_\_\_\_ (name) of \_\_\_\_\_ (address) being a Member of the Legislative Council hereby request to view and inspect the Register of Interests in respect of the Members of the Legislative Council of the Virgin Islands.

The purpose(s) for which this request is made is/are as follows:

.....  
.....  
.....  
.....  
.....  
.....  
.....

The request is made for a specific inspection in relation to

(please specify for the latter option the Member or subject matter or both to which the request relates).

The date on which I wish to conduct an inspection of the Register is the \_\_\_\_\_ day of \_\_\_\_\_, 200 .

Date:

Signature:

**For use by the Registrar only**

Date request received: .....

Date request processed: .....

Approved: .....

Inspection date granted: .....

Disapproved: .....

Reason(s) for disapproval: .....

.....

.....

.....

Signed:  
(Registrar of Interests)

Date:

**SCHEDULE 3**

[Section 13(1)]

**OATH OF CONFIDENTIALITY**

**FORM OF OATH**

I, \_\_\_\_\_, being the Registrar of Interests/a person appointed/designated to assist the Registrar of Interests in the performance of his duties under the Register of Interests Act, 2006, solemnly swear/affirm that I shall keep confidential all declarations and other information in connection with or relative to Members of the Legislative Council and the Register of Interests which has come to my knowledge in my capacity as Registrar of Interests/a person appointed/designated to assist the Registrar of Interests or in relation to such office that I hold and I shall not disclose such declaration or other information except as authorized by and in accordance with law.

So help me God (omit if affirming)



**VIRGIN ISLANDS**

**CRIMINAL CODE (AMENDMENT) ACT, 2006**

**ARRANGEMENT OF SECTIONS**

*Section*

1. Short title.
2. Interpretation.
3. Section 26 amended.
4. Amendments re. indictable offences.
5. Amendments re. summary offences.
6. Amendments re. attempts.
7. Section 48 amended.
8. Section 68 amended.
9. Sections 79 to 81 repealed and substituted.
10. Section 82 amended.
11. Section 83 amended.
12. Section 84 amended.
13. Section 85 amended.
14. Section 88 amended.
15. Section 89 amended.
16. Section 93A inserted.
17. Section 104 amended.
18. Section 105 amended.
19. Section 109 repealed.
20. Section 124 amended.
21. Section 142 amended.
22. Section 162 amended.
23. Section 184 amended.
24. Section 189 amended.
25. Section 190 amended.
26. Section 191 amended.
27. Section 193 amended.
28. Section 213 amended.
29. Section 224 amended.
30. Section 226 amended.
31. Section 230 amended.
32. Section 243A inserted.
33. Section 265 amended.
34. Section 266 amended.
35. Section 267 amended.

36. Section 267 amended.
37. Section 311 amended.
38. Section 317 amended.
39. Schedule 1 amended.
40. Consequential amendment of Cap. 44.

**No. 8 of 2006**

**Criminal Code (Amendment) Act, 2006**

**Virgin  
Islands**

**I Assent**

**DAVID PEAREY**  
**Governor**  
**7<sup>th</sup> June, 2006**

**VIRGIN ISLANDS**

**No. 8 of 2006**

An Act to amend the Criminal Code, 1997 (No. 1 of 1997) and to repeal section 71 of the Magistrate's Code of Procedure Act (Cap. 44).

[Gazetted 29<sup>th</sup> June, 2006]

ENACTED by the Legislature of the Virgin Islands as follows:

1. This Act may be cited as the Criminal Code (Amendment) Act, 2006. Short title.
2. In this Act, "the principal Act" means the Criminal Code, 1997. Interpretation.  
No. 1 of 1997
3. Section 26 of the principal Act is amended Section 26  
amended.
  - (a) by deleting the words "offence under sections 79, 80, 81, or 101" and substituting the words "offence under this Act that is punishable with a term of imprisonment of two years or more"; and
  - (b) by inserting after the words "in connection with", the words ", or was used in,".

Amendments re.  
indictable  
offences.

4. (1) The principal Act is amended in sections 37, 38, 41(1), 42, 44(1), 55, 56, 58(1), 63(2), 64(3), 65(1), 65(2), 66, 69, 93, 95(1), 96, 97(1), 106(1) and (2), 117(1), 118(1), 119(1), 120(1), 121(2), 122(1), 123(1), 126, 127(1), 133(1), 134, 139(1), 140, 141(1), 142(1), 143, 144, 145, 147(1), 152, 155(1), 156, 157(1), 163, 164, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 181(1) and (2), 185, 195, 196, 197, 199, 200, 201, 210, 211(4), 217(1), 221(1), 223(1), 235(1) and (2), 236(1), (2) and (3), 237, 238, 241(1) and (2), 244, 245(1) and (2), 246(1), 249(1), 250(1) and (2), 251(3) and (5), 252(1), 253(1), 255(1), (2) and (3), 261(2), 262(1) and (2), 264, 272(1), 291(1) and (2) and 292(2)(a), (b) and (c), by inserting after the words “on conviction”, the words “on indictment”.

(2) Section 36 of the principal Act is amended by deleting the word “(1)” and by inserting after the words “on conviction”, the words “on indictment”.

(3) Section 103 of the principal Act is amended by renumbering the section as section 103(1) and by inserting after the words “on conviction” occurring in paragraphs (a), (b) and (c), the words “on indictment”.

(4) Section 150 of the principal Act is amended by deleting the words “is convicted of murder is liable” and substituting the words “commits murder is liable on conviction on indictment”.

(5) Section 153 of the principal Act is amended by deleting the words “is convicted of manslaughter is liable” and substituting the words “commits manslaughter is liable on conviction on indictment”.

(6) Section 212(2) of the principal Act is amended by deleting the words “is convicted of aggravated burglary is liable” and substituting the words “commits aggravated burglary is liable on conviction on indictment”.

(7) Section 225(4) of the principal Act is amended by deleting the words “convicted of blackmail is liable” and substituting the words “who commits blackmail is liable on conviction on indictment”.

(8) Paragraphs (a), (b) and (c) of section 318(5) of the principal Act are amended in each paragraph by inserting after the word “liable”, the words “on conviction on indictment”.

Amendments re.  
summary  
offences.

5. (1) The principal Act is amended in sections 43, 48(2), 50(1) and (2), 51(2), 58(2), 60, 61, 62(3), 67, 70(1), 71(2), 72(1), 73, 74(1) and (2), 75, 76, 77(1), 78, 82, 83, 85, 86, 88, 89, 90, 91, 92, 94(1), 98(1), 101, 102, 107, 108, 110, 111, 112, 113, 114, 115(1) and (2), 125, 128(1), 129, 130, 131(1), 132(1), 135, 136, 137(1), 161, 165, 178, 179, 180, 182, 183, 186, 187, 188, 198, 215, 216(1), 220(1), 239, 240(1), 247, 251(1), (2), (4) and (6), 254, 256(1) and (3), 257, 258, 259(1), (2) and (3), 261(1), 263(1) and (2), 273(1), 281, 282(1), 283(1), 284(1), 286(1), 287(1), (2), (3), (4) and (5), 288(1) and (2), 289(1), (2) and (4), 290(2)

and (4), 293, 294(1), 295(1) and (2), 296(1), 297, 298, 299, 300(1), 301(1), (6) and (7), 302(1), 303, 304, 305(1) and (2), 306(1), 307(1), (2) and (3), 308, 309, 313, 319 and 322 by deleting the words “on conviction” and substituting the words “on summary conviction”.

(2) Section 77(2) of the principal Act is amended by inserting after the word “liable”, the words “on summary conviction”.

(3) Section 87 of the principal Act is amended by deleting the word “(1)” and by deleting the words “on conviction” and substituting the words “on summary conviction”.

(4) Section 285(1) of the principal Act is amended by deleting paragraph (i) and substituting the following:

“(i) has no fixed abode and sleeps by night in open or public places,

commits an offence and is liable on summary conviction to imprisonment for a term not exceeding three months or to a fine not exceeding two hundred and fifty dollars.”.

(5) Section 318(5)(d) of the principal Act is amended by inserting after the word “liable”, the words “on summary conviction”.

**6.** The principal Act is amended by repealing sections 117(7), 118(3), 122(4), 123(3) and 272(2). Amendments re. attempts.

**7.** Section 48 of the principal Act is amended Section 48 amended.

(a) in subsection (1), by deleting from the words “and is liable” to the words “the Crown”; and

(b) by inserting after subsection (1), the following subsection:

“(1A) A person who commits an offence under subsection (1) is liable

(a) on summary conviction to imprisonment for a term not exceeding three years or to a fine not exceeding three thousand dollars, or both, or

(b) on conviction on indictment to imprisonment for a term not exceeding ten years,

and any seditious publication shall be forfeited to the Crown.”.

Section 68  
amended.

8. Section 68(1) of the principal Act is amended

- (a) by renumbering paragraph (a) as paragraph (aa) and inserting before that paragraph, the following paragraph:

“(a) “air gun” means a gun whose propelling force is compressed air and includes an air pistol or air rifle;”;

- (b) by deleting paragraph (d) and substituting the following paragraph:

“(d) “firearm” means any lethal barrelled weapon of any description from which any shot, bullet or other missiles can be discharged and includes

(i) any weapon which is so designed or adapted that, if pressure is applied to the trigger, missiles continue to be discharged until pressure is removed from the trigger or the magazine containing the missiles is empty, and

(ii) any weapon of whatever description designed or adapted for the discharge of any noxious liquid, gas or thing,

and any component part of any such weapon, any accessory to any such weapon designed or adapted to diminish the noise or flash caused by firing the weapon, but does not include

(iii) an air gun;

(iv) a toy-pistol or toy-gun from which any shot, bullet or missile is discharged by the force of a spring alone; and

(v) a firearm which is preserved for antiquarian interest and not for use;”;

- (c) in paragraph (g), by inserting after the word “firearm”, the words “, air gun”.

9. Sections 79 to 81 of the principal Act are repealed and the following sections are substituted:

Sections 79 to 81 repealed and substituted.

“Interpretation and application of this Part.

**79. (1)** In this Part, “agent”

- (a) means any person employed by or acting for another person; and
- (b) includes a member or an officer of a public body, a trustee, a sub-contractor, and any person employed by or acting for such public body, trustee or sub-contractor;

“associate”, in relation to a person, means

- (a) a person who is a nominee or an employee of that person;
- (b) a person who manages the affairs of that person or a person whose affairs are managed by that person;
- (c) a firm of which that person, or his nominee, is a partner or a person in charge or in control of its business or affairs;
- (d) a company in which that person, or his nominee,
  - (i) is a director or is in charge or in control of its business or affairs;
  - (ii) holds a direct or indirect private interest; or
  - (iii) by reason of his financial input through loans, debentures or otherwise, or by reason of the presence of his representative on the Board of Directors, is in a position to influence its policy or decisions; or
- (e) the trustee of a trust, where
  - (i) the trust has been created by that person; or

- (ii) the total value of the assets contributed by that person to the trust at any time, whether before or after the creation of the trust, amounts, at any time, to not less than twenty per cent of the total value of the assets of the trust;

“child” means a son or daughter of any age and includes a child born out of wedlock, an adopted child, a step-child or a child of the family;

“child of the family”, in relation to a person, means

- (a) a child of both the person and his spouse; and
- (b) any other child, who has been accepted and treated by both the person and his spouse as a child of their family;

“foreign public official” includes

- (a) a person who holds a legislative, executive, administrative or judicial position of a foreign state;
- (b) a person who performs public duties or functions for a foreign state, including a person employed by a board, commission, corporation or other body or authority that is established to perform a duty or function on behalf of a foreign state, or is performing such a duty or function; and
- (c) an official or agent of a public international organisation that is formed by two or more states or governments, or by two or more such public international organisations;

“foreign state” means a country or territory other than the Virgin Islands and includes

- (a) a political subdivision of a country or territory;
- (b) the government, or a department or branch of the government, of a country, a territory or a political subdivision of a country or territory; and

- (c) an agency of a country, a territory or a political subdivision of a country or territory;

No. 16 of 2004      “Government company” means a company registered under the BVI Business Companies Act, 2004 and in which the Government of the Virgin Islands

- (a) holds a direct or indirect private interest; or
- (b) by reason of its financial input through loans, debentures or otherwise, or by reason of the presence of its representatives on the Board of Directors, is in a position to influence its policy or decisions;

“gratification”

- (a) means a gift, reward, discount, premium or other pecuniary or non-pecuniary advantage, other than lawful remuneration; and
- (b) includes
  - (i) a loan, fee or commission consisting of money or of any valuable security or of other property or interest in property of any description;
  - (ii) the offer of an office, employment or other contract;
  - (iii) the payment, release or discharge of a loan, obligation or other liability;
  - (iv) the payment of inadequate consideration for property, an interest in property, goods or services;
  - (v) an overpayment for property, an interest in property, goods or services; and
  - (vi) the offer or promise, whether conditional or unconditional, of anything mentioned in paragraph (a) or subparagraphs (i) to (v);

“principal” includes an employer, a beneficiary under a trust, a person beneficially interested in the succession of a person, and, in the case of a person serving in or under a public body, the public body;

“public body” means the Executive Council, the Legislative Council, a Ministry or Government department, a Commission of Inquiry, a statutory board, a statutory corporation or a Government company;

“public official” includes a Minister, a member of the Legislative Council, a Judge of the Supreme Court, a Magistrate, a public officer, a member of a Commission of Inquiry, a member or employee of a statutory board or a statutory corporation, a director or employee of a Government company, an arbitrator, an assessor, a member of a jury or any other person who performs a public function or provides a public service, whether appointed or elected, whether permanent or temporary, whether paid or unpaid and irrespective of that person’s seniority;

“relative”, in relation to a person, means

- (a) a spouse or child of that person;
- (b) a brother or sister of that person;
- (c) a brother or sister of the spouse of that person; or
- (d) a parent, grandparent or grandchild of that person;

“spouse”, in relation to a person, means the husband or wife of that person or a person of the opposite sex who is living with that person in the circumstances of husband and wife at the time the act or omission constituting the offence occurs.

(2) A person commits an offence under this Part where

- (a) the act or omission constituting the offence occurs in or outside the Virgin Islands; or
- (b) the act constituting the offence is done by that person or for him by another person.

(3) Notwithstanding any law to the contrary, the prosecution of a summary offence under this Part may be

commenced at any time before the expiration of ten years from the date on which the offence is alleged to have been committed.

Bribery by  
public official.

**80.** (1) A public official who, directly or indirectly, solicits, accepts or obtains from another person, for himself or for any other person, a gratification for

- (a) doing or abstaining from doing, or having done or abstained from doing, an act in the execution of his functions or duties,
- (b) doing or abstaining from doing, or having done or abstained from doing, an act which is facilitated by his functions or duties,
- (c) expediting, delaying, hindering or preventing, or having expedited, delayed, hindered or prevented, the performance of an act in the execution of his functions or duties,
- (d) expediting, delaying, hindering or preventing, or having expedited, delayed, hindered or prevented, the performance of an act by another public official, in the execution of the latter's functions or duties, or
- (e) assisting, favouring, hindering or delaying, or having assisted, favoured, hindered or delayed, another person in the transaction of a business with a public body,

commits an offence.

(2) A public official who commits an offence under subsection (1) is liable,

- (a) on summary conviction, to imprisonment for a term not exceeding three years or to a fine not exceeding thirty thousand dollars, or both; or
- (b) on conviction on indictment, to imprisonment for a term not exceeding seven years or to a fine not exceeding fifty thousand dollars or three times the value of

the gratification, whichever is higher, or both.

(3) Notwithstanding any other law, where in any proceedings against a person for an offence under subsection (1), it is proved that the public official directly or indirectly solicited, accepted or obtained a gratification from another person, for himself or for another person, it shall be presumed, until the contrary is proved, that the gratification was solicited, accepted or obtained for any of the purposes set out in subsection (1)(a) to (e).

Bribery of  
public official.

**80A.** (1) A person who, directly or indirectly, gives, agrees to give, or offers a gratification to a public official for

- (a) doing, or for abstaining from doing, or having done or abstained from doing, an act in the execution of his functions or duties,
- (b) doing or abstaining from doing, or for having done or abstained from doing, an act which is facilitated by his functions or duties,
- (c) expediting, delaying, hindering or preventing, or having expedited, delayed, hindered or prevented, the performance of an act in the execution of his functions or duties,
- (d) expediting, delaying, hindering or preventing, or having expedited, delayed, hindered or prevented, the performance of an act by another public official in the execution of the latter's functions or duties, or
- (e) assisting, favouring, hindering or delaying or having assisted, favoured, hindered or delayed another person in the transaction of a business with a public body,

commits an offence.

(2) A person who commits an offence under subsection (1) is,

- (a) liable, on summary conviction, to imprisonment for a term not exceeding three years or to a fine not exceeding thirty thousand dollars, or both;
- (b) in the case of an individual, liable on conviction on indictment, to imprisonment for a term not exceeding seven years or to a fine not exceeding fifty thousand dollars or three times the value of the gratification, whichever is higher, or both; or
- (c) in the case of a body corporate, liable on conviction on indictment, to a fine not exceeding two hundred and fifty thousand dollars or three times the value of the gratification, whichever is higher.

(3) Notwithstanding any other law, where in any proceedings against a person for an offence under subsection (1), it is proved that the accused directly or indirectly gave, agreed to give or offered gratification to a public official, it shall be presumed, until the contrary is proved, that the accused gave, agreed to give or offered the gratification for any of the purposes set out in subsection (1)(a) to (e).

Taking gratification to screen offender from punishment.

**80B.** (1) Subject to subsection (2), a person who, directly or indirectly, accepts or obtains, or agrees to accept or attempts to obtain, a gratification for himself or for any other person, in consideration of his concealing an offence, or his screening any other person from legal proceedings for an offence, or his not proceeding against any other person in relation to an alleged offence, or his abandoning or withdrawing, or his obtaining or endeavouring to obtain the withdrawal of, a prosecution against any other person, commits an offence and is liable,

- (a) on summary conviction, to imprisonment for a term not exceeding two years; or
- (b) on conviction on indictment, to imprisonment for a term not exceeding five years.

(2) This section shall not extend to any lawful compromise as to the civil interests resulting from the offence or any lawful

compromise arising out of mediation approved by a court or plea bargaining, but any such compromise shall not be a bar to any criminal proceedings which may be instituted in respect of the offence.

Public official using his office for gratification.

**80C.** (1) Subject to subsection (3), a public official who, directly or indirectly, makes use of his office or position for a gratification for himself or another person commits an offence and is liable

- (a) on summary conviction, to imprisonment for a term not exceeding three years or to a fine not exceeding thirty thousand dollars, or both; or
- (b) on conviction on indictment, to imprisonment for a term not exceeding seven years or to a fine not exceeding fifty thousand dollars or three times the value of the gratification, whichever is higher, or both.

(2) For the purposes of subsection (1), a public official shall be presumed, until the contrary is proved, to have made use of his office or position for a gratification where he has taken, or directed or participated in the taking of, any decision or action in relation to any matter in which he, or a relative or associate of his, has a direct or indirect private interest or where he has given advice in any such matter.

(3) This section shall not apply to a public official who

- (a) holds office in a public body as a representative of a body corporate which holds shares or interests in that public body; and
- (b) acts in that capacity in the interest of that body corporate.

Bribery of or by public official to influence the decision of a public body.

**80D.** (1) A person who, directly or indirectly, gives, or agrees to give, or offers, to a public official, a gratification for

- (a) voting or abstaining from voting, or having voted or abstained from voting, at a meeting of a public body of which he is a member, director or employee, in favour of or against

any measure, resolution or question submitted to the public body,

- (b) performing or abstaining from performing, or aiding in procuring, expediting, delaying, hindering or preventing, or having performed or abstained from performing, or having aided in procuring, expediting, delaying, hindering or preventing, the performance of an act of a public body of which he is a member, director or employee, or
- (c) aiding in procuring, or preventing, or having aided in procuring or preventing, the passing of any vote or the granting of any contract or advantage in favour of any other person,

commits an offence.

(2) A person who commits an offence under subsection (1) is,

- (a) liable, on summary conviction, to imprisonment for a term not exceeding three years or to a fine not exceeding thirty thousand dollars, or both;
- (b) in the case of an individual, liable on conviction on indictment, to imprisonment for a term not exceeding seven years or to a fine not exceeding fifty thousand dollars or three times the value of the gratification, whichever is higher, or both; or
- (c) in the case of a body corporate, liable on conviction on indictment, to a fine not exceeding two hundred and fifty thousand dollars or three times the value of the gratification, whichever is higher.

(3) A public official who, directly or indirectly, solicits or accepts a gratification for

- (a) voting or abstaining from voting, or having voted or abstained from voting at a meeting of a public body of which he is a member, director or employee, in favour of or against any measure, resolution or question submitted to the public body,
- (b) performing or abstaining from performing, or aiding in procuring, expediting, delaying, hindering or preventing, the performance of, an act of a public body of which he is a member, director or employee, or
- (c) aiding in procuring or preventing, or having aided in procuring or preventing, the passing of any vote or the granting of any contract or advantage in favour of any person,

commits an offence.

(4) A public official who commits an offence under subsection (3) is liable,

- (a) on summary conviction, to imprisonment for a term not exceeding three years or to a fine not exceeding thirty thousand dollars, or both; or
- (b) on conviction on indictment, to imprisonment for a term not exceeding seven years or to a fine not exceeding fifty thousand dollars or three times the value of the gratification, whichever is higher, or both.

Bribery of or by  
foreign public  
official.

**80E.** (1) A person who, in order to obtain or retain business or other undue advantage in relation to the conduct of international business, directly or indirectly, gives, or agrees to give, or offers, to a foreign public official, a gratification for

- (a) doing, or for abstaining from doing, or having done or abstained from doing, an act in the execution of his functions or duties,
- (b) doing or abstaining from doing, or for having done or abstained from doing, an act

which is facilitated by his functions or duties,

- (c) expediting, delaying, hindering or preventing, or having expedited, delayed, hindered or prevented, the performance of an act in the execution of his functions or duties,
- (d) expediting, delaying, hindering or preventing, or having expedited, delayed, hindered or prevented, the performance of an act by another foreign public official in the execution of the latter's functions or duties,
- (e) assisting, favouring, hindering or delaying or having assisted, favoured, hindered or delayed any person in the transaction of a business with the foreign state or public international organisation for which the foreign public official performs duties or functions,
- (f) voting or abstaining from voting, or having voted or abstained from voting, in favour of or against any measure, resolution or question in the execution of his duties or functions,
- (g) aiding in procuring, expediting, delaying, hindering or preventing, or having aided in procuring, expediting, delaying, hindering or preventing the performance of, an act by or on behalf of the foreign state or public international organisation for which the foreign public official performs duties or functions, or
- (h) aiding in procuring, or preventing, or having aided in procuring or preventing, the passing of any vote or the granting of any contract or advantage by the foreign state or public international organisation for which the foreign public official performs duties or functions, in favour of any other person,

commits an offence.

(2) A person who commits an offence under subsection (1) is,

- (a) liable, on summary conviction, to imprisonment for a term not exceeding three years or to a fine not exceeding thirty thousand dollars, or both;
- (b) in the case of an individual, liable on conviction on indictment, to imprisonment for a term not exceeding seven years or to a fine not exceeding fifty thousand dollars or three times the value of the gratification, whichever is higher, or both; or
- (c) in the case of a body corporate, liable on conviction on indictment, to a fine not exceeding two hundred and fifty thousand dollars or three times the value of the gratification, whichever is higher.

(3) Notwithstanding any other law, where in any proceedings against a person for an offence under subsection (1), it is proved that the accused gave, agreed to give or offered gratification, it shall be presumed, until the contrary is proved, that the accused gave, agreed to give or offered the gratification for any of the purposes set out in subsection (1)(a) to (h).

(4) A foreign public official who, directly or indirectly,

- (a) gives, or agrees to give, or offers, to a public official, or
- (b) solicits, accepts or obtains from another person, for himself or for any other person,

a gratification for

- (i) doing or abstaining from doing, or having done or abstained from doing, an act in the execution of his functions or duties,

- (ii) doing or abstaining from doing, or having done or abstained from doing, an act which is facilitated by his functions or duties,
- (iii) expediting, delaying, hindering or preventing, or having expedited, delayed, hindered or prevented, the performance of an act in the execution of his functions or duties,
- (iv) expediting, delaying, hindering or preventing, or having expedited, delayed, hindered or prevented, the performance of an act by another foreign public official, in the execution of the latter's functions or duties,
- (v) assisting, favouring, hindering or delaying or having assisted, favoured, hindered or delayed any person in the transaction of a business with the foreign state or public international organisation for which the foreign public official performs duties or functions,
- (vi) voting or abstaining from voting, or having voted or abstained from voting, in favour of or against any measure, resolution or question in the execution of his duties or functions,
- (vii) aiding in procuring, expediting, delaying, hindering or preventing, or having aided in procuring, expediting, delaying, hindering or preventing the performance of, an act by or on behalf of the foreign state or public international organisation for which the foreign public official performs duties or functions, or

- (viii) aiding in procuring, or preventing, or having aided in procuring or preventing, the passing of any vote or the granting of any contract or advantage by the foreign state or public international organisation for which the foreign public official performs duties or functions, in favour of any other person,

commits an offence.

(5) A foreign public official who commits an offence under subsection (4) is liable,

- (a) on summary conviction, to imprisonment for a term not exceeding three years or to a fine not exceeding thirty thousand dollars, or both; or
- (b) on conviction on indictment, to imprisonment for a term not exceeding seven years or to a fine not exceeding fifty thousand dollars or three times the value of the gratification, whichever is higher, or both.

(6) Notwithstanding any other law, where in any proceedings against a person for an offence under subsection (4), it is proved that the foreign public official directly or indirectly,

- (a) gave, or agreed to give, or offered, to a public official, or
- (b) solicited, accepted or obtained from another person, for himself or for any other person,

a gratification, it shall be presumed, until the contrary is proved, that the foreign public official gave, agreed to give, offered, solicited, accepted or obtained the gratification for any of the purposes set out in subsection (4)(a)(i) to (viii) or subsection (4)(b)(i) to (viii), as the case may be.

Influencing  
public official.

**81.** A person who, directly or indirectly, exercises any form of violence, or pressure by means of threat, upon a public official, with a view to the performance, by that public official, of

any act in the execution of his functions or duties, or the non-performance, by that public official, of any such act, commits an offence and is liable,

- (a) on summary conviction, to imprisonment for a term not exceeding five years or to a fine not exceeding fifty thousand dollars, or both; or
- (b) on conviction on indictment, to imprisonment for a term not exceeding ten years or to a fine not exceeding seventy-five thousand dollars, or both.

Trading in  
influence.

**81A.** (1) A person who, directly or indirectly, gives or agrees to give or offers a gratification to another person, to cause a public official to use his influence, real or fictitious, to obtain any work, employment, contract or other benefit from a public body, commits an offence.

(2) A person who, directly or indirectly, gives or agrees to give or offers a gratification to another person to use his influence, real or fictitious, to obtain work, employment, contract or other benefit from a public body, commits an offence.

(3) A person who, directly or indirectly, gives or agrees to give or offers a gratification to a public official to cause that public official to use his influence, real or fictitious, to obtain work, employment, contract or other benefit from a public body, commits an offence.

(4) A person who, directly or indirectly, solicits, accepts or obtains a gratification from any other person for himself or for any other person in order to make use of his influence, real or fictitious, to obtain any work, employment, contract or other benefit from a public body, commits an offence.

(5) A public official who, directly or indirectly, solicits, accepts or obtains a gratification from any other person for himself or for any other person in order to make use of his influence, real or fictitious, to obtain any work, employment, contract or other benefit from a public body, commits an offence.

(6) A person who commits an offence under this section is

- (a) liable, on summary conviction, to imprisonment for a term not exceeding three years or to a fine not exceeding thirty thousand dollars, or both;
- (b) in the case of an individual, liable on conviction on indictment, to imprisonment for a term not exceeding seven years or to a fine not exceeding fifty thousand dollars or three times the value of the gratification, whichever is higher, or both; or
- (c) in the case of a body corporate, liable on conviction on indictment, to a fine not exceeding two hundred and fifty thousand dollars or three times the value of the gratification, whichever is higher.

Public official taking gratification.

**81B.** Any public official who, directly or indirectly, accepts or receives a gratification, for himself or for any other person

- (a) for doing or having done an act which he alleges, or induces any person to believe, he is empowered to do in the exercise of his functions or duties, although as a fact such act does not form part of his functions or duties, or
- (b) for abstaining from doing or having abstained from doing an act which he alleges, or induces any person to believe, he is empowered not to do or bound to do in the ordinary course of his function or duty, although as a fact such act does not form part of his functions or duties,

commits an offence.

(2) A public official who commits an offence under subsection (1) is liable,

- (a) on summary conviction, to imprisonment for a term not exceeding three years or to a fine not exceeding thirty thousand dollars, or both;

- (b) on conviction on indictment, to imprisonment for a term not exceeding seven years or to a fine not exceeding fifty thousand dollars or three times the value of the gratification, whichever is higher, or both.

Bribery for procuring contracts.

**81C.** (1) A person who, directly or indirectly, gives or agrees to give or offers a gratification to a public official in consideration of that public official giving assistance or using influence in

- (a) promoting, executing, or procuring a contract with a public body for the performance of a work, the supply of a service, or the procurement of supplies,
- (b) the payment of the price provided for in a contract with a public body, or
- (c) obtaining for that person or for any other person, an advantage under a contract for work or procurement,

commits an offence.

(2) Where a public official, directly or indirectly, solicits, accepts or obtains from a person, for himself or for any other person (“a third party”), a gratification for giving assistance or using influence in

- (a) promoting, executing, or procuring a contract with a public body for the performance of a work, the supply of a service, or the procurement of supplies,
- (b) the payment of the price provided for in a contract with a public body, or
- (c) obtaining for that person or for any other person, an advantage under a contract for work or procurement,

the public official commits an offence and, if the third party, directly or indirectly, accepts, obtains or benefits from the gratification or part thereof knowing that the gratification was

solicited, accepted or obtained by a public official in contravention of this subsection, the third party also commits an offence.

(3) A person who commits an offence under subsection (1) or (2) is,

- (a) liable, on summary conviction, to imprisonment for a term not exceeding three years or to a fine not exceeding thirty thousand dollars, or both;
- (b) in the case of an individual, liable on conviction on indictment, to imprisonment for a term not exceeding seven years or to a fine not exceeding fifty thousand dollars or three times the value of the gratification, whichever is higher, or both; or
- (c) in the case of a body corporate, liable on conviction on indictment, to a fine not exceeding two hundred and fifty thousand dollars or three times the value of the gratification, whichever is higher.

(4) Where a person is convicted of an offence under this section, the court may, in addition to any penalty imposed on him, make an order prohibiting that person, or any body corporate of which he is a director, shareholder or member, from applying for or obtaining any contract from a public body for a period not exceeding seven years.

(5) Notwithstanding any other law, where in any proceedings against a person for an offence under subsection (1), it is proved that the accused directly or indirectly gave, agreed to give or offered gratification to a public official, it shall be presumed, until the contrary is proved, that the accused gave, agreed to give or offered the gratification for any of the purposes set out in subsection (1)(a) to (c).

(6) Notwithstanding any other law, where in any proceedings against a person for an offence under subsection (2), it is proved that the public official directly or indirectly solicited, accepted or obtained from a person a gratification for himself or a third party, it shall be presumed, until the contrary is proved, that the gratification was solicited, accepted or obtained for any of the purposes set out in subsection (2)(a) to (c).

(7) Notwithstanding any other law, where in any proceedings against a person for an offence under subsection (2), it is proved that a third party directly or indirectly accepted, obtained or benefitted from the gratification or part thereof, it shall be presumed, until the contrary is proved, that the third party accepted, obtained or benefitted from the gratification or part thereof knowing that the gratification was solicited, accepted or obtained by a public official in contravention of subsection (2).

Conflict of interests.

**81D.** (1) Where

- (a) a public body in which a public official is a member, director, manager or other senior officer proposes to deal with a company, partnership or other undertaking in which that public official or a relative or associate of him has a direct or indirect private interest, and
- (b) that public official or his relative or associate of him holds more than ten per cent of the total issued share capital or of the total equity participation in such company, partnership or other undertaking,

that public official shall forthwith disclose, in writing, to that public body the nature of such interest.

(2) Where, in relation to subsection (1), a public official or a relative or associate of him has a direct or indirect private interest in a decision which a public body is to take, that public official shall not vote or take part in any proceedings of that public body relating to such decision.

(3) A public official who knowingly contravenes subsection (1) or (2) commits an offence and is liable

- (a) on summary conviction, to imprisonment for a term not exceeding two years or to a fine not exceeding ten thousand dollars, or both; or
- (b) on conviction on indictment, to imprisonment for a term not exceeding five years or to a fine not exceeding twenty-five thousand dollars, or both.

(4) For the purposes of this section in relation to the relative of a public official, proof by the public official that he did not know the interest of the relative is a defence.

Treating of  
public official.

**81E.** A person who, while having dealings with a public body, directly or indirectly, offers a gratification to a public official who is a member, director or employee of that public body commits an offence and is liable

- (a) on summary conviction, to imprisonment for a term not exceeding two years or to a fine not exceeding ten thousand dollars, or both; or
- (b) on conviction on indictment, to imprisonment for a term not exceeding five years or to a fine not exceeding twenty-five thousand dollars, or both.

Receiving gift  
for a corrupt  
purpose.

**81F.** (1) A public official who, directly or indirectly, solicits, accepts or obtains a gratification for himself or for any other person

- (a) from a person, whom he knows to have been, to be, or to be likely to be, concerned in any proceeding or business transacted or about to be transacted by him, or having any connection with his functions or those of any public official to whom he is subordinate or of whom he is the superior, or
- (b) from a person whom he knows to be interested in or related to the person so concerned,

commits an offence.

(2) A person who commits an offence under subsection (1) is liable

- (a) on summary conviction, to imprisonment for a term not exceeding three years or to a fine not exceeding thirty thousand dollars, or both; or

- (b) on conviction on indictment, to imprisonment for a term not exceeding seven years or to a fine not exceeding fifty thousand dollars or three times the value of the gratification, whichever is higher, or both.

Frauds and breaches of trust by public officials.

**81G.** A public official who, in the discharge of his duties, commits any fraud or breach of trust affecting the public, whether such fraud or breach of trust would have been criminal or not if committed against a private person, commits an offence and is liable

- (a) on summary conviction to imprisonment for a term not exceeding three years; or
- (b) on conviction on indictment to imprisonment for a term not exceeding seven years.

Illicit enrichment.

**81H.** (1) The Commissioner of Police, or a member of the Police Force of or above the rank of Inspector authorised by the Commissioner of Police in writing, may, subject to an order issued on an *ex parte* application to the High Court, investigate a public official where there are reasonable grounds to suspect that there has been a significant increase in the assets of the public official that the public official cannot reasonably explain in relation to his lawful income or assets.

(2) Where a public official fails to give a satisfactory explanation for the significant increase in his assets to the person conducting an investigation under subsection (1), the significant increase in his assets shall be deemed to be illicit enrichment for the purposes of this section and the public official commits an offence and is liable on conviction on indictment to imprisonment for a term not exceeding seven years or to a fine not exceeding fifty thousand dollars or three times the value of the significant increase, whichever is higher, or both.

(3) Where a court is satisfied in proceedings for an offence under subsection (2), having regard to the closeness of the relationship of the accused to any other person and to other relevant circumstances, that there is reason to believe that that person is or was holding assets in trust for or otherwise on behalf of the accused or acquired such assets as a gift or loan without

adequate consideration from the accused, such assets shall, until the contrary is proved, be deemed to be the assets of the accused.

Corruption of agent.

**81I.** (1) An agent who, directly or indirectly, corruptly solicits, accepts or obtains from any other person for himself or for any other person, a gratification for doing or abstaining from doing an act in the execution of his functions or duties or in relation to his principal's affairs or business, or for having done or abstained from doing such act, commits an offence and is liable

- (a) on summary conviction, to imprisonment for a term not exceeding three years or to a fine not exceeding thirty thousand dollars, or both; or
- (b) on conviction on indictment, to imprisonment for a term not exceeding seven years or to a fine not exceeding fifty thousand dollars or three times the value of the gratification, whichever is higher, or both.

(2) A person who, directly or indirectly, gives or agrees to give or offers, a gratification to an agent for doing or abstaining from doing an act in the execution of his functions or duties or in relation to his principal's affairs or business or for having done or abstained from doing such act, commits an offence and is liable

- (a) on summary conviction, to imprisonment for a term not exceeding three years or to a fine not exceeding thirty thousand dollars, or both; or
- (b) on conviction on indictment, to imprisonment for a term not exceeding seven years or to a fine not exceeding fifty thousand dollars or three times the value of the gratification, whichever is higher, or both.

(3) No proceedings for an offence under this section shall be instituted except by or with the consent of the Attorney General.”.

- 10.** Section 82 of the principal Act is amended Section 82 amended.
- (a) in the marginal note, by deleting the word “Officers” and substituting the words “Public officials”; and
  - (b) by deleting the words “person who, being employed in the public service, and” and substituting the words “public official who.”.
- 11.** Section 83 of the principal Act is amended Section 83 amended.
- (a) in the marginal note, by inserting after the word “by”, the word “public”; and
  - (b) by deleting the words “person who, being employed in the public service” and substituting the words “public official who, being employed”.
- 12.** Section 84 of the principal Act is amended Section 84 amended.
- (a) in subsection (1),
    - (i) by deleting the words “person who, being employed in the public service,” and substituting the words “public official who”; and
    - (ii) by deleting from the words “on conviction” to the end and adding the following paragraphs:
      - “(a) on summary conviction to imprisonment for a term not exceeding three years; or
      - (b) on conviction on indictment to imprisonment for a term not exceeding seven years.”; and
  - (b) in subsection (2),
    - (i) by deleting the word “person” and substituting the words “public official”; and
    - (ii) by deleting from the words “on conviction” to the end and adding the following paragraphs:

“(a) on summary conviction to imprisonment for a term not exceeding three years; or

(b) on conviction on indictment to imprisonment for a term not exceeding seven years.”.

Section 85 amended.

**13.** Section 85 of the principal Act is amended

(a) in the marginal note, by deleting the word “officers” and substituting the word “officials”; and

(b) by deleting the words “person employed in the public service,” and substituting the words “public official”.

Section 88 amended.

**14.** Section 88 of the principal Act is amended

(a) in the marginal note, by deleting the word “officers” and substituting the word “officials”;

(b) in paragraph (a), by deleting the words “person employed in the public service” and substituting the words “public official”; and

(c) in paragraph (b), by deleting the words “person employed in the public service” and substituting the words “public official”.

Section 89 amended.

**15.** Section 89 of the principal Act is amended

(a) in the marginal note, by deleting the words “persons employed in the public service” and substituting the words “public officials”;

(b) by deleting the words “person employed in the public service” wherever they occur and substituting in each place the words “public official”; and

(c) by deleting the words “persons employed in the public service” and substituting the words “public officials”.

Section 93A inserted.

**16.** The principal Act is amended by inserting after section 93, the following section:

“Unlawful disclosure of identity of informer.

**93A.** (1) Subject to subsection (3), a law enforcement officer or any other person who discloses to another person, other than a person mentioned in subsection (4),

- (a) the name, or a description, of a person who has, or whom he believes has, provided information to a law enforcement agency in connection with the commission or investigation of any criminal offence, or
- (b) the fact, or his belief, that a person has provided information to a law enforcement agency in connection with the commission or investigation of any criminal offence,

commits an offence.

(2) A person who commits an offence under subsection (1) is liable

- (a) on summary conviction, to imprisonment for a term not exceeding three years or to a fine not exceeding ten thousand dollars, or both; or
- (b) on conviction on indictment, to imprisonment for a term not exceeding five years or to a fine not exceeding twenty-five thousand dollars, or both.

(3) Subsection (1) does not apply to the disclosure of information in court proceedings or, where necessary, for the purposes of such proceedings.

(4) For the purposes of subsection (1), the persons referred to in that section are the Governor, the Chief Minister, the Deputy Chief Minister, the Deputy Governor and a law enforcement officer.

(5) For the purposes of this section, “law enforcement officer” means a member of the Royal Virgin Islands Police Force, the Attorney General, the Director of Public Prosecutions or any other prosecutor, an officer or official of the Financial Investigation Agency or a public officer employed in the Customs Department, Immigration Department or Prison Department, and “law enforcement agency” shall be construed accordingly.”

Section 104 amended.

**17.** Section 104 of the principal Act is amended by deleting from the words “on conviction” to the end and adding the following paragraphs:

- “(a) on summary conviction to imprisonment for a term not exceeding three years; or
- (b) on conviction on indictment to imprisonment for a term not exceeding seven years.”.

Section 105 amended.

**18.** Section 105 of the principal Act is amended by deleting from the words “on conviction” to the end and adding the following paragraphs:

- “(a) on summary conviction to imprisonment for a term not exceeding three years; or
- (b) on conviction on indictment to imprisonment for a term not exceeding seven years.”.

Section 109 repealed.

**19.** Section 109 of the principal Act is repealed.

Section 124 amended.

**20.** Section 124 of the principal Act is amended by repealing subsection (1) and substituting the following subsection:

“(1) Subject to the provisions of this section, any person who makes an indecent assault on another person commits an offence and is liable

- (a) on summary conviction to imprisonment for a term not exceeding five years;
- (b) on conviction on indictment, if on a person of or under the age of thirteen years, to imprisonment for a term not exceeding ten years; or
- (c) on conviction on indictment, in any other case, to imprisonment for a term not exceeding seven years.”.

Section 142 amended.

**21.** Section 142 of the principal Act is amended

- (a) by inserting after subsection (1), the following subsection:

“(1A) Subject to subsection (2), a person who is deemed, pursuant to section 2(2) of the Virgin Islands

U.K.S.I. 1976  
No. 2145

(Constitution) Order 1976, to belong to the Virgin Islands and who, being married, marries outside of the Virgin Islands any other person during the life of the former husband or wife, commits an offence and is liable on conviction on indictment to imprisonment for a term not exceeding seven years.”; and

- (b) in subsection (2), by inserting after the words “subsection (1)” in the opening paragraph, the words “or (1A)”.

**22.** Section 162 of the principal Act is repealed.

Section 162  
amended.

**23.** Section 184 of the principal Act is amended by deleting from the words “on conviction” to the end and adding the following paragraphs:

Section 184  
amended.

- “(a) on summary conviction to imprisonment for a term not exceeding three years; or
- (b) on conviction on indictment to imprisonment for a term not exceeding seven years.”.

**24.** Section 189 of the principal Act is amended

Section 189  
amended.

- (a) by renumbering the section as section 189(1);
- (b) by deleting from the words “and is liable” to the words “five years”; and
- (c) by adding the following subsection:

“(2) A person who commits an offence under subsection (1) is liable

- (a) on summary conviction to imprisonment for a term not exceeding three years; or
- (b) on conviction on indictment to imprisonment for a term not exceeding seven years.”.

**25.** Section 190 of the principal Act is amended by deleting from the words “on conviction” to the end and adding the following paragraphs:

Section 190  
amended.

- “(a) on summary conviction to imprisonment for a term not exceeding five years; or

- (b) on conviction on indictment to imprisonment for a term not exceeding ten years.”.

Section 191  
amended.

**26.** Section 191 of the principal Act is amended by deleting from the words “on conviction” to the end and adding the following paragraphs:

- “(a) on summary conviction to imprisonment for a term not exceeding five years; or
- (b) on conviction on indictment to imprisonment for a term not exceeding ten years.”.

Section 193  
amended.

**27.** Section 193 of the principal Act is amended by deleting from the words “on conviction” to the end and adding the following paragraphs:

- “(a) on summary conviction to imprisonment for a term not exceeding three years; or
- (b) on conviction on indictment to imprisonment for a term not exceeding seven years.”.

Section 213  
amended.

**28.** Section 213(1) of the principal Act is amended by deleting from the words “on conviction” to the end and adding the following paragraphs:

- “(a) on summary conviction to imprisonment for a term not exceeding two years; or
- (b) on conviction on indictment to imprisonment for a term not exceeding five years.”.

Section 224  
amended.

**29.** Subsections (1) and (2) of section 224 of the principal Act are amended in each subsection by deleting from the words “on conviction” to the end of each subsection and adding the following paragraphs at the end of subsection:

- “(a) on summary conviction to imprisonment for a term not exceeding three years; or
- (b) on conviction on indictment to imprisonment for a term not exceeding seven years.”.

Section 226  
amended.

**30.** Section 226(2) of the principal Act is amended by deleting from the words “on conviction” to the end and adding the following paragraphs:

- “(a) on summary conviction to imprisonment for a term not exceeding five years; or

- (b) on conviction on indictment to imprisonment for a term not exceeding ten years.”.

**31.** Section 230(1) of the principal Act is amended by deleting from the words “on conviction” to the end and adding the following paragraphs: Section 230 amended.

- “(a) on summary conviction to imprisonment for a term not exceeding five years; or

- (b) on conviction on indictment to imprisonment for a term not exceeding ten years.”.

**32.** The principal Act is amended by inserting after section 243, the following section: Section 243A inserted.

“Mode of trial re. uttering. **243A.** A person who is charged with the offence of uttering a document, seal or die contrary to section 242(1) or 243 shall be tried in the same manner as he would have been tried if he were charged with forging that document, seal or die.”.

**33.** Section 265 of the principal Act is amended by repealing subsection (4) and substituting the following subsections: Section 265 amended.

“(4) A person who commits arson under subsection (1) or any offence under subsection (2) is liable on conviction on indictment to imprisonment for life, and a person who commits any other offence under this section is liable

- (a) on summary conviction to imprisonment for a term not exceeding five years; or

- (b) on conviction on indictment to imprisonment for a term not exceeding ten years.”.

**34.** Section 266 of the principal Act is amended Section 266 amended.

- (a) by renumbering the section as section 266(1);
- (b) by deleting from the words “and is liable” to the words “ten years”; and
- (c) by adding the following subsection:

“(2) A person who commits an offence under subsection (1) is liable

- (a) on summary conviction to imprisonment for a term not exceeding three years; and
- (b) on conviction on indictment for a term not exceeding ten years.”.

Section 267 amended.

**35.** Section 267 of the principal Act is amended

- (a) by renumbering the section as section 267(1);
- (b) by deleting from the words “and is liable” to the words “ten years”; and
- (c) by adding the following subsection:

“(2) A person who commits an offence under subsection (1) is liable

- (a) on summary conviction to imprisonment for a term not exceeding three years; and
- (b) on conviction on indictment for a term not exceeding ten years.”.

Section 267 amended.

**36.** Section 289(5) of the principal Act is amended by deleting the words “this section” and substituting the words “subsection (2) or (4)”.

Section 311 amended.

**37.** Section 311 of the principal Act is amended by inserting after subsection (3), the following subsection:

“(3A) A person charged with conspiracy to commit an offence shall be tried in the same manner as he would have been tried if he were charged with the complete offence.”.

Section 317 amended.

**38.** Section 317 of the principal Act is amended

- (a) in the marginal note, by inserting after the word “attempt”, the words “or incitement”;
- (b) in subsection (1), by inserting after the words “Any person who attempts”, the words “, or incites another person,”;

(c) in subsection (2), by inserting after the word “attempt”, the words “or incitement”;

(d) by inserting after subsection (2), the following subsection:

“(2A) A person charged with an attempt or incitement to commit an offence shall be tried in the same manner as he would have been tried if he were charged with the complete offence.”; and

(e) in subsection (3), by inserting after the word “attempt”, the words “or incitement”.

**39. Schedule 1 to the principal Act is amended**

Schedule 1 amended.

(a) by deleting the item relating to section 48(1) and substituting the following item:

“48(1A)	Sedition	A
(a) on summary conviction	3 years \$3,000	S
(b) on conviction on indictment	10 years”;	

(b) by deleting the items relating to sections 79, 80 and 81 and substituting the following items:

“80	Bribery by public official	A
(a) on summary conviction	3 years \$30,000	S
(b) on conviction on indictment	7 years \$50,000 or 3 times the value of the gratification whichever is higher	
80A	Bribery of public official	A
(a) on summary conviction	3 years \$30,000	S

	(b) in case of an individual, on conviction on indictment	7 years \$50,000 or 3 times the value of the gratification whichever is higher	
	(c) in case of a body corporate, on conviction on indictment	\$250,000 or 3 times the value of the gratification whichever is higher	
80B	Taking gratification to screen offender		A
	(a) on summary conviction	2 years	S
	(b) on conviction on indictment	5 years	
80C	Public official using office for gratification		A
	(a) on summary conviction	3 years \$30,000	S
	(b) on conviction on indictment	7 years \$50,000 or 3 times the value of the gratification whichever is higher	
80D(2)	Bribery of public official to influence decision of public body		A
	(a) on summary conviction	3 years \$30,000	S
	(b) in case of an individual, on conviction on indictment	7 years \$50,000 or 3 times the value of the gratification whichever is higher	

	individual, on conviction on indictment	\$50,000 or 3 times the value of the gratification whichever is higher	
	(c) in case of a body corporate, on conviction on indictment	\$250,000 or 3 times the value of the gratification whichever is higher	
80D(4)	Bribery by public official to influence decision of public body		A
	(a) on summary conviction	3 years \$30,000	S
	(b) on conviction on indictment	7 years \$50,000 or 3 times the value of the gratification whichever is higher	
80E(2)	Bribery of foreign public official		A
	(a) on summary conviction	3 years \$30,000	S
	(b) in case of an individual, on conviction on indictment	7 years \$50,000 or 3 times the value of the gratification whichever is higher	

	(c) in case of a body corporate, on conviction on indictment	\$250,000 or 3 times the value of the gratification whichever is higher	
80E(5)	Bribery by foreign public official		A
	(a) on summary conviction	3 years \$30,000	S
	(b) on conviction on indictment	7 years \$50,000 or 3 times the value of the gratification whichever is higher	
81	Influencing public official		A
	(a) on summary conviction	5 years \$50,000	S
	(b) on conviction on indictment	10 years \$75,000	
81A(6)	Trading in influence		A
	(a) on summary conviction	3 years \$30,000	S
	(b) in case of an individual, on conviction on indictment	7 years \$50,000 or 3 times the value of the gratification whichever is higher	

	(c) in case of a body corporate, on conviction on indictment	\$250,000 or 3 times the value of the gratification whichever is higher	
81B	Public official taking gratification		A
	(a) on summary conviction	3 years \$30,000	S
	(b) on conviction on indictment	7 years \$50,000 or 3 times the value of the gratification whichever is higher	
81C(3)	Bribery for procuring contracts		A
	(a) on summary conviction	3 years \$30,000	S
	(b) in case of an individual, on conviction on indictment	7 years \$50,000 or 3 times the value of the gratification whichever is higher	
	(c) in case of a body corporate, on conviction on indictment	\$250,000 or 3 times the value of the gratification whichever is higher	

81D(3)	Conflict of interests	A
	(a) on summary conviction 2 years \$10,000	S
	(b) on conviction on indictment 5 years \$25,000	
81E	Treating of public official	A
	(a) on summary conviction 2 years \$10,000	S
	(b) on conviction on indictment 5 years \$25,000	
81F	Receiving gift for corrupt purpose	A
	(a) on summary conviction 3 years \$30,000	S
	(b) on conviction on indictment 7 years \$50,000 or 3 times the value of the gratification whichever is higher	
81G	Fraud or breach of trust by public official	A
	(a) on summary conviction 3 years	S
	(b) on conviction on indictment 7 years	

81H(2)	Illicit enrichment	7 years \$50,000 or 3 times the value of the significant increase whichever is higher	A
81I(1) and (2)	Corruption of agent		A
	(a) on summary conviction	3 years \$30,000	S
	(b) on conviction on indictment	7 years \$50,000 or 3 times the value of the gratification whichever is higher”;	
(c)	in the items relating to sections 82, 85, 88 and 89, by deleting the word “officer” and substituting the word “official”;		
(d)	in the item relating to section 83, by inserting after the word “by”, the word “public”;		
(e)	by deleting the items relating to sections 84(1) and 84(2) and substituting the following items:		
“84(1)	Abuse of powers of public official		A
	(a) on summary conviction	3 years	S
	(b) on conviction on indictment	7 years	

- |  |   |   |
|--|---|---|
| 84(2)  | Abuse of powers<br>of public official<br>for private gain | A |
|  | (a) on summary conviction 3 years                         | S |
|  | (b) on conviction 7 years<br>on indictment”;              |   |
| (f) by inserting after the item relating to section 93, the following item:                      |   |   |
| “93A   | Unlawful<br>disclosure of<br>identity of<br>informer      | A |
|  | (a) on summary conviction 3 years<br>\$10,000             | S |
|  | (b) on conviction 5 years<br>on indictment \$25,000”;     |   |
| (g) by deleting the items relating to sections 104 and 105 and substituting the following items: |   |   |
| “104   | Escape from<br>lawful custody                             | A |
|  | (a) on summary conviction 3 years                         | S |
|  | (b) on conviction 7 years<br>on indictment                |   |
| 105  | Permitting<br>prisoner to escape                          | A |
|  | (a) on summary conviction 3 years                         | S |
|  | (b) on conviction 7 years<br>on indictment”;              |   |

(h) by deleting the item relating to section 124 and substituting the following item:

“124 Indecent assault A  
(a) on summary conviction 5 years S  
(b) on conviction on indictment – of or under 13 years 10 years  
(c) on conviction on indictment – in any other case 7 years”;

(i) in the item relating to section 142, by adding after the word “142”, the words “(1) and (1A)”;

(j) by deleting the item relating to section 184 and substituting the following item:

“184 Assault causing actual bodily harm A  
(a) on summary conviction 3 years S  
(b) on conviction on indictment 7 years”;

(k) by deleting the items relating to sections 189, 190 and 191 and substituting the following items:

“189 Neglecting servant or apprentice A  
(a) on summary conviction 3 years S  
(b) on conviction on indictment 7 years  
190 Failure to supply necessaries A  
(a) on summary conviction 5 years S

- |      |  |            |   |
|------|--|------------|---|
|      | (b) on conviction on indictment  | 10 years   |   |
| 191  | Abandoning or exposing child under two years                                       |            | A |
|      | (a) on summary conviction  | 5 years    | S |
|      | (b) on conviction on indictment  | 10 years”; |   |
| (l)  | by deleting the item relating to section 193 and substituting the following item:  |            |   |
| “193 | Other negligent acts or commissions causing harm                                   |            | A |
|      | (a) on summary conviction  | 3 years    | S |
|      | (b) on conviction on indictment  | 7 years”;  |   |
| (m)  | by deleting the item relating to section 213 and substituting the following item:  |            |   |
| “213 | Removing articles from place open to the public                                    |            | A |
|      | (a) on summary conviction  | 2 years    | S |
|      | (b) on conviction on indictment  | 5 years”;  |   |
| (n)  | by deleting the item relating to section 224 and substituting the following item:  |            |   |
| “224 | Destruction, etc. of valuable security or procuring execution of same by deception |            | A |
|      | (a) on summary conviction  | 3 years    | S |
|      | (b) on conviction on indictment  | 7 years”;  |   |

(o) by deleting the item relating to section 226 and substituting the following item:

“226 Handling stolen goods A  
(a) on summary conviction 5 years S  
(b) on conviction on indictment 10 years”;

(p) by deleting the item relating to section 230 and substituting the following item:

“230 Going equipped to steal, etc. A  
(a) on summary conviction 5 years S  
(b) on conviction on indictment 10 years”;

(q) by deleting the items relating to sections 265, 266 and 267 and substituting the following items:

“265 Destroying or damaging property, A  
(a) in the case of arson or an offence under subsection (2) Life  
(b) in any other case – on summary conviction 5 years S  
(c) in any other case – on conviction on indictment 10 years  
266 Threats to destroy or damage property A  
(a) on summary conviction 3 years S  
(b) on conviction on indictment 10 years

267 Possessing anything with  
intent to destroy or damage  
property A

(a) on summary conviction 3 years S

(b) on conviction on  
indictment 10 years”;

(r) in the item relating to section 317, by inserting after the  
word “Attempt”, the words “or incitement”.

Consequential  
amendment of  
Cap. 44.

**40.** Section 71 of the Magistrate’s Code of Procedure Act is repealed.

Passed by the Legislative Council this 25<sup>th</sup> day of May, 2006.

V. INEZ ARCHIBALD,  
Speaker.

ALVA MC CALL  
Acting Clerk of the Legislative Council.

**No. 11 of 2006**

**VIRGIN ISLANDS**

**IMMIGRATION AND PASSPORT (AMENDMENT) ACT, 2006**

**ARRANGEMENT OF SECTIONS**

*Section*

1. Short title.
2. Section 20 amended.
3. Section 21 amended.
4. Section 22 amended.
5. Section 23 amended.

**No. 11 of 2006 Immigration and Passport (Amendment) Act, 2006 Virgin Islands**

**I Assent**

**(Sgd.) DAVID PEAREY,  
Governor.  
16<sup>th</sup> October, 2006**

**VIRGIN ISLANDS**

**No. 11 of 2006**

An Act to amend the Immigration and Passport Ordinance (Cap. 130).

[Gazetted 27<sup>th</sup> October, 2006]

ENACTED by the Legislature of the Virgin Islands as follows:

Short title.

**1.** This Act may be cited as the Immigration and Passport (Amendment) Act, 2006.

Section 20  
amended.  
Cap. 130

**2.** Section 20 of the Immigration and Passport Ordinance (hereinafter referred to as “the principal Ordinance”) is amended by repealing subsection (2) and substituting the following subsection:

“ (2) An immigration officer may on the examination of a person who enters or seeks to enter the Territory

- (a) refuse him admission into the Territory, except where the person falls within any of the categories enumerated in section 21; or
- (b) admit him into the Territory subject to a condition restricting the period for which he may remain in the Territory with or without conditions for restricting his employment or occupation in the Territory, except where

the person falls within a category specified in section 21(a) or (b).”.

3. Section 21(1)(i) of the principal Ordinance is amended by deleting the words “wife and child” and substituting the words “husband, wife or child”. Section 21 amended.

4. Section 22(2) of the principal Ordinance is amended by inserting after the words “section 21”, the words “(a) or (b)”. Section 22 amended.

5. Section 23 of the principal Ordinance is amended Section 23 amended.

(a) in subsection (1), by inserting after the words “upon being satisfied”, the words “that that person is a person who falls within any of the categories enumerated in section 21(c) to (i) or”;

(b) in subsection (2), by deleting the full stop and substituting a semicolon and by adding after paragraph (b), the following paragraph:

“(c) where such person is a person who falls within any of the categories enumerated in section 21(c) to (i), such period as the person continues to be a person who falls within any of the categories enumerated in section 21(c) to (i).”.

Passed by the Legislative Council this 22<sup>nd</sup> day of September, 2006.

(Sgd.) V. INEZ ARCHIBALD,  
Speaker.

(Sgd.) ALVA MC CALL,  
Acting Clerk of the Legislative Council.



**No. 11 of 2007**

**VIRGIN ISLANDS**

**REGISTER OF INTERESTS (AMENDMENT) ACT, 2007**

**ARRANGEMENT OF SECTIONS**

*Section*

1. Short title.
2. Section 1 amended.
3. General amendment to the Act.

**No. 11 of 2007 Register of Interests (Amendment) Act, 2007** **Virgin Islands**

**I Assent**

**DAVID PEAREY,**  
**Governor.**

**17<sup>th</sup> January, 2008**

**VIRGIN ISLANDS**

**No. 11 of 2007**

An Act to amend the Register of Interests Act (No. 5 of 2006).

[Gazetted 7<sup>th</sup> February, 2008]

ENACTED by the Legislature of the Virgin Islands as follows:

- Short title.
1. This Act may be cited as the Register of Interests (Amendment) Act, 2007.
- Section 1 amended.  
No. 5 of 2006
2. Section 1 of the Register of Interests Act, (in this Act referred to as “the principal Act”) is amended by deleting the section and substituting for that section, the following:
- “Short title and commencement. 1. This Act may be cited as the Register of Interests Act, 2006 and shall come into force on such date as the Premier may, by Notice published in the *Gazette*, appoint.”.
- General amendment to the Act.
3. The principal Act is amended
- (a) by deleting the words “Legislative Council” wherever they appear in the Act and substituting the words “House of Assembly; and

(b) by deleting the words “U.K. S.I. 1976 No. 2145” wherever they appear in the Act and substituting the words “U.K.S.I. 2007 No. 1678.”

Passed by the House of Assembly this 27<sup>th</sup> day of December, 2007.

(Sgd.) ROY HARRIGAN,  
Speaker.

(Sgd.) ALVA MCCALL,  
Clerk of the House of Assembly.

**No. 11 of 2009**

**VIRGIN ISLANDS**

**NON-BELONGERS LAND HOLDING REGULATION  
(AMENDMENT) ACT, 2009**

**ARRANGEMENT OF SECTIONS**

*Section*

1. Short title.
2. Section 3 amended.

**No. 11 of 2009**

**Non-belongers Land Holding Regulation  
(Amendment) Act, 2009**

**Virgin  
Islands**

**I Assent**

**DAVID PEAREY,  
Governor.**

**VIRGIN ISLANDS**

**No. 11 of 2009**

An Act to amend the Non-belongers Land Holding Regulation Act (Cap. 122).

[Gazetted 10<sup>th</sup> September, 2009]

ENACTED by the Legislature of the Virgin Islands as follows:

Short title.

**1.** This Act may be cited as the Non-belongers Land Holding Regulation (Amendment) Act, 2009.

Section 3  
amended.  
Cap. 122

**2.** Section 3 of the Non-belongers Land Holding Regulation Act is amended

(a) by deleting paragraph (c); and

(b) by renumbering paragraphs (d) to (h) as (c) to (g) accordingly.

Passed by the House of Assembly this 24 day of July, 2009.

**ROY HARRIGAN,  
Speaker.**

**PHYLLIS EVANS,  
Clerk of the House of Assembly.**

**No. 4 of 2010**

**VIRGIN ISLANDS**  
**LABOUR CODE, 2010**  
**ARRANGEMENT OF SECTIONS**

*Section*

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- 7..Principles of administration.
- 8..Labour Commissioner.
- 9..Duties and responsibilities of Commissioner.
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- 11..Commissioner to have powers of inspector.
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- 14..Powers of inspectors.
- 15..Action of inspector in case of threat to safety or health.
- 16..Inspection of premises where domestic servants are employed.
- 17..Notification of presence.
- 18..Limitations and restrictions on inspectors.
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- 20..Obligations of employers.
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- 22..Liability of employer for agent, etc..
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- 25..Limitation of liability.

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- 27..Action by Minister.
- 28..Referral to Tribunal or Board of Inquiry.
- 29..Establishment of Arbitration Tribunal and Appointment of Members.
- 30..Findings of Tribunal binding.
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- 32..Powers of Tribunal and Board to summon witnesses and administer oaths.
- 33..Summons of Tribunal and Board to be obeyed.
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- 35..Tribunal and Board to regulate own proceedings.
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- 49..Premium pay.
- 50..Limitation on overtime.
- 51..Payment where employee stopped or prevented from working full day or shift.
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## SCHEDULE

No. 4 of 2010

Labour Code, 2010

Virgin  
Islands

I ASSENT

Sgd. DAVID PEAREY  
Governor  
12<sup>th</sup> July, 2010

**VIRGIN ISLANDS**

**No. 4 of 2010**

An Act to provide for the improvement of the administration of labour, taking into account applicable international standards, prescribing minimum conditions of employment, a system for labour administration, settlement of disputes and observance of labour laws generally, and to provide for the repeal of the Labour Ordinance (Cap. 292), the Labour Code Ordinance (Cap. 293) and the Trade Disputes (Arbitration and Inquiry) Act (Cap. 299) and for other connected matters.

[Gazetted 16<sup>th</sup> July, 2010]

ENACTED by the Legislature of the Virgin Islands as follows:

**PRELIMINARY**

Short title and  
commencement.

**1.** This Act (referred to in this Act as the “Code”) may be cited as the Labour Code 2010 and shall come into force on a date the Governor may, by Proclamation published in the *Gazette*, appoint.

National policy  
underlying the  
Code.

**2.** The following expressions of national policy shall be used in interpreting the Code:

- (a) the increase in production and in purchasing power which will result from the application of paragraphs (b) to (s) will benefit the workers, the employers, the consumers and finally will advance the overall socio-economic level of the Virgin Islands;

- (b) the legitimate employment interests of Virgin Islanders and Belongers shall be paramount and shall override all other competing expression on national policy in this section;
- (c) there shall be the preservation of social balance, national cultural heritage, values and norms of the Virgin Islands;
- (d) standards for a competitive economy and efficient labour market shall be recognised and promoted, with due regard to basic minimum conditions of work, and respect for the fundamental principles of human rights and social justice;
- (e) standards and conditions of work shall be transparent in their implementation;
- (f) there shall be a fair and equitable balance of rights, interests and obligations between employers on the one hand and employees on the other hand;
- (g) collaboration and co-operation among Government, employers and employees and social dialogue shall be promoted in the system of labour administration;
- (h) fundamental international principles and standards at work, adapted to the circumstances of the Virgin Islands, shall be respected and promoted;
- (i) labour enactments shall be practical in terms of regulatory and administrative feasibility;
- (j) there shall be an easily accessible system in place for the expeditious, fair and inexpensive settlement of disputes between employers and employees;
- (k) systems, procedures and institutional framework for the effective implementation, monitoring and enforcement of the provisions of

the Code and the system of labour administration shall be given due attention;

- (l) the interests of employees, employers and the public shall be taken into account and their representative organisations duly consulted in connection with the formulation and periodic revision of the law relating to labour and in connection with the resolution of issues arising in the enforcement of those laws;
- (m) employers and employees shall be free, through the processes of collective bargaining or otherwise, to agree on wages and other conditions of employment, provided the agreements do not infringe the minimum conditions prescribed in the Code;
- (n) employers and employees shall be free to associate with one another, or with their representative associations, in order to improve their economic situation, without interference, restraint or coercion;
- (o) employees shall enjoy decent work in accordance with the standards of the International Labour Organisation and suitable to the circumstances of the Virgin Islands;
- (p) social policy for the provision of retirement benefits of employees shall be promoted, taking into consideration the need for uniformity of standards, the need to stabilise industrial relations practices, and the need for transitional arrangements;
- (q) the employment conditions of employees shall be those which serve to preserve their health, safety and welfare and to prevent industrial accidents;
- (r) there shall be non-discrimination and equal opportunity in employment and occupation; and
- (s) employers shall aim to maximise profits by competing on the basis of managerial efficiency

and use of entrepreneurial skills rather than by seeking to reduce or otherwise derogate from their employees' working conditions.

3. In this Code, unless the context otherwise requires,

Interpretation.

“bargaining agent” means a trade union that acts on behalf of employees for purposes of collective bargaining;

“bargaining unit” means a group of employees on whose behalf collective bargaining may take place;

“basic wage” means that part of an employee’s remuneration for services which is payable in money for his or her normal hours of work;

“Belonger” means a person who belongs to the Virgin Islands as defined in section 2(2) of the Virgin Islands Constitution Order, 2007;

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“child” means a person under the age of sixteen years;

“collective agreement” means any contract between one or more employers or their representatives and two or more employees or their representatives relating to the terms and conditions of employment or any other matter of mutual interest;

“commercial establishment” includes supermarkets, shops and other similar establishments;

“commission agent” means an agent or employee who is remunerated by commission;

“Commissioner” means the person for the time being appointed to, or acting in, the post of Labour Commissioner pursuant to section 8;

“conditions of employment” refers to the elements of hire and termination of employment, the remuneration, hours, duties and the surrounding terms of employment and to all other factors directly related to the employment arrangement;

“confinement” means labour resulting in the birth of a living child or labour, after not less than twenty-eight weeks of pregnancy, resulting in the birth of a child, whether alive or dead;

“continuous employment”, for the purposes of section 73(1) and Part VII, means an uninterrupted period of employment with an employer, and any predecessor-employer, provided that any break in employment not

exceeding six months shall not be deemed to break continuity of employment, but in any case, the duration of breaks shall not count as employment for the purposes of calculating entitlements to severance pay or retirement benefits as may be provided by Regulations made under section 111;

“*de facto* spouse” means a single person who lives with a single person of the opposite sex as husband or wife for a period not less than two years, although not married to that person;

“dependent contractor” means a person, whether or not employed under a contract of employment, who performs work or services for another person for compensation or reward on such terms and conditions that he or she is in relation to that person in a position of economic dependence on, and under an obligation to perform duties for that person more closely resembling the relationship of employee than that of an independent contractor;

“dispute” or “complaint” means any difference between one or more employers or organisations representing employers and one or more employees or organisations representing employees relating in whole or in part to any matter covered by the Code or any law relating to labour or generally arising out of the relationship between the employer and the employee;

“employee” means any person who enters into or works under, or where a contract of employment has been terminated for any reason, a person who entered into or worked under, a contract with an employer, personally to perform any services or labour, whether the contract be oral or written, expressed or implied; and the term includes

- (a) a person whose services or labour have been interrupted by a suspension of work during a period of leave, temporary lay-off, strike or lockout;
- (b) an apprentice whose services or labour may be designed primarily to train such apprentice;
- (c) a commission agent;
- (d) a dependent contractor; and
- (e) a managerial employee who is not responsible for policy formulation or in effective control of a department or branch of the undertaking;

“employer” includes a person, body corporate, undertaking, association, public authority or body of persons who or which employed or employs a person under an employment contract, and includes the heirs, successors and assigns of an employer;

“employment contract” means any contract, whether expressed or implied and whether written or oral, under which it is agreed that one person (the employee) will perform certain services for another (the employer), and the term shall include any indenture or contract of apprenticeship or engagement as a commission agent;

“essential services” means the Police Service, Prison Service, Water and Sewerage Services, Fire and Rescue Services, Electricity Generation and Distribution Services, Telecommunication Services, Health Care Providers, Transportation Services and Port Services;

“established employee” means a public officer or a person employed by the Government whose salary is paid from or out of funds allocated for the payment of the personal emoluments of persons on the permanent and pensionable establishment as included in the Official Estimates of the Virgin Islands;

“family responsibility” means responsibilities in respect of any dependent family member which are reasonable in the circumstances not persistent in practice and for which no reasonable alternative could be made;

“gratuity” means remuneration, in money, however designated, received by an employer from customers, on behalf of employees for services rendered by an employee;

“gross wage” means the total remuneration for services received in money, in kind and in privileges or allowances, including gratuities and premium pay;

“inspector” means any person appointed as Labour Inspector under section 12;

“lockout” means

- (a) the exclusion by an employer of any or all of his or her employees from any premises on or in which work provided by the employer has been performed, or

- (b) the total or partial discontinuance by the employer of his or her business or the provision of work,

with a view to inducing his or her employees, or any persons in the employment of any other employer or employers, to agree to, or to comply with, any demands or proposals relating to any dispute, or to abandon any demand or modification of any demand;

“Minister” means the Minister to whom responsibility for labour is assigned;

“night work” means work performed between the hours of 10:00 p.m. on one day and 5:00 a.m. on the following day;

“non-established employee” means a person who is employed by the Government and whose wage is paid from or out of funds allocated for the payment of the personal emoluments of persons who are not on the permanent and pensionable establishment as included in the Official Estimates of the Virgin Islands;

“normal hours of work” means those hours of work for which premium pay is not due under section 49;

“parent or guardian” means a parent or guardian of a child or young person and includes any person who is liable for the maintenance of, who has the custody of or who has control over, a child or young person, or who has or would have a direct benefit from the earnings of the child or young person;

“part-time employment” means an employment contract, or a succession of employment contracts, with the same employer or a successor-employer or another employer, in which an employee is required to provide his or her services at intervals, so that the employee is not, in any twelve month period, continuously employed by that employer, and the term includes casual employment;

“periodic employee” means an employee who has worked for at least four months but less than twelve months per year;

“predecessor- employee” in relation to employment of a person, is one who, in consequence of a change occurring in the ownership or in the part of an undertaking in which that person is involved, is no longer the employer of that person;

“premium pay” refers to the form of payment mentioned in section 49;

- “prescribed” means prescribed by Regulations under section 186;
- “redundancy” means the loss of employment as defined in section 89(3);
- “Regulations” means Regulations made under the Code;
- “requirements”, “obligations” or “provisions” include the requirements, obligations or provisions of any Regulations or Orders made under the Code;
- “severance pay” means remuneration to which an employee whose employment is terminated under the circumstances described in Part VI is entitled;
- “ship” means any seagoing ship or boat of any description registered in the Virgin Islands;
- “Sister Islands” means the islands of the Virgin Islands other than Tortola;
- “strike” means the refusal or failure in concert by two or more employees of an employer to continue, whether completely or partly, to work or to resume their work or to comply with the terms and conditions of employment applicable to them, or the retardation of the progress of work by them or the obstruction of work by them, with a view to inducing the employer or any other employer to agree to, or to comply with, any demands or proposals relating to any dispute or to abandon any demand or modification of any such demand;
- “substantially equivalent employment” means employment at work which, although not identical to that which is the basis of comparison, requires similar skills, affords relatively similar prospects of progression and provides remuneration of relatively equal value;
- “successor-employer”, in relation to the employment of a person, is one who, in consequence of a change occurring in the ownership of an undertaking or in that part of the undertaking in which the person is involved, has become the new employer of that person;
- “Tribunal” means the Arbitration Tribunal established under section 29;
- “undertaking” comprises public and private undertakings and any branch of that undertaking and includes
- (a) mines, quarries and other works for the extraction of minerals from the earth;

- (b) workplaces in which articles are manufactured, altered, cleaned, repaired, ornamented, finished, adapted for sale, broken up or demolished, or in which materials are transformed, including undertakings engaged in ship-building or in the generation, transformation or transmission of electricity, gas or motive power of any kind;
- (c) building and civil engineering works, including constructional, repair, maintenance, alteration and demolition work;
- (d) enterprises engaged in the transport of passengers or goods by road, rail, sea, inland waterway or air, including the handling of goods at docks, quays, wharves, warehouses or airports;
- (e) commercial establishments;
- (f) postal and telecommunication services;
- (g) establishments and administrative services in which the persons employed are mainly engaged in clerical work;
- (h) newspaper and printing establishments;
- (i) hotels, guest houses, villas, restaurants, inns and cafés;
- (j) establishments for the treatment or care of the sick, infirm, destitute or orphans;
- (k) theatres, clubs and places of public entertainment;
- (l) utilities engaged in the provision of water, sewerage or waste disposal services;
- (m) enterprises engaged in farming, cropping, fishing or other forms of agriculture;

“unfair dismissal” refers to a termination of employment which may be an unfair dismissal under Part V;

“Virgin Islander” means a person who belongs to the Virgin Islands as defined in section 2(2) of the Virgin Islands Constitution Order, 2007; U.K.S.I. 2007 No. 1678.

“wages” means any money or other benefits however designated or calculated, paid or contracted to be paid, delivered or given, at periodic intervals, as recompense, reward or remuneration for services rendered or labour done;

“workplace” means a place at which work is performed, and includes property belonging to or occupied by the Government;

“worst forms of child labour” means

- (a) all forms of slavery or practices similar to slavery, such as the sale and trafficking of children and young persons, debt bondage and serfdom and forced or compulsory labour, including forced or compulsory recruitment of children for use in armed conflict;
- (b) the use, procuring or offering of a child and young persons for prostitution, for the production of pornography or for pornographic performances;
- (c) the use, procuring or offering of a child and young persons for illicit activities, in particular for the production and trafficking of drugs as defined in the relevant international treaties, or for activities which involve the unlawful carrying or use of firearms or other weapons; and
- (d) work deemed by the Minister to be hazardous to young persons.

“young person” means a person who has ceased to be a child and who is under the age of eighteen years.

**4. (1)** To the extent that the Code applies to employers, it shall apply to employers operating or doing business in the Virgin Islands, Application of the Code.

including the statutory authorities and Government as the employer of its non-established employees, but it shall not bind the Government as the employer of its other employees, except that Parts VIII and IX shall bind the Government in relation to all its employees.

(2) To the extent that the Code applies to employees, it shall apply to employees of employers operating or doing business in the Virgin Islands, including employees of statutory authorities and non-established employees of the Government, but they shall not apply to

- (a) established employees; and
- (b) members of the Royal Virgin Islands Police Force.

(3) For the avoidance of doubt, nothing in subsections (1) and (2) shall be construed as derogating from section 60(1)(d) and Chapter 7 of the Virgin Islands Constitution Order, 2007.

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Enforcement  
against  
Government as  
an employer.

5. Where the Government as an employer is in contravention of a provision of the Code, any Regulations or Orders, which contravention constitutes an offence, criminal proceedings shall not be commenced against the Crown but instead civil proceedings, including arbitration in accordance with the Code may be commenced against the Crown by the aggrieved employee, and the court or arbitration tribunal may grant the relief claimed or other reliefs the court or arbitration tribunal considers appropriate, including any sum owing to the employee by way of wages, vacation leave pay or other sum owing to the employee arising out of his or her employment.

Establishment of  
working  
conditions above  
minimum  
standards in the  
Code.

6. Nothing in the Code shall be construed as prohibiting an employer, either unilaterally by individual contract with an employee or with employees, or by collective agreement with employees' representatives, from establishing working conditions more advantageous to employees than those minimum standards which are set forth in the Code.

## PART I ADMINISTRATION

Principles of  
administration.

7. The following principles shall govern the administration of the Code:

- (a) responsibilities shall be clearly defined, so that administrators of the Code, employers and employees and their representatives, and the general public know the persons responsible for the administration of the Code;

- (b) uniform procedures, to the extent practicable, shall be established and publicised;
- (c) to the extent practicable, all actions taken by administrators of the Code shall be recorded in writing and, except where they are self-evident, reasons for the actions shall be set forth in writing;
- (d) voluntary adjustment or settlement of issues, without formal action by the administrators, is to be encouraged, and any adjustment or settlement, unless clearly contrary to the purposes of the Code, shall be accepted as disposing of the issues;
- (e) subject to the Code and the confidentiality of voluntary settlement proceedings, actions of administrators under the Code shall be publicised to the extent practicable; and
- (f) a person to whom the administration of any provision of the Code is entrusted shall, in the discharge of that duty, act impartially and without undue delay.

8. (1) There shall be a Commissioner who shall, subject to the general direction of the Minister, be in charge of the Labour Department.

Labour  
Commissioner.

(2) The Commissioner shall be a public officer.

9. The Commissioner shall

- (a) be available to assist in the resolution of any question arising out of employer-employee relationships whether or not the question arose out of the Code;
- (b) participate in the preparation, co-ordination and administration of national employment policy;
- (c) provide technical advice to the Government in labour matters;

Duties and  
responsibilities  
of  
Commissioner.

- (d) keep under review the overall situation concerning employment, drawing attention to the terms and conditions of employment and working life of the employed and under-employed and submit proposals for improvement;
- (e) make technical advice available to employers and employees and their respective organisations at their request;
- (f) make his or her services available to employers and their respective organisations with a view to promoting effective co-operation between the Government, employers and employees;
- (g) receive questions, complaints, petitions or notifications of differences regarding employment between employers and employees;
- (h) investigate and resolve disputes or complaints pursuant to Part II;
- (i) collect data and statistics in relation to
  - (i) applications for, and the granting of, work permits;
  - (ii) complaints received and settled;
  - (iii) inspections completed;
  - (iv) violations of the Code;
  - (v) accidents and injuries;
  - (vi) occupational diseases;
  - (vii) strikes and work days lost due to strikes; and
  - (viii) any other key indicators of the labour market;
- (j) provide job registration and placement services;

- (k) be responsible for ensuring compliance with
  - (i) work force planning and development;
  - (ii) occupational safety and health;
  - (iii) labour standards; and
  - (iv) regional and international co-operation in labour matters and the preparation of reports required by the International Labour Organisation;
- (l) prepare and furnish the Minister with the annual report referred to under section 24; and
- (m) do any other thing reasonably necessary for the effective administration of the Code.

**10.** Subject to section 59 of the Virgin Islands Constitution Order, 2007, the Commissioner may commence proceedings in respect of any offence committed under the provisions of the Code.

Institution of proceedings.  
U.K.S.I. 2007  
No. 1678.

**11.** The Commissioner shall have the powers conferred upon an inspector.

Commissioner to have powers of inspector.

**12.** (1) The Minister may, by Order published in the *Gazette*, designate a public officer who is trained and certified as a labour inspector to assist the Commissioner in the execution of his or her duties.

Designation of labour inspectors.

(2) An inspector shall be furnished with a certificate of appointment in the form prescribed and, when visiting any premises or questioning a person in connection with the exercise of his or her powers, shall produce the certificate.

**13.** An inspector shall, under the general directions of the Commissioner,

Duties and responsibilities of inspectors.

- (a) ensure that the laws in force concerning conditions of employment and the protection of employees in their occupation are being duly applied;
- (b) give technical information and advice whenever necessary, to employers and employees as to the

most effective means of complying with existing laws;

- (c) submit to the Commissioner written inspection reports within seven days after each inspection and indicate in those inspection reports difficulties or abuses not specifically covered by the existing laws;
- (d) compile such statistical data in the course of his or her duties as he or she may be instructed by the Commissioner to establish; and
- (e) assist, as required, in the resolution of disputes or complaints.

Powers of inspectors.

- 14.** (1) An inspector may
- (a) enter freely and without previous notice at any hour of the day or night during the working hours of the business, any workplace liable to inspection;
  - (b) enter by day any premises which he or she may have reasonable cause to believe to be liable to inspection;
  - (c) interview alone or in the presence of witnesses, the employer or any person in or at a workplace on any matter concerning the application of the requirements of the law relating to labour;
  - (d) carry out any examination, test or enquiry which he or she may consider necessary in order to ensure that the requirements of the law are being observed;
  - (e) require the production of any books, registers or documents, the keeping of which is required by any law relating to conditions of employment, in order to see that they are in conformity with the provisions of the Code, and copy such documents or make extracts from them;
  - (f) enforce the posting of notices as required by law;

- (g) take or remove from any workplace for purposes of analysis, samples of materials or substances used or handled, subject to the employer or the employer's representative being notified at the time of such taking or removal of any such samples of materials or substances;
- (h) require from any employer, information as to the number of employees and the wages, hours and conditions of employment of the employees or returns consisting of that information;
- (i) issue a written warning to an employer requiring him or her to remedy any contravention identified during an inspection, within a stated time which is reasonable in the circumstances; and
- (j) be accompanied by a police officer or any other employee of the Crown where the Commissioner has reasonable grounds to believe that the presence of the police officer or Crown employee is necessary for the discharge of the inspector's duties.

(2) A person aggrieved by the decision of an inspector in the exercise of a power under this section may seek redress from the Commissioner.

(3) Where the aggrieved person is dissatisfied with the decision of the Commissioner, he or she may apply to the Tribunal for an appropriate remedy.

**15.** (1) Where an inspector has reasonable cause to believe that at any workplace, the building, the layout of machinery and equipment or working method constitutes a threat to the safety or health of any employee, he or she shall serve written notice upon the owner or person in charge of the workplace requiring the owner or the person in charge to carry out within a specified time, alterations to the workplace, the building, layout or working of machinery and equipment or working method as may be necessary to secure compliance with the law relating to the safety and health of the employees.

Action of inspector in case of threat to safety or health.

(2) Where upon a subsequent inspection the inspector identifies a continuing breach, he or she shall give the employer a final written notice to comply within a specified time reasonable in the circumstances.

(3) An employer who fails to comply with the final notice commits an offence and is liable on summary conviction to a fine not exceeding five thousand dollars.

Inspection of premises where domestic servants are employed.

**16.** (1) Notwithstanding section 14(1)(a) and (b), an inspector shall not visit or inspect any private premises where domestic servants or others are employed or believed to be employed except between the hours of 8:00 a.m. and 6:00 p.m., and in the presence of the employer.

(2) Where the Commissioner has reason to believe that an inspection beyond 6.00 pm. is necessary to address a contravention of the Code, the Commissioner shall cause an inspection to be conducted beyond 6.00 pm.

Notification of presence.

**17.** On the occasion of any inspection or visit, an inspector shall notify the employer or his or her representative of his or her presence, unless he or she considers that such notification may be prejudicial to the performance of his or her duties.

Limitations and restrictions on inspectors.

- 18.** (1) An inspector shall
- (a) not have a direct or indirect interest in any enterprise under his or her inspection or supervision;
  - (b) not reveal at any time manufacturing or commercial secrets or working processes which may come to his or her knowledge in the course of his or her duties; and
  - (c) treat as confidential, the source of any complaint bringing to his or her notice a defect or breach of the law and shall give no intimation to the employer or his or her representative that a visit of inspection was made in consequence of the receipt of such complaint.

(2) A person who contravenes this section commits an offence and is liable on summary conviction to a fine not exceeding five thousand dollars.

Records and returns.

**19.** (1) An employer shall, at an address in the Virgin Islands, keep in such form as the Commissioner may approve,

- (a) an accurate record in respect of each employee showing
  - (i) the employee's name, address, occupation and hiring dates either by the employer or by a predecessor-employer;
  - (ii) the immigration status of the employee and, where applicable, the date of expiry of the employee's work permit;
  - (iii) the number of hours worked each day in each pay period;
  - (iv) the basic and other wages paid to the employee for each pay period;
  - (v) the leave taken by the employee by type, duration and date; and
  - (vi) the protective gear issued to the employee, and
- (b) a register of all employees under the age of eighteen years,

and, where applicable, shall keep at that address a copy of each written statement furnished to an employee under section 45.

(2) Where an employee's services have been terminated for any reason, an employer shall preserve the employee's records and the written statements referred to in subsection (1) for a period not less than six years after the date of termination.

(3) Upon request by an inspector, the employer shall make the employee's record available to the inspector for inspection and copying by the inspector, in the presence of the employer or his or her representative.

(4) An employer who contravenes subsection (1) or (2) with intent to deny an employee his or her statutory benefits with respect to his or her employment commits an offence and is liable on summary conviction to a fine not exceeding three thousand dollars.

(5) Notwithstanding subsection (1), if there is not a present record of an employee's latest hiring date by virtue of the fact that the requirement of subsection (1) was not in effect on that date, the question of

the employee's hiring date shall be one to be disposed of by the procedures set forth in section 26.

(6) The Commissioner may, within such period as he or she may specify by notice in the *Gazette* and any local newspaper circulating in the Territory, require employers to submit returns containing such particulars and information contained in the employers' records kept under subsection (1) as he or she may specify in the notice.

(7) The Commissioner may from time to time compile, analyse and tabulate statistics collected by way of returns submitted under this section and, subject to the directions of the Minister, cause the statistics or abstracts to be published in a form determined by the Commissioner, without disclosing the identity of the employer, employee or agricultural or industrial undertaking.

Obligations of employers.

**20.** An employer whose premises are visited by an inspector shall

- (a) permit the inspector access to any place or undertaking to be inspected;
- (b) furnish the inspector with any information as will enable him or her to carry out the duties of his or her office; and
- (c) grant to the employees and their representatives, every facility for communicating freely with the inspector.

Offences and penalties in relation to Commissioner and inspectors.

**21.** A person who

- (a) wilfully, hinders or obstructs the Commissioner or an inspector in the exercise of the powers and duties conferred on him or her by the Code,
- (b) fails or refuses, without good reason, to permit his or her employees free access to and communication with an inspector while on a visit for inspection,
- (c) refuses or wilfully neglects to furnish the Commissioner or an inspector, any information or return or particular that may be required of the employer under the Code, or

- (d) knowingly furnishes, or causes, or allows to be furnished to the Commissioner or an inspector, any information or return which is false in any material particular,

commits an offence and is liable on summary conviction to a fine not exceeding five thousand dollars.

**22.** Where an act or default is committed by an agent which constitutes an offence under the Code, the employer is liable, unless he or she proves that the offence was committed without his or her consent or connivance.

Liability of employer for agent, etc..

**23.** (1) A person who commits an act of victimisation against another person commits an offence and is liable on summary conviction to a fine not exceeding five thousand dollars.

Victimisation.

(2) For the purposes of subsection (1), a person shall be taken to commit an act of victimisation against another person if the first-mentioned person subjects or threatens to subject the other person to any detriment

- (a) on the ground that the other person
  - (i) has made, or proposes to make, a complaint under the Code;
  - (ii) has brought, or proposes to bring, proceedings under the Code against any person;
  - (iii) has furnished or proposes to furnish any information, or has produced or proposes to produce any documents, to a person exercising or performing any power or function under the Code;
  - (iv) has attended or proposes to attend an inquiry under the Code or to provide evidence or testimony as a witness;
  - (v) has made a good faith allegation that a person has committed an act of discrimination in contravention of the Code; or

- (b) on the ground that the first-mentioned person believes that the other person has done, or proposes to do, an act or thing referred to in paragraph (a).

Annual reports.

**24.** The Commissioner shall, on or before 30<sup>th</sup> April in each year, prepare and furnish the Minister with a report, in such form as the Minister may approve, on the operations of the Labour Department during the preceding calendar year, including

- (a) unaudited revenue and expenditure statements,
- (b) the number of
  - (i) jobs created and jobs lost;
  - (ii) work permits granted;
  - (iii) workplace accidents;
  - (iv) work days lost due to industrial action;
  - (v) strikes;
  - (vi) inspections undertaken;
  - (vii) infringements of the Code;
  - (viii) complaints received from employees and employers; and
  - (ix) disputes settled by the Minister, the Commissioner and the Tribunal,during that year,
- (c) general level of salary increases,
- (d) a status report on occupational safety and health, and
- (e) other information as the Minister may specify in writing,

and the report shall be laid before the House of Assembly by the Minister not later than three months after receiving the report.

**25.** Proceedings shall not lie against, and compensation shall not be payable by, the Commissioner, an inspector or any other officer employed in carrying out the Code in respect of any act done in good faith under the Code.

Limitation of liability.

## **PART II SETTLEMENT OF DISPUTES**

**26.** (1) Any dispute or complaint arising out of any matter covered by the Code or any law relating to labour or generally out of the relationship between the employer and the employee may be referred by either party concerned or his or her representative to the Commissioner for settlement.

Procedure for the settlement of disputes.

(2) Upon receipt of the reference, the Commissioner shall investigate the matter and make every effort to dispose of the issue raised in the reference by voluntary settlement in accordance with industrial relations practice, and in pursuance thereof he or she may

- (a) request the parties to meet with him or her jointly or separately;
- (b) request the parties to state the facts as they know them and their respective positions on the issue;
- (c) request the parties to present witnesses and he or she may examine any person in relation to the issues, either alone or in the presence of others, at his or her discretion; and
- (d) utilise the process of conciliation or mediation or any other device designed to facilitate voluntary settlement.

(3) Where the Commissioner fails to achieve a settlement within thirty days from the date of reference under subsection (2) or such longer period as the parties may agree, he or she shall transmit the matter, with a full written report on the matter, to the Minister.

**27.** On receipt of a report transmitted by the Commissioner under section 26(3), the Minister may

Action by Minister.

- (a) himself or herself attempt to achieve a voluntary settlement of the issue, taking the necessary steps he or she deems appropriate;
- (b) refer the matter to a Board of Inquiry or the Tribunal within twenty-one days in accordance with the provisions of section 28; or
- (c) permit the parties to submit their dispute to mediation.

Referral to  
Tribunal or  
Board of Inquiry.

**28.** (1) Where, after the expiration of a period of twenty-one days from the date of transmission of the matter in accordance with section 26(3) or such longer period as the parties may agree, the Minister fails to achieve a settlement using the processes set out in section 27(a), he or she shall

- (a) refer the matter to the Tribunal for settlement where
  - (i) the dispute is one involving essential services; or
  - (ii) in the opinion of the Minister, the dispute is likely to endanger the health or safety of employees or the public; or
  - (iii) the dispute is one involving the application of a provision of an enactment, collective agreement or contract of employment;
- (b) in the case of a dispute other than a dispute mentioned in paragraph (a), refer the matter for recommendation to a Board of Inquiry, if the parties agree in advance to accept the recommendation of the Board; or
- (c) in the case of a dispute other than a dispute mentioned in paragraphs (a) and (b), give notice in writing to the parties concerned that he or she intends to refer the dispute to the Tribunal for settlement.

(2) Where the Minister has given notice under subsection (1)(c), he or she shall refer the dispute to the Tribunal for settlement unless,

within fourteen days from the date on which he or she gave the notice, he or she receives written notice from either the complainants' representative, or in the absence of the complainant's representative, from a majority of the complainants involved in the dispute, that the majority of the complainants object to the reference of the dispute to arbitration and agrees to withdraw the complaint.

(3) A strike shall not take place in an essential service.

(4) A strike shall not take place in an undertaking that is not an essential service unless

(a) the Commissioner has failed to achieve a settlement within the period specified under section 26(3);

(b) fifty percent plus one of the employees voted in favour of a resolution for that action; and

(c) at least three working days written notice is given to the Minister, the employer and any other interested party, of an intention to embark on that action.

(5) A lockout shall not take place in an essential service.

(6) A lock out shall not take place in an undertaking that is not an essential service unless

(a) the Commissioner has failed to achieve a settlement within the period specified under section 26(3); and

(b) at least three working days written notice is given to the Minister, the employees and any other interested party, of an intention to embark on that action.

(7) A strike or lockout shall cease on reference of the matter by the Minister to the Tribunal.

(8) A person who contravenes subsection (3), (4), (5), (6) or (7) commits an offence and is liable on summary conviction to a fine not exceeding ten thousand dollars.

Establishment of  
Arbitration  
Tribunal and  
Appointment of  
Members.

**29.** (1) For the purposes of section 27 or 28(1)(a), there is established an Arbitration Tribunal to settle any dispute or complaint transmitted to it by the Minister under section 28.

(2) The Tribunal shall comprise a Chairperson and two other members.

(3) The Chairperson shall be an attorney-at-law of at least ten years' standing, and shall be appointed by the Minister in consultation with Cabinet for a period of two years.

(4) The two other members shall be appointed by the Minister upon recommendation of the parties to the dispute.

(5) A person appointed to the Tribunal shall not be removed while he is in charge of a case or before the expiry date of his or her term, except for misbehaviour or incapacity, whether arising from infirmity of body or mind, to perform his or her duties.

(6) In exercise of its functions, the Tribunal shall not be subject to the direction or control of any other person or authority.

(7) The Minister shall provide administrative support for the Tribunal.

(8) The Minister responsible for finance, in consultation with Cabinet, shall determine allowances to be paid to the members of the Tribunal.

Findings of  
Tribunal binding.

**30.** (1) The findings of the Tribunal shall be binding upon the parties to the dispute and may only be appealed to the High Court on a point of law.

(2) The Tribunal shall in the exercise of its powers

(a) make an order or award as it considers fair and just having regard to the interests of the persons concerned and the community as a whole; and

(b) act in accordance with equity, good conscience and the substantial merits of the case before it having regard to the principles and practices of good industrial relations.

(3) The Tribunal shall not make an order as to costs except

for exceptional reasons which the Tribunal considers appropriate.

(4) An order or award of the Tribunal shall have the same force as an order or award of the High Court.

**31.** (1) For the purpose of inquiring into, reporting on and making recommendations for the settlement of any dispute or complaint which is transmitted to him under section 26(3), the Minister, in accordance with the provisions of section 27(b) or section 28(1)(b), may appoint a Board of Inquiry (in the Code referred to as a “Board”).

Appointment of Board of Inquiry.

(2) A Board shall consist of such number of members, who shall be appointed by the Minister, as he may determine.

(3) Where the number of members is more than one, an equal number shall be appointed to represent employers and employees respectively on their nomination or on the nomination of their respective organisations, where such organisations exist.

(4) The Minister shall appoint a person who does not represent the interests of employers or employees to be chairperson of a Board.

(5) A Board shall enquire into any matter referred to it and shall, within thirty days or a longer period as the Minister may approve in writing, submit its report and recommendations to the Minister, who shall release the report and recommendations to the parties to the dispute within fourteen days of his or her receipt of the report.

**32.** (1) A Tribunal or a Board may summon a person to attend before such Tribunal or Board, as the case may be, and to give evidence or to produce any document or other record in the possession or under the control of such person.

Powers of Tribunal and Board to summon witnesses and administer oaths.

(2) A summons under this section may be served either personally or by registered post.

(3) A Tribunal or a Board may administer oaths or take the affirmation of any witness appearing before them.

(4) A person who knowingly makes a false statement under oath or affirmation commits an offence and is liable on summary conviction to a fine not exceeding seven thousand dollars.

Summons of Tribunal and Board to be obeyed.

**33.** Any party appearing or any person summoned pursuant to section 32(1) to attend and give evidence or to produce any document or other record before a Tribunal or a Board shall be

- (a) bound to obey the summons served upon him or her; and
- (b) entitled to the same right or privilege as he or she would have before a court.

Failure to obey summons of Tribunal or Board.

**34.** A person who fails without reasonable cause to obey a summons served upon him or her pursuant to section 32(1) commits an offence and is liable on summary conviction to a fine not exceeding five thousand dollars.

Tribunal and Board to regulate own proceedings.

**35.** A Board or the Tribunal, as the case may be, shall regulate its own proceedings and publish general guidelines concerning the procedures to be observed.

Arbitration Ordinance not to apply. Cap. 6

**36.** The Arbitration Ordinance shall not apply to any proceedings of the Tribunal under the Code or to any award made by it.

### **PART III ADVISORY COMMITTEES**

Tripartite consultation.

**37.** The Minister shall consult with employers and employees or their respective representatives, if any, from time to time in such manner as he or she may think fit, on any matter affecting the relationship between employers and employees and conditions of employment in general.

Advisory Committees.

**38.** (1) The Minister may appoint an Advisory Committee to investigate or review

- (a) the conditions of employment in general or of a particular trade or occupation;
- (b) the extent of unemployment;
- (c) the cost of living and the basic minimum wage;
- (d) the general conditions of the economy of the Virgin Islands;

- (e) the minimum basic wage rate which should be payable in respect of any trade or occupation or employment in general;
- (f) the application of International Labour Organisation Conventions extended to the Virgin islands and requests by the Government of the United Kingdom for International Labour Organisation Conventions to be extended to the Virgin Islands;
- (g) employment policies and laws; or
- (h) general questions relating to migration for employment,

and to make recommendations to the Minister on those matters.

(2) Subject to subsection (3), a Committee shall consist of an equal number of employers and employees and representatives of such other interest groups as the Minister deems appropriate.

(3) The Minister shall appoint a person who does not represent the interests of employers or employees to be chairperson of a Committee.

(4) The members representing employers and employees shall be appointed after consultation with representatives of the employers and employees concerned.

(5) A Committee may hold public meetings before which it may, by public notice, invite employers and employees and their representatives to appear and make recommendations.

(6) A Committee shall seek to determine by consensus all questions arising at its meetings.

**39.** (1) A Committee shall

Reports of  
Committee.

- (a) issue interim reports with recommendations by the Minister; and
- (b) issue a final report with recommendations within one month of completing its investigation.

(2) The reports referred to in subsection (1) shall be addressed and delivered to the Minister, along with minority or dissenting reports, if any.

Orders.

**40.** (1) Having regard to the recommendations of the Committee, the Minister shall, upon approval of the Cabinet, make an Order prescribing the conditions of employment, or the minimum basic wage rate payable for employment, in any industry, trade, occupation or employment.

(2) For the purposes of the Code, the reference to minimum basic wage shall be construed to mean minimum basic wage in monetary terms.

Variation of Orders.

**41.** The Minister may, upon approval of the Cabinet, vary the provisions of an Order made under this Part, but only with like advice and in the manner set out in this Part.

#### **PART IV BASIC CONDITIONS OF EMPLOYMENT**

Public policy.

**42.** The following expressions of public policy underlie and shall be used in the interpretation of this Part:

- (a) an employee should know what his or her job consists of, what his or her employment conditions are, and, if his or her employment is terminated, the reason for the termination;
- (b) an employee is entitled to reasonable breaks in employment, whether because of physical disability or for rest and rehabilitation;
- (c) in the interests of spreading employment opportunities and of preventing industrial accidents, there shall be a reasonable limitation upon working hours of employees;
- (d) to the extent that circumstances dictate that the normal hours of work be reasonably extended, premium pay ought to be received.

Conformity with the Code generally.

**43.** An employer shall not provide employment, nor is an employee obliged to accept employment, under terms and conditions which do not conform generally with the minimum provisions of the Code.

44. (1) An employer and employee may enter into an individual employment contract, either written or oral, which specifies conditions of employment, but any provision which

- (a) establishes conditions which fall below the minimum employment standards established by the Code; or
- (b) requires that the employee refrain from associating with other employees or with a trade union for collective bargaining purposes,

is void.

(2) Subject to any applicable work permit, where an employment contract for a fixed term is renewed on one or more occasions so that the total period involved is twelve months or more, such contract shall, for the purposes of the Code, be deemed to be for an indefinite period.

(3) When it appears to the Tribunal appointed in accordance with section 29 that a fixed term employment contract is renewed in such a way as to evade the provisions of the Code, the Tribunal shall subject to any applicable work permit, determine such contract to be for an indefinite period.

(4) It shall be lawful for an employer, or group of employers, to enter into a written collective agreement with two or more employees or their representatives, and the collective agreement shall

- (a) be signed by the parties to the agreement; and
- (b) be for a period of not less than three years and not more than five years.

(5) A copy of a collective agreement reached under subsection (4) shall be lodged in the prescribed manner with the Commissioner within seven days of being signed by the parties, for registration, as a collective agreement, and the collective agreement shall, upon being so registered, be binding on the parties.

(6) A collective agreement lodged for registration under this section which, in the opinion of the Commissioner, is in conflict with the requirements of section 43 shall be returned to the parties for amendment, and shall not be registered by the Commissioner until he or she is satisfied that the provisions of that section have been met.

Statement of  
working  
conditions.

45. (1) Where an employee is engaged by an employer for a term of employment exceeding four months, the employer shall furnish the employee with a written statement within ten days of engagement containing at least

- (a) the name and address of the employer and employee and the general responsibilities and related duties for which the employee is hired;
- (b) the regular hours of work and rest periods;
- (c) the starting pay and methods of computing the same;
- (d) the interval between payment of wages;
- (e) the term of employment, if other than indefinite;
- (f) the period of probation, if any; and
- (g) the employee's leave and vacation entitlement.

(2) With respect to persons currently employed for periods exceeding four months on the date of the coming into force of the Code, each employer shall, if he or she has not already done so, within twenty days after that date, furnish each person with a written statement which shall set forth

- (a) the name and address of the employer and employee and the general responsibilities and related duties of the employee;
- (b) the regular hours of work and rest periods;
- (c) the employee's pay and methods of computing the same;
- (d) the interval between payment of wages;
- (e) the term of employment, if other than indefinite;
- (f) the period of probation, if any; and
- (g) the employee's leave and vacation entitlement.

(3) Where, subsequent to the giving of a statement under

subsection (1) or (2), the employer desires to change the responsibilities and related duties of an employee as set forth in such statement, he or she shall at the time he or she effectuates any such change, furnish such employee with a new written statement.

(4) Notwithstanding subsection (3), where there is no organisation representing an employee who is employed for an indefinite period, the employer shall in consultation with the employee review the employee's wages and other terms and conditions of employment at least once every two years.

**46.** (1) The probationary period of any employee shall not exceed four months, except in the case of an employee of the rank of a supervisor or above, where the probationary period shall not exceed six months. Probationary period.

(2) During the probationary period the employee shall be given reasonable training and general orientation in the duties and responsibilities of the position for which he or she was hired and the employee shall be informed on a monthly basis of his or her progress.

(3) Notwithstanding subsection (1),

(a) where the contract of employment does not exceed four months, probationary period need not be included in the contract of employment, but where the contract does not specify a probationary period, subsection (1) shall apply; and

(b) the employer may, after consultation with the employee or his or her representative extend the probationary period for a further period not exceeding the duration of the original probationary period, where it is in the interest of the employee to do so.

(4) An employer shall, within fourteen days of the expiry of the probationary period, inform the employee in writing of whether the employee has satisfactorily completed the probationary period, failing which the employee is deemed to have satisfactorily completed the probationary period.

(5) An employer who has informed an employee that the employee has satisfactorily completed the probationary period shall not place the employee on any further period of probation for the same job.

Rest periods and normal hours of work.

**47.** (1) Except where otherwise provided by a collective agreement, every employer shall permit each of his or her employees to enjoy in every period of seven consecutive days a period of rest comprising at least twenty-four consecutive hours.

(2) The normal hours of work, exclusive of the meal interval, shall be eight hours and the standard work week shall be forty hours.

(3) The Minister may, after considering the recommendations of an Advisory Committee appointed under Part III, vary the standards prescribed in this section by issuing an Order to that effect.

Meal intervals.

**48.** (1) An employer shall not require or permit an employee

(a) to work for more than five hours continuously without a meal interval of not less than one hour or, where subsection (2) is applied, of not less than the agreed time;

(b) to perform any work during his or her meal interval.

(2) An employer may agree with his or her employee to reduce the employee's meal interval to not less than thirty minutes.

(3) For the purposes of this section, a period shorter than that specified under subsections (1)(a) or (2) shall not be considered as a meal interval.

Premium pay.

**49.** (1) Subject to subsections (3) and (4), for any hours of work accrued by an employee for his or her employer at the employer's request on a rest day, or in excess of eight hours on any work day or in excess of forty hours in any week, the employer shall pay the employee at the rate of at least one and one half times his or her basic rate of pay.

(2) The Minister may, after considering the recommendations of an Advisory Committee appointed under Part III, and after approval of the Cabinet, vary the standards prescribed in this section by issuing an Order to that effect.

(3) In arranging for overtime work, the employer shall take into account the special circumstances of young persons under eighteen years of age, pregnant women, nursing mothers and disabled persons, and for the purposes of this subsection "disabled person" has the meaning assigned to it by section 113.

(4) The provisions of subsection (1) shall not apply to salaried employees whose terms and conditions of employment are fixed at a level which adequately compensates them, including employees holding positions of supervision or management.

(5) An employer shall not classify an employee as holding a position of supervision or management under subsection (4) if his or her duties and compensation are not commensurate with such status and the Tribunal appointed under the Code or a court may inquire into the matter and make a determination giving due regard to this section and to the right of an employer to manage his or her business.

**50.** (1) Except as provided in subsection (2), an employer shall not employ any person in excess of twelve hours in any period of twenty-four hours subject to a maximum of sixty hours in any period of one hundred and sixty-eight hours.

Limitation on overtime.

(2) The Minister may, in his or her discretion, approve in writing a temporary increase in the hours of work authorised by the Code in any establishment in the following circumstances:

- (a) in the case of an actual or apparent accident, or urgent work to the plant or equipment, but only so far as may be necessary to avoid serious interference with the ordinary working of the establishment;
- (b) in the event of abnormal pressure of work due to special circumstances in so far as the employer could not be expected to resort to other measures; or
- (c) in order to prevent the loss of perishable goods,

but in no case shall the night rest period or, for employees working at night, the day rest period be less than eight hours.

(3) In the case where, because of urgency of the circumstances, the employer could not reasonably be expected to apply in advance for approval, that employer shall not be deemed to have contravened subsection (2).

Payment where employee stopped or prevented from working full day or shift.

**51.** Where an employee is required to report for work and does so but is prevented from working by an act of God or force *majeure*, or is stopped from working by his or her employer or anyone lawfully acting for him or her, payment to that employee shall be made on the following basis:

- (a) where the employee works for more than six hours a day, the employee shall be paid for the day; or
- (b) where the employee works for less than six hours, he or she shall be paid for the time so worked at his or her basic hourly rate of pay.

Pay for period of stand-by or being on call.

**52.** (1) Where an employee is required by his or her employer to remain on stand-by at the work place, he or she shall be regarded as being on duty for that period and be paid wages accordingly.

(2) Where an employee is required by his or her employer to remain on call for any period, the employee, shall be paid an allowance to be agreed upon by the employer and employee.

Payment in respect of public holidays.

**53.** Where an employee does not work for his or her employer on a public holiday, he or she shall not suffer loss of pay, that is to say, he or she shall be paid the basic wage he or she would have received for the work performed on that day, had it not been a public holiday, provided that

- (a) he or she worked on his or her scheduled work-day immediately before and his or her scheduled work day immediately after the said public holiday; and
- (b) the public holiday was not one of his or her scheduled work-days.

Payment for work on public holidays.

**54.** (1) Where an employer causes an employee to work on a public holiday, the employer shall pay to the employee, in addition to the basic wage the employee is entitled to by virtue of section 53, a basic hourly rate of at least one and one-half times his or her basic wage for each hour worked on that day.

(2) In the case of employees remunerated on a piece- work basis or by the task, the expression “basic rate of pay” shall, for the purposes of this section, be deemed to be equal to the employee’s earnings over the period of thirteen weeks immediately preceding the date payment is made, divided by the number of days worked during that period.

- (3) The provisions of this section shall not apply to
  - (a) persons holding positions of supervision or management whose basic rate of pay and other terms and conditions of employment shall be fixed by their employers at a level which adequately compensates them; or
  - (b) employees who are remunerated on a piece work basis or by the task and are not subject to continuous supervision.

55. (1) The money wages of an employee shall be payable in legal tender, provided that the payment of wages by cheque on a bank in the Virgin Islands or by direct deposit or by postal order shall be deemed to be payment in legal tender in cases in which payment in such manner is customary or necessary or is consented to by the employee. Form of wages.

(2) Where an employer pays an employee's wages by cheque drawn on a bank in the Virgin Islands and the cheque is dishonoured by non acceptance upon presentation for payment, and upon subsequent presentation the same occurs, the employer is liable to pay to the employee, in addition to the employee's wages,

- (a) one-tenth of the value of the employee's cheque; and
- (b) any charges the employee may have suffered upon presentation of the cheque, whether for the first time or a subsequent time.

(3) Nothing contained in subsection (1) shall be construed as prohibiting the giving of food, a dwelling-place or other allowances and privileges in addition to money wages as a remuneration for services, except that

- (a) the allowances and privileges shall not include any alcoholic beverage or any noxious drugs;
- (b) the allowances are appropriate for the personal use and benefit of the employee and his or her family; and
- (c) the allowances and privileges are fairly evaluated at cost to the employer.

(4) Nothing in this section shall be construed as prohibiting the distributing to an employee of gratuity received from customers of the employer as part of remuneration for services, and the amount distributed in gratuity shall not be considered a part of any basic wage which is fixed by an Order made under section 40.

Wages to be paid to employee.

**56.** Wages shall be paid directly to the employee to whom they are due or to a person specified by him or her in writing except as provided in section 58.

Deductions.

**57.** (1) Subject to subsection (2), an employer may deduct from remuneration payable to an employee under any contract of employment the following:

- (a) any tax, rate or other deduction imposed by any law;
- (b) any money advanced by the employer by way of loan, provided the amount deducted accords with the agreement made between the employer and the employee at the time of the loan, and that no interest, discount or similar charge may be imposed on such loan; or
- (c) any sum of money which an employee has authorised in writing to be deducted for other purposes, except for the purpose of obtaining or retaining employment for or in respect of any fine, or for bad or negligent work or for damage to the materials or other property of the employer, except when the damage is occasioned by the willful misconduct of the employee.

(2) The total sum which may be deducted or stopped in any pay period shall not exceed one-third of the gross wage, excluding the value of any payments in kind, of the employee in the applicable pay period.

(3) Nothing in this section shall prevent an employer from recovering from an employee, whose employment is terminated, the outstanding balance of a loan granted by the employer to the employee, which loan may be deducted from any accrued gross wages due to the employee.

Statement of deductions.

**58.** Where an employer makes a deduction from an employee's

wages, he or she shall, simultaneously with the payment made, furnish the employee with an accurate statement of wages earned and describe the deduction made.

**59.** (1) Notwithstanding anything to the contrary contained in any other law, the remuneration of an employee is liable to attachment or seizure within the following limits only:

Limitation on attachment or seizure of wages.

(a) up to one-half in respect of maintenance payments; or

(b) up to one-third in respect of all debts of any kind and however contracted.

(2) The proportion specified in subsection (1)(b) shall not be applicable cumulatively on the ground that there are several debts or several creditors.

(3) The aggregate of the sums attached and seized under subsection (1)(a) and (b) shall not, in the case of any employee, exceed fifty percent of his or her remuneration.

(4) The sums attached or seized shall be divided among the claimants in proportion to their established claims.

**60.** (1) In an establishment in which a customer pays a gratuity which is a specified percentage of the customer's bill, the employer shall cause the gratuity to be pooled and distributed among his or her employees in a period of four weeks in accordance with this section.

Gratuity.

(2) Where an establishment to which subsection (1) applies has at least five employees, the employer shall establish a gratuity committee (in this section referred to as the "Committee") for periodic distribution of the gratuity.

(3) The Committee shall consist of three representatives as follows:

(a) one person appointed by the employer to represent the employer;

(b) two persons representing the employees to be elected by the employees within the first six weeks of each year to serve for a term of one year and the results of such election shall be filed with the Labour Department by the 28<sup>th</sup>

day of February each year, provided that where any person so elected is unable for any reason to serve his or her full term, the employees may elect another person to represent them in his or her stead and for the remainder of his or her term and shall file the result of the election with the Labour Department within fourteen days of obtaining that result.

(4) From the total amount of gratuity accumulated over every period of four weeks there shall be deducted by the employer the Government tax, if any, on gratuity.

(5) A further amount to be agreed by the employer and employee or if there is a Committee, the Committee but not exceeding seven and a half percent of the balance after the Government tax, if any, is deducted may be retained by the employer for administrative expenses.

(6) The employer shall distribute the remainder of the gratuity among the employees of the establishment on such basis as may be agreed in writing from time to time by the employer and employees or if there is Committee, by the Committee.

(7) The employer prepared a record showing the total amount of gratuity accumulated in each period of four weeks, the total amount of Government tax which is deducted, the amount retained by the employer for administrative expenses, the list of employees to whom the balance is distributed and the amount paid to each of those employees.

(8) Within seven days after the close of the period to which the record relates, one copy, along with the amount of tax deducted, if any, shall be forwarded by the employer to the Commissioner of Inland Revenue who shall issue a receipt for the amount received, and one copy shall be sent by the employer to the Commissioner for his or her information.

(9) An employer who contravenes this section commits an offence and is liable on summary conviction to a fine not exceeding seven thousand dollars.

Periods and place  
of wage  
payments.

- 61.** (1) Wages shall be paid at regular time intervals of
- (a) not more than two weeks, in the case of employees whose wages are fixed by the hour, day, week or fortnight, or by the piece of work performed;

- (b) not more than one month, in the case of employees whose wages are fixed on a monthly or annual basis; or
- (c) in the case of employees employed to perform a task the completion of which requires two weeks or more, not more than one fortnight in proportion to the amount of work completed,

but the provisions of this section shall not apply where a collective agreement is entered into fixing other intervals for the payment of wages.

(2) Payment of wages shall be made at or near the work place and on ordinary working days only, but where, for practical reasons, this requirement cannot apply, the employer shall allow the employee reasonable time off with pay to enable him or her to receive his or her wages.

(3) Any arrangement under subsection (2) shall be approved in writing by the Commissioner.

(4) An employer shall not pay wages to any employee at or within any retail shop or place engaged in the sale of spirits, wine, beer or other spirituous or fermented liquor, except where such wages are paid by the owner or occupier of such shop or place to any employee *bona fide* employed by him in that shop or place.

**62.** An employer shall not, in any employment contract or in any other manner, coerce or require, or attempt to coerce or require, an employee to

Employee not to be required or coerced regarding manner of spending wages, or to use stores or services.

- (a) spend any part of his or her wages at any place or in a particular manner, or with any person; or
- (b) purchase or make use of stores or services which may be available from shops or stores established at or in connection with any workplace.

**63.** An employee is entitled to leave privileges during the course of his or her employment in accordance with the Code.

Employees' leave rights generally.

**64.** (1) Subject to subsection (2), an employee who has successfully completed his or her probationary period is entitled to be granted vacation leave at the rates set out below in respect of each year of service:

Vacation leave.

- (a) employees with less than ten years' service, to a minimum of twelve normal working days;

- (b) employees with ten years' service and less than twenty years' service, to a minimum of fifteen normal working days; and
- (c) employees with twenty years' service or above, to a minimum of twenty normal working days.

(2) Where the employment contract provides for periodic employment, an employee shall qualify for the grant of vacation leave if he or she has worked with the same employer for an aggregate of not less than four months in any period of twelve months.

(3) An employee to whom subsection (2) applies is entitled to be granted one day of vacation leave for every twenty-six days worked in any period of twelve months, and any fraction of a day which is obtained by dividing the number of days worked by twenty-six shall be reckoned as one day.

(4) Where the employment contract provides for part-time employment, an employee shall qualify for the grant of vacation leave in accordance with subsection (1).

Vacation leave pay.

**65.** (1) An employee to whom section 64(1) or (4) applies shall be paid vacation leave pay at the basic wage rate, along with all allowances, at which he or she was paid in respect of the last normal working week immediately prior to the commencement of such vacation leave.

(2) An employee to whom section 64(2) and (3) applies shall be paid vacation leave pay at the basic daily wage rate for each day of his or her vacation leave.

(3) An employee who is employed on a piece-work basis or by the task shall, in respect of each day of his or her vacation leave, be paid vacation leave pay at the rate of 1/65<sup>th</sup> of the total basic wage, and the cash equivalent of any form of payment earned, in respect of the last thirteen weeks of employment (which need not be consecutive) immediately preceding the commencement of his or her vacation leave.

When vacation leave pay to be paid.

**66.** The payment of vacation leave pay shall be made not later than the last working day prior to the commencement of such vacation leave, unless the employer and the employee, or their representatives, agree otherwise.

Public holidays, etc. not to affect vacation leave.

**67.** (1) Public holidays, whether or not they fall during the period of vacation leave, and agreed regular days of rest shall not be counted as a part of the annual vacation leave provided in section 64.

(2) Periods of absence from work due to maternity leave, or to illness or injury for a period not exceeding three months, shall not be deducted from the period of an employee's service for the purpose of the calculation of vacation leave entitlement.

**68.** (1) The dates of the taking of earned vacation leave shall be fixed by agreement between the employer and the employee or their representatives and, by similar agreement, the employer may advance leave not yet earned.

Mutual agreement affecting vacation leave.

(2) By mutual agreement between the employer and the employee or their representatives, the vacation leave earned by the employee may be allowed to accumulate for a period of two years:

(3) Where vacation leave is allowed to accumulate under subsection (2), such leave shall be granted and taken not later than six months after the end of the second year, and at least two weeks uninterrupted leave shall be taken before the end of the year following that in respect of which entitlement arises.

(4) An agreement between an employer and an employee by which the employee would forego the taking of earned leave, shall not be deemed to deny the employee the right to vacation leave at a future time to be mutually agreed between the employer and the employee.

**69.** A person whose employment is for any reason terminated shall receive vacation leave pay in respect of vacation leave earned but not yet taken, and such vacation leave pay shall be calculated in accordance with section 65 and, where applicable, as though a reference in that section to the commencement of vacation leave were a reference to the date on which the person's employment is terminated.

Vacation leave pay upon termination of employment.

**70.** (1) Except as is provided for in section 71, an employee who becomes ill shall, where service with his or her employer is for a continuous period of not less than four months, be eligible for sick leave with pay for a period of not less than twelve working days in any one year.

Sick leave.

(2) Where the employment contract provides for part-time employment, an employee shall be eligible for sick leave in accordance with subsection (1).

(3) An employee to whom this section applies shall not be eligible for sick leave with pay unless that employee

- (a) notifies the employer of the illness on the first day of his or her absence; and
- (b) submits a medical certificate, signed by a medical practitioner or, where a medical practitioner is not available, in the Sister Islands only, by a qualified registered nurse employed by the Government, the BVI Health Services Authority or other public authority no later than the second day of illness.

Sick leave for periodic employees.

**71.** (1) An employee whose employment is periodic, and who has worked for the same employer for a total of not less than four months in that year, is entitled to sick leave with pay in that year, at the rate of one day for every twenty-six days worked.

(2) Any fraction of a day which is obtained by dividing the number of days worked by twenty-six shall be reckoned as one day.

(3) An employee to whom this section applies shall not be granted sick leave with pay unless he or she fulfils the conditions set out in section 70(3) as regards notification and the submission of a medical certificate.

Sick leave pay and social security benefit.

**72.** (1) Subject to sections 70 and 71 in respect of sick leave taken in any period of twelve consecutive months, the employer shall pay to the employee the basic wages which he or she would have received had the employee worked on each of those days.

(2) The minimum daily rate of sick leave pay payable to an employee to whom section 71 applies shall be the total basic wage paid to the employee in respect of the normal working week nearest, preceding that in which the illness occurred divided by the number of working days in the employee's normal working week.

(3) An employer is entitled to deduct for sick leave pay or benefits due to an employee under the Code any pay or benefits received by that employee under the Social Security Ordinance for his or her illness, injury or incapacitation.

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(4) The reference in this section and section 75 to the Social Security Ordinance includes the Regulations made under the Ordinance.

Entitlement to maternity and paternity leave.

**73.** (1) On the production of a certificate from a medical practitioner stating the presumed date of confinement, a female employee who

has completed twelve months continuous employment shall be granted a period of maternity leave by her employer.

(2) The period of maternity leave shall not be less than thirteen weeks of which not less than six weeks shall be taken after the date of confinement.

(3) The remainder of the period of maternity leave may be taken before the presumed date of confinement or following the period of compulsory leave, or partly before the presumed date of confinement and partly following the period of compulsory leave.

(4) The leave before the presumed date of confinement shall be extended by any period elapsing between that date and the actual date of confinement, and the period of compulsory leave to be taken after confinement shall not be reduced on that account.

(5) Where a female employee is granted maternity leave under this section, the husband or *de facto* spouse of the employee shall, upon application, be granted paternity leave without pay for such period as requested in the application, but in any case not exceeding one month, to be taken during the period his wife or *de facto* spouse is on confinement or not later than six months from the birth of the child.

(6) The Minister may make Regulations for the granting of leave to the adoptive parent of a child and paternity leave.

74. Where a female employee to whom section 73 applies is granted maternity leave under that section, and a medical practitioner certifies that any illness necessitating absence from work arises out of pregnancy or confinement or both, the employer shall grant the employee an additional period of leave not exceeding three months.

Additional period of leave.

75. Where a female employee is granted leave in accordance with sections 73 and 74, she shall be entitled to any benefits as may be prescribed under the Social Security Ordinance or any other law for the time being amending or replacing it.

Payment of maternity benefits.  
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76. While a female employee is absent from work on maternity leave in accordance with sections 73 and 74 it shall not be lawful for an employer to give her notice of dismissal during such absence, or to give her notice of dismissal at such a time that the notice would expire during such absence.

Employee not to be given notice of dismissal while on maternity leave.

Special leave for jury service and other purposes.

77. (1) An employee who is required to attend court for jury service shall be granted leave with full pay by his or her employer for that purpose.

(2) An employee who is required to attend any hearing of the Tribunal or Board constituted in accordance with Part II shall be granted leave on full pay by his or her employer for the purpose of attending such hearing.

Penalties and employee's right to recover.

78. (1) An employer who

- (a) enters into any agreement or contract or gives any remuneration for employment contrary to the minimum standards set out in section 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61 or 62,
- (b) makes any deduction from the wages of an employee, or receives any payment from an employee, contrary to the sections mentioned in paragraph (a), or
- (c) otherwise contravenes any of the sections mentioned in paragraph (a),

commits an offence and is liable on summary conviction to a fine not exceeding five thousand dollars, and for each subsequent offence to a fine not exceeding seven thousand dollars.

(2) An employee is entitled to recover in a court so much of his or her wages as have not been paid to him or her, including any entitlement under section 55(2) but exclusive of sums lawfully deducted, plus interest at the rate to be determined by the court.

(3) An employer who contravenes section 47 and 48 commits an offence.

(4) An employer who commits an offence under subsection (3) is liable on summary conviction to a fine not exceeding five thousand dollars, and in addition, the court may order the employer to pay the employee such sum as the court thinks fit.

(5) An employer who

- (a) refuses or fails to allow an employee to take paid vacation leave to which he or she is entitled under this Part, or

- (b) fails to pay an employee any vacation leave pay, sick leave pay or special leave pay to which he or she is entitled under this Part,

commits an offence and is liable on summary conviction to a fine not exceeding one thousand dollars, and in addition, if the court is satisfied that by reason of the offence the employer owes the employee a sum of money, it may order the payment of such sum, with or without interest, to the employee as the court thinks fit.

79. (1) Where a minimum basic wage rate is fixed under section 40, an employer who fails to pay wages at or above such wage rate commits an offence and is liable on summary conviction to a fine not exceeding five thousand dollars.

Penalty for not paying minimum basic wage rate.

(2) Where an employer is convicted of failure to pay wages at or above the minimum basic wage rate to an employee, then, if notice of intention so to do had been served upon the employer with the summons, warrant or complaint, evidence may be given of any failure on the part of the employer to pay wages at or above the minimum basic wage rate to that employee during the two years immediately preceding the date on which the information was laid or the complaint was served and, on proof of the failure, the court may order the employer to pay to the employee such sum as in the opinion of the court represents the difference between the amount which should have been paid during those years and that which was actually paid, plus ten percent interest per annum or part of it from the date any wage was due until it is paid.

(3) The power given in subsection (2) shall not derogate from any right of the employee to recover wages in any other proceeding, but the employee shall not be entitled to recover more than the sum of the difference referred to in subsection (2).

(4) Where an employer who is charged with an offence under this section proves to the satisfaction of the court that he or she used due diligence to enforce the execution of an Order made under section 40 and that the offence was in fact committed by an agent or some other person without the employer's knowledge, consent or connivance, he or she shall not be convicted of the offence, but this is without prejudice to the power of the court

- (a) to proceed against the agent or other person for the offence; and

(b) to order the employer to pay the sum due under subsection (2).

(5) On prosecution of an employer for failing to pay wages at or above the minimum basic wage rate, the onus shall lie on that employer to prove that he or she has not paid wages at less than the minimum basic wage rate.

Penalties where person other than employer may be violator.

**80.** (1) Where an employer is charged with an offence under this Part, the employer shall be entitled upon information duly laid by him or her, to have any other person whom the employer claims is the actual offender brought before the court and if, after the commission of the offence is proved, the employer proves to the satisfaction of the court that he or she has used due diligence to comply with the provisions of this Part and that the other person committed the offence in question without his or her knowledge, consent or connivance, the other person shall be summarily convicted of the offence.

(2) If an offence is proved under subsection (1), the court may order the employer or the other person convicted to pay to the employee any sums that are lawfully owed to the employee under the provisions of this Part, and the order may be enforced in the same manner as a judgement or order in a civil case.

(3) The power of the court to issue an order under subsection (2) shall not derogate from any right of the employee to recover the sum by any other proceeding provided that no employee shall be entitled in any other proceeding to recover any amount which the court has ordered to be paid under subsection (2).

## **PART V TERMINATION OF EMPLOYMENT, DISCIPLINARY ACTION, AND CONTINUITY OF EMPLOYMENT**

Limitation on termination of employment by employer.

**81.** (1) The employment contract of an employee shall not be terminated by an employer without a valid and fair reason for such termination connected with the capacity or conduct of the employee, or with the operational requirements of the undertaking, establishment or service, pursuant to section 88, 89, 101 or 103, and unless the notice requirements in section 90 are complied with.

(2) Subject to section 89, an employer may not terminate the appointment of an employee unless the employer has informed the employee in writing of the nature and particulars of the complaint against the employee and has given the employee or his or her representative a fair

opportunity to defend himself or herself including access to his or her employment record.

**82.** (1) Without derogating from the generality of section 81, the termination of the employment contract of an employee on any of the following grounds is deemed to be unfair: Meaning of unfair dismissal.

- (a) trade union membership or participation in union activities outside working hours or, with the consent of the employer, during working hours;
- (b) seeking office as, or acting or having acted in the capacity of, an employees' representative;
- (c) making a complaint or participating in proceedings against the employer involving an alleged contravention of any enactment or having recourse to competent administrative authorities;
- (d) participation, or proposed participation in industrial action including a strike, which takes place in conformity with the provisions of the Code or any other labour relations law;
- (e) race, colour, sex, sexual orientation religion, ethnic origin, nationality, political opinion or affiliation, disability, HIV status, or, except for purposes of retirement and restrictions on work and employment of young persons and children, age;
- (f) marital status, family responsibility, pregnancy or absence from work during maternity leave as certified by a medical practitioner;
- (g) temporary absence from work due to illness or injury as certified in accordance with section 70(3)(b), provided that the employee informs the employer on the first day of absence and submits the certificate to his or her employer no later than the second day of absence;

- (h) absence from work due to compulsory military service or other civil obligation in accordance with law;
- (i) the exercise or proposed exercise of the right to remove himself or herself from a work situation which he or she reasonably believes presents an imminent or serious danger to life or health.

(2) An employer who contravenes subsection (1) commits an offence and is liable on summary conviction to a fine not exceeding three thousand five hundred dollars.

Constructive dismissal.

**83.** (1) An employee is entitled to terminate his or her employment contract without notice or with less notice than that to which the employer is entitled by any statutory provision or contractual term, where the employer's conduct has made it unreasonable to expect the employee to continue the employment contract.

(2) Where the employment contract is terminated by the employee pursuant to subsection (1), the employee shall be deemed to have been unfairly dismissed by the employer for purposes of the Code.

Appeals against unfair dismissal.

**84.** In any case where an employee or his or her representative alleges that such employee is unfairly dismissed and no settlement of the allegation is reached in direct discussion with the employer, the allegation may be referred to the Commissioner in accordance with the provisions of section 26, by either the employer or the employee, or by their representatives.

Burden of proof.

**85.** (1) In any claim or complaint arising out of the dismissal of an employee, it shall be for the employer to prove the reason for the dismissal.

(2) In the circumstances referred to in section 83, it shall be for the employee to prove the reason which made the continuation of the employment contract unreasonable.

(3) The test as to whether or not a dismissal was unfair under section 82 or 83 is whether or not, under the circumstances the employer acted unreasonably.

Remedies for unfair dismissal.

**86.** (1) Where the Tribunal determines upon a dispute referred to it under section 27 that the dismissal was unfair or illegal, the Tribunal

- (a) may order either that

- (i) the employee be reinstated;
- (ii) the employee be re-engaged in a position that is substantially equivalent if the post held by the employee is not immediately available; or
- (iii) compensation be paid in lieu of reinstatement or re-engagement,

if this remedy is acceptable to both parties; or

- (b) may order the employer to pay the employee such punitive sum as it thinks fit.

(2) Where the Tribunal orders that compensation be paid, it shall take into account, among other things,

- (a) any vacation pay earned, but not taken;
- (b) any wages lost by the employee, on account of the dispute, up to the date of determination of the issue by the Tribunal;
- (c) the termination notice to which the employee would have been entitled;
- (d) the employment category of the employee, his or her seniority and the ease or difficulty with which he or she can secure alternative employment; and
- (e) the duty of the employee to seek to mitigate his or her losses.

**87.** (1) Where an employee reaches the age at which he or she becomes entitled to an age benefit under the Social Security Ordinance, the employer and employee may agree on a date upon which the employee's services shall be terminated.

Retirement of employee entitled to age benefit under Social Security Ordinance Cap 266.

(2) For the purposes of subsection (1), an employee reaches the age at which he or she becomes entitled to an age benefit

- (a) under the Social Security Ordinance, upon attaining the age of sixty five years; or

- (b) under a pension plan or retirement scheme, upon becoming eligible for a pay-out in accordance with that pension plan or retirement scheme.

(3) Any date agreed upon pursuant to subsection (1) shall take into account the notice periods specified in section 90.

Termination of employment contract within probationary period and short term contracts.

**88.** (1) The employment contract of any employee may be terminated by the employer at any time during the probationary period for any valid and fair reason with twenty-four hours notice.

(2) Where an employment contract is for a specified term not exceeding four months, an employer may terminate the employee's services for any valid and fair reason with twenty-four hours notice.

Termination of employment contract with notice.

**89.** (1) The employment contract of an employee may be terminated with notice, or with pay in lieu of notice, for any valid and fair reason connected with the capacity or conduct of the employee, or the operational requirements of the undertaking, establishment or service.

(2) Without derogating from the generality of subsection (1), notice of termination may be given by an employer in any of the following circumstances:

- (a) where two medical practitioners certify that the employee is unfit to continue in employment because of an incapacity of the mind or body which has lasted for at least six months and which is likely to be permanent;
- (b) where the employee could not continue to work in the position held without contravention of a provision of a law; or
- (c) where the employee is made redundant.

(3) For the purposes of the Code,

“redundancy” means where the work required of the employee is affected because

- (a) the employer has modernised, automated or mechanised all or part of his or her business;
- (b) the employer has discontinued or ceased to carry on all or part of his or her business;

- (c) the employer has reorganised or relocated his or her business to improve efficiency;
- (d) the employer's need for employees in a particular category has ceased or diminished;
- (e) it has become impossible or impracticable for the employer to carry on his or her business at its usual rate or level or at all, due to a shortage of material, a mechanical breakdown, a *force majeure* or an act of God; or
- (f) a reduced operation in the employer's business has been made necessary by economic conditions including a lack of or change in markets, contraction in the volume of work or sales, reduced demand or surplus inventory.

90. (1) Where an employer is required by section 89 to give an employee notice of termination of the employment contract, such notice shall be determined on the following basis unless a written contract provides more favourable terms: Notice periods.

- (a) where the employee's length of service does not exceed seven years, the period of notice shall be at least equivalent to the interval of time between the affected employee's pay days;
- (b) where the employee's length of service exceeds seven years but does not exceed fifteen years, the period of notice shall be at least one month;
- (c) where the employee's length of service exceeds fifteen years, the period of notice shall be at least two months.

(2) The periods of notice under subsection (1) shall not apply where the employer is entitled to summarily dismiss an employee under this Part.

(3) A notice of termination under subsection (1) shall not be given by an employer during an employee's period of absence on any leave granted under the Code.

Payment in lieu of notice.

**91.** (1) In lieu of providing notice of termination, the employer may, at his or her discretion, pay the employee a sum equal to the wages and other remuneration and confer on the employee all other benefits that would have been due to the employee at the expiry of any required period of notice.

(2) An employer, having given notice to terminate employment, and not having exercised the option provided in subsection (1), shall not be required to pay the employee's wages if that employee voluntarily quits his or her employment prior to the effective date of termination specified in the notice.

Recovery of remuneration and notice pay.

**92.** (1) Any amount due to an employee whose service is terminated shall be paid to the employee by the employer not later than the last working day before the termination becomes effective.

(2) Without prejudice to any other method of recovery, an amount due as pay for a period of notice may be recovered by civil proceedings in a court.

Winding up of employer's business, etc.

**93.** (1) The winding up of, or appointment of a receiver with respect to an employer's business shall cause the employment contract of any employee to terminate one month from the date of winding up or the appointment of a receiver, unless it is otherwise terminated within that period pursuant to section 87, 88, 89, 101 or 103.

(2) This section shall not apply where, notwithstanding the winding up or appointment of a receiver, the business continues to operate or is transformed.

(3) Notwithstanding any enactment to the contrary, on the winding up of, or appointment of a receiver with respect to, an employer's business, the claim of an employee, or those claiming on his or her behalf, to the following payments to which he or she is entitled under the Code or any contract shall have priority over other creditors, including the Government and the social security system:

- (a) wages, overtime pay, commissions and other forms of remuneration including gratuity relating to work performed during the twenty-six weeks preceding the date of winding up or appointment of a receiver;
- (b) vacation pay due;
- (c) amounts due in respect of other types of paid absence accrued during the twelve months

preceding the date of winding up or appointment of a receiver; and

- (d) severance pay, compensation for unfair dismissal and other payments due to employees upon termination of their employment.

**94.** When the employer's personal or legal position formed the basis of the contract of employment, the death of the employer shall cause the contract of employment to terminate one month from the date of the employer's death, unless the contract is otherwise terminated in accordance with section 87, 88, 89, 101 or 103. Death of employer.

**95.** (1) Where on termination of an employee's employment contract the employee requests a certificate of employment, the employer shall provide the employee with that certificate. Certificate of employment.

(2) The certificate of employment referred to in subsection (1) shall include

- (a) the name and address of the employer;
- (b) the nature of the employer's business;
- (c) the length of the employee's continuous service;
- (d) the duties upon which the employee was employed during the employment contract; and
- (e) the wages and other remuneration payable at the date of termination of the contract.

(3) A certificate of employment shall not contain the reason for termination of the employment contract or an evaluation of the employee's work, unless requested by the employee.

**96.** A temporary cessation of work on any of the following grounds shall not constitute a break in an employee's continuity of employment: Continuity of employment.

- (a) an industrial dispute;
- (b) illness for two days or illness certified in accordance with section 70(3)(b) where the absence from work exceeds two days;

- (c) industrial injury;
- (d) maternity leave certified by a medical practitioner;
- (e) the operation of any law;
- (f) an act of God or *force majeure*;
- (g) absence permitted or condoned by the employer;
- (h) temporary lay-off;
- (i) suspension; or
- (j) leave without pay.

Rights of employees on change of ownership.

97. (1) Where there is a change of ownership of business or undertaking and the successor-employer offers any or all involved employees continued employment with the business, the employees, shall carry forward their service and accrued rights to the successor-employer.

(2) Where the employee accepts continued employment with the successor-employer, the arrangements made at the time of the change of ownership in respect of the employee, including details of the employee's length of service and accrued rights, shall be notified to the Commissioner by the successor-employer in a statement signed by the employee and jointly by the predecessor-employer and successor-employer.

(3) Where the employer is a body corporate and there is a change in its corporate identity due to any merger and acquisition, amalgamation, restructuring, change of ownership or other similar circumstance affecting the rights of employees, the employer is deemed to have changed ownership for purposes of subsections (1) and (4).

(4) Where there is a change of ownership, the predecessor-employer shall pay to those employees who have not been offered continued employment with the successor- employer their outstanding wages, vacation pay, severance pay and any other entitlement due to them.

(5) Where there is a change of ownership of a business or undertaking, the predecessor-employer shall, where practicable, give at least one month's notice of that change in ownership to the employees.

**98.** Subject to section 97 and an agreement between the parties where a person for any reason sells or disposes of a business, all of the obligations under the Code of the person selling or otherwise disposing of the business are binding on the person acquiring the business.

Effect of sale of business.

**99.** (1) Where an employer intends to terminate simultaneously the employment contract of three or more employees on the grounds of redundancy, he or she shall notify the Commissioner as soon as practicable and, except in exceptional circumstances, not less than one month before the effective date of termination.

Commissioner to be informed of intended multiple terminations for reasons of redundancy.

(2) The notification to the Commissioner shall state the number and categories of employees to be terminated, the reasons for that action, the period over which the termination is to take place, whether there has been any consultation with a trade union, any other representative of the employees or with the employees themselves to mitigate the effects of the redundancy and the results of that consultation.

(3) The Commissioner shall, as soon as possible after receipt of the notification under subsection (1), inform the Minister of its contents.

(4) An employer who terminates the employment of an employee on the grounds of redundancy shall give preference to the re-employment of that employee if he or she decides to hire a person, within a period of six months from the date of the termination, to perform duties that are the same or substantially the same as those that were formerly performed by the employee, and shall make every reasonable effort to notify that employee of the vacancy.

**100.** (1) An employee who is engaged for a specified term of employment and who intends not to continue with that employment at the end of the specified term is not required to give advance notice of that intention unless the terms of his or her employment contract specify otherwise.

Employee's notice of termination.

(2) An employee, other than an employee mentioned in subsection (1), shall give advance notice to his or her employer of an intention voluntarily to terminate his or her employment, which shall correspond to the periods of notice required of employers specified in sections 88 and 90 and where the contract of employment is not in writing, the period of notice to be given by the employee shall not be less than two weeks.

(3) Where an employee gives notice in accordance with subsection (2), the employer may, at his or her discretion, require the employee to cease employment at the commencement of the period of notice and simultaneously pay the employee a sum equal to the wages and other

remuneration and all other benefits that would have been due to the employee at the expiry of the required period of notice.

(4) Where an employee fails to give the employer notice as required in subsection (2), the employee shall be liable to pay to the employer an amount equal to the single time pay which the employee would have received had he or she worked for such part of the notice period as was not served.

(5) Where an employee is liable to make any payment under subsection (4), the employer may deduct the amount payable from monies, if any, due to the employee from the employer.

Summary  
dismissal for  
serious  
misconduct.

**101.** (1) An employer is entitled to dismiss summarily, without notice, an employee who is guilty of serious misconduct of a nature that it would be unreasonable to require the employer to continue the employment contract.

(2) The serious misconduct referred to in subsection (1) is restricted to that conduct which is directly related to the employment contract and has a detrimental effect on the business and it includes, but is not limited to, situations in which the employee has

- (a) conducted himself or herself in a manner as to clearly demonstrate that the employment contract cannot reasonably be expected to continue;
- (b) been convicted of an offence in the course of his or her employment, the penalty for which prevents the employee from meeting his or her obligations under his or her employment contract for twelve working days or more.

(3) The employer shall, when terminating an employment contract under the provisions of this section, provide the employee with a written statement of the precise reason for the action and the employer shall be conclusively bound by the contents of the statement in any proceeding contesting the fairness of the dismissal.

(4) An employer who fails to provide the statement referred to in subsection (3) shall be stopped from introducing testimony as to facts which might have been included in the statement, in any proceeding contesting the fairness of the dismissal.

**102.** (1) An employer is entitled to take disciplinary action other than dismissal when it is reasonable to do so under the circumstances. Disciplinary action.

(2) For purposes of this section, “disciplinary action” includes in order of severity -

- (a) a written warning;
- (b) suspension from duty for a period not exceeding one week without pay.

(3) In deciding what is reasonable under the circumstances pursuant to subsection (1), the employer shall have regard to the nature of the violation, the terms of the employment contract, the employee’s duties, the pattern and practice of the employer in similar situations, the procedure followed by the employer, the nature of any damage incurred and the previous conduct and the circumstances of the employee.

(4) Where action is taken by an employer in accordance with this section, he or she shall advise the employee concerned in writing of the misconduct or action in breach of the employment contract and of what steps the employer is likely to take in the event of any repetition of the behaviour in respect of which the disciplinary action is taken.

(5) A complaint that any disciplinary action taken against an employee was unfair or unreasonable may be made by the employee to the Commissioner pursuant to section 26.

**103.** (1) Where an employee is guilty of an offence in breach of his or her employment contract, or of any misconduct such that the employer cannot reasonably be expected to continue to employ him or her if it is repeated, the employer may, when taking disciplinary action in accordance with section 102, warn the employee that repetition of the behaviour will result in summary dismissal. Termination for repeated misconduct, breach of contract or unsatisfactory performance.

(2) If the employee, after being warned pursuant to subsection (1), is guilty of a similar offence or misconduct in the following six months, the employer may terminate the employee’s employment without further notice.

(3) An employer who dismisses an employee under subsection (2) shall provide the employee with a written statement of the reasons for the action and the principles set out in section 101(3) and (4) shall apply to the provision of, or failure to provide, such statements.

(4) The employer shall be deemed to have waived his or her right to terminate the employment of an employee for misconduct if he or she has failed to do so within a reasonable period of time after having knowledge of the misconduct.

(5) Where, after the probationary period has expired, the employee is not performing his or her duties in a satisfactory manner, the employer may give him or her a written warning to that effect.

(6) If the employee, after he or she is warned pursuant to subsection (5) and in compliance with subsection (7), does not, during the following three-month period, demonstrate that he or she is able to perform and has performed duties in a satisfactory manner, the employer may terminate the employment contract.

(7) An employer shall not terminate the employment of an employee for unsatisfactory performance unless the employer has given the employee written warning pursuant to subsection (5) and appropriate instructions to correct the unsatisfactory performance and the employee continues to perform his or her duties unsatisfactorily for a period of three months.

## **PART VI SEVERANCE PAYMENTS AND RETIREMENT BENEFITS**

Right of  
severance pay.

**104.** (1) An employee whose period of continuous employment is at least twelve months is entitled to severance pay upon termination of such employment on any of the grounds specified in paragraphs (a), (b) or (c) of section 89(2) or in section 93 or 94.

(2) A periodic employee shall be deemed to satisfy the conditions as to length of service if he or she had worked with the same employer and any predecessor-employer for at least a consecutive four year period.

(3) An employer who lays off an employee for a temporary period shall inform the employee in writing and indicate the proposed date for his or her re-engagement prior to the lay-off.

(4) Where a periodic employee is employed by two or more employers to perform duties that benefit the same person or associated companies, then two or more employers shall be jointly responsible for severance payment of the employee.

(5) An employer who fails, without reasonable excuse, to pay severance pay within two months of the date on which payment of severance pay is due commits an offence and is liable on summary conviction to a fine not exceeding seven thousand dollars.

(6) Where an employer is convicted of an offence under subsection (5), the Magistrate shall, in addition to any penalty under subsection (5), order him or her to pay the employee an additional ten per cent of the amount of severance pay to which the employee is entitled.

**105.** (1) In the case of an employee who is not a periodic employee and who is not paid on a piece-work basis, severance payment shall consist of three-quarters of one day's pay or nine days' pay per year, at the employee's latest basic rate of pay, for each month or major fraction thereof of his or her period of employment with his or her employer and any predecessor-employer.

Methods of calculation of severance pay.

(2) In the case of an employee who is not a periodic employee and

- (a) who is paid on a piece-work basis, or
- (b) whose employment contract provides for part-time employment,

severance payment shall consist of three-quarters of one day's pay or nine days' pay per year, at the employee's latest basic rate of pay, for each month or major fraction thereof of his or her period of employment with his or her employer and any predecessor-employer, and for the purposes of this subsection one day's pay shall be equal to his or her earnings over the period of thirteen weeks immediately preceding the date of termination, divided by the number of days worked.

- (3) In the case of a periodic employee,
  - (a) severance payment shall consist of three-quarters of one day's pay or nine days' pay per year for each twenty-nine days worked;
  - (b) any fraction of a day which is obtained by dividing the number of days worked by twenty-nine shall be reckoned as one day; and
  - (c) one day's pay shall be calculated as equal to the total of his or her basic wage in the last twelve-

month period worked divided by the number of days worked.

(4) The method of calculation of severance payment specified in subsection (1), (2) or (3) shall take effect from the date the Code comes into force.

(5) The method of calculation of severance payment in respect of service prior to the date the Code takes effect shall remain at six days for each year of service.

(6) Where an employees' basic rate of pay is reduced during the last six months of his or her employment prior to retrenchment, the basic rate of pay to be used for calculation of severance payment of that employee shall be his or her basic rate of pay prior to that pay cut.

Entitlement to severance pay not to be affected by other payments.

**106.** The payment of severance pay under section 104 shall not affect, nor shall it be affected by, the employee's entitlement, if any, to payment in lieu of notice under section 91 or to any compensatory award made under section 86.

Severance pay, when payable; temporary termination; payment of interest.

**107.** (1) On the date of termination of employment of an employee entitled to severance pay under section 104, the employer shall pay the severance pay computed in accordance with section 105.

(2) If the termination is stated as temporary, no severance pay need be paid to the terminated employee at the time of termination, provided that

- (a) if the date of re-employment is more than three months immediately following the date of termination, the employee may choose to receive severance pay from the employer on the date of termination;
- (b) where the employer has stated a date for re-employment but is unable to do so on or before that stated date, severance pay shall be payable on the stated date; or
- (c) if no date of re-employment is given and three months have elapsed without the employee being re-employed, severance pay shall be payable immediately upon the expiration of the three-month period,

and, in which case, interest at the rate of ten percent per annum on the amount of severance pay due shall be payable for the interval between the original termination date and the date of actual payment.

(3) If after severance pay is paid in accordance with subsection (1) or (2) the employee is again employed by the same employer, he or she shall, for subsequent severance pay purposes, be considered to be newly hired and the term of employment shall be considered to have commenced on the date of re-employment.

**108.** If an employee's employment contract in his or her last occupation is terminated because of redundancy but he or she is offered other employment by the employer at a reduced wage, the employee may accept the offer of employment without forfeiture of severance pay, but if he or she accepts the offer of employment after having received severance pay, the employee shall be considered newly hired for the purposes of subsequent severance pay.

Reduction in pay because of redundancy.

**109.** (1) Subject to the provisions of section 104, where the employment contract of an employee is terminated on the grounds set out in section 97, he or she shall be eligible for severance pay, unless

Limitation on severance pay.

- (a) he or she has otherwise elected in accordance with the provisions of section 97; and
- (b) he or she is offered by a successor-employer an employment contract which is the same as that held prior to the disposal of the business and he or she has accepted that offer.

(2) Where the employment contract of the employee continues either on the basis of an election made under section 97 or on the basis of subsection (1) of this section, details of the employee's length of service and entitlements shall be communicated to the Commissioner in a statement signed by the employee and jointly by the predecessor-employer and successor-employer.

- (3) Severance pay shall not apply where the employee
  - (a) is fairly dismissed;
  - (b) unreasonably refuses to accept an offer of re-employment by the employer at the same place of work, under no less favourable terms than he

or she was employed immediately prior to the termination;

- (c) is employed by a partnership and his or her employment ceases on the dissolution of the partnership, and he or she either enters into employment with one or more of the partners immediately after such dissolution, or unreasonably refuses to accept an offer of employment by any such person on no less favourable terms than he or she was employed immediately prior to the dissolution; or
- (d) is employed by an employer who dies, and the employee either enters into the employment of the personal representative, widow, or any heir of the deceased employer immediately after such death, or he or she unreasonably refuses to accept an offer of employment by any such person on no less favourable terms than he or she was employed immediately prior to the death.

Recovery of  
severance pay.

**110.** An employee may, without prejudice to any other remedy available to him or her, bring civil proceedings in a court of competent jurisdiction to recover the severance payment to which he or she may be entitled under this Part.

Retirements  
benefits.

**111. (1)** An employer shall make provision for retirement benefits to be paid to his or her permanent employees by means of a pension scheme, an annuity, provident fund or other form of retirement scheme which may be contributory.

(2) An employee, who is employed by an employer prior to the employer establishing a pension or similar retirement scheme that does not provide for coverage for service with the employer prior to the establishment of the pension or retirement scheme, and who becomes a member of the pension or other retirement scheme is entitled to a payment under subsection (3) in respect of any non pensionable service with that employer, in addition to his or her pension benefit under the scheme.

(3) Where an employer does not provide a pension scheme or other retirement scheme for an employee, who has been employed with that employer for at least ten years and retires at age sixty five or at an agreed retirement age or where the employee retires at an earlier age on grounds of

ill- health, he or she shall pay to that employee retirement benefits calculated on the following basis:

- (a) nine days pay for each completed year of service after the commencement of the Code;
- (b) three days pay for each completed year of service for the first ten years of service prior to the commencement of the Code;
- (c) four days pay for each completed year of service between ten and twenty years' service prior to the commencement of the Code;
- (d) five days pay for each completed year of service between twenty and thirty years' service prior to the commencement of the Code; and
- (e) six days pay for each completed year of service beyond thirty years' service prior to the commencement of the Code;

(4) The rate of pay to be applied for calculation under subsection (3) shall be based on the wages of the employee at each year of entitlement.

(5) Where an employee becomes entitled within five years from the commencement of the Code, to a retirement benefit under subsection (2) or (3), the employer may pay that part of the retirement benefit that relates to service prior to the commencement of the Code in six equal payments over a period of two years.

(6) Where an employee becomes entitled, after two years from the commencement of the Code, to a retirement benefit under subsection (2) or (3), the employer shall pay all retirement benefits due to the employee in one lump sum payment within one month of the employee's retirement.

(7) Nothing in subsection (2) or (3) shall be construed to cause an employer to derogate from his or her obligation under a more favourable retirement benefit scheme that he or she may have established prior to the commencement of the Code.

(8) Where an employer is unable to pay retirement benefits under subsection (2) or (3) by reason of exceptional financial hardship, the employer may appeal to the Minister for variation of the obligation.

**PART VII**  
**EQUALITY OF TREATMENT IN EMPLOYMENT**

Objectives.

**112.** The objectives of this Part are

- (a) to eliminate discrimination against persons with respect to employment and occupation;
- (b) to promote recognition and acceptance of the principle of equal opportunity and treatment in employment and occupation; and
- (c) to promote gender equity and equality.

Interpretation.

**113.** In this Part,

“disabled person” means an individual whose prospects of securing, retaining and advancing in suitable employment are reduced as a result of a physical or mental impairment;

“marital status” means the status or condition of being

- (a) single;
- (b) married;
- (c) married but living separately and apart from one’s spouse;
- (d) divorced;
- (e) widowed; or
- (f) the *de facto* spouse of a person.

“sexual harassment” means unwanted conduct of a sexual nature in the workplace or in connection with the performance of work which is threatened or imposed as a condition of employment on the employee or which creates a hostile working environment for the employee.

Definition of  
“discrimination”.

**114.** (1) For the purposes of this Part, a person discriminates against another person if the first-mentioned person makes, on any of the grounds mentioned in subsection (2), any distinction, exclusion or preference the intent

or effect of which is to nullify or impair equality of opportunity or treatment in occupation or employment.

(2) The grounds referred to in subsection (1) are

- (a) race, colour, sex, sexual orientation, religion, ethnic origin, political opinion or affiliation, indigenous population, social origin, national extraction, disability, HIV or other medical status, family responsibility, pregnancy, marital status or, except for purposes of retirement and restrictions on work and employment of young persons and children, age;
- (b) any characteristic which pertains generally or is generally imputed to persons of a particular race, sex, sexual orientation, religion, colour, ethnic origin, indigenous population, nationality, political opinion, disability, HIV or other medical status, family responsibility, pregnant state, marital status or, except for purposes of retirement and restrictions on work and employment of young persons and children, age.

(3) Discrimination on the grounds of HIV or other medical status includes the requirement by an employer to have an applicant for a job or an employee subjected to an HIV test.

(4) Discrimination on the grounds of pregnancy includes the requirement to have an applicant for a job subjected to a pregnancy test.

**115.** (1) Subject to sections 116, 117 and 118, an employer, or any person acting or purporting to act on behalf of a person who is an employer, shall not, in relation to recruitment, selection or employment of any other person for purposes of training, apprenticeship or employment, discriminate against that other person in

Prohibition of discrimination.

- (a) the advertisement of a job;
- (b) the procedures used for the purpose of determining who should be offered that employment;
- (c) determining who should be offered employment;
- (d) the terms or conditions on which employment is offered; or

(e) the creation, classification or abolition of jobs.

(2) Subject to sections 116, 117 and 118, an employer shall not discriminate against an employee

(a) in the terms or conditions of employment afforded to that employee by the employer;

(b) in the conditions of work or occupational safety and health measures;

(c) in the provision of facilities related to or connected with employment;

(d) by denying access, or limiting access, to opportunities for advancement, promotion, transfer or training, or to any other benefits, facilities or services associated with employment;

(e) by retrenching or dismissing the employee; or

(f) by subjecting the employee to any other disadvantage.

Bona fide occupational qualifications.

**116.** (1) Nothing in section 115 shall apply to any distinction, exclusion or preference based on the grounds listed in section 114(2) where a genuine occupational qualification exists.

(2) For the purposes of this Part, a genuine occupational qualification for a job exists where

(a) the essential nature of the job calls for a particular race, sex, religion, national extraction, indigenous population, ethnic origin, social origin, disability, HIV status, pregnancy, family responsibility, marital status or age, in dramatic performances or other entertainment for reasons of authenticity;

(b) in a religious institution, the essential nature of the job calls for a particular religious affiliation or belief, and the essential nature of the job would be materially different or unable to be

carried out if performed by a person of a different religious affiliation or belief;

- (c) the job needs to be held by a man or a woman to preserve privacy or to comply with recognised cultural practices;
- (d) the nature of the location of the establishment makes it impracticable for the holder of the job to live elsewhere than in premises provided by the employer and
  - (i) the only such premises which are available for persons holding that kind of job are occupied or normally occupied, by persons of the same sex and are not equipped with separate sleeping accommodation and sanitary facilities for persons of the opposite sex; and
  - (ii) it is not reasonable to expect the employer either to equip those premises with such accommodation and facilities or to provide other premises for persons of the opposite sex or to work out a practicable solution or usage of such facilities for members of both sexes;
- (e) the job requires a married couple; or
- (f) on the grounds of disability it is shown that
  - (i) the disability in question was a relevant consideration in relation to the particular requirements of the employment concerned and the performance of the job would not be able to be carried out as a result of the disability; or
  - (ii) special facilities or modifications, whether physical, administrative or otherwise, are required to be made at the work place to accommodate the disabled person which the employer cannot reasonably be expected to perform.

Preference to Virgin Islander or Belonger.

- 117.** (1) An employer shall
- (a) seek to employ a Virgin Islander or Belonger in preference to a non-Virgin Islander or non-Belonger where such a Virgin Islander or Belonger is qualified; and
  - (b) not terminate the employment of a Virgin Islander or a Belonger in preference to a non-Virgin Islander or non-Belonger.

(2) Subsection (1) shall not be construed as forbidding the taking of personnel actions genuinely related to an employee's capacity or conduct in relation to the employment in question.

Special positive action.

**118.** Special measures taken by, or required of, employers of a temporary nature to promote equality of opportunity in employment based on the grounds set out in section 114 shall not be deemed to be unlawful discrimination within the meaning of section 115.

Sexual harassment.

**119.** Any act of sexual harassment against an employee committed by his or her employer, or an employee of that employer, shall constitute unlawful discrimination based on sex within the meaning of section 114.

Equal remuneration.

**120.** (1) An employer shall pay equal remuneration to men and women performing work of equal value for the employer and there shall be equal evaluation for equal work.

- (2) For the purposes of subsection (1),
- (a) "equal remuneration" means rates of remuneration that have been established without differentiation based on the grounds of sex; and
  - (b) "work of equal value" means work equal in value in terms of the demands it makes in relation to such matters as skill levels, duties, physical and mental effort, responsibility and conditions of work.

(3) The burden of proof to establish that equal remuneration has been paid shall rest on the employer.

**121.** (1) Where employment in a particular occupation is largely provided through partnership firms, it is an offence for such firms, or for persons proposing to form themselves into such a partnership firm, to discriminate against any person on the grounds set out in section 114(2) Partnerships.

- (a) in the arrangements they make for the purpose of determining who should be offered a position as partner in the firm; or
- (b) by expelling persons from, or subjecting persons in the firm to, detrimental treatment.

(2) Subsection (1)(a) and (b) does not apply if the treatment afforded to the partner or potential partner is based on an essential occupational qualification.

**122.** It is an offence for an organisation of employers, trade unions or other organisations of employees, or any other organisation whose members carry on a particular profession or trade for the purpose of which the organisation exists, to discriminate against any person on the grounds set out in section 114(2) Employer and employee organisations.

- (a) by refusing or failing to accept that person's application for membership;
- (b) in the terms on which it is prepared to admit that person to membership; or
- (c) in the case of a person who is a member of the organisation,
  - (i) by denying or deliberately omitting to afford him or her or limiting his or her access to any benefits, facilities or services provided by the organisation;
  - (ii) by depriving him or her of membership or varying the terms of membership;
  - (iii) by limiting his, or her or depriving him or her of, access to, or the acquisition of, leadership positions within the organisation; or

- (iv) by subjecting him or her to any other detriment.

Inducement to discriminate.

**123.** It is an offence to induce, or attempt to induce, a person to do any act which contravenes this Part by

- (a) providing, or offering to provide, the person with any benefit; or
- (b) subjecting, or threatening to subject, the person to any detriment.

Burden of proof.

**124.** Except where otherwise provided in this Part, the person alleging a violation of this Part shall bear the burden of proving discrimination, inducement or attempted inducement.

Proof of exceptions.

**125.** Where by any provision of this Part, conduct is excepted from conduct that is a contravention of this Part, the onus of proving the exception lies upon the party claiming the exception.

Offences and penalties under this Part.

**126.** (1) Any person who

- (a) commits an offence under section 122 or 123, or
- (b) otherwise contravenes the provisions of this Part commits an offence and,

is liable on summary conviction to a fine not exceeding seven thousand dollars, and for a second or subsequent offence, to a fine not exceeding ten thousand dollars.

(2) Where any partnership, or group of persons proposing to form themselves into a partnership, contravenes section 121(1), the individual partners shall, upon the contravention being proved, be each liable to a fine not exceeding two thousand dollars, and for a second or subsequent offence, to a fine not exceeding five thousand dollars.

(3) Where an offence under this Part is proved to have been committed by an employer who is not a natural person, and is proved to have been committed with the consent or connivance of, or to have been facilitated by any neglect on the part of any director, chairman, manager or other officer, they shall each be liable to be proceeded against accordingly.

Remedies.

**127.** (1) Without prejudice to any other remedy that may be available in any competent court, where any person who is aggrieved by any act or omission of an employer in contravention of the provisions of this Part,

and no settlement of the issue is reached in direct discussion with the employer, the dispute may be referred for settlement to the Commissioner under section 26.

(2) Where any dispute referred to the Commissioner in accordance with subsection (1) is subsequently referred to the Tribunal by the Minister in accordance with the provisions of section 27, the Tribunal may, if an offence is proved, make an order

- (a) directing the payment of compensation by the employer, or any other person or body covered under the provisions of this Part, to the aggrieved employee for any loss caused directly or indirectly as a result of the contravention;
- (b) directing the employer or other relevant person or body covered under this Part to redress the contravention including an order to employ, re-employ or reinstate any person, notwithstanding that the vacancy in question is already filled and notwithstanding that the employer may be liable to any claim arising from the need to dismiss or terminate the services of any other employee who has been engaged;
- (c) making any decision found to have been based on unlawful discrimination void;
- (d) prescribing any other remedy the Tribunal may deem fair and just to remedy the cause and effect of the act or omission of the employer.

### **PART VIII PROTECTION OF CHILDREN AND YOUNG PERSONS**

**128.** (1) A person shall not employ, or permit a child to be employed, as an employee, and a person who employs a child or permits him or her to work in contravention of this section commits an offence and is liable on summary conviction to a fine not exceeding eight thousand dollars, and in the case of a second or subsequent offence to a fine not exceeding ten thousand dollars.

Prohibition of employment of children.

- (2) This section shall not apply to
- (a) light work approved by the Minister for children not below the age of fourteen years and subject

to the number of hours and other conditions determined by the Minister after consultation with employers' and employees' representative organisations, where practicable;

- (b) artistic performances approved by the Minister and subject to conditions determined by the Minister after consultation with employers' and employees' representative organisations, where practicable; or
- (c) the exercise of manual labour by a child under order of detention in a reformatory or industrial school, or by a child receiving instruction in manual labour in a school, provided that such work is approved and supervised by a public authority.

Liability of parent or guardian.

**129.** Subject to section 130(8), where a child is employed in contravention of this Part, the parent or guardian of that child is deemed to have committed an offence unless he or she proves that the employment occurred without his or her knowledge, consent, acquiescence or connivance and is liable on summary conviction to a fine not exceeding two thousand dollars, and in the case of a second or subsequent offence to a fine not exceeding three thousand dollars.

Restrictions on employment of young persons.

**130.** (1) A person shall not employ a young person unless that young person is fit for the work he or she is expected to perform after a thorough medical examination, and the employer of a young person shall ensure that the young person is medically examined every six months and that he or she is fit for the work that he or she is expected to perform.

(2) A person shall not, without the prior written consent of the Minister responsible for education, employ during school hours, a young person who is within the compulsory school age.

(3) A person shall not employ a young person on night work, and for the purpose of this subsection "night work" means work performed between the hours of 8:00 p.m. on one day and 5:00 a.m. on the following day.

(4) A person shall not employ a young person in any form of work which the Minister may, by Order, declare to be hazardous work for the purposes of this section.

(5) Where the Commissioner is aware of the involvement of a child or young person in a worst form of child labour, the Commissioner shall, communicate and collaborate with other agencies of the Crown to ensure that the child or young person is removed from that kind of labour and rehabilitated.

(6) For purposes of subsection (5), “rehabilitation” includes access to education, training and social welfare.

(7) A person who contravenes subsection (1), (2), (3) or (4) commits an offence and is liable on summary conviction to a fine not exceeding five thousand dollars, and in the case of a second or subsequent offence to a fine not exceeding seven thousand dollars.

(8) A person who employs or induces another to employ or procures the employment of a child or young person in the worst form of child labour commits an offence and is liable on summary conviction to a fine not exceeding twenty-five thousand dollars.

(9) For purposes of subsection (6), a child or young person is considered employed whether or not he or she is in an employment contract or is paid or not paid for his or her services.

**131.** (1) An employer shall keep a register of young persons employed by him or her.

Registers to be kept.

(2) The register referred to in subsection (1) shall contain particulars of the names, addresses and dates of birth of young persons, and of the dates on which they enter and leave the employment, and the employer shall on request at any reasonable time, produce that register for inspection by any authorised public officer.

(3) An employer who contravenes this section commits an offence and is liable on summary conviction to a fine not exceeding eight thousand dollars, and in the case of a second or subsequent offence to a fine not exceeding ten thousand dollars.

**132.** (1) The prohibitions and restrictions under this Part on the employment of children and young persons, save section 130(3), shall not apply to students who participate in the Government’s vacation work programme for students, except that a student shall not be engaged to perform any work which by its nature or the circumstances in which it is carried out is, in the opinion of the Commissioner, likely to jeopardise the health, safety or morals of the student.

Government’s vacation work programme for students.

(2) For the purposes of subsection (1),

- (a) the Chief Education Officer shall, where students are required to participate in a vacation work programme, prepare and submit a report to the Commissioner
  - (i) in respect of the institutions in which the students are expected to work;
  - (ii) on the type of work the students will be engaged in;
  - (iii) on the duration of the work concerned; and
  - (iv) on the number of hours to be worked by the students;
- (b) the Commissioner may, after consultation with such persons as he considers necessary, prepare guidelines on the engagement of students to perform work under the vacation work programme.

False representation as to age.

**133.** A person who misrepresents the age of a child or young person for the purposes of contravening a provision of this Part commits an offence and is liable on summary conviction to a fine not exceeding eight thousand dollars, and in the case of a second or subsequent offence to a fine not exceeding ten thousand dollars.

## PART IX HEALTH, SAFETY AND WELFARE

Interpretation.

**134.** In this Part, unless the context otherwise requires,

“building operation” includes the construction, alteration, repair, maintenance or demolition of a structure, harbour facility, bridge, viaduct, waterworks, reservoir, pipeline, aqueduct, sewer or sewage system;

“employee” includes a person performing duties in a workplace with the expressed or implied permission of the operator of the workplace, on a part-time or full-time basis, whether or not the person is receiving remuneration for his or her services, and the expression “to employ” shall be construed accordingly;

- “employer” means any person or undertaking, corporation, company, public authority or body of persons who or which employs any person under a contract of employment or uses the services of a dependent contractor, commission agent or a contract employer; and may be an operator, principal contractor, contractor or sub-contractor; and includes the heirs, successors and assigns of an employer;
- “factory” includes the premises in which manufacturing takes place, and the term includes any warehouse or storage place, building operation, harbour operation, mine or quarry;
- “fumes” includes gases or vapours;
- “harbour operation” includes any work performed at a harbour, whether natural or artificial or at a pier, jetty or other installation in or at which ships can dock, obtain shelter or ship, or unship, goods or passengers;
- “hazardous work” means work that poses an unreasonable risk to the health or safety of an employee;
- “machinery” includes all manufacturing equipment, machines whether operated manually or mechanically, prime movers of machines, units designed to transmit power or motion, units designed to transport items or persons in connection with a manufacturing process, appliances used in the process, and all the parts of the appliances;
- “occupier” means the person who has the ultimate control over the affairs of a workplace or any other place of employment or work;
- “operator of a workplace” includes the owner of a building containing a workplace, the owner or hirer of a machine or implement used in a workplace other than the principal operator thereof to the extent that any obligation under this Part relates to persons who are employed in or about or in connection with such machine and who are in the employment or pay of such owner or hirer;
- “owner” includes a trustee, receiver, mortgagee in possession, tenant, lessees, or occupier of any lands or premises used or to be used as a workplace, and a person who acts for or on behalf of an owner as an agent or delegate; and an owner does not become an employer at a construction site by virtue only of the fact that the owner has engaged an architect, professional engineer or other person solely oversee quality control at a construction site;

“prime mover” includes an engine, motor or other appliance which provides mechanical energy derived from steam, water, wind, electricity, the combustion of fuel or other source of energy;

“sanitary conveniences” include urinals, water closets, earth closets, privies, ash-pits and any similar conveniences.

Duties of  
employers.

**135. (1)** An employer at any work place including a construction site shall ensure that,

- (a) a safe, sound, healthy and secure working environment is provided as far as is reasonably practicable;
- (b) the measures and procedures prescribed by the Code and the Regulations are carried out;
- (c) every supervisor and every employee performing work complies with the Code and the Regulations;
- (d) every reasonable precaution is taken in the circumstances for the protection of a worker;
- (e) reasonable precaution is taken in the circumstances to protect the general public who comes into contact with the work site;
- (f) all applicable standards and policies established by the Labour Department and other relevant agencies of the Government in consultation with stakeholders are complied with;
- (g) a copy of the occupational safety and health policy is posted at a conspicuous location in the workplace;
- (h) the equipment, materials and protective devices and clothing as prescribed are provided;
- (i) the equipment, materials and protective devices and clothing provided by the employer are suitable and adequate and maintained in good condition;
- (j) the equipment, materials and protective devices

and clothing provided by the employer are used as prescribed;

- (k) the workplace, machinery, equipment and processes under his or her or control are safe and without risk to safety and health as far as is reasonably practicable;
- (l) that the machine, device, tool or equipment is in good condition; and
- (m) that the machine, device, tool or equipment complies with the Code and the Regulations.

**136.** (1) The employer and operator of a workplace shall, within six months of the commencement of the Code, file with the Commissioner a notice stating

Registration of workplaces.

- (a) the hazardous chemicals, the hazardous physical agents and the hazardous biological agents present in the workplace and indicating whether the workplace is a major hazard installation; and
- (b) other particulars prescribed by Regulations,

and a person who commences to operate a workplace subsequent to the coming into force of the Code shall, within three months from the commencement date, file a similar notice.

(2) When there is a material change in any of the particulars appearing in the notice filed in accordance with subsection (1), the employer and operator of that workplace shall, within one month of that change, file with the Commissioner a notice setting forth the details of the change.

**137.** (1) Every employer shall within one year from the commencement of the Code make a suitable and sufficient assessment of

Risk assessment.

- (a) the risks to the safety and health of his or her employees to which they are exposed whilst they are at work; and
- (b) the risks to the safety and health of persons not in his or her employment arising out of or in connection with the conduct by him or her of his or her undertaking,

for the purpose of identifying the measures he or she needs to take to comply with the requirements and prohibitions imposed upon him or her by or under the relevant statutory provisions.

(2) Any assessment referred to in subsection (1) or (2) shall be reviewed by the employer who made it if

- (a) there is reason to suspect that it is no longer valid; or
- (b) there has been a significant change in the matters to which it relates,

and where as a result of any review, changes to an assessment are required, the employer or self-employed person concerned shall make them.

(3) Where the employer employs twenty or more employees, he or she shall record

- (a) the significant findings of the assessment; and
- (b) any group of his or her employees identified by it as being especially at risk.

Safety and health  
policy and  
emergency plan.

**138.** (1) An employer of a workplace where twenty or more employees are employed shall prepare or revise, in consultation with the employees' representatives

- (a) a written statement of the general policy with respect to the safety and health of the employees, specifying the organisation and arrangements for the time being in force for carrying out that policy and the provisions of the Code; and
- (b) an emergency plan in writing based on the risk assessment made in accordance with section 137 which shall include
  - (i) suitable and rapid means of obtaining first aid help and transportation from the industrial establishment to a hospital for injured workers; and
  - (ii) measures and procedures to be used to control a major fire, to react to serious

damage to the industrial establishment,  
to evacuate the industrial establishment  
and to notify rescue personnel,

and the employer of the workplace shall submit the statement or the emergency plan, and any revision of the statement or plan to the Commissioner and bring them to the notice of all persons employed in the workplace.

(2) An employer of a workplace shall ensure, as far as is reasonably practicable, that no unsafe structure exists in the workplace that is likely to expose persons to risks to bodily injury.

**139.** The employer and operator of a workplace shall, as the Health. particular circumstances require,

- (a) keep the workplace in a clean state;
- (b) keep the workplace from being overcrowded;
- (c) maintain a reasonable temperature in the workplace;
- (d) provide adequate ventilation in the workplace;
- (e) provide adequate lighting;
- (f) provide effective means for draining floors; and
- (g) provide adequate sanitary conveniences.

**140.** (1) The employer and operator of a workplace shall, as the Safety. particular circumstances require,

- (a) take adequate measures for the prevention of fire and for adequate means of escape for employees;
- (b) ensure that all machinery used is operated and maintained in a manner as to be safe for employees; and
- (c) ensure that the workplace is properly maintained.

(2) The employer is entitled under the Code to take such action as is necessary to remove an employee whom the employer has reasonable cause to believe is under the influence of alcohol, addictive drugs or any other substance which may adversely affect the health and safety of the employee or other persons in or about the workplace and may request the employee to take a drug test.

Welfare.

**141.** (1) The employer of a workplace shall, as the particular circumstances require,

- (a) make available adequate supply of wholesome of drinking water;
- (b) provide and maintain suitable washing facilities;
- (c) provide accommodation for clothing not worn during working hours and for the drying of work clothing;
- (d) provide and maintain suitable facilities for employees to sit during the course of their employment;
- (e) provide and maintain readily accessible first aid equipment; and
- (f) provide and maintain other facilities such as canteen, mess rooms and rest rooms, as are reasonable under the circumstances.

Special protective measures.

**142.** It is the responsibility of the employer of any workplace, as the particular circumstances require, to ensure that

- (a) a person is not permitted to take any food or drink into any room where any lead, arsenic or other poisonous substance is used;
- (b) suitable goggles or protective screens are provided to protect the eyes of any persons employed in a process involving a special risk of injury to the eyes;
- (c) where a work process involves a reasonable possibility of injury to other parts of an employee's body, suitable protective equipment is furnished;

- (d) an employee is not required manually to lift, carry or move anything in excess of the maximum weight specified by any Regulations made under this Part;
- (e) where a person is employed in any process involving exposure to wet or to any injurious or offensive substance, suitable protective clothing and appliances are provided and maintained;
- (f) where a process involves heat or steam, facilities adequate to protect employees from the heat or steam are provided and maintained;
- (g) a person is not required to use white phosphorous (sometimes called “yellow phosphorous”) in any process; and
- (h) with respect to any process involving the use of, or exposure to, products containing benzene (which term, as used in the Code, means the aromatic hydrocarbon  $C_6H_6$  itself or any product the benzene content of which exceeds one percent by volume), harmless or less harmful substitutes are used if they are available but, if substitutes are not available then
  - (i) the process shall be, as far as is practicable, carried out in an enclosed system or where an enclosed system is not practicable, the place of work in which the process is carried out shall be equipped with effective means to ensure the removal of benzene fumes to the extent necessary for the protection of the health of the employees;
  - (ii) the word “benzene” and appropriate danger signals shall be clearly visible on any container holding benzene; and
  - (iii) an employee who may be exposed to benzene shall receive appropriate instructions about safeguarding health and preventing accidents, as well as

about action to be taken if there is any evidence of poison.

Protective clothing and devices.

**143.** (1) Persons entering an area in a workplace where they are likely to be exposed to the risk of head, eye, ear, hand or foot injury, injury from air contaminant or any other bodily injury, shall be provided with suitable protective clothing or devices of an approved standard and adequate instructions in the use of the protective clothing or devices, and a person shall not be permitted to be in that area unless he or she is wearing the protective clothing or device.

(2) The employer and operator of a workplace shall conspicuously display in areas where protective clothing or devices are required to be worn, a notice to that effect.

Hazardous chemicals.

**144.** (1) An employer shall

- (a) ensure that all hazardous chemicals present in the workplace are labeled in a way easily understandable to the employees, or are identified in the prescribed manner;
- (b) obtain or prepare, as may be prescribed, an unexpired chemical safety data sheet for all hazardous chemicals present in the workplace;
- (c) ensure that the identification required by paragraph (a) and chemical safety data sheets required by paragraph (b) are available in English and other languages as may be prescribed;
- (d) ensure that when hazardous chemicals are transferred into other containers or equipment, the contents are indicated in a manner which will make known to employees, their identity, any hazards associated with their use, and any safety precautions to be observed; and
- (e) ensure that information is provided on the handling and disposal of hazardous chemicals which are no longer required and containers which have been emptied but which may contain residues of hazardous chemicals, so that the risk to safety and health and to the environment is eliminated or minimized.

(2) An employer shall ensure that a hazardous chemical is not used, handled or stored in the industrial establishment unless the prescribed requirements concerning identification, chemical safety data sheets and worker instruction and training are met.

(3) An employer shall advise the Commissioner in writing if the employer, after making reasonable efforts, is unable to obtain a label or chemical safety data sheet required by subsection (1).

(4) A copy of the most recent version of the inventory and of every unexpired chemical safety data sheet required by this Part in respect of hazardous chemicals in a workplace shall be

- (a) made available by the employer in such a manner as to allow examination by the employees;
- (b) furnished by the employer to a representative of health and safety committee, if any, or to an employee selected by the employees to represent them, if there is no health and safety committee or if there is no trade union, an employee selected by the employees to represent them;
- (c) filed by the employer with the Commissioner on request or if so prescribed.

(5) A person shall not remove or deface the identification referred to in subsection (1)(a), for a hazardous chemical.

**145.** (1) An employer shall, after being notified by a female employee that she is pregnant and upon production of a medical certificate to that effect, adapt the working conditions of the female employee to ensure that she is not

Special protection for pregnant employees.

- (a) involved in the use of, or exposed to, chemicals, substances or anything dangerous to the health of the unborn child; or
- (b) subjected to working conditions dangerous to the health of the unborn child, and where appropriate, the employer may assign alternative work, where available, to her without prejudice to her right to return to her previous job.

(2) An employer shall not require or permit a pregnant employee or an employee who is nursing her child to perform work that is hazardous to her health or the health of the child.

(3) Notwithstanding any other law, during an employee's pregnancy, and for a period of six months after birth of her child, her employer shall offer her suitable, alternative employment on terms and conditions that are no less favourable than her ordinary terms and conditions of work, where the employee is required to perform work that poses a danger to her safety or health or that of her child, unless there is no other available suitable alternative employment or that in doing so the employer will incur costs greater than ordinary administrative costs.

Employment of young persons on dangerous machines.

**146.** (1) In every industrial establishment, a young person shall not work at a machine to which this section applies, unless he or she is fully instructed as to the dangers arising in connection with its operation, and the precautions to be observed, and

- (a) has received sufficient training in work at the machine; or
- (b) is under adequate supervision by a person who has special knowledge and experience in the operation of the machine.

(2) This section applies to machines as may be prescribed, being machines which are of a dangerous character that a young person ought not to work at them unless the requirements of subsection (1) are complied with.

Disposal of waste.

**147.** An employer shall, before the expiration of one year from the date on which the Code comes into force or a longer period as the Minister may, upon application in writing by an employer, approve, make arrangements for the safe and efficient disposal of wastes and effluents resulting from any processes carried on and the arrangements shall be designed so as to ensure that the disposal does not result in any danger to persons, property or to the environment.

Noise and vibration.

**148.** (1) An employer shall take adequate steps to prevent hearing impairment caused by noise, and diseases caused by vibration, from occurring to persons in, or in the vicinity of, his or her workplace and shall comply with directives as

- (a) an inspector may issue, in order to reduce the level of noise or vibration generated by a machine, device or process; and
  - (b) the Chief Medical Officer may issue, in order to protect persons employed from hearing impairment caused by noise or from diseases caused by vibration.
- (2) An employer shall
- (a) ensure that protective equipment necessary for compliance with subsection (1) is worn or used by employees at all appropriate times;
  - (b) arrange for the initial and periodic medical examination and assessment of those employees who are exposed to the risk of injury to their hearing or of contracting a disease caused by vibration;
  - (c) keep a record of the results of examinations and assessments under paragraph (b) which shall include audiometric tests and the monitoring of the work environment; and
  - (d) arrange programmes for preservation of hearing.

**149.** (1) An employee to whom this Part applies shall make use of all means, appliances, conveniences or other things provided under the Code for the health, safety and welfare of employees, to the extent that his or her employment involves their use.

Obligations of persons employed.

- (2) An employee shall not
- (a) willfully interfere with, misuse or damage any means, appliance, convenience or other thing;
  - (b) willfully and without reasonable cause do anything likely to endanger himself or herself or others; or
  - (c) enter, or remain, at a workplace, when under the influence of alcohol, addictive drugs or any other substance which may adversely affect the

health and safety of the employee or other persons in or about that workplace.

(3) An employee shall report to his or her employer or supervisor

(a) the absence of, or defect in, any equipment or protective device and clothing of which he or she is aware and which may endanger himself or herself or another employee or person; and

(b) any contravention of the Code or any Regulations of which he or she is aware.

Prohibition of deduction of wages.

**150.** The operator of a workplace shall not, in respect of the cost of anything done or to be done by him or her in pursuance of this Part or any Regulations or Order issued under the Code, make any deduction from the sum contracted to be paid by him or her to any person employed, nor shall he or she receive or allow any other person to exact or to receive any payment in lieu of such deduction except that the wages may be deducted from an employee for any absence arising out of action taken by the employee under section 149(2)(c).

Regulations and Orders.

**151.** (1) The Minister may make Regulations prescribing the standards to be achieved in respect of any of the obligations set forth in this Part and the methods required to attain them, and he or she may establish advisory committees on which employers and employees are represented to assist him or her in this function.

(2) The Minister may, by Order,

(a) require the operator of a workplace to take special measures bearing on the health, safety or welfare of employees;

(b) require the operator of a workplace to take specified measures bearing on the health, safety or welfare of employees whose duties relate to the business of the workplace and are performed, in whole or in part, outside the workplace;

(c) require arrangements to be made for medical supervision in any workplace; or

- (d) require medical examinations of employees in any workplace at the expense of the operator of the workplace to ascertain whether their health has been or is being adversely affected by their employment.

**152.** (1) At a construction site or other workplace where a committee is not required under section 153, the employer shall cause the employees to select at least one safety and health representative from among the employees of a relevant department or section within the workplace who does not exercise managerial functions.

Safety and health representatives.

(2) The safety and health representative shall accompany the inspector during an inspection and may make such representation as may be desirable to protect the safety and health of employees.

**153.** (1) A joint workplace safety and health committee is required at a workplace at which twenty or more employees are regularly employed.

Joint workplace safety and health committees.

(2) Subject to subsection (3), this section does not apply

- (a) to an employer at a construction site at which work is expected to last less than three months; or
- (b) to a prescribed employer or workplace or class of employers or workplaces.

(3) Notwithstanding subsections (1) and (2), the Minister may, by Order, require an employer to establish and maintain one or more joint workplace safety and health committees for a workplace and may, in the Order, provide for the composition, practice and procedure of any committee so established.

(4) It is the function of a committee and it has power to

- (a) identify situations that may be a source of danger or hazard to employees;
- (b) recommend to the employer and the employees the establishment, maintenance and monitoring of programmes, measures and procedures respecting the safety of employees;

- (c) obtain information from the employer respecting
  - (i) the identification of potential or existing hazards of materials, processes or equipment; and
  - (ii) safety and health experience and work practices and standards in similar or other industries of which the employer has knowledge;
- (d) obtain information from the employer concerning the conducting or taking of tests of any equipment, machine device, article, material, chemical, physical agent or biological agent in or about a workplace for the purpose of occupational safety and health; and
- (e) be consulted about, and have a designated member representing employees be present at the beginning of testing referred to in paragraph (d) conducted in or about the workplace if the designated member believes his or her presence is required to ensure that valid testing procedures are used or to ensure that the test results are valid.

Accident and safety programme.

**154.** The Commissioner may, with the approval of the Minister, undertake

- (a) research into the cause of, and the means of preventing, employment injury, and
- (b) programmes to reduce or prevent employment injury,

in the course of which he or she may cooperate with any other department of Government or any other organisation undertaking similar programmes.

Special powers of inspector.

**155.** (1) An inspector may take for analysis samples of material used or intended to be used in a workplace which he or she thinks may prove on analysis to be likely to cause bodily injury to employees.

(2) An inspector who has reasonable cause to believe that a condition exists at a workplace which is likely to cause bodily harm to any persons employed or performing duties, shall serve written notice upon the operator thereof of an intention to recommend that the Minister issue an appropriate Order under section 153.

(3) When an inspector is of the opinion that the employment of any young person in a workplace or any process or part is or may be prejudicial to that young person's health, he or she may serve written notice on the operator of the workplace requiring the cessation of, or the imposition of specified limitations upon, that young person's employment and the requirements of the notice shall become an obligation under this Part.

**156.** An employer shall, within forty-eight hours of an accident or death referred to in this section, report to Reports by employer.

- (a) the Commissioner, the joint workplace safety and health committee, the employees' safety representative and the recognised trade union accidents involving an employee, or any other person present in the workplace, which result in disability for more than three days or death;
- (b) the Commissioner
  - (i) other accidents, fires and explosions;
  - (ii) the collapse or failure of any building or structure; and
  - (iii) any accident with machinery or plant which results in the cessation of work beyond the shift or day on which the accident took place.

**157.** The owner of a workplace that is not a construction site shall Duties of owner.  
ensure that

- (a) the facilities prescribed are provided;
- (b) the facilities prescribed to be provided are maintained as prescribed; and
- (c) the workplace complies with the Regulations, and that the workplace is not constructed, developed, reconstructed, altered or added to,

except in compliance with the Code and the Regulations.

Exemptions and extensions.

**158.** (1) The Minister may, by Order, exempt a workplace from the application of one or more of the provisions of this Part.

(2) An Order made under subsection (1) shall set forth the reasons and terms of the exemption.

(3) The exemption shall be effective for not more than six months in the absence of an Order of extension by the Minister which shall set forth the reason for the extension.

(4) Any extension made under subsection (3) shall be effective for not more than six months in the absence of an order of further extension by the Minister which shall set forth the reason for further extension.

(5) An Order of exemption or extension may contain conditions which shall be met in order to qualify for the exemption or extension.

Non-exclusivity of provisions of this Part.

**159.** Except where otherwise expressly provided, the provisions of this Part shall be in addition to, and not in substitution for or diminution of, the provisions of any other Part.

Offences.

**160.** (1) A person who contravenes an obligation created under this Part, or any Regulations or Order, commits an offence.

(2) If the contravention is by an employee, the operator of the workplace shall also be liable if it is proved that the operator failed to take reasonable steps to prevent the contravention.

(3) Where an offence committed by the operator of a workplace under this Part, or any Order or Regulations, is proved to have been committed with the consent or connivance of, or to have been facilitated by any neglect on the part of any director, chairman, manager, other officer or person other than the operator, he or she, as well as the operator, is deemed to have committed the offence and is liable to be proceeded against.

Multiple offences.

**161.** Where an employer employs persons in a workplace other than in accordance with this Part or any Regulations or Order, there shall be deemed to be a separate contravention in respect of each person so employed.

**162.** (1) A person who fails to comply with section 139 commits an offence and is liable on summary conviction to a fine not exceeding fifteen thousand dollars.

Penalties for specific offences.

(2) A person who

- (a) forges or counterfeits any certificate required by, under or for the purposes of this Part or any Regulations or Order;
- (b) gives or signs any certificate knowing it to be false in any material particular;
- (c) knowingly utters or makes use of any certificate so forged or counterfeited, or which is false as mentioned in paragraph (b);
- (d) knowingly utters or makes use of any certificate as applying to a person to whom it does not apply;
- (e) falsely pretends to be an inspector;
- (f) willfully connives in any forging, counterfeiting, giving, signing, uttering, making use, personating or pretending referred to in this subsection;
- (g) willfully makes a false entry in any register, notice, certificate or document required by, under or for the purposes of this Part or any Regulations or Order;
- (h) willfully makes or signs a false declaration required by, under or for the purposes of this Part or any Regulations or Order; or
- (i) knowingly makes use of any false entry or declaration referred to in paragraph (g) or (h),

commits an offence and is liable on summary conviction to a fine not exceeding ten thousand dollars.

(3) The operator of a workplace who

- (a) obstructs or delays an inspector in the due exercise of any power conferred on him or her by or under this Part;
- (b) refuses to answer or falsely answers, any inquiry authorised by or under this Part;
- (c) fails to produce any register, book, document or other record he or she is required by or under this Part to produce; or
- (d) conceals or prevents, or attempts to conceal or prevent, any person from appearing before or being examined by an inspector,

commits an offence and is liable on summary conviction to a fine not exceeding ten thousand dollars.

(4) If any person suffers personal injury or dies in consequence of the operator of the workplace having contravened any provision of this Part or any Regulations or Order, the operator commits an offence and is liable on summary conviction to a fine not exceeding ten thousand dollars.

Penalties for offences for which no express penalty is provided.

**163.** A person who commits an offence, for which express penalty is not provided, is liable on summary conviction to a fine not exceeding five thousand dollars, and on a second or subsequent conviction to a fine not exceeding eight thousand dollars.

Power of court to order cause of contravention to be remedied.

**164.** Where the employer or operator of a workplace is convicted of an offence under this Part, the court may, in addition to or instead of imposing a fine, order him or her, within the time specified in the Order, to take steps as may be specified for remedying the matters in respect of which the contravention occurred, and may, on application, extend the time specified.

Penalty for person actually committing offence for which operator is liable.

**165.** Where an act or default for which the employer or operator of a workplace is liable is in fact the act or default of an agent of the operator or other person, that agent or other person commits an offence and is liable on summary conviction to the penalty prescribed for the offence as if he or she were the employer or operator.

Procedure where inspector or operator believes the offender to be other than operator.

**166.** (1) Where it appears to an inspector at the time of discovering the commission of an offence

- (a) that an employer or operator of the workplace used due diligence to enforce the execution of this Part;
- (b) that the offence is committed by a person other than the operator; and
- (c) that the offence is committed without the consent, connivance or willful fault of the operator,

the inspector shall make a written report of the matter to the Commissioner who shall investigate the matter.

(2) Where the Commissioner is satisfied that a contravention of this Part has occurred, he or she shall refer the matter to the Director of Public Prosecutions.

**167.** (1) Where an entry in a register or record is required to be made by this Part or any Regulations or Order, Records as evidence.

- (a) an entry made in the register or record by or on behalf of the operator of a workplace shall be admissible against him or her as evidence of the facts stated in the register or record; and
- (b) the absence of the entry shall be admissible as evidence that the requirement has not been observed.

(2) Where, in any proceedings under this Part with respect to a young person, it appears to the court that the young person is of or below the age alleged by the defendant, the onus lies on the defendant to prove that the young person is not of or below that age.

**168.** Compliance or non compliance by an employer or employee with this Part shall not prevent any person from seeking compensation under any other law. Other Remedies.

## PART X WORK PERMITS

**169.** In this Part, unless the context otherwise requires, Interpretation.  
“emergency work permit” means a work permit issued to a non-Belonger to

enter the Virgin Islands on a single occasion to undertake emergency work not anticipated by the employer for a period not exceeding seven days;

“engage in employment” means

- (a) take or continue in any employment;
- (b) practise any profession;
- (c) engage in any trade or business; or
- (d) engage or be employed in any form of occupation,

whether or not such employment, profession, trade, business or occupation is taken, continued, engaged in, practised or carried on for reward, profit or gain;

“periodic work permit” means a work permit issued to a non-Belonger to enter and work in the Virgin Islands for a single employer for short periods within a one year period;

“self-employment” means employment on one’s own behalf and not under a contract of employment, express or implied;

“temporary work permit” means a work permit issued to a non-Belonger to enter and work in the Virgin Islands for a single period not exceeding three months; and

“work permit” means a work permit issued under this Part.

Prohibition  
against  
employment.

**170.** Subject to section 172, a person who does not belong to the Virgin Islands shall not engage in employment or self-employment in the Virgin Islands unless he or she has obtained a work permit issued by the Minister.

Applications for  
work permit and  
interim work  
permit.

**171. (1)** An application for a work permit shall be made by the intended employer on behalf of the person for whom the permit is sought, by filing with the Labour Department an application in triplicate, in the prescribed form and, unless the applicant is a self-employed person, that application shall be accompanied by a statement in the prescribed form, completed by the intended employer.

(2) The Minister shall, in approving any work permit, have the discretion to impose any conditions he or she may consider appropriate to

promote the national policy underlying the Code in section 2, the work permit policy, the employment of Virgin Islanders and Belongers and any man power development plan of the Virgin Islands.

(3) An application for renewal or extension of a work permit shall be made by, or on behalf of the person for whom the work permit is sought, by filing with the Labour Department an application in the prescribed form and, unless the applicant intends to be self-employed, the application shall be accompanied by a statement in the prescribed form completed by the intended employer.

(4) The Minister shall, in considering an application under subsection (3) take into account the extent to which the employer has complied with a condition imposed under subsection (2).

(5) An application for a work permit to engage a person in employment as the employer of another person who is himself or herself a non-Belonger employee shall be made by the non-Belonger employee as the employer of that person and that person shall subject to subsection (9) not be permitted to obtain another work permit for any other job.

(6) An application for a temporary work permit or its renewal shall be made by the employer on behalf of the person for whom the permit is sought, by filing directly with the Minister, an application in the prescribed form.

(7) An application for a periodic work permit or its renewal shall be made by the employer on behalf of the person for whom the permit is sought, by filing directly with the Minister an application in the prescribed form.

(8) An application for an emergency work permit shall be made by the employer on behalf of the person for whom the permit is sought, by filing directly with the Minister, an application in the prescribed form.

(9) Where an employer is granted a work permit, a second employer may, with the consent of the primary employer, apply for a part-time work permit on behalf of that employee provided that the total working hours of that employee shall not exceed twelve hours per day and the Minister is satisfied that the welfare of the employee is not abused.

(10) An application for a part-time work permit shall be made by the employer on behalf of the person for whom the permit is sought, by filing directly with the Minister, an application in the prescribed form.

(11) Subject to subsection (9), a work permit holder shall neither seek employment nor be given a work permit to work with another employer during the validity of the work permit unless, after investigation by an inspector, the Commissioner is satisfied that the employer's conduct towards the employee has made it unreasonable for him or her to remain in that job.

(12) The Minister may vary the conditions of a work permit granted under this section at any time.

Application.

**172.** This Part shall not apply to an employee who

- (a) is holder of a certificate of residence;
- (b) is a member of Her Majesty's regular naval, military or air forces;
- (c) is duly accredited to the Virgin Islands by or under Her Majesty or the Government of any Commonwealth or foreign State; or
- (d) is a person or belongs to a class of persons exempted by an Order made by the Cabinet.

Action upon application for work permit.

**173.** (1) The Minister may, by Order, delegate any of his or her functions under section 171 or this section to the Commissioner.

(2) The Minister shall subject to section 171(2) decide whether or not, and under what conditions, the work permit should be granted, renewed or extended.

(3) A statement in a work permit stating the conditions upon which the permit is granted, renewed or extended shall be conclusive evidence of those conditions.

(4) Where a work permit is granted, renewed or extended, it shall be in the prescribed form and its validity shall be dependent upon compliance with section 178.

(5) Subject to section 171(2) and (4), a work permit shall be effective for a period not exceeding three years at a time and the permit may, upon application duly filed under section 171, be renewed or extended by the Minister from time to time.

**174.** (1) A person who fails to comply with section 170 or 171 commits an offence and is liable on summary conviction to a fine not exceeding eight thousand dollars, and any work permit granted to him or her shall be cancelled.

Penalty applicable to employees or self-employed persons.

(2) The Commissioner may request the assistance of the Commissioner of Police, the Chief Immigration Officer or Comptroller of Customs or any other government agency for purposes of enforcing this Part.

**175.** (1) An employer who employs a person

Penalty applicable to employers.

(a) who requires a work permit without that person having first obtained the work permit; or

(b) in non-compliance with the conditions attaching to that person's work permit,

commits an offence and is liable on summary conviction to a fine not exceeding eight thousand dollars.

(2) Nothing in subsection (1) shall prevent a person who has the written consent of the primary employer from engaging the service of a work permit holder for not more than five days.

(3) Where an offence under subsection (1) is committed by a body corporate, the chairman and every director and every officer of the body corporate who knowingly authorises or permits the offence is liable on summary conviction to the same penalty as if they were individual employers.

**176.** A person who makes a false statement in any prescribed form which is filed under section 171 with the Labour Department or the Minister, or in response to any queries put to him or her in the course of an investigation made under section 173, commits an offence and is liable on summary conviction to a fine not exceeding eight thousand dollars.

False statements in application, etc.

**177.** (1) The Minister shall with the approval of Cabinet, by Order specify the fee to be paid for every application for, grant, renewal or extension of a work permit under this Part.

Fees.

(2) The Minister may specify different fees for different persons or categories of persons and for persons receiving different wages or salaries.

(3) Fees for applications, work permits and exemptions shall be paid into the Consolidated Fund.

(4) Where a work permit is granted for any period less than one year, the amount of fees payable shall be pro-rated from time to time as the Minister may by Order determine.

Government policy on international migration for employment.

**178.** (1) The Minister shall cause to be prepared, and reviewed annually, a comprehensive policy on international migration for employment that

- (a) is based on the economic and social needs of the Virgin Islands; and
- (b) takes into account
  - (i) the short-term need of human resources;
  - (ii) the short-term availability of human resources in the Virgin Islands; and
  - (iii) the long-term social and economic consequences of migration for Virgin Islanders, Belongers and migrant employees.

(2) The Minister shall submit the policy prepared under subsection (1), and each revision, to the Cabinet for its approval and the approved policy shall be laid before the House of Assembly as soon as practicable.

Provisions relating to termination of employment.

**179.** An employee who leaves the Virgin Islands upon the termination of his or her employment is entitled to

- (a) any outstanding remuneration for work performed, including severance payments where due; and
- (b) benefits which may be due in respect of injury suffered in the course of his or her employment.

**PART XI  
RECOGNITION OF BARGAINING AGENTS  
FOR BARGAINING UNITS**

Regulations.

**180.** The Minister shall, after consultations with stakeholders, make Regulations respecting the recognition of bargaining agents.

**PART XII  
MISCELLANEOUS**

**181.** (1) A person shall refer a dispute or complaint to the Commissioner within six months of the ground for the dispute or complaint coming to the knowledge of that person. Limitation upon referring dispute or complaint.

(2) The Commissioner shall not investigate or resolve a dispute or complaint referred to him or her after the six-month period mentioned in subsection (1).

**182.** Prosecution for an offence under the Code shall not be commenced after the expiration of one year from the date on which the Commissioner becomes aware of the offence. Limitation upon prosecution.

**183.** (1) A public contract shall be deemed to incorporate the Rules set out in the Schedule as if the Rules were expressly set out in that contract. Labour clauses in public contracts.  
Schedule

(2) Every contractor under a public contract shall keep displayed in a conspicuous place in his or her establishment and workplace for the information of the employees, a notice containing the conditions of their employment so printed that it may be read by all employees.

(3) In this section, a “public contract” arises where

- (a) at least one of the parties to the contract is the Government or a statutory board;
- (b) the execution of the contract involves
  - (i) the expenditure of funds by the Government or a statutory board; and
  - (ii) the employment of employees by the other party to the contract; and
- (c) the contract is for
  - (i) the construction, alteration, repair or demolition of public works;

(ii) the manufacture, assembly, handling or shipment of materials, supplies or equipment; or

(iii) the performance or supply of services.

Conflict between the Code and any other law.

**184.** Subject to the powers of the Director of Public Prosecutions under the Virgin Islands Constitution Order, 2007 and any other law, where there is a conflict or inconsistency between any provision of the Code and any other law relative to labour matters, the provisions of the Code shall prevail.

Residual Penalty.

**185.** Where a person contravenes a provision of the Code for which a penalty has not been specified, the person is liable on summary conviction to a fine not exceeding eight thousand dollars.

Regulations.

**186.** (1) The Minister may make Regulations giving effect to the principles and provisions of the Code.

(2) Regulations made under this section may provide that any breach of any regulation shall be punished by the imposition of a fine not exceeding eight thousand dollars.

(3) Regulations made by the Minister shall be published in the *Gazette*.

(4) Regulations made by the Minister shall, as soon as practicable after its publication in the *Gazette*, be laid before the House of Assembly.

**187.** (1) The Labour Ordinance, the Labour Code Ordinance and the Trade Disputes (Arbitration and Inquiry) Act are repealed.

(2) Notwithstanding the repeal of the enactments mentioned in subsection (1),

(a) any Rule, Order or Regulations made under the repealed enactments shall, until revoked, continue to be in force to the extent that the Rule, Order or Regulations is not inconsistent with the Code;

(b) any requirement performed, table of fees, licenses or certificates issued, notice, decision, determination, direction or approval given, application made, or thing done, under any of the repealed enactments, shall, if in force on the

Repeals and savings.  
Caps. 292, 293  
and 299

date immediately prior to the coming into force of the Code, continue in force, or in the case of a license or certificate, continue in force until the date of expiry of the license or certificate as set out in the license or certificate, and shall, so far as it could have been made, issued, given or done under the Code have effect as if made, issued, given or done under the corresponding provision of the Code.

**188.** A reference to the Chief Labour Officer in an enactment or document existing prior to the coming into force of the Code shall be construed as a reference to the Labour Commissioner under the Code. Consequential  
Amendment.

## SCHEDULE

[Section 183]

### LABOUR CLAUSES IN PUBLIC CONTRACTS RULES

1. The contractor shall pay rates of wages and observe hours and conditions of employment, not less favourable than those established in the trade or industry in the district where the work is carried out, by collective agreement, other recognised machinery of negotiation or arbitration, between organisations of employers and employees which are representative respectively of substantial proportions of the employers and employees engaged in the trade or industry concerned (hereinafter referred to as “established rates and conditions”), or failing such established rates and conditions in the trade or industry in the district, established rates and conditions in other districts where the trade or industry is carried on under similar general circumstances.
2. In the absence of any established rates and conditions as defined in paragraph 1, the contractor shall pay rates of wages and observe hours and conditions of employment not less favourable than those which are or would be paid and observed in the trade or industry in which the contractor is engaged, by employers whose general circumstances are similar.
3. Before being placed on any list of Government contractors, the contractor shall certify that to the best of his or her knowledge and belief the wages, hours of work and other conditions of employment of all employees employed by him or her in the trade or industry in which he is offering himself as a contractor are fair and reasonable having regard to paragraphs 1 and 2.
4. In the event of any dispute or complaint arising as to what wages ought to be paid or what hours or other conditions of employment ought to be observed in accordance with the requirements of paragraphs 1 and 2, it shall, if not otherwise disposed of, be referred by the Commissioner to the Minister who may, if he or she thinks fit, refer the matter to the Tribunal in accordance with the provisions of the Code. In arriving at its decision, the Tribunal, in the absence of any established rates and conditions in the trade or industry concerned as specified in paragraph 1, shall have regard to any agreement, custom, practice or award that may be brought to its notice relating to the wages, hours or conditions of employment of employees employed in a capacity similar to that of the employees to whom the dispute relates in trades or industries carried on under similar circumstances.

5. The contractor shall keep proper wages books and time sheets showing the wages paid to and times worked by employees in the execution of the contract, and he or she shall, whenever required, produce wage books and time sheets for inspection by any person authorised by the Commissioner.
6.
  - (1) A sub-contractor shall be bound in all cases to conform to the conditions of the main contract and the main contractor shall be responsible for the observance of all contract conditions on the part of the sub-contractors.
  - (2) The contractor shall not transfer or assign a contract or any portion thereof without the written permission of the Commissioner.
  - (3) No portion of the work to be performed on a contract shall be done at the homes of the employees, except in so far as work is so performed by practice or custom.
7. Contractors and sub-contractors shall recognise the freedom of their employees to be members of registered trade unions.
8. A contractor shall not be entitled to payment of any money which would otherwise be payable under the terms of contract in respect of the work and labour performed in the execution of the contract unless and until he or she has filed together with his or her claims for payment a certificate
  - (a) showing the rates of wages and hours of employment of the various classes of employees employed in the execution of the contract;
  - (b) stating whether any wages in respect of the work and labour remain in arrears; and
  - (c) that all the labour conditions of the contract have been duly complied with.
9. The contractor shall from time to time furnish to the Commissioner further information and evidence as the Commissioner may require in order to satisfy himself or herself that the conditions of these Rules are complied with.
10. In the event of default being made in payment of any money in respect of wages of employees employed on the contract and if claim thereafter is filed with the Commissioner and satisfactory proof is furnished to the Commissioner, the Commissioner may, failing payment by the contractor, arrange for the payment of the claim out of the moneys at any time

payable under the contract and the amount so paid shall be deemed payments to the contractor.

11. If a contractor or subcontractor fails to comply with any of these Rules, the Commissioner may take action to ensure compliance and make representations to the relevant authority concerning the status of the contractor or subcontractor for future contracts.

Passed by the House of Assembly this 27<sup>th</sup> day of May, 2010.

Sgd. Roy Harrigan,

Speaker.

Sgd. Phyllis Evans,

Clerk of the House of Assembly.

VIRGIN ISLANDS  
STATUTORY INSTRUMENT 2011 NO. 6  
CUSTOMS MANAGEMENT AND DUTIES ACT, 2010  
(No. 6 of 2010)

A PROCLAMATION

BY HIS EXCELLENCY THE GOVERNOR UNDER SECTION 1 OF THE CUSTOMS  
MANAGEMENT AND DUTIES ACT, 2010 DECLARING THE DATE ON WHICH THE  
SAID ACT SHALL COME INTO FORCE



Governor.

[Gazetted 17<sup>th</sup> February, 2011]

WHEREAS it is provided by section 1 of the Customs Management and Duties Act, 2010 (No. 6 of 2010) that the said Act shall come into force on such date as the Governor may, by Proclamation published in the *Gazette*, appoint;

NOW THEREFORE, by virtue and in the exercise of the powers vested in me, I do hereby proclaim that the Customs Management and Duties Act, 2010 shall come into force on the 15<sup>th</sup> day of February, 2011;

AND all Her Majesty's loving subjects are hereby required to take note hereof and govern themselves accordingly.

GIVEN under my hand and the Public Seal of the Virgin Islands at the Governor's Office in Tortola in the Virgin Islands this 10<sup>th</sup> day of February, 2011 and in the fifty-eighth year of Her Majesty's reign.

GOD SAVE THE QUEEN!



**No. 6 of 2010**

**VIRGIN ISLANDS**  
**CUSTOMS MANAGEMENT AND DUTIES ACT, 2010**  
**ARRANGEMENT OF SECTIONS**

*Section*

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I Assent

(Sgd.) BOYD McCLEARY, CMG, CVO  
Governor

24<sup>th</sup> September, 2010

**VIRGIN ISLANDS**

**No. 6 of 2010**

An Act to provide for the collection and management of the revenues of customs, to substitute the Customs Ordinance (Cap. 104) and the Customs Duties Ordinance (Cap. 105), and to provide for connected matters.

[Gazetted 28<sup>th</sup> October, 2010]

ENACTED by the Legislature of the Virgin Islands as follows:

**PRELIMINARY**

1. This Act may be cited as the Customs Management and Duties Act, 2010 and shall come into operation on a date the Governor may, by Proclamation published in the *Gazette*, appoint. Short title and commencement.

2. In this Act, unless the context otherwise requires, Interpretation.

“agent” means a person appointed as an agent under section 19;

“aircraft” includes any balloon (whether captive or free), kite, glider, airship, helicopter or other flying machine;

“approved wharf” means a place approved under section 14 (1);

“assigned matter” means a matter in respect of which the Commissioner is required to discharge a duty in pursuance of an enactment;

“A. T. A. Carnet” means a document issued by an internationally approved Chamber of Commerce covering the temporary import of goods and giving security for the re-export of those goods in the unchanged condition within the period prescribed in the document;

“beer” means any alcoholic beverage produced from a fermented extract of malt or mixture of malt, sugar and other cereal products;

“boarding station” means a place directed to be a boarding station under section 13 (5);

“burden” in relation to the weight of a vessel, means the net registered tonnage calculated in the manner prescribed by law for ascertaining net registered tonnage;

“cargo” means any goods other than mail, stores, crew member’s effects and passenger’s accompanied baggage, carried on board a vessel or aircraft;

“claimant”, in relation to proceedings for the condemnation of any thing liable to forfeiture, means a person claiming that the thing is not liable to forfeiture;

“commander”, in relation to an aircraft, includes a person having or taking charge or command of that aircraft;

“Commissioner” means the public officer appointed pursuant to section 4 to be in charge of Customs;

“container” includes a bundle or package and any box, cask or other receptacle;

“crew” means persons employed to discharge duties on board any vessel or aircraft during a voyage or flight, whether or not the persons are on a crew list;

“Customs” means the department of Government responsible for the collection and security of the revenues of customs and control of all imports and exports to and from the Territory;

“customs airport” means a place appointed as a customs airport under section 15 (1);

“customs area” means a place approved under section 16 (1) for the deposit of uncustomed and export goods and the embarkation and disembarkation of passengers;

“customs enactment” means the provisions of this Act, any subsidiary legislation made under this Act, and any other enactment which relates to an assigned matter;

“customed goods” means goods which have been submitted to and lawfully released from customs charge;

“customs officer” means a person appointed as a customs officer under section 4;

“customs port” means a place prescribed or appointed by the Minister under section 13;

“customs warehouse” means a place appointed as custom’s warehouse under section 52;

“denatured spirits” means ethyl alcohol rendered non-portable by the addition of approved or prescribed noxious substances and is deemed to include crude or pure methyl alcohol;

“dollar” means the currency of the United States of America;

“drawback” means duty repaid or repayable in respect of customed goods by reason of the re-export of the same or by some other provision of this or any other enactment;

“dutiabale goods” means goods of a class or description subject to a duty of customs, whether or not those goods are in fact chargeable with that duty, and whether or not that duty has been paid;

“duty” means the amount or charge leviable on certain classes of goods imported into the Territory as defined and set out in the Tariff Book;

“entered” means,

- (a) in relation to goods imported, warehoused, put on board an aircraft or ship as stores or exported, the acceptance and signing by the proper officer of an entry, specification or shipping bill and declaration

signed by the importer or exporter on the prescribed form in the prescribed manner, together with the payment to the proper officer by the importer or exporter of all rents and charges due to the Government in respect of the goods;

- (b) in the case of dutiable goods (except on the entry for warehousing of imported goods), the payment by the importer or exporter to the proper officer of the full duties on the goods, or where permitted, the deposit of a sum of money or giving of security for the duties, as provided by law; and
- (c) in the case of goods for which security by bond is required to be given on the exportation, putting on board an aircraft or ship as stores or removal of the goods, the giving of that security;

“entry” means in respect of the importation or exportation of any goods, document as may be required to be produced by the importer or exporter to the Commissioner in accordance with this Act, being a declaration of the importation or exportation of the goods, in the form and manner and containing the particulars the Commissioner may direct;

“entry by bill of sight” means an entry made in accordance with section 26 (3);

“examination station” means a place approved under section 17 (1) as an examination station;

“export” means in relation to goods, to despatch, cause to be despatched or attempt to despatch the goods by any means from a place within to a place outside, the Territory;

“exporter” includes, in relation to goods for exportation or for use as stores, the shipper of the goods and in relation to an aircraft, a person performing functions corresponding with those of a shipper;

“Financial Secretary” means the public officer appointed by the Governor to be responsible for the control and management of the finances of the Territory;

“franchise” means an agreement between the Governor of the Territory and any other person to operate a service or business on conditions

mutually agreed between the Government and the holder of the franchise;

“gallon” means imperial gallon;

“goods” includes stores, baggage, personal effects and every moveable thing capable of being owned;

“Harmonised System” means the Harmonised Commodity Description and Coding System, a copy of which is lodged for record at the Record Office of the Territory;

“home use” means, with reference to imported goods, goods intended for consumption, use or retention in the Territory;

“import” means, in relation to goods, the bringing or arrival of goods by any means into the Territory from a place outside the Territory;

“importer” includes any owner or other person for the time being having a right to possession of or being beneficially interested in any imported goods with effect from the time of import of the goods;

“K-9” means

- (a) a trained and certified dog owned by Customs and designated by the Commissioner as a Customs dog;  
or
- (b) a trained and certified dog, the service of which is hired by the Commissioner as a Customs dog,

to be used for the detection of criminal activity, enforcement of law or apprehension of an offender in respect of an assigned matter;

“kite” means an aircraft which is a heavier-than-air aircraft without mechanical propulsion and which is moored to the ground by a cable in the same way as captive balloons;

“land” and “landing” includes, in relation to aircraft, alighting on water;

“master” includes, in relation to a vessel, a person having or taking charge or command of the vessel;

“Minister” means the Minister responsible for Finance;

“occupier” means in relation to a warehouse, the person who has given security to the Commissioner in respect of the premises;

“officer” includes the Commissioner, the Deputy Commissioner, an Assistant Commissioner and any customs officer appointed in accordance with section 4 (1);

“own use” means for one’s personal use;

“owner” includes every person for the time being entitled as agent or otherwise to the possession of goods, whether or not the goods are subject to any lien;

“passenger” means a person other than a crew member departing on or arriving from, any vessel or aircraft;

“passenger’s accompanied baggage” means the personal and household effects of a passenger, including currency carried on a vessel or aircraft, whether in the personal possession of the passenger or not, so long as it is not carried under a contract of carriage or other similar agreement and does not include an article intended for sale, exchange or use for commercial purposes;

“perfect entry” means an entry made in accordance with section 25 (1) or the Warehousing Regulations, as the case may be;

“person” includes a firm, partnership, a corporate and unincorporated body of persons;

“police officer” means a member of the Royal Virgin Islands Police Force;

“prescribed” means prescribed by the Minister under this Act;

“proof spirit” means the mixture of ethyl alcohol and distilled water which at a temperature of 51° Fahrenheit weighs twelve thirteenth’s of an equivalent volume of distilled water and the strength of spirits and shall be construed by reference to a scale on which

- (a) distilled water is zero degrees proof;
- (b) proof spirit is one hundred degrees proof; and
- (c) pure ethyl alcohol is one hundred and seventy-five

and four tenth degrees proof;

“prohibited or restricted goods” means goods of a class or description of which the importation or exportation is prohibited or restricted under or by virtue of an enactment;

“proper officer” means, in relation to the person by, with or to whom or the place at which any thing is to be done, the person or place appointed or authorised by the Commissioner in that behalf;

“proprietor” includes, in relation to goods, any owner, importer, exporter, shipper or other person possessed of or beneficially interested in those goods;

“resident” means a person who has lawfully resided in the Territory for a period of six months or more, in the twelve months immediately preceding the date of entry;

“shipment” includes any goods loaded into any vessel or aircraft;

“spirits” means a mixture of ethyl alcohol and water intended for human consumption, produced by distillation of fermented liquors or chemical synthesis and whether containing added colouring or flavouring matters, but not including perfumes, essences, food concentrates, medical preparations and similar goods which contain that mixture of ethyl alcohol and water, as a preservative or solvent;

“stores” includes consumable goods and other goods for use in or on a vessel or aircraft;

“Territory” means the Territory of the Virgin Islands;

“territorial waters” means the territorial sea and internal waters of the Virgin Islands, including all the bays, coves, inlets, sounds, channels, passages, marinas, ports and harbours, directly or indirectly opening or adjacent, whether natural or artificial, within the limits of the Virgin Islands;

“transhipment” means the re-export of goods in transit;

“transit”, in relation to goods, means the importation of goods into the Territory temporarily to be re-exported to a place outside the Territory, but which goods have not been cleared from customs charge;

“transit shed” means a place approved under section 18;

“uncustomed goods” means imported goods which have not been cleared from customs charge;

“vehicle” means any method of carriage or conveyance, cart, wagon or a trailer attached to a vehicle;

“vessel” includes a ship, hovercraft or boat;

“warehouse” means a building or place or portion of a building or place where uncustomed goods in respect of which entry has been made, may lawfully be stored for a period of time and under conditions that may be prescribed, without payment of duty during storage;

“Warehousing Regulations” means Regulations governing warehouses made under section 143;

“warranty” means a form of guarantee or contractual promise whereby the supplier of goods undertakes to replace free of charge or fully compensate for any defective parts arising within an agreed period of time from the date of sale or delivery of the goods to the buyer; and

“wine” means an alcoholic beverage not exceeding 42° proof spirit produced from fermentation of grapes, grape must, other fruit or fruit and vegetable extracts fortified by the addition of spirit.

Time of  
importation or  
exportation.

3. (1) This section applies to an enactment relating to customs.
- (2) The time of importation of any goods shall be deemed to be,
- (a) where the goods are brought by sea, the time when the vessel carrying them comes within the limits of the territorial waters; or
  - (b) where the goods are brought by air, the time when the aircraft carrying them lands in the Territory or the time when the goods are unloaded in the Territory, whichever is the earlier.

- (3) The time of exportation of goods from the Territory shall,
  - (a) in the case of goods exported by sea or air, be deemed to be the time when the goods are shipped for exportation; and
  - (b) in the case of prohibited or restricted goods which are exported by sea or by air, be deemed to be the time when the exporting vessel or aircraft departs from the last customs port or customs airport at which it is cleared before departing for a destination outside the Territory.
  
- (4) A vessel is deemed to have arrived in or departed from the Territory when the vessel arrives in or leaves, the territorial waters as the case may be.

**PART I  
ADMINISTRATION**

- 4.** (1) There shall be appointed a Commissioner for Customs and other customs officers as may be necessary for the administration of this Act. Customs authorities.
  
- (2) Subject to any policy direction of the Minister, the Commissioner is responsible for the administration and implementation of this Act.
  
- 5.** (1) The Commissioner is responsible for Duties of Commissioner.
  - (a) the management, supervision and control of Customs;
  - (b) the collection and accounting of customs revenue;
  - (c) the care of public and other property under customs control, but without having to account for loss thereof unless the loss is due to the Commissioner's personal default; and

- (d) any other enactments relating to any assigned matter.

(2) The responsibility of the Commissioner under subsection (1) may be exercised by officers subordinate to him or her and expressly authorised in writing by him or her.

Delegation and appointment by the Commissioner.

**6.** (1) Any act or thing required or authorised by a customs enactment to be done by the Commissioner may be done by an officer authorised generally or specifically in that behalf, in writing or otherwise, by the Commissioner, except that where, the post of Commissioner is vacant, any authorisation given by a previous Commissioner which has not been revoked shall continue in force until revoked by a person subsequently appointed as Commissioner.

(2) A person appointed by the authority or with the concurrence of the Commissioner (whether previously or subsequently expressed) to perform any act or duty relating to an assigned matter which by law may be or is required to be performed by an officer, shall be deemed to be an officer.

(3) A person deemed by virtue of subsection (2) to be an officer shall have the powers of an officer in relation to the act or duty to be performed by the person.

(4) A person authorised in writing by the Commissioner to discharge a duty, perform a function or exercise a power, commits an offence when the authority is revoked in writing by the Commissioner and the person is required by the Commissioner to return that written authority but fails to do so and purports to act as if he or she is still authorised.

(5) A person convicted of an offence under subsection (4) is liable on summary conviction to a fine not exceeding ten thousand dollars.

(6) Where an act is required by a customs enactment to be done at a particular place it shall be deemed to be done in that place if done in any other place authorised by the Commissioner for that purpose.

Obligation of secrecy.

**7.** A person appointed or employed in carrying out any requirement of or any duty imposed by or any power granted by a customs enactment, who

- (a) discloses to an unauthorised person any document, information or confidential instruction which has

come into the person's possession or to the person's knowledge in the course of the person's duties, or

- (b) permits an unauthorised person to have access to any records in the person's possession or custody,

commits an offence and is liable on conviction to a fine not exceeding twenty thousand dollars or to imprisonment for a term not exceeding two years or both.

**8.** (1) An officer authorised by the Commissioner by virtue of section 6 (1) who fails to disclose to the Commissioner that he or she

Officers to disclose interest in certain vessels, aircraft or merchandise.

- (a) owns, either in whole or in part, any vessel or aircraft engaged in trade,
- (b) acts on behalf of the owner of any vessel or aircraft engaged in trade,
- (c) imports or is concerned in the importation of any merchandise for sale, or
- (d) acts on behalf of an importer or an importer's agent in the preparation of an entry or any other document required under this Act in respect of the importation of goods,

commits an offence and is liable on summary conviction to a fine not exceeding ten thousand dollars.

(2) Nothing in subsection (1) shall prevent the disclosure by a person of any document, information or confidential instruction where that disclosure is authorised, by or under an Act or by the Commissioner.

**9.** (1) The days on which, and the hours between which, offices of Customs are to be open or officers are to be available for the performance of particular duties shall be as the Minister may by an Order published in the *Gazette*, prescribe.

Times of attendance of officers.

(2) A request for an officer to discharge a duty outside the normal hours of attendance of officers shall be made in writing to the Commissioner who may grant the request if he or she considers appropriate.

(3) Fees payable for the performance of duties outside the hours directed by the Commissioner shall be as the Minister may by an Order published in the *Gazette*, prescribe.

(4) A request for an officer to perform a duty at any time away from a customs area shall be made in writing to the Commissioner who may grant the request.

(5) Fees payable for the performance of duties away from customs areas shall be as the Minister may by an Order published in the *Gazette*, prescribe.

(6) An Order made under this section shall also be published in a newspaper of wide circulation in the Territory.

Assistance to be rendered by the Police.

**10.** (1) It shall be the duty of every police officer to assist in the enforcement of the law relating to an assigned matter and as soon as is reasonably possible, report any enforcement steps taken to the Commissioner.

(2) Every police officer shall in relation to an assigned matter, have the same powers, authorities and privileges as are given by law to customs officers.

Directions.

**11.** A direction given by the Commissioner under this Act or any subsidiary legislation made under it,

- (a) shall be published in the *Gazette* and a newspaper of wide circulation in the Territory;
- (b) may make different provisions for different circumstances;
- (c) may be varied or revoked by any subsequent direction; and
- (d) unless varied or revoked by a subsequent direction, shall continue to apply notwithstanding that the person who gave the direction is no longer the Commissioner or an officer or, for any other reason, no longer has the authority to give the direction.

- 12.** The requirements imposed by Parts III and IV shall not apply
- Application to  
Government  
vessels and  
aircraft.
- (a) to any vessel or aircraft owned by or in the service of the Government or of the Government of the United Kingdom when being used for the purpose of customs, police or coastguard; and
  - (b) where the Commissioner so directs, and for the periods and subject to conditions and restrictions the Commissioner may see fit to impose, on any vessel or aircraft owned by or in the service of the Government of any other country.

## **PART II CUSTOMS CONTROLLED AREAS**

**13.** (1) On the recommendation of the Commissioner, the Minister, with the approval of the Cabinet, may by an Order published in the *Gazette* and a newspaper of wide circulation in the Territory, do either or a combination of the following:

Appointment of  
customs ports.

- (a) appoint and name an area in the Territory as a customs port;
- (b) alter the name or limits of any customs port;
- (c) revoke the appointment of any customs port;
- (d) impose any condition or restriction, or vary or revoke any condition or restriction imposed, on the use of an area in the Territory as a customs port.

(2) Notwithstanding subsection (1), the Minister may on the recommendation of the Commissioner, make an Order providing for either or a combination of the matters specified in paragraphs (a) to (d) of subsection (1) to have effect for forty days from the commencement date of the Order.

(3) An Order made under subsection (1) is subject to the affirmative resolution of the House of Assembly, unless the matter for which the Order is made, is intended to have effect for forty days only.

- (4) A person in control of a customs port shall
- (a) permit an officer at any time to enter upon and inspect that customs port and buildings and goods on it; and
  - (b) if so required by the Commissioner,
    - (i) keep a record containing the particulars, in the form and manner the Commissioner may direct, of all vessels arriving at or departing from that customs port;
    - (ii) keep that record available and produce it on demand to an officer, together with other documents kept at the customs port which relate to the movement of vessels; and
    - (iii) permit an officer to make copies of, take extracts from or remove for a reasonable period, any record or document referred to in subparagraphs (i) and (ii).

(5) The Commissioner may direct that any place in a customs port shall be a boarding station for the purpose of the boarding of or disembarkation from vessels by officers.

- (6) A person who contravenes or fails to comply with
- (a) a condition or restriction imposed by the Minister under subsection (1) (d), or
  - (b) any requirement imposed under subsection (4)

commits an offence and is liable on summary conviction to a fine not exceeding ten thousand dollars.

Approved  
wharves.

**14.** (1) The Commissioner may approve a place within a customs port in the Territory as a wharf for the embarkation and disembarkation of passengers onto and from vessels and for the loading and the unloading of goods for the periods and subject to the conditions and restrictions the Commissioner may impose.

(2) The Commissioner may at any time for reasonable cause revoke or vary the terms of any approval given under subsection (1).

(3) An officer may at any time enter an approved wharf and inspect the wharf and any goods at the wharf.

(4) A person who contravenes or fails to comply with a condition or restriction imposed by the Commissioner under subsection (1), commits an offence and is liable on summary conviction to a fine not exceeding ten thousand dollars.

**15.** (1) On the recommendation of the Commissioner, the Minister, with the approval of the Cabinet, may by an Order published in the *Gazette* and a newspaper of wide circulation in the Territory, do either or a combination of the following: Customs airport.

- (a) appoint and name an area in the Territory as a customs airport;
- (b) alter the name or limits of a customs airport;
- (c) revoke the appointment of a customs airport;
- (d) impose a condition or restriction, or vary or revoke a condition or restriction imposed, on the use of an area in the Territory as a customs airport.

(2) Notwithstanding subsection (1), the Minister may on the recommendation of the Commissioner, make an Order providing for either or a combination of the matters specified in paragraphs (a) to (d) of subsection (1) to have effect for thirty days from the commencement date of the Order.

(3) An Order made under subsection (1) is subject to the affirmative resolution of the House of Assembly, unless the matter for which the Order is made, is intended to have effect for thirty days only.

(4) A person in control of a customs airport shall

- (a) permit an officer at any time to enter upon and inspect that airport and buildings, and goods on it; and
- (b) if so required by the Commissioner

- (i) keep a record, containing the particulars in the form and manner as the Commissioner may direct, of all aircrafts arriving at or departing from that airport;
- (ii) keep that record available and produce it on demand to an officer, together with all other documents kept at the airport which relate to the movement of aircrafts; and
- (iii) permit an officer to make copies of, take extracts from or remove for a reasonable period any record or document referred to in subparagraphs (i) and (ii).

(5) A person who contravenes or fails to comply with

- (a) a condition or restriction imposed by the Minister under subsection (1), or
- (b) a requirement imposed under subsection (4),

commits an offence and is liable on summary conviction to a fine not exceeding ten thousand dollars.

Customs areas.

**16.** (1) The Commissioner may approve a place in the Territory not being a customs port, approved wharf or customs airport, as a “customs area”, for the periods and subject to the conditions and restrictions the Commissioner considers appropriate to impose.

(2) The Commissioner may at anytime for reasonable cause, revoke or vary the terms of an approval given under subsection (1).

(3) A person who contravenes or fails to comply with a condition or restriction imposed by the Commissioner under subsection (1), commits an offence and is liable on summary conviction to a fine not exceeding ten thousand dollars.

Examination stations.

**17.** (1) The Commissioner may approve a place at a customs port, approved wharf, customs airport or customs area to be an examination station for the loading and unloading of goods and the embarkation and disembarkation of

passengers, for the periods and subject to conditions and restrictions the Commissioner may impose.

(2) The Commissioner may at any time, for reasonable cause, revoke or vary the terms of an approval given under this section.

(3) A person who contravenes or fails to comply with a condition or restriction imposed by the Commissioner under subsection (1), commits an offence and is liable on summary conviction to a fine not exceeding ten thousand dollars.

(4) Except as authorised under this Act, a person who without the consent of the Commissioner enters or remains on an examination station commits an offence and is liable on conviction to a fine not exceeding fifteen thousand dollars.

**18.** (1) The Commissioner may for a specified period, approve a place for the deposit of goods imported and not yet cleared from customs charge, including goods not yet reported and entered under this Act, subject to any conditions and restrictions the Commissioner may impose. Transit sheds.

(2) An officer may at any time enter a transit shed and inspect it and any goods in the transit shed.

(3) The Commissioner may at anytime, for reasonable cause, revoke or vary the terms of an approval given under subsection (1).

(4) A person who contravenes or fails to comply with a condition or restriction imposed by the Commissioner under subsection (1), commits an offence and is liable on summary conviction to a fine not exceeding ten thousand dollars.

**19.** (1) Subject to subsection (2), the master of a vessel or the commander of an aircraft may appoint as his or her agent, a person duly authorised to perform an act required by any customs enactment to be performed by a master or a commander, and, if the person does so, the person shall notify the Commissioner of the name and address of that person and if the Commissioner is satisfied that the person appointed is a fit and proper person to be the agent, the Commissioner may, subject to the terms and conditions the Commissioner considers appropriate to impose, accept that person as the agent of that vessel or aircraft. Agents.

(2) If an agent is not appointed, the owner of the vessel or aircraft, if resident or represented in the Territory, shall be deemed to be the agent of the master or commander for purposes of an assigned matter.

(3) If an agent appointed under subsection (1) wilfully neglects or refuses to comply with a requirement imposed by a customs enactment on a master of a vessel or a commander of an aircraft, the Commissioner may by notice in writing, advise any master of that vessel or any commander of that aircraft that the Commissioner no longer accepts the person appointed as the agent of that vessel or that aircraft, and that person shall upon that notification cease to be the agent of the master of that vessel or the commander of that aircraft.

(4) Where a person other than the master of a vessel or the commander of an aircraft is required by a customs enactment to perform an act or discharge a duty, the person may appoint as the person's agent any other person to perform that act or discharge that duty.

(5) Before accepting a request by an agent to act on behalf of a person in relation to an assigned matter, an officer may require that agent to produce to him or her written authority from the person whose agent he or she is, certifying that he or she is so authorised to act.

(6) The Commissioner may, require a person appointed to act as an agent under subsection (1) to give security, by bond or otherwise, in the form and manner the Commissioner may direct and the bond

(a) shall be taken on behalf of the Government of the Territory; and

(b) may be cancelled at any time by the Commissioner or by the order of the Commissioner.

Control of movement of uncleared goods.

**20.** (1) The Commissioner may give general or specific directions as to the manner, conditions and restrictions that goods to which this section applies are to be moved within the limits of a customs port, approved wharf, customs airport or customs area, between any of them, or between any of them and any other place.

(2) This section applies to

(a) goods chargeable with a duty which duty has not been paid;

- (b) goods on which a drawback has been paid; and
- (c) any other goods which have not yet been cleared out of customs charge.

(3) A direction under subsection (1) may require that goods to which this section applies shall only be moved

- (a) by persons licensed by the Commissioner for that purpose, or
- (b) in the vessels, aircraft or vehicles or by any other means, that may be approved by the Commissioner for that purpose

and the licence or approval may be granted for the periods and be subject to the conditions and restrictions the Commissioner may see fit to impose and may be revoked at any time by the Commissioner.

(4) A person who contravenes or fails to comply with a direction given, or a condition or restriction imposed, or the terms of a licence or approval granted by the Commissioner under subsection (1), commits an offence and is liable on summary conviction to a fine not exceeding ten thousand dollars.

**21.** (1) The owner or operator of a mooring facility shall register his or her facility with the Commissioner and the registration shall be renewed annually. Control of mooring facilities.

(2) Where an owner or operator of a facility permits a vessel from a place outside the Territory to tie up and use the owner or operator's facility without the master of that vessel having first reported as is required under section 24, the owner or operator commits an offence and is liable on summary conviction to a fine not exceeding ten thousand dollars.

(3) Subsection (2) shall not apply to a vessel seeking refuge because of stress of weather, equipment failure or other reason outside the control of the master or crew.

**PART III  
IMPORTATION**

Procedure on  
arrival of vessels.

**22.** (1) Subject to subsections (2) and (3) and except as the Commissioner may otherwise permit,

- (a) the master of a vessel arriving in the territorial waters from a place outside the Territory shall not cause or permit that vessel to arrive at a place other than a customs port, and
- (b) a person importing or concerned in importing any goods in a vessel shall not bring those goods into the Territory at a place other than a customs port,

and a master or any other person who contravenes or fails to comply with a requirement of this subsection commits an offence and is liable on conviction to a fine not exceeding ten thousand dollars, or three times the value of the goods whichever is the greater, and any goods imported in contravention of this subsection and the vessel are liable to forfeiture.

(2) Subsection (1) shall not apply in relation to a vessel which is compelled by accident, stress of weather or other unavoidable cause to arrive at a place other than a customs port, but

- (a) the master of the vessel
  - (i) shall immediately report the arrival to an officer;
  - (ii) shall not, without the consent of an officer, permit any goods carried on the vessel to be unloaded from, or any passenger or member of the crew to depart from the vicinity of the vessel; and
  - (iii) shall comply with any direction given by an officer in respect of the goods; and
- (b) a passenger or member of the crew shall not leave the immediate vicinity of the vessel without the consent of an officer.

- (3) Nothing in subsection (2) shall prohibit
  - (a) the departure of a passenger or member of the crew from the vicinity of a vessel, or
  - (b) the removal of goods from a vessel

where that departure or removal is necessary for reasons of health, safety or the preservation of life or property.

(4) A master or other person who contravenes or fails to comply with a requirement of subsection (2) commits an offence and is liable on conviction to a fine not exceeding twenty thousand dollars and any goods imported in contravention of that subsection and the vessel are liable to forfeiture.

**23.** (1) Subject to this section and except as the Commissioner may otherwise permit,

Procedure on arrival of aircraft.

- (a) the commander of an aircraft arriving in the Territory from a place outside the Territory shall not cause or permit that aircraft to land at any time while it is carrying passengers or goods brought in that aircraft from a place outside the Territory and not yet cleared, at a place other than a customs airport; and
- (b) a person importing or concerned in importing goods in an aircraft shall not bring those goods into the Territory at a place other than a customs airport.

(2) A commander or other person who contravenes or fails to comply with a requirement of subsection (1) commits an offence and is liable on conviction to a fine not exceeding ten thousand dollars, or three times the value of the goods, whichever is the greater, and any goods imported in contravention of subsection (1) and the aircraft are liable to forfeiture.

(3) Subsection (1) shall not apply in relation to an aircraft which is required under an enactment relating to air navigation, or is compelled by accident, stress of weather or other unavoidable cause, to land at a place other than a customs airport, but the commander of the aircraft

- (a) shall immediately report the landing to an officer and shall on demand produce to the officer, the journey log belonging to the aircraft; and
- (b) shall not, without the consent of an officer, permit any goods carried on the aircraft to be unloaded, or any passenger or member of the crew to depart, from the vicinity of the aircraft.

(4) A commander or other person who contravenes or fails to comply with a requirement of subsection (3) commits an offence and is liable on summary conviction to a fine not exceeding ten thousand dollars and any goods imported in contravention of subsection (3) and the aircraft are liable to forfeiture.

(5) Nothing in subsection (3) shall prohibit

- (a) the departure of a passenger or member of the crew from the vicinity of an aircraft, or
- (b) the removal of goods from an aircraft,

where that departure or removal is necessary for reasons of health, safety or the preservation of life or property.

Report inwards.

**24.** (1) The master of every vessel arriving at a customs port

- (a) from a place outside the Territory, or
- (b) carrying goods brought in that vessel from a place outside the Territory and not yet cleared on importation,

shall, within twelve hours of that arrival, deliver to the Commissioner a report in the form and manner and containing the particulars the Commissioner may direct.

(2) The commander of every aircraft arriving at a customs airport

- (a) from a place outside the Territory; or
- (b) carrying goods or passengers taken on board that aircraft at a place outside the Territory, being goods or passengers either

- (i) bound for a destination in the Territory and not yet cleared at a customs airport; or
- (ii) bound for a destination outside the Territory,

shall on arrival, deliver to the Commissioner a report containing particulars in the form and manner the Commissioner may direct.

(3) Where a report made under this section is incorrect, the person who made it shall, within twenty-four hours of the making of it or a longer period the Commissioner may permit, be allowed to amend it, and if the Commissioner is satisfied that the error was not made knowingly or recklessly, then notwithstanding any other provisions of a customs enactment, that person shall not have committed an offence and where the error consisted of the omission or incorrect reporting of any goods, those goods shall not be liable to forfeiture.

(4) A person by whom a report is required to be made by this section commits an offence if the person fails to do so, and is liable on conviction to a fine not exceeding ten thousand dollars, or three times the value of any goods which are not declared, whichever is the greater, and the vessel or aircraft is liable to forfeiture.

(5) A master or commander commits an offence if goods which appear on a clearance required to be produced by this section do not appear on the report, unless the report is amended under subsection (3), and is liable on conviction to a fine not exceeding ten thousand dollars, or three times the value of the goods, whichever is the greater, and shall pay to the Commissioner the duty on the goods.

(6) A person making a report under this section shall, at the time of making it,

- (a) answer all the questions relating to the vessel or aircraft, its cargo, stores, baggage, crew, passengers, voyage or flight as may be put to the person by the proper officer; and
- (b) produce all books and documents in his or her custody or control relating to the vessel or aircraft, its cargo, stores, baggage, crew, passengers, voyage or flight as the proper officer may require.

(7) A person who fails to comply with subsection (6) commits an offence and is liable on summary conviction to a fine not exceeding ten thousand dollars.

(8) If at any time after a vessel or aircraft carrying goods brought in that vessel or aircraft from a place outside the Territory arrives within the territorial waters or lands and before a report has been made in accordance with this section,

- (a) any hold is opened or bulk broken or any goods are otherwise interfered with on the vessel or aircraft,
- (b) goods are unloaded from or taken on board that vessel or aircraft,
- (c) an alteration is made in the stowage of any goods carried, or
- (d) any goods are staved, destroyed or thrown overboard, or any container is opened,

then unless the matter is explained to the satisfaction of the Commissioner, the master or commander of the vessel or aircraft commits an offence and is liable on conviction

- (i) in the case of an offence under paragraphs (a), (b) or (c), to a fine not exceeding ten thousand dollars or three times the value of the goods, whichever is the greater, and any goods in respect of which the offence was committed are liable to forfeiture; and
- (ii) in the case of an offence under paragraph (d), to a fine not exceeding twenty thousand dollars or three times the value of the goods, whichever is the greater, or to imprisonment for a term not exceeding two years, or both, and any goods in respect of which the offence was committed are liable to forfeiture.

(9) The Commissioner may require any goods reported as stores on board any vessel or aircraft, or any portion of them, to be entered for

warehousing under section 27 and for the purposes of this subsection the master or commander shall be deemed to be the importer of those goods.

**25.** (1) The importer of goods, other than goods which are exempt from the requirements of this section, shall Entry of goods on importation.

- (a) in the case of goods, imported by air, within seven days of their importation, or
- (b) in the case of goods imported by sea, within fourteen days of their importation,

deliver to the proper officer an entry of those goods, in the form and manner and containing the particulars, the Commissioner may direct.

(2) The following goods are exempt from the requirements of this section:

- (a) fresh fish (including shell fish) taken by a local fisherman and imported by the fisherman in the fisherman's vessel; and
- (b) passenger's accompanied baggage.

(3) Subject to subsection (4), goods may be entered under subsection (1)

- (a) for warehousing if so eligible;
- (b) for home use, if so eligible;
- (c) for transshipment; or
- (d) in other circumstances the Commissioner may permit, for temporary retention with a view to subsequent re-exportation.

(4) The Commissioner may refuse to accept an entry of goods if he or she is not satisfied that the goods were imported at the time of the delivery of the entry.

(5) Where in the case of goods which are not chargeable with duty, an entry made under subsection (1) is incorrect, the importer shall, within

ten days after the delivery of the entry or a longer period the Commissioner may permit, be allowed to deliver to the Commissioner, a full and accurate account of the goods and if the Commissioner is satisfied that the error was not made knowingly or recklessly, then notwithstanding any other provision of a customs enactment, the person making the entry does not commit an offence and the goods which were the subject of the error are not liable to forfeiture.

(6) The Commissioner may, notwithstanding that entry has not been made under subsection (1), permit the delivery to an importer of any bullion, currency notes or coins imported into the Territory.

Entry by bill of sight.

**26.** (1) Without prejudice to section 25, where on the importation of goods the importer is unable for want of any document or information to make a perfect entry of those goods, the importer shall make a signed declaration to that effect to the proper officer.

(2) Where a declaration under subsection (1) is made to the designated officer, the officer shall permit the importer to examine the goods imported.

(3) Where an importer has made a declaration under subsection (1) and submits to the proper officer an entry, not being a perfect entry, in the form and manner and containing the particulars as the Commissioner may direct, and the proper officer is satisfied that the description of the goods for tariff and statistical purposes is correct, and in the case of goods liable to duty according to number, weight, measurement or strength, the number, weight, measurement or strength is correct, the proper officer shall on payment of the specified sum to him or her, accept that entry as an entry by bill of sight and allow the goods to be delivered for home use.

(4) For the purposes of subsection (3), the specified sum shall be an amount estimated by the proper officer to be the duty payable on the goods, together with any further sum as the proper officer may require, that further sum being not less than one half of the estimated duty.

(5) If within thirty days from the date of making an entry by bill of sight under subsection (3), or any longer period the Commissioner may permit, the importer is required to make a perfect entry, the perfect entry shows the amount of duty

(a) to be less than the specified sum, the Commissioner shall pay the difference to the importer; or

- (b) to be more than the specified sum, the importer shall pay the difference to the Commissioner.

(6) Where a perfect entry is not made within the time limit stated under subsection (5), the specified sum paid shall be deemed to be the amount of duty payable on the importation of the goods and brought to account as duty by the Commissioner.

(7) Notwithstanding any other provision of this section, where, at any time after the importation of goods the Commissioner is satisfied that it is impossible for the importer to make a perfect entry in respect of the goods, the Commissioner may subject to the conditions and restrictions the Commissioner may see fit to impose, permit the goods to be entered at a value which is in the Commissioner's opinion the correct value of the goods, and the entry shall be deemed to be a perfect entry, but where any condition imposed under this subsection is contravened or not complied with the goods are liable to forfeiture.

**27.** (1) Where in the case of imported goods for which an entry is required,

Removal of uncleared goods to a customs warehouse.

- (a) entry has not been made by the expiration of the relevant period, or
- (b) at the expiration of twenty-one clear days from the relevant date, entry has been made of the goods but the goods have not been unloaded from the importing vessel or aircraft, or in the case of goods which have been unloaded, they have not been produced for examination and clearance,

then at any time after the relevant date, the proper officer may, subject to subsection (2), cause the goods to be deposited in a customs warehouse.

(2) Goods may not be deposited in a customs warehouse if they are

- (a) of a type prescribed in Schedule 1;
- (b) in the opinion of the Commissioner, of a perishable nature; or
- (c) likely to constitute a hazard,

Schedule 1

in which case they may be sold.

(3) Subject to subsection (4), in this section

- (a) the relevant period” means a period of seven days from the relevant date, in the case of goods imported by air, and in the case of goods imported by sea, a period of fourteen days from the relevant date; and
- (b) “the relevant date” means the date when the report was made of the importing vessel or aircraft under section 24 or of the goods under section 25 or, where a report was not made, the date when it should properly have been made.

(4) Where any restriction is placed upon the unloading of goods from any vessel or aircraft by virtue of an enactment relating to the prevention of epidemic or infectious diseases, then in relation to those goods, “the relevant date” means the date of the removal of the restriction.

Importation and  
exportation of  
goods by post or  
courier.

**28.** (1) Without limiting the effect of any other provision of this Act,

- (a) postal packets arriving in the Territory from abroad or posted in the Territory for transmission abroad may be required to be opened by the Postmaster, a person authorised by the Postmaster or the manager or agent of the courier company through which it is brought, in the presence of an officer, and
- (b) parcels consigned to a place in the Territory from abroad or posted in the Territory for transmission abroad may be required to be opened by the Postmaster, a person authorised by the Postmaster or the manager or agent of the courier company through which it is brought, in the presence of an officer,

and where any goods contained in the postal packets or parcels are dutiable, restricted, prohibited or do not correspond with the declaration of contents made in respect of them, those goods are liable to forfeiture.

(2) Goods imported into the Territory by post or courier shall not be allowed to be removed from customs charge until duty chargeable on them is paid.

**29.** (1) The Commissioner may by direction in writing, impose conditions and restriction in respect of Control of movement of goods.

(a) the movement of imported goods between the place of importation and a place approved by the Commissioner for

(i) clearing of the goods out of charge; or

(ii) the exportation of the goods; and

(b) the movement of goods intended for export between a place approved by the Commissioner for the examination of the goods or a place designated by the proper officer as the place for exportation of goods.

(2) Directions under subsection (1) may, in particular

(a) require the goods to be moved within the period and by the route that may be specified by or under Regulations made under this Act;

(b) require the goods to be carried in a vehicle or container complying with the requirements, and secured in the manner, as may be specified; or

(c) prohibit any unloading or loading of the vehicle or container or any interference with its security, except in the circumstances specified.

(3) A document required to be made or produced as a result of directions made under subsection (1) shall be made or produced in the form and manner, and contain particulars the Commissioner may direct, but the Commissioner may relax any requirement that a specific document be made or produced.

(4) The Commissioner may impose a substituted requirement, if a requirement resulting from a direction given under subsection (1) is relaxed under subsection (3).

(5) If a person contravenes or fails to comply with a direction under subsection (1) or a requirement imposed by or under the direction, that person and the person then in charge of the goods each commit an offence and each is liable on summary conviction to a fine not exceeding ten thousand dollars and any goods in respect of which the offence was committed are liable to forfeiture.

Forfeiture of goods improperly imported.

**30.** (1) Without prejudice to any other provision of a customs enactment, where

- (a) imported goods, being goods subject to duty on their importation, are without payment of that duty
  - (i) unloaded at any port,
  - (ii) unloaded from any aircraft,
  - (iii) removed from their place of importation or from any approved wharf, examination station, transit shed or customs area,
- (b) goods imported, landed or unloaded contrary to a prohibition or restriction that is in force with respect to them under or by virtue of an enactment,
- (c) goods subject to duty, or goods the importation of which is prohibited under or restricted by an enactment, are found to have been concealed in any manner on board any vessel or aircraft, whether before or after the unloading of the goods,
- (d) goods are imported concealed in a container holding goods of a different description,
- (e) imported goods are found, whether before or after delivery, not to correspond with an entry made in respect of them, or

- (f) imported goods are concealed or packed in a manner appearing to be intended to deceive an officer,

those goods shall, subject to subsection (2), be liable to forfeiture.

(2) Where goods, the importation of which is prohibited under or restricted by an enactment, are on their importation

- (a) reported as intended for exportation in the same vessel or aircraft,
- (b) entered for transshipment, or
- (c) entered to be warehoused for exportation or to be used as stores,

the Commissioner may, if he or she considers appropriate, permit those goods to be dealt with accordingly.

**31.** description:

(1) Subsection (2) applies to goods of the following

- (a) goods chargeable with a duty which has not been paid; and
- (b) goods the importation, landing or unloading of which is prohibited or restricted by or under an enactment.

Penalty for improper importation of goods.

(2) A person commits an offence if, with intent to defraud the payment of duty or to evade the prohibition or restriction mentioned in subsection (1), the person

- (a) unships or lands in a customs port or unloads from an aircraft in the Territory, goods to which this subsection applies, or assists or is otherwise concerned in the unshipping, landing or unloading of those goods; or

- (b) removes from their place of importation or from any approved wharf, examination station, transit shed, customs airport or customs area, goods to which this subsection applies, or assists or is otherwise concerned in the removal of those goods.

(3) A person who imports or is concerned in importing goods contrary to a prohibition under or restriction by virtue of an enactment with respect to those goods commits an offence if the person does so with intent to evade the prohibition or restriction, whether or not the goods are unloaded.

(4) Subject to subsection (5), a person who commits an offence under subsection (2) or (3), is liable on conviction to a fine not exceeding twenty thousand dollars or three times the value of the goods, whichever is the greater, or to imprisonment for a term not exceeding two years, or both.

(5) In the case of an offence under subsection (2) or (3), where the goods are a controlled drug, the importation of which is prohibited or restricted by section 5 of the Drugs (Prevention of Misuse) Act, the penalty specified in Schedule 3 shall be substituted for the penalty contained in subsection (4).

(6) A person who,

- (a) imports or causes to be imported, goods
  - (i) concealed in a container holding goods of a different description, or
  - (ii) packed in a manner appearing to be intended to deceive an officer, or
- (b) directly or indirectly imports or causes to be imported or entered any goods found, whether before or after delivery, not to correspond with any entry made in respect of them,

commits an offence and is liable on conviction to a fine not exceeding ten thousand dollars, or three times the value of the goods, whichever is the greater.

**PART IV  
EXPORTATION**

**32.** (1) Subject to subsection (2), the exporter of goods other than passenger's accompanied baggage, shall deliver to the proper officer an entry of those goods in the form and manner, and containing the particulars, the Commissioner may direct. Entry of goods for exportation.

(2) The Commissioner may relax all or any of the requirements imposed under subsection (1) in relation to any goods, class or description of goods, subject to any conditions and restrictions he or she may see fit to impose.

(3) Where in the case of goods which are not chargeable with duty, an entry made under subsection (1) is incorrect, the exporter shall, within ten days after the delivery of the entry or any longer period the Commissioner may permit, be allowed to deliver to the Commissioner a full and accurate account of the goods and, if the Commissioner is satisfied that the error was not made knowingly or recklessly, then notwithstanding any other provision of a customs enactment, the person making the entry does not commit an offence and the goods which were the subject of the error shall not be liable to forfeiture.

(4) Where goods which have been entered for exportation or for use as stores are not duly loaded on the vessel or aircraft for which they are entered, then, unless within twenty-four hours of the departure of that vessel or aircraft the person who entered them notifies the proper officer of that short loading, the goods are liable to forfeiture.

(5) If goods for which entry is required under subsection (1) are put on board any vessel or aircraft for exportation or for use as stores, or are water-borne for that purpose before entry in respect of them has been made, those goods are liable to forfeiture and, where the placing on board or making water-borne was done knowingly and with fraudulent intent, any person knowingly concerned in that act commits an offence and is liable on conviction to a fine not exceeding twenty thousand dollars, or three times the value of the goods, whichever is the greater, or to a term of imprisonment not exceeding two years, or both.

**33.** (1) Except as the Commissioner may otherwise permit, Entry outwards of vessels and aircraft.

(a) before any goods for exportation or for use as stores are loaded on any vessel or aircraft, or

(b) where a vessel carrying goods arrives at a customs port or an aircraft arrives at a customs airport with

the intention of proceeding to a destination outside the Territory,

the master of the vessel or the commander of the aircraft shall deliver to the proper officer, an entry outwards of that vessel or aircraft in the form and containing the particulars the Commissioner may direct.

(2) Where an entry made under subsection (1) is incorrect, the person who made it shall within forty-eight hours of the making of it or any longer period the Commissioner may permit, be allowed to amend it, and if the Commissioner is satisfied that the error was not made knowingly or recklessly, then notwithstanding any other provision of a customs enactment, that person does not commit an offence and any goods which were the subject of the error shall not be liable to forfeiture.

(3) A person by whom an entry is required to be made under subsection (1) commits an offence if he or she fails to do so, and is liable on conviction to a fine not exceeding twenty thousand dollars.

(4) Where goods are loaded on board any vessel or aircraft in contravention of subsection (1), the master of the vessel or the commander of the aircraft commits an offence and is liable on conviction to a fine not exceeding twenty thousand dollars and, where the loading was done with fraudulent intent, any person concerned in that loading with that intent commits an offence and is liable on conviction to a fine not exceeding twenty thousand dollars, or three times the value of the goods, whichever is the greater and the goods are liable to forfeiture.

Stores.

**34.** (1) Subject to subsection (2), upon an application made by the master of a vessel over thirty tons burden or the commander of an aircraft, which is about to leave the Territory for a destination outside the Territory, in the form and manner and containing the particulars the Commissioner may direct, the Commissioner may subject to conditions and restrictions he or she may see fit to impose and having regard to the number of persons on board that vessel or aircraft, permit the quantity of goods he or she considers reasonable to be removed without payment of duty from any warehouse or on drawback and loaded on to that vessel or aircraft for use as stores during that voyage or flight.

(2) Where the application under subsection (1) is in respect of fuel and lubricants only, that application may be made by the master of the vessel, regardless of its burden.

(3) If any vessel or aircraft, having left the Territory for a destination outside the Territory, fails to reach that destination or any other

destination outside the Territory and returns to the Territory, and in the opinion of the proper officer the deficiency in the stores of that vessel or aircraft is in excess of the quantity that might reasonably have been consumed having regard to the period between the departure and the discovery of the deficiency, the master or commander

- (a) commits an offence and is liable on conviction to a fine not exceeding ten thousand dollars, or three times the value of that deficiency, whichever is the greater; and
- (b) shall pay to the Commissioner the duty on that deficiency.

**35.** (1) Except as the Commissioner may otherwise permit, Clearance.

- (a) the master of a vessel intending to depart from a customs port, and
- (b) the commander of any aircraft intending to depart from a customs airport

to a destination outside the Territory, shall obtain clearance from the proper officer.

- (2) A person applying for clearance under subsection (1) shall
  - (a) deliver to the proper officer an account of all cargo and stores taken or remaining on board the vessel or aircraft in the Territory;
  - (b) produce all the books and documents in his or her custody or control relating to the vessel or aircraft, its cargo, stores, baggage, crew, passengers, voyage or flight as the proper officer may require; and
  - (c) answer all questions relating to the vessel or aircraft, its cargo, stores, baggage, crew, passengers, voyage or flight as may be put to him or her, by the proper officer.

(3) Where clearance is sought under subsection (1) for a vessel or aircraft which is in ballast, or a vessel or aircraft which does not have on board, goods other than stores, passenger's accompanied baggage or empty containers

upon which freight or profit is not earned, the proper officer granting clearance of that vessel or aircraft shall, on the application of the master or commander, clear that vessel or aircraft as in ballast.

(4) Where it appears to the proper officer that a vessel or aircraft intends or is likely to depart for a destination outside the Territory without clearance, the officer may give instructions and take steps by way of the detention of that vessel or aircraft as appear to the officer necessary to prevent that departure.

(5) If any vessel or aircraft required to be cleared under this section departs from a customs port or customs airport for a destination outside the Territory without a valid clearance, or after clearance calls at a customs port or customs airport without the permission of the proper officer, except where the departure or call was caused by accident, stress of weather or other unavoidable cause, the master or commander of the vessel or aircraft commits an offence and is liable on summary conviction to a fine not exceeding ten thousand dollars.

(6) If twenty-four hours after the granting of a clearance under subsection (1), the vessel cleared has not left the territorial waters or the aircraft cleared has not taken off for a destination outside the Territory, that clearance shall become void.

(7) If an aircraft or a vessel is required to obtain clearance from a customs airport or a customs port respectively under this section, and goods are loaded into that aircraft or vessel at that airport or port before application for clearance has been made, the goods are liable to forfeiture and where the loading is done with fraudulent intent, a person with knowledge of that intent commits an offence and is liable on conviction to a fine not exceeding twenty thousand dollars or three times the value of the goods, whichever is the greater or to imprisonment for a term not exceeding two years, or both.

Power to refuse  
or demand return  
of clearance.

**36.** (1) For the purpose of securing the detention of a vessel or aircraft in pursuance of a power or duty conferred or imposed by a customs enactment, or for the purpose of securing compliance with a customs enactment,

- (a) the proper officer may at any time refuse clearance of any vessel or aircraft; and
- (b) where clearance has been granted to a vessel or aircraft, any proper officer may at any time while the vessel is within the territorial waters or the aircraft is at a customs airport, demand the clearance granted to be returned to him or her.

(2) A demand for the return of a clearance may be made either orally or in writing to the master of the vessel or the commander of the aircraft, and if made in writing may be served

- (a) by delivering it to the master or commander personally;
- (b) by leaving it at the master or commander's last known place of abode or business in the Territory; or
- (c) by leaving it on board the vessel or aircraft with the person appearing to be in charge or command of the vessel or aircraft.

(3) Where a demand for the return of a clearance is made under subsection (2),

- (a) the clearance shall immediately become void; and
- (b) if the demand is not complied with, the master of the vessel or commander of the aircraft commits an offence and is liable on summary conviction to a fine not exceeding ten thousand dollars.

**37.** (1) Where warehoused goods or goods on drawback are to be exported, the Commissioner may require the exporter to give security in an amount not less than the duty which would have been chargeable on those goods if they had been imported into the Territory for home use.

Security for exportation of goods.

(2) If within one month of the exportation of the goods referred to in subsection (1) or any longer period the Commissioner may permit, the exporter does not produce to the Commissioner a certificate signed by a customs officer in the country to which the goods were exported certifying that the goods have been imported into that country, or otherwise account for those goods to the satisfaction of the Commissioner, the security referred to in subsection (1) shall be forfeited.

**38.** (1) If goods loaded or retained on board any vessel or aircraft for exportation or for use as stores are not exported and discharged at a place outside the Territory or used as stores but are unloaded in the Territory, then

Offences in relation to exportation.

- (a) unless the unloading was authorised by the proper officer, and

- (b) except
  - (i) where the proper officer otherwise permits,
  - (ii) any duty chargeable and unpaid on those goods is paid, and
  - (iii) any drawback or other allowance made in respect of those goods is repaid,

the master of the vessel or the commander of the aircraft and any person concerned in the unshipping, relanding, landing, unloading or carrying of the goods from the vessel or aircraft without that authority, payment or repayment commits an offence.

(2) The Commissioner may impose conditions and restrictions he or she considers appropriate with respect to goods loaded or retained as mentioned in subsection (1) which are permitted to be unloaded in the Territory, and a person who contravenes or fails to comply with a condition or restriction imposed under this subsection commits an offence.

(3) If after a vessel or aircraft has obtained clearance but before it has left the Territory it is discovered that goods cleared for exportation or for use as stores are no longer on board, then unless those goods have been unloaded with the permission of the proper officer or are stores which reasonably could have been consumed since the granting of the clearance, the master or the commander commits an offence and shall in addition to the penalty prescribed in subsection (5), pay to the Commissioner the duty on that deficiency.

- (4) A person commits an offence, if the person
  - (a) exports, causes to be exported or attempts to export goods
    - (i) concealed in a container holding goods of a different description; or
    - (ii) packed in a manner appearing to be intended to deceive an officer;
  - (b) directly or indirectly exports or causes to be exported or entered any goods found not to correspond with the entry made in respect of them; or

- (c) exports or attempts to export, without the authority of the proper officer,
  - (i) warehoused goods;
  - (ii) goods which have been transferred from an importing vessel or aircraft and which are chargeable with duty which has not been paid ; or
  - (iii) goods entitled to drawback on exportation.

(5) A person who commits an offence under this section is liable on conviction to a fine not exceeding ten thousand dollars, or three times the value of the goods, whichever is the greater, and the goods are liable to forfeiture.

- 39.** (1) If any goods are
- (a) exported or shipped as stores, or
  - (b) brought to any place in the Territory for the purpose of being exported or shipped as stores,

Exportation of prohibited or restricted goods.

and the exportation or shipment is contrary to a prohibition or restriction in force with respect to those goods under an enactment, the goods are liable to forfeiture and, subject to subsection (3), the exporter or intending exporter of the goods and any agent of the exporter concerned in the exportation or shipment or intended exportation or shipment commits an offence and each is liable on conviction to a fine not exceeding ten thousand dollars or three times the value of the goods, whichever is the greater.

(2) A person knowingly concerned in the exportation or shipment as stores, or in the attempted exportation or shipment as stores, of any goods with intent to evade a prohibition or restriction commits an offence and, subject to subsection (3), is liable on conviction to a fine not exceeding twenty thousand dollars, or three times the value of the goods, whichever is the greater, or to imprisonment for a term not exceeding two years, or both.

(3) In the case of an offence under subsections (1) and (2) where the goods are a controlled drug the exportation of which is prohibited or restricted by section 5 of the Drugs (Prevention of Misuse) Act, the penalty specified in Schedule 3 shall be substituted for the penalty contained in subsections (1) and (2).

Cap. 178  
Schedule 3

Power to require information regarding goods.

**40.** (1) Where on the exportation of goods from the Territory there has been furnished for the purpose of a preferential trading arrangement or a Customs requirement or practice, a certificate or other evidence as to the origin of the goods, or as to payments made or relief from duty allowed in any country or territory, then, for the purpose of verifying or investigating that certificate for evidence, the Commissioner or an officer may require the exporter, or any other persons appearing to the Commissioner or the officer to have been concerned in any way with the goods, or with any goods from which directly or indirectly the goods have been produced or manufactured, or to have been concerned with the obtaining or furnishing of the certificate or evidence,

- (a) to furnish the information, in the form and within the time, the Commissioner or officer may specify in the requirement; or
- (b) to produce for inspection, and to allow the taking of copies or extracts from, the invoices, bills of lading, books or documents as may be specified.

(2) A person who, without reasonable cause, fails to comply with a requirement imposed on him or her under subsection (1), commits an offence and is liable on summary conviction to a fine not exceeding ten thousand dollars.

## **PART V WAREHOUSING**

Approval of warehouses.

**41.** (1) The Commissioner may, for a specified period and subject to conditions he or she considers appropriate to impose, approve places of security for the deposit, keeping and securing of,

- (a) goods chargeable with customs duty but for which payment of the duty has not been made;
- (b) goods for exportation or use as stores, being goods not eligible for home use; and
- (c) goods permitted by or under this Act to be warehoused on drawback.

(2) Without limiting the generality of subsection (1), the Commissioner may

- (a) restrict goods which may be permitted to be warehoused in a particular warehouse to goods owned by the occupier of that warehouse; or
- (b) make the approval of a warehouse conditional upon the warehousing of a minimum amount of goods during a specified period, and different amounts may be required in respect of warehouses restricted under paragraph (a) and warehouses not so restricted.

(3) An occupier of a warehouse who after an approval of a warehouse under subsection (1), contravenes or fails to comply with a condition or restriction by the Commissioner under that subsection commits an offence and is liable on summary conviction to a fine not exceeding ten thousand dollars.

(4) Subject to subsection (5), the Commissioner may at any time, for reasonable cause, revoke or vary the terms of an approval given under subsection (1).

(5) Where the Commissioner intends to revoke or not to renew an approval of a warehouse given under subsection (1), the Commissioner shall, not later than three months before the date when the revocation is due to take effect or the approval is due to expire (in this section referred to as “the date of cessation”), give notice of his or her intention in writing, and this notice shall be deemed to have been served on all persons interested in any goods then deposited in that warehouse, or permitted by or under this Act to be so deposited between the date of the giving of the notice and the date of cessation, if addressed to the occupier of, and left at, the warehouse.

(6) If, after the date of cessation or a later date the Commissioner may permit, uncleared goods remain in a place no longer approved under subsection (1), they may be taken by an officer to a customs warehouse and, without prejudice to any other power of earlier sale provided by this Act, may be sold if they are not cleared within one month.

**42.** (1) Goods, class or description of goods, specified in Schedule 1, may not be warehoused.

Goods not to be warehoused on importation. Schedule 1

(2) With the approval of the Cabinet, the Minister may, by an Order published in the *Gazette* and a newspaper of wide circulation in the Territory,

- (a) delete from, vary or add to the goods, class or description of goods specified in Schedule 1;
- (b) prescribe goods, class or description of goods which may not remain warehoused for a period longer than six months and may delete from, vary or add to the goods, class or description of goods; and
- (c) specify goods, class or description of goods which are required to be warehoused on their importation.

(3) An Order made under subsection (2) is subject to a negative resolution of the House of Assembly.

(4) Except as the Commissioner may otherwise permit and subject to the conditions and restrictions he or she considers appropriate to impose, warehoused goods may not remain warehoused for longer than twelve months and warehoused goods which remain warehoused after that time, shall be entered for rewarehousing or for home use or be re-exported.

(5) Damaged goods or goods enclosed in an insecure or otherwise defective container or in a container from which portion of the contents have been removed may not be warehoused, unless they are secured to the satisfaction of the proper officer.

(6) Goods warehoused contrary to this section or failing to be warehoused, are liable to forfeiture.

Production of goods in warehouse.

**43.** (1) The occupier of a warehouse shall produce to an officer, on request, any goods deposited in the warehouse which have not been lawfully authorised to be removed from the warehouse, and an occupier who fails to produce the goods commits an offence and is liable on conviction to a fine not exceeding one thousand dollars or three times the value of the goods, whichever is the greater.

(2) The occupier of a warehouse shall stow every container or lot of goods warehoused that easy access may be had to the goods, and the occupier commits an offence for every container or lot not so stowed and is liable on summary conviction to a fine not exceeding one thousand dollars.

Proprietor to inspect and show goods for sale.

**44.** (1) Without prejudice to a restriction or condition imposed by the occupier of a warehouse, the proprietor of warehoused goods may, with the authority of the proper officer,

- (a) inspect the goods and their containers with intent to prevent loss that may result from their storage; and
- (b) show the goods for sale.

(2) Where the proper officer requires that he or she shall be present at an inspection or showing of goods, the proper officer shall, so far as is practicable, attend at a reasonable time requested, but shall not be obliged to attend for the purposes of this section more than once in a period of twenty-four hours at the request of the same person or in respect of the same goods.

(3) The Commissioner may allow the proprietor of warehoused goods to take samples of the goods subject to conditions, and with or without entry or payment of duty.

**45.** (1) Imported goods which are on importation entered for warehousing are deemed to be duly warehoused as from the time when the proper officer certifies that the entry and warehousing of those goods are complete.

Entry, marking, etc. of goods for warehousing.

(2) Before any other goods are warehoused, the proprietor of the goods shall deliver an entry in respect of the goods to the proper officer in the form and manner and containing the particulars the Commissioner may direct.

(3) Goods brought to a warehouse for re-warehousing after removal for that purpose from another warehouse shall be dealt with in like manner as if they were goods being warehoused for the first time, except that subsections (1) and (2) shall not apply,

(4) Except permitted by or under this Act, goods shall be warehoused in the containers or lots in which they were first entered for warehousing.

(5) The proprietor of warehoused goods shall mark the containers or lots in the manner the proper officer may direct and shall subject to any further direction, keep them so marked while they are warehoused.

(6) A person who fails to comply with subsection (5) commits an offence and is liable on summary conviction to a fine not exceeding ten thousand dollars.

(7) Where without the authority of the proper officer and except permitted under this Act,

- (a) any goods are warehoused in containers or lots other than those in which they were entered for warehousing, or
- (b) an alteration is made to any goods in a warehouse, or in the packing or marking of the containers or lots of the goods after the goods have been duly warehoused,

those goods are liable to forfeiture.

Re-entry of goods entered for warehousing.

**46.** (1) Subject to subsection (2), goods which have been entered for warehousing or which have been permitted to be removed from a warehouse for transport to another warehouse may, at any time before they have been warehoused or re-warehoused,

- (a) be further entered by their proprietor for
  - (i) home use, if so eligible, or
  - (ii) exportation or for use as stores,

and shall then be dealt with as if they had been so entered from the warehouse; or

- (b) be removed for transport to another warehouse approved for the warehousing of those goods, and shall then be dealt with as if they had been duly warehoused.

(2) Where goods are held in containers, part of those goods shall not be further entered or removed under subsection (1), unless that part consists of one or more complete containers.

Operations of warehoused goods.

**47.** (1) Without prejudice to this or any other Act under which an operation on warehoused goods is or may be permitted, the Commissioner may, in the case of those goods and subject to the conditions and restrictions he or she considers appropriate, permit the sorting, separating, packing or repacking of goods in a warehouse and the carrying out on warehoused goods, other operations necessary for the preservation, sale, shipment or disposal of the goods as he or she considers appropriate and may give directions as to the warehouses or the part of any warehouse in which an operation on goods may be carried out.

(2) The Commissioner may at any time revoke or vary permission granted or deemed to have been granted under this section.

(3) A person who carries out an operation on goods in a warehouse otherwise than in accordance with permission granted or deemed to have been granted under this section or otherwise than as permitted under some other Act commits an offence and is liable on summary conviction to a fine not exceeding ten thousand dollars and the goods are liable to forfeiture.

**48.** (1) If at any time after goods have been warehoused and before they have been lawfully removed, all or part of those goods are found to be missing then, without prejudice to any other fine or liability to forfeiture incurred under this Act, the occupier of the warehouse

Deficiency in warehoused goods.

(a) commits an offence and is liable on conviction to a fine not exceeding ten thousand dollars, or three times the value of the goods, whichever is the greater; and

(b) shall pay to the Commissioner

(i) the duty that the goods would have borne if they had been entered for home use on the date of the discovery of the deficiency; or

(ii) in the case of goods not eligible for home use, an amount which in the opinion of the proper officer was the value of the goods, at the date of the discovery of the deficiency.

(2) Where goods have without payment of duty been lawfully removed from a warehouse for transport to some other warehouse or to some other place, and all or part of the goods fail to reach that other warehouse or place then, without prejudice to any other fine or liability to forfeiture incurred by or under this Act, the proprietor of the goods

(a) commits an offence and is liable on conviction to a fine not exceeding ten thousand dollars, or three times the value of the goods, whichever is the greater; and

(b) shall pay to the Commissioner

- (i) the duty that the goods would have borne if they had been entered for home use on the date of the discovery of the deficiency; or
- (ii) in the case of goods not eligible for home use, an amount which in the opinion of the proper officer was the value of the goods, at the date of the discovery of the deficiency.

(3) Subject to subsection (4), compensation shall not be payable by the Commissioner and action shall not lie against the Commissioner, for loss or damage caused to any goods while in a warehouse or for an unlawful removal of goods from a warehouse.

(4) Where warehoused goods are damaged, destroyed or unlawfully removed by or with the assistance or connivance of an officer, and that officer is convicted of an offence in relation to that damage, destruction or removal, then except where the occupier of the warehouse or the proprietor of the goods was a party to the offence, the Commissioner shall pay compensation for any loss caused by the damage, destruction or removal, and notwithstanding any other provision of a customs enactment, duty shall not be payable on the goods by the occupier or the proprietor and any sum paid by the proprietor by way of duty before the conviction shall be refunded.

Removal of  
warehoused  
goods.

**49.** (1) Before goods are removed from a warehouse the proprietor of the goods shall deliver to the proper officer an entry in respect of the goods in the form and manner, and containing the particulars the Commissioner may direct.

(2) Subject to this Act and any statutory instrument made under the Act as to the purposes for which goods may be warehoused, goods may be entered under this section for any of the following purposes:

- (a) for home use;
- (b) for exportation;
- (c) for use as stores;
- (d) subject to the conditions and restrictions the Commissioner considers appropriate to impose,
  - (i) for removal to another warehouse approved for the warehousing of the goods;

- (ii) for removal for other purposes, to the places and for the periods the Commissioner may allow.

(3) Warehoused goods shall not be removed from the warehouse or loaded onto any vessel, aircraft or vehicle for removal or for exportation or use as stores except with the authority of and in accordance with directions given by the proper officer.

**50.** (1) Except as permitted by or under this Act, goods shall not be removed from a warehouse until all duty chargeable on those goods has been paid.

Duty chargeable on warehoused goods.

(2) Except as provided by section 54 (3) the duties and rates chargeable on warehoused goods shall be those in force with respect to the goods of that class or description at the time of the removal of the goods from the warehouse.

(3) Subject to subsection (4), the amount payable in respect of duty chargeable on goods shall be calculated in accordance with the account taken of those goods upon their first being warehoused, except that where the goods are spirits, wine, or tobacco, the calculation shall be in accordance with the quantity of the goods ascertained by weight, measure or strength at the time of actual delivery of the goods, unless the Commissioner considers that the difference between the first account and the amount delivered is not explained by natural evaporation or other legitimate cause, in which case the calculation shall be in accordance with that first account.

(4) Where warehoused goods have deteriorated or have been damaged to a degree that the Commissioner is satisfied that they have become unsaleable, the Commissioner shall allow the abatement of the duty chargeable on them as, in the Commissioner's opinion, the amount of the deterioration or damage bears to the original value of the goods.

**51.** Without prejudice to any other provision of this Act, the Commissioner may authorise the removal of goods from a warehouse subject to any conditions and restrictions the Commissioner may think fit to impose, without payment of duty, but where any condition or restriction imposed under this section is contravened or not complied with, the goods are liable to forfeiture.

Removal of goods from warehouse without payment of duty.

**52.** (1) This section shall have effect in relation to goods which are deposited in a customs warehouse under this Act.

Provisions for goods to be deposited in a customs warehouse.

(2) The Commissioner may appoint a place for the deposit of goods, for security of those goods and of any duty chargeable on them.

(3) Where, in respect of goods which may or are required to be warehoused, the Commissioner is of the opinion that it would be undesirable or inconvenient to deposit the goods in a customs warehouse, the Commissioner may deem those goods to be deposited in a customs warehouse, and this section shall apply to the goods as if they were deposited in a customs warehouse.

(4) The Minister acting on the recommendation of the Commissioner may, by Order published in the *Gazette* and a newspaper of wide circulation in the Territory, prescribe the rent that shall be payable in respect of goods deposited in a customs warehouse.

(5) The Commissioner may, with the approval of the Minister, remit or authorise the refund of any rent payable or paid in respect of goods deposited in a customs warehouse.

(6) The Commissioner may, in respect of goods deposited in a customs warehouse, do all the acts that appear to the Commissioner necessary for custody and preservation of the goods, and the expenses of so doing shall be payable by the proprietor of the goods in addition to other charges payable in respect of those goods.

(7) If in the opinion of the Commissioner goods deposited in a customs warehouse are of a nature that requires special care or treatment, then

(a) they shall, in addition to other charges payable on them, be chargeable with the expenses for the securing, watching and guarding of them as the Commissioner considers necessary; and

(b) the Commissioner shall not be liable to make good any damage which the goods may sustain.

(8) Except as the Commissioner may otherwise permit, goods deposited in a customs warehouse shall be removed from that warehouse within two months from the date of their deposit, and any goods not so removed may be sold.

(9) Except as permitted by or under this Act, goods shall not be removed from a customs warehouse until all duty chargeable on those goods, and any charges

- (a) in respect of the removal of the goods to the customs ware-house, and
- (b) arising by virtue of subsections (3), (4), (6), and (7)

have been paid and in the case of goods requiring entry and not yet entered, until entry of those goods have been made.

(10) An officer having custody of goods in a customs warehouse may refuse to permit them to be removed until it is shown to the officer's satisfaction that all charges due on those goods have been paid.

(11) When goods are authorised to be sold under this Part but cannot be sold, or are in the opinion of the Commissioner of a perishable nature, the Commissioner may destroy them.

**53.** (1) Except with the authority of the proper officer or for just and sufficient cause, a person who opens a door or lock of a customs warehouse or makes or obtains access to a warehouse or to goods in a warehouse, commits an offence and is liable on conviction to a fine not exceeding twenty thousand dollars, or to imprisonment for a term not exceeding two year, or both.

Offence in relation to warehouses and warehoused goods.

- (2) Goods are liable to forfeiture, where
  - (a) they have been entered for warehousing and are taken into a warehouse without the authority of, or otherwise than in accordance with any direction given by, the proper officer;
  - (b) except as permitted under this Act, they have been entered for warehousing and are removed without being duly warehoused or are otherwise not duly warehoused;
  - (c) they have been deposited in a warehouse or a customs warehouse and are unlawfully removed or are unlawfully loaded into any vessel, aircraft or vehicle for removal or for exportation or for use as stores;
  - (d) they are entered for warehousing and are concealed, either before or after they have been warehoused; or

- (e) they have been lawfully permitted to be removed from a warehouse or a customs warehouse without payment of duty for any purpose and are not duly delivered at the destination to which they should have been taken in accordance with that permission.

(3) A person who is in any way concerned with the taking, removal, loading concealing or non-delivery of goods, as described in subsection (2), commits an offence and is liable on conviction to a fine not exceeding ten thousand dollars, or three times the value of the goods, whichever is the greater, or to imprisonment for a term not exceeding twelve months, or both.

(4) A person who is in any way concerned with the taking, removal, loading concealing or non-delivery of goods as described in subsection (2), with intent to defraud the Government of any duty chargeable on those goods or to evade a prohibition or restriction in force with respect to those goods under or by virtue of an enactment, commits an offence and is liable on conviction to a fine not exceeding twenty thousand dollars, or three times the value of the goods, whichever is the greater or to imprisonment for a term not exceeding two years, or both.

(5) Where the goods in respect of which the offences specified in subsection (4) were committed are controlled drugs the exportation of which is prohibited or restricted by section 5 of the Drugs (Prevention of Misuse) Act, the penalty specified in Schedule 3 shall be substituted for the penalty contained in subsection (4).

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Schedule 3

## **PART VI DUTIES, DRAWBACKS, PROHIBITIONS AND RESTRICTIONS**

Collection  
of duty.

- 54.** (1) The Commissioner shall raise, levy or collect on goods
- (a) imported into the Territory for home use, or
  - (b) removed from bond for home use,

Schedule 4

a duty at the rate set out in Schedule 4, at the time of first importation into the Territory or delivery from customs charge.

(2) Except as permitted by or under this Act or any other enactment relating to customs, imported goods shall not be delivered or removed

on importation until the importer has paid to the proper officer, duty chargeable on the goods.

(3) The goods enumerated in Schedule 5 shall be admitted into the Territory exempt from duty. Schedule 5

**55.** (1) Notwithstanding anything to the contrary in this Act or in any other Act, there shall be paid in respect of the goods enumerated in Chapter 27 of Schedule 4, an additional levy of ten cents per gallon. Additional levy on import duty. Schedule 4

(2) Moneys collected under subsection (1) shall be credited to the Transportation Network (Land, Sea and Air) Improvement Fund established by the Transportation Network (Land, Sea and Air) Improvement Fund Act, 1992. No. 9 of 1992

**56.** (1) Notwithstanding section 55(1), the BVI Electricity Corporation, Public Works Department, Water and Sewerage Corporation and the Virgin Islands Fishing Company are exempted from the payment of the additional levy. Exemption from payment of additional levy.

(2) The Minister may by an Order published in the *Gazette* and a newspaper of wide circulation in the Territory, prescribe statutory bodies and Government agencies to be exempted from the payment of the additional levy.

**57.** Notwithstanding anything to the contrary in section 54, a licensee under the Business Professions and Trade Licenses Act who sells by retail, any of the items set out in Schedule 9, and who imports any of those items, shall pay customs duty at the rate of five per cent on each item imported. Rate of customs duty payable in respect of certain items. Schedule 9

**58.** (1) The owner of goods subject to duty shall Liability for duty.

(a) in the case of goods of which entry is made, pay the duty payable at the time of making the entry; and

(b) in the case of other goods, pay the duty payable some other time prescribed by this Act.

(2) Except as otherwise permitted under a customs enactment, the rate of duty to be charged on imported goods is

(a) the rate in force with respect to goods of that class or description, at the time of

- (i) the delivery of the entry in respect of those goods to the proper officer, where an entry for home use is delivered in respect of goods imported into the Territory or an entry is delivered in respect of goods to be exported out of the Territory;
  - (ii) the importation or exportation of the goods, where an entry is required in respect of the importation of goods into or the exportation of goods out of the Territory, but entry is not delivered to an officer;
  - (iii) the delivery of the goods, where goods are removed from any vessel, aircraft or transit shed under any bond or other security;
  - (iv) the removal of goods from a warehouse, where goods are removed from the warehouse for home or other use; and
  - (v) the importation or exportation of the goods, in any other case; or
- (b) in the case of goods in a warehouse under section 79 (1) (e) or an Order made under section 42 (2) (c), the applicable rate in force at the time of delivery from the warehouse, if an entry in respect of those goods is delivered to the proper officer within seven working days of those goods being imported into the Territory.
- (3) Subject to this Act, goods permitted on their importation to be entered for warehousing may be allowed to be warehoused without payment of duty.
- (4) Duty may be paid in the currency of the United States of America by
- (a) a draft issued by a licensed bank operating in the Territory; or

(b) a cheque drawn on and guaranteed by a licensed bank operating in the Territory.

(5) Without prejudice to any other provision of this Act, an amount due by way of customs duty is recoverable as a debt due to the Government.

**59.** Goods brought into the Territory by sea otherwise than as cargo, stores or baggage carried in a vessel shall be chargeable with the like duty, if any, as would be applicable to those goods if they have been imported as merchandise, and if any question arises as to the origin of the goods they shall be deemed to be the produce of the country the Commissioner may on investigation determine.

Goods imported other than as cargo, stores or baggage.

**60.** (1) An amount due and not paid to the Commissioner under a customs enactment may be recovered by the Commissioner in a court of competent jurisdiction.

Recovery of amounts due.

(2) In proceedings by the Commissioner for the recovery of an amount due by way of duty, it shall not be competent for the defendant to enter a defence that the amount of duty claimed to be due by the Commissioner, is incorrect.

**61.** (1) Goods which are not exempted in Schedule 5 are deemed to belong to the class under which they fall in the section and Chapter of the Harmonised System set out in Schedule 4, and shall be charged accordingly.

Harmonised System (H.S.).  
Schedule 4  
Schedule 5

(2) In accordance with sections 138 and 139 (2) and (3), an appraisal made in the event of a doubt or dispute as to liability to pay duty under subsection (1) shall accord with a proper interpretation of the Harmonised System and the official notes to it as interpreted by the Rules set out in the Harmonised System.

(3) A certified true copy of the Harmonised System as documented shall be lodged by the Commissioner, at the Record Office of the Registrar of Deeds in the Territory and open to inspection by the public during the opening hours of that office.

**62.** (1) Imported goods subject to duty shall be charged at an *ad valorem* rate expressed as a percentage of the value of the goods as ascertained in accordance with the method of calculation set out in Schedule 7.

Basis of valuation.  
Schedule 7

(2) Any duty, drawback, allowance or rebate the rate of which is expressed by reference to a specified quantity or weight of any goods shall be

chargeable or allowable on a fraction of that quantity or weight of the goods, and the amount payable or allowable on that fraction shall be calculated proportionately.

(3) For the purpose of calculating an amount due from or to a person under a customs enactment by way of duty, drawback, allowance, repayment or rebate, any fraction of a cent in that amount shall be disregarded.

Special provisions.

**63.** (1) If goods chargeable with duty on their importation into or exportation out of the Territory,

- (a) are imported or exported in a package intended for sale, or of a kind normally sold with those goods, and the package is marked or labelled or commonly sold as, or reputed as containing a specified quantity of those goods, then the package shall be deemed to contain not less than that specified quantity of those goods;
- (b) are imported or exported in a package intended for sale, or of a kind normally sold with those goods, but the package is not marked or labelled, or commonly sold as, or reputed as containing a specified quantity of those goods, then, unless the importer is able to satisfy the Commissioner as to the net weight of the goods, the duty shall be calculated on the gross weight of the package and the goods;
- (c) are imported or exported in any package or covering which, in the opinion of the Commissioner,
  - (i) is not the usual or proper package or covering for the goods, or
  - (ii) is designed for separate use other than as a package or covering for the same or similar goods, subsequent to the importation or exportation,

that package or covering shall be deemed to be a separate article;

- (d) are brought into the Territory as derelict jetsam, flotsam or part of a wreck or, as droits of Admiralty, are sold in the Territory, they shall, at the time of their discovery or sale be charged with duty as goods of that class or description would be subjected to; and
- (e) are imported or exported as a part or an ingredient of another article, duty shall be chargeable on those goods according to the proportion of those goods to other goods used in the manufacture or preparation of the article.

(2) Subject to the approval of the Cabinet, the Minister may by Order published in the *Gazette* and a newspaper of wide circulation in the Territory, specify standard capacities for containers of liquid goods, and where goods liable to duty by liquid volume are sold in containers or reputed to be sold in containers of the size specified in the Order, the quantity of goods in that container shall be deemed to be the specified quantity.

**64.** (1) The value of a currency other than the currency of the United States of America is deemed to be its buying price in the Territory rounded up or down to the nearest one cent in the currency of the United States of America, where all or part of the value of any goods is quoted in that currency.

Rates of exchange.

(2) Notwithstanding subsection (1), the Financial Secretary taking into consideration all known facts may fix a rate of exchange for a currency until the rate of exchange of that currency is stabilised, where the state of the money market is uncertain.

**65.** (1) Goods enumerated in Schedule 5 and goods which are conditionally exempted from duty by any other Act shall, be released from customs' charge

Release of exempt goods and conditionally exempt goods. Schedule 5

- (a) on the production of a certificate issued by the appropriate authority granting the exemption; or
- (b) by making a declaration in the prescribed form.

(2) A person may on an application in writing to the Commissioner, obtain the Commissioner's consent in writing to divert goods to which an exemption has been granted under subsection (1), to use other than that for which the certificate was issued or declaration made.

(3) Duty shall be paid on goods diverted pursuant to the Commissioner's consent, at the rate and on the value of the goods, at the time of the diversion.

Every item of goods liable to duty.

**66.** An item of imported goods having independent intrinsic value shall be liable to duty notwithstanding that it may be designed for temporary or permanent use in conjunction or connection with some other item of goods.

Processed re-imports.

**67.** (1) The owner of a class of goods exported from the Territory for the purpose of being repaired, restored or otherwise processed after which the goods shall be re-imported, may at the time of entering the goods for export declare the purpose of the export.

(2) Subject to subsection (3), duty shall be charged only on the increase in value of goods exported in accordance with subsection (1) and subsequently re-imported as repaired, restored or processed but without there being a substantial change in their form or character, as if the increased value consequent on the repair, restoration or processing is the whole value of the goods.

(3) If it is proved to the satisfaction of the Commissioner that either prior to exportation or at a subsequent time, duty chargeable in respect of the goods referred to under subsection (1) was duly paid and either that

- (a) a drawback of duty paid in respect of the goods was not allowed on the exportation of the goods; or
- (b) a drawback paid has been repaid to Customs by the person who exported the goods,

then duty other than the duty on the increased value shall not be chargeable, levied or collected on the goods again.

Goods Imported on hire, free loan or own use.

**68.** (1) Goods temporarily imported for commercial or industrial use on hire, free loan or own use other than goods falling within the class created by section 70 (2) shall attract duty

- (a) on the cost of the hire including freight and other charges from the foreign port for loading if the charges are additional to the cost of hire, as if the hire and charges are the whole value of the goods;

- (b) on assessed value of any free loan, as if the goods were hired; and
- (c) on an assessed value of own use as if the goods were hired, but duty shall not be charged on the personal tools of trade of an individual person.

(2) Notwithstanding subsection (1), the person importing may elect at the time of first importation to pay the duty on the full value and shall not then be required to pay any further duty on the goods.

**69.** (1) Subject to conditions as may be prescribed by the Commissioner, goods which fall within the following classes may be imported free or partially free from any duty:

Relief from duty.

- (a) goods entered for home use which are proved to the satisfaction of the Commissioner to have had duty paid with respect to them on importation on a previous occasion;
- (b) goods imported for charitable work or to propagate a religion;
- (c) goods imported by the holder of a duty free franchise in respect of the goods;
- (d) goods imported by or on behalf of a person entitled to full or partial relief in respect of the goods under this Act or any other enactment; and
- (e) goods and unassembled parts of the goods replaced free of charge under a warranty by the supplier, where the replacement is made within six months of the issue of the warranty.

(2) Where goods are entered as being in transit or for transshipment, the Commissioner may allow the goods to be removed for that purpose without payment of duty, subject to conditions and restrictions the Commissioner considers appropriate to impose.

(3) Where goods previously entered for home use in the Territory, are imported into the Territory after exportation from the Territory, and it is shown to the satisfaction of the Commissioner that

- (a) duty was not chargeable on those goods on any previous importation into the Territory or that if duty was chargeable, it has been paid,
- (b) drawback has not been paid or duty refunded on their exportation or that any drawback so paid or duty so refunded has been repaid, and
- (c) the goods have not undergone any process outside the Territory since their exportation,

those goods may be permitted to be imported, subject to any conditions and restrictions the Commissioner may see fit to impose, without payment of duty.

(4) Subject to any conditions prescribed, the following classes of goods may be imported free of duty for retention in the Territory for a period not exceeding six months or for an extended period as the Commissioner may authorise in a particular case:

- (a) commercial travellers samples;
- (b) containers;
- (c) packages and packing material;
- (d) professional equipment;
- (e) goods for display or exhibition; and
- (f) goods covered by an A.T.A Carnet.

(5) Notwithstanding subsection (4), goods imported and exempted under subsection (4) which are not re-exported within the period or extended period permitted by the Commissioner shall become liable to the full duty payable in respect of the goods as if the goods had been imported without reference to this section.

Personal reliefs.

**70.** (1) Subject to the approval of the Cabinet, the Minister may by Order published in the *Gazette* and a newspaper of wide circulation in the Territory, make provision for conferring on persons entering the Territory, relief from customs duties on goods or classes or description of goods specified in the Order.

- (2) Relief granted under subsection (1) may be
  - (a) an exemption from duty; or
  - (b) a sum payable by way of duty less than the full amount due.
- (3) An Order made under subsection (1) may
  - (a) make a relief for which it provides, subject to the conditions the Minister considers appropriate, including conditions to be complied with after the importation of goods to which the relief applies; and
  - (b) make different provisions for different cases.

(4) Without limiting the generality of subsection (1), an Order made under that subsection may provide for the imposition of a fine of an amount not exceeding twenty thousand dollars for any contravention of or failure to comply with, the Order or a direction given under the Order, and for the forfeiture of any goods involved in an offence.

(5) An Order made under subsection (1) is subject to the affirmative resolution of the House of Assembly.

**71.** Without prejudice to any other enactment relating to customs, but notwithstanding section 69(3), if it is shown to the satisfaction of the Commissioner that goods manufactured or produced in the Territory are re-imported into the Territory after exportation have not undergone any process outside the Territory since their exportation the goods may on their re-importation be delivered for home use without payment of duty.

Relief from duty on re-imported goods locally produced.

**72.** (1) Where under any provision of a customs enactment goods are, subject to a condition or restriction, relieved from duty chargeable on them, and that condition or restriction is contravened or not complied with, the duty relieved shall become payable by the person who, but for that relief, would have had to pay that duty, and the goods in respect of which the relief was granted are liable to forfeiture.

Offences and forfeiture for breach of conditions.

(2) Goods relieved from duty by virtue of a provision of a customs enactment shall, on a demand made by an officer, be produced or otherwise accounted for to the officer, and a person who fails to produce or account for the goods commits an offence and is liable on conviction to a fine not

exceeding ten thousand dollars, or three times the value of the goods, whichever is the greater, and if goods not produced or accounted for are subsequently found, they shall be liable to forfeiture.

Abatement of duty.

**73.** (1) Subject to subsection (2), where the Commissioner is satisfied in respect of imported goods that,

- (a) before or on their importation they have deteriorated or have been damaged, or that they or some of them have been lost or destroyed, and, in the case of lost goods, that they have not been entered or will not be entered for home use in the Territory, and
- (b) the carrier or insurer has made an allowance to the importer in respect of the deterioration, damage, loss and destruction,

the Commissioner shall allow the abatement of the duty chargeable on those goods as, in the Commissioner's opinion, the amount of the deterioration, damage, loss or destruction bears to the original value of the goods.

(2) Where duty has already been paid on goods in respect of which abatement is allowable under subsection (1), repayment of the amount of the abatement shall not be made unless the claim is made within six months of the date of the payment of the duty.

Temporary importation of certain vessels.

**74.** (1) Subject to section 78 and to conditions the Minister may by Regulations determine, a vessel may be imported or re-imported free of duty into the Territory for a total period of not more than one hundred and eighty days in a twelve months period.

(2) Subsection (1) shall not apply to a vessel

- (a) which is proved to the Commissioner to have been first imported into the Territory on or before the 1<sup>st</sup> day of January, 1978 and which is owned by
  - (i) a resident; or
  - (ii) a person other than a resident and has its normal place of mooring within the Territory;

- (b) which is a cargo boat or light vessel;
- (c) which is on a scheduled passenger service;
- (d) which is a cruise ship on a pre-advised visit;
- (e) which is used solely or principally for the carriage of freight and which is operated from a place situated outside the Territory;
- (f) which is imported for servicing, repair or laying up at a recognised commercial repair yard, garage or a place of mooring registered under section 21(1) for a period necessary for the completion of the servicing, repair or laying up;
- (g) which is imported into the Territory by reason of a mechanical break down for a period necessary to effect its repair; or
- (h) which is used solely or principally for fishing and which is ported and used by a person whose only or principal means of livelihood is fishing.

(3) For purposes of this section and section 75 to 78, “vessel” means a device or thing capable of being used for conveying goods or passengers from one place to another and includes a vessel being carried or towed by another vessel whether as cargo or for some other purpose but does not include an aircraft, airboat or flying machine.

(4) For purposes of subsection (2) (a), the onus of proof that a vessel has been imported before the specified date or has its normal place of mooring within the Territory shall lie on the person seeking to prove that assertion.

(5) Subsection (1) to (4) shall not apply to commercial recreational vessels nor to temporarily imported non-commercial recreational vessels.

Extension of exemption under conditions.

**75.** (1) Subject to conditions as the Minister may by Regulations prescribe, a vessel which is owned by a person other than a resident and which would otherwise be liable to pay duty may be imported or re-imported into the Territory free of duty for a total period in excess of one hundred and eighty days in any twelve months period, where

- (a) the number of days that the vessel is laid up for servicing, repair or storage and which is not a time the vessel is used or lived on, when deducted from the number of days that the vessel is within the Territory, is less than one hundred and eighty days in any twelve months period; and
- (b) the vessel has not been used for gain, hire, reward or any other commercial purpose or used by a person other than the owner or the owner's immediate family.

(2) The exemptions granted under this section shall not apply in respect of a vessel for more than any two twelve months periods.

Exemption from non-recorded charter boats.

**76.** (1) Subject to conditions as the Minister may by Regulations prescribe, a non-recorded charter boat which is owned by a person other than a resident person may be imported or re-imported into the Territory free of duty for a total period in excess of one hundred and eighty days in any twelve months period, if the number of days on which a cruising permit is issued under the Cruising Permit Act in respect of persons on board other than employed crew, when deducted from the number of days that the vessel is within the Territory is less than one hundred and eighty days.

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(2) If at anytime a person is convicted of an offence under the Cruising Permit Act in respect of a vessel granted an exemption under subsection (1) then, the owner of the vessel shall be liable to pay duty on the vessel at a rate of two hundred per cent of the rate in force on the date when the vessel was first imported and on the value of the vessel at that time.

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(3) For purposes of this section and section 77

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- (a) "charter boat" has the meaning assigned to it under section 2 of the Cruising Permit Act; and

- (b) “recorded” or “non-recorded” charter boat shall mean a charter boat recorded or not recorded under section 5 of that Act, as the case may be.

**77.** (1) Subject to conditions as the Minister may prescribe by Regulations, a recorded charter boat which is crewed on a full-time basis may be imported into the Territory free of duty for a total period not exceeding two hundred and eighty days in any twelve months period. Crewed charter boats.

(2) Subsection (1) shall apply to the twelve-months period commencing with the date of first importation after the first day of January, 1978.

**78.** (1) Notwithstanding section 75, a vessel which is owned by a resident and which has its normal place of mooring outside the Territory may be imported into the Territory free of duty for a period not exceeding thirty days in a twelve months period. Boats owned by residents.

(2) Notwithstanding subsection (1), a vessel owned by a resident and which has its normal place of mooring outside the Territory is subject to duty.

**79.** (1) Subject to this section, the Commissioner shall, pay drawback on goods imported into the country, where the goods are entered for Drawback.

- (a) export;
- (b) re-export, in the packages in which they were imported, unopened;
- (c) shipment for use as stores;
- (d) use in the manufacture of goods for export, whether in the same state or not; and
- (e) deposit in warehouses for subsequent exportation or shipment for use as stores.

(2) Drawback may not be claimed in respect of

- (a) goods of a value less than fifty dollars, being the value of the goods when they were originally imported,

- (b) goods which were imported into the Territory more than twelve months before the date of the claim for drawback, and
- (c) goods not in the packages in which they were originally imported into the Territory or in the case of bulk goods, where that bulk has been broken,

except that where imported goods are re-exported within six months of their importation by their importer to the same country and to the same person or firm from which they were imported or are entered for shipment for use as stores, this subsection shall not apply.

(3) The Minister, acting on the recommendation of the Commissioner, may by an Order published in the *Gazette* and a newspaper of wide circulation in the Territory, prescribe any goods, class or description of goods in respect of which drawback is not be claimable.

Claims for drawback.

**80.** (1) A claim for drawback shall be made in the form and manner, and contain the particulars, the Commissioner may direct.

(2) Drawback is not payable,

- (a) unless it is shown to the satisfaction of the Commissioner that duty due on the goods in respect of which the claim is made has been paid and not otherwise drawn back;
- (b) until the person making the claim has furnished the Commissioner with the information, and produced to him or her the books of account or other documents, relating to the goods as the Commissioner may demand;
- (c) subject to section 62, until all the goods which are the subject of the claim have been exported; and
- (d) in respect of an amount of duty not exceeding fifty dollars.

Rate of drawback.

**81.** The rate of drawback shall be ninety per cent of the duty paid.

- 82.** (1) Subject to conditions prescribed by the Commissioner, where it is proved to the satisfaction of the Commissioner that
- Payment of duty when goods returned or destroyed.
- (a) customed goods were imported in pursuance of a contract of sale;
  - (b) the description, quality, state or condition of the goods was not in accordance with the contract or that the goods were damaged in transit or during their transshipment; and
  - (c) the importer with the consent of the seller
    - (i) returned the goods unused to the seller and that the goods were duly entered outwards; or
    - (ii) destroyed the goods unused,

the Commissioner may sign a voucher for the refund of any duty already paid on the import of the goods.

(2) Nothing in this section shall apply to goods imported “on approval” or “sale or return” or on any similar terms.

**83.** Without limiting the generality of section 82, and subject to conditions prescribed by the Commissioner, duty may be repaid by the Commissioner to an importer in full or in part if

Refund of duty in other cases.

- (a) it is proved to the satisfaction of the Commissioner that duty in excess of the correct amount has been paid by an importer; or
- (b) the goods are declared by a Resolution of the House of Assembly to be free of duty.

**84.** (1) The Commissioner, with the approval of the Financial Secretary, may remit or authorise the refund of, the whole or a part, of import or export duty paid by a person in respect of any goods.

Power to alter duty or authorise a refund.

(2) A remission or refund made or authorised to be made under subsection (1) may apply either to specific instances or to persons of a specific

class, and may be made subject to conditions and restrictions the Minister considers fit to impose.

- (3) Notwithstanding subsections (1) and (2), if an amount is paid as duty,
- (a) any excess of duty arising from an increase in the rate of duty payable, shall not be payable if it has previously been paid; and
  - (b) any shortfall of duty arising from a decrease in the rate of duty shall be refunded by the Commissioner if the duty has previously been paid on the date that this Act or a Resolution made under this section, is commenced.

(4) The House of Assembly may by Resolution impose duty on goods imported which at the time when the Resolution was passed was not leviable, and the change shall be effective on all uncustomed goods deposited in a warehouse from the commencement date of the Resolution.

(5) The House of Assembly may by Resolution alter the list of goods set out in Schedule 4, or prohibited or restricted under Schedule 8, and subsection (3) shall have effect.

General provisions.  
Schedule 8

**85.** (1) Goods, class or description of goods prescribed in Part I of Schedule 8 may not be imported into or exported from the Territory.

Schedule 8

(2) Goods, class or description of goods prescribed in Part II of Schedule 8 may not be imported into or exported from the Territory.

(3) The Minister may, by an Order published in the *Gazette* and a newspaper of wide circulation in the Territory,

- (a) delete from, vary or add to the goods, classes or description of goods prescribed in Part I of Schedule 8, or vary the conditions or restrictions in Part II of Schedule 8; and
- (b) prohibit or restrict, subject to conditions and restrictions the Order may impose, the importation or exportation of any goods, class or description of

goods specified in the Order to or from any place in the Territory so specified.

(4) An Order made by the Minister under subsection (3), is subject to the negative resolution of the House of Assembly.

**86.** (1) A person who obtains or attempts to obtain or does anything whereby there might be obtained by any person an amount by way of drawback in respect of goods for which there is no entitlement, commits an offence and is liable on conviction to a fine not exceeding ten thousand dollars, or three times the amount obtained, attempted to be or which might have been obtained whichever is the greater.

Offences relating to drawbacks.

(2) A person who with intent to defraud, obtains, attempts to obtain or does anything whereby there might be obtained by any person an amount by way of drawback in respect of goods for which there is no lawful entitlement, commits an offence and is liable on conviction, to a fine not exceeding twenty thousand dollars, or three times the amount obtained, attempted to be or which might have been obtained, whichever is the greater, or to imprisonment for a term not exceeding two years, or both.

(3) Goods in respect of which an offence is committed under subsection (1) or (2) are liable to forfeiture.

## **PART VII POWERS**

**87.** (1) Without prejudice to any other power contained in this Act, an officer may question a person who is entering or about to depart from the Territory or is at any customs area, customs airport, customs port or approved wharf for the purpose of determining whether that person has any dutiable, prohibited or restricted goods in his or her possession, whether on his or her person, in his or her baggage, vehicle, vessel or aircraft.

Customs control of persons entering or leaving the Territory.

(2) A person entering or departing from the Territory shall, at the place and in the manner the Commissioner may direct, make a declaration of anything contained in the person's baggage or carried with the person which

- (a) the person has obtained outside the Territory;
- (b) being dutiable goods, the person has obtained in the Territory without payment of duty;

- (c) being prohibited or restricted goods, the person has obtained in the Territory; or
- (d) being an amount of cash, exceeds ten thousand dollars.

(3) A person entering or about to depart from the Territory shall answer the questions the proper officer may put to the person with respect to the person's baggage and anything contained in or carried with the person and shall, if required by the proper officer, produce that baggage and anything contained in it for examination at the place the Commissioner may direct.

(4) A person who fails to declare any baggage or thing as required by this section commits an offence and is liable on conviction to a fine not exceeding ten thousand dollars, or three times the value of the thing not declared or the baggage or thing not produced, as the case may be, which ever is the greater.

(5) Anything chargeable with duty which is found concealed or is not declared, and anything which is being brought into or taken out of the Territory contrary to a prohibition or restriction in force under an enactment with respect to that thing is liable to forfeiture.

(6) For the purpose of this section, cash includes coins, notes, travellers cheques and negotiable instruments such as money orders, cheques, stocks and bonds, in any currency.

Right of access.

**88.** (1) Without prejudice to any other power contained in this Act, an officer shall have a right of access to, and the power to search, any part of a customs port, approved wharf, customs airport or other customs area, and any vehicle, vessel, aircraft, or goods found at that place.

(2) The power of search provided under subsection (1) shall include the power to break into or open a building or container which is locked and to which there is no access.

(3) Goods found concealed in any vehicle, vessel or aircraft found at a customs port, approved wharf, customs airport or other customs area, are liable to forfeiture.

**89.** (1) At any time while a vessel is in the territorial waters or an aircraft is at a customs airport, an officer may require that vessel or aircraft to stop and then may board it, remain on board it, and may rummage and search any part of it. Power of boarding.

(2) An officer on board a vessel or aircraft in pursuance of subsection (1) may

- (a) cause any goods to be marked before they are unloaded from that vessel or aircraft;
- (b) examine any goods in the course of their being unloaded,
- (c) lock up, seal, mark or otherwise secure any goods carried in that vessel or aircraft, or any place or container in which they are so carried,
- (d) break open any place or container which is locked and to which there is no access,
- (e) require a document or book which should be on board that vessel or aircraft to be produced to him or her for examination, and
- (f) require answers to all the questions relating to the vessel or aircraft, its cargo, stores, baggage, crew, passengers, voyage or flight as may be put by him or her,

and if any person prevents the officer from so doing, or refuses to produce any document or book, or answer any questions, that person commits an offence and is liable on summary conviction to a fine not exceeding ten thousand dollars.

(3) Goods liable to duty or in respect of which there is in force any prohibition or restriction under any Act, found concealed on board any vessel or any aircraft in the Territory are liable to forfeiture.

(4) Where a vessel or aircraft refuses to stop or permit an officer to board when required to do so under subsection (1), the master of that vessel or the commander of that aircraft commits an offence and is liable on conviction to a fine not exceeding twenty thousand dollars or to imprisonment for

a term not exceeding two years, or both, and the vessel or aircraft is liable to forfeiture.

Power to station officers on vessels.

**90.** The Commissioner may station an officer on board a vessel at any time while it is within the territorial waters and if the master of a vessel on which an officer is stationed by virtue of this section neglects or refuses to provide

- (a) proper and sufficient food and water, together with reasonable accommodation for the officer, and
- (b) means of safe access to and egress from that vessel as required by the officer

the master commits an offence and is liable on summary conviction to a fine not exceeding ten thousand dollars.

Power to patrol and moor.

**91.** (1) In relation to an assigned matter, an officer may patrol upon and pass freely either on foot or otherwise along and over, and enter any part of the Territory other than a dwelling house whether or not that place is private property, and the officer so proceeding shall not be liable to prosecution or any other action for so doing.

(2) Subject to subsection (3), an officer in command or in charge of a vessel or aircraft engaged in the prevention of smuggling may haul up and moor that vessel, or land that aircraft, at any place in the Territory.

(3) Nothing in this section shall authorise the entry into or use of a private dwelling house.

Power to examine and take account of goods.

**92.** (1) Without prejudice to any other power conferred by a customs enactment, an officer may examine and take account of any goods

- (a) which have been imported,
- (b) which are in a warehouse or a customs warehouse,
- (c) which have been loaded into or unloaded from a vessel or aircraft at any place in the Territory,
- (d) which have been entered for exportation or for use as stores,

- (e) which have been brought to any place in the Territory for exportation or for use as stores, or for shipment for exportation or for use as stores, or
- (f) in respect of which a claim for drawback, allowance, rebate, remission or repayment of duty has been made,

and may for that purpose require any container to be opened or unpacked.

(2) An examination of goods by an officer under subsection (1) shall be made at the time and place the officer may direct.

(3) The bringing of goods to a place directed under subsection (2), and their unloading, opening, unpacking, weighing, repacking, bulking, sorting, lotting, marking, numbering, loading, carrying or landing, and the treatment to any containers in which the goods are kept, for the purposes of and incidental to the examination or for use as stores, or warehousing shall be done, and any facilities or assistance required for the examination shall be provided by or at the expense of the owner of the goods.

(4) If any

- (a) imported goods which an officer has the power under this Act to examine, and
- (b) goods, other than imported goods, which an officer has directed to be brought to a place for the purposes of examination,

are, without the authority of the proper officer, removed from customs charge before they have been examined, those goods are liable to forfeiture.

**93.** (1) A person required by the Commissioner under this Act to give security in respect of any premises shall

Power to require provision of facilities, etc.

- (a) provide and maintain the appliances and afford other facilities reasonably necessary to enable an officer to take an account or make any examination or search or to discharge any other of his or her duties on the premises of that person or place the Commissioner may direct,

- (b) keep any appliances so provided in a convenient place approved by the proper officer for that purpose, and
- (c) allow the proper officer at any time to use anything so provided and give the proper officer any assistance necessary for the performance of his or her duties,

and a person who contravenes or fails to comply with this subsection commits an offence and is liable on summary conviction to a fine not exceeding ten thousand dollars.

(2) A person mentioned in subsection (1) shall provide and maintain a fitting required for the purpose of affixing any lock which the proper officer may require to affix to the premises of that person or to any vessel, utensil or other apparatus kept on the premises, and in default, the fittings may be provided or any work necessary for its maintenance may be carried out by the proper officer, and any expenses incurred shall be paid on demand by the person.

(3) A person commits an offence if the person fails to pay on demand, the expenses incurred under subsection (2), and is liable on summary conviction to a fine not exceeding ten thousand dollars.

(4) If the person referred to in subsection (1) or servant of the person,

- (a) wilfully destroys or damages any fittings, lock or key provided for use as or any label or seal placed on the lock,
- (b) improperly obtains access to any place or article secured by the lock, or
- (c) has any fitting or article intended to be used to secure the premises so constructed that the intention is defeated,

the person or the person's servant commits an offence and is liable on summary conviction to a fine not exceeding ten thousand dollars.

Power to take samples.

**94.** (1) An officer may at any time take a sample of any imported goods required to be examined under a customs enactment.

(2) A sample taken by an officer under subsection (1) shall be disposed of and accounted for in the manner the Commissioner may direct.

**95.** (1) Without prejudice to any other power conferred by this Act, if a magistrate is satisfied by information on oath given by an officer that there are reasonable grounds to suspect that anything which is liable to forfeiture by virtue of an enactment, or that evidence of an offence in relation to an assigned matter is kept at or concealed in a building or other place, the magistrate may by warrant under his or her hand authorise that officer or any other person named in the warrant to enter and search any building or place so named, and may

Power to search premises.

- (a) do so at any time, and search for, seize, detain or remove any thing which appears to the officer may be liable to forfeiture;
- (b) so far as is reasonably necessary for the purpose of the entry, search, detention or removal, break open any door, window or container and force and remove any other impediment or obstruction; and
- (c) search for and remove any invoice, bill of lading or any other document, relating to an assigned matter.

(2) Where in the case of any entry, search, seizure, detention or removal, damage to property is caused and goods which are not liable to forfeiture are found, the owner of the building, place or goods damaged shall be entitled to recover from the Commissioner the costs of making good that damage to the property.

**96.** (1) Without prejudice to any other power contained in or under this Act, where an officer has reasonable grounds to believe that a vehicle is carrying anything which is liable to forfeiture, the officer may stop and search that vehicle.

Power to search vehicle.

(2) A person in charge of a vehicle who fails to stop or refuses to permit the vehicle to be searched if so required under subsection (1), commits an offence and is liable on summary conviction to a fine not exceeding ten thousand dollars.

**97.** (1) Subject to subsection (3), where an officer has reasonable grounds to believe that a person has in his or her possession any thing which is

Power to search persons.

liable to forfeiture, he or she may stop and search that person and any article which that person has with him or her.

(2) A person shall not be searched in pursuance of subsection (1) except by a person of the same sex.

(3) A person to be searched under subsection (1) may request to be taken before a magistrate or a superior officer who shall consider the grounds for the suspicion and direct whether or not the search is to take place.

Power to arrest.

**98.** (1) Subject to subsection (2), an officer may arrest without warrant a person who has committed, or whom there are reasonable grounds to suspect of having committed an offence for which he or she is liable to be arrested under any customs enactment and the officer may for that purpose use all reasonable force.

(2) A person may not be arrested for an offence committed under subsection (1) more than seven years after the commission of that offence, except that where for any reason it was not practicable to arrest that person at the time of the commission of the offence, he or she may be arrested and proceeded against as if the offence had been committed at the time when he or she was arrested.

(3) Where by virtue of subsection (1) a person is arrested by a police officer, the police officer shall immediately give written notice of that arrest to the Commissioner.

Power to carry and use firearms.

**99.** (1) Where the Commissioner is satisfied that it is necessary for the protection of the life of an officer duly engaged in the discharge of a duty and of other lives incidental to the discharge of that duty, the Commissioner may

- (a) in writing, or
- (b) in exceptional circumstances, upon a specific and explained request made by the most senior officer involved in an event or operation, by means of a radio communication or other similar means, verbally

authorise that officer to carry a firearm provided by Customs.

(2) An officer may where necessary use any firearm authorised to be carried under subsection (1),

- (a) for the preservation of life; or
- (b) for the summoning of a vessel in accordance with section 100.

**100.** (1) If any part of the cargo on a vessel is thrown overboard or is stored or destroyed to prevent seizure Power to summon vessels.

- (a) while the vessel is within the territorial waters, or
- (b) while the vessel, having been properly summoned by a vessel in the service of the Government to bring the vessel, refuses to do so and is given a chase and arrested,

the vessel is liable to forfeiture.

(2) Except for just and sufficient cause, the master of a vessel commits an offence if the vessel under his or her charge is liable to forfeiture or examination under this Act and the vessel is not brought to the Commissioner when summoned to do so, and is liable on conviction to a fine not exceeding twenty thousand dollars.

(3) Where a vessel liable to forfeiture or examination under this section has refused to bring the vessel to the Commissioner when summoned to do so and chase has been given by any vessel in the service of the Government, and after the commander of the vessel in the Government's service has caused a gun to be fired as a signal, the vessel being chased still refuses to bring to, the vessel may be brought to by use of non-lethal force.

(4) For the purposes of this section, a vessel is deemed to have been properly summoned by the Commissioner

- (a) if the vessel making the summons did so by means of
  - (i) an international signal code,
  - (ii) two shots fired in the air,
  - (iii) siren and a blue light, or

(iv) any other recognised means

and while flying her proper ensign; and

(b) if at the time the summons was made the vessel was within the territorial waters.

Power to require attendance.

**101.** (1) Where under a provision of a customs enactment, the master of a vessel or the commander of an aircraft is required to answer a question put to him or her by the Commissioner or an officer, the Commissioner or the officer may, at any time while the vessel is at a customs port or the aircraft is at a customs airport, require the master or commander or, with the consent of the Commissioner or the officer, a senior officer of that vessel or aircraft, to attend before the Commissioner at his or her office.

(2) A master or commander who fails to comply with subsection (1) commits an offence and is liable on summary conviction to a fine not exceeding ten thousand dollars.

Power to require information and the production of evidence.

**102.** (1) An officer may, at any time within seven years of the importation or exportation of any goods, require a person

(a) concerned in that importation or exportation, or

(b) concerned in the carriage, unloading, landing or loading of the goods,

to furnish to him or her in the form and manner he or she may require, any information relating to the goods, and to produce and permit the officer to inspect, take extracts from, make copies of or remove for a reasonable period, any invoice, bill of lading or other book or document relating to the goods.

(2) The officer may seize and detain any invoice, bill of lading or other book or document which, in the officer's opinion, afford evidence of the commission of an offence under this Act or a customs enactment.

(3) The Commissioner may require evidence to be produced to his or her satisfaction in support of any information provided under subsection (1), a customs enactment or Parts III, IV and V in respect of any goods imported or exported, or in respect of which any repayment of duty is claimed.

(4) A person who fails to comply with a requirement imposed on him or her under subsection (1) or (2) commits an offence and is liable on summary conviction to a fine not exceeding ten thousand dollars.

**103.** (1) Without prejudice to any express requirement as to security provided for by or under any other customs enactment, the Commissioner may, if he or she considers fit, require a person to give security by bond or otherwise in the form and manner the Commissioner may direct, for the observance of any condition or restriction in connection with an assigned matter.

Power to require security.

(2) A bond taken for the purposes of an assigned matter

(a) shall be taken on behalf of the Government; and

(b) may be cancelled at any time by the Commissioner or by the order of the Commissioner.

## **PART VIII OFFENCES**

**104.** If, for the purpose of obtaining admission to any aircraft, vessel, building or other place, or of doing or procuring to be done any act which he or she would not be entitled to do or procure to be done of his or her own authority, or for any other unlawful purpose, a person falsely assumes the name, designation or character of the Commissioner, or any other officer or of any other person appointed by the Commissioner to discharge any duty relating to an assigned matter, the person commits an offence and, in addition to any other proceedings which may be taken against the person, is liable on conviction, to a fine not exceeding twenty thousand dollars, or to imprisonment for a term not exceeding two years, or both.

Unlawful impersonation of Commissioner or officer.

**105.** (1) The Commissioner, any other officer or any other person appointed by the Commissioner to discharge any duty relating to an assigned matter, commits an offence if the Commissioner, officer or other person appointed by the Commissioner,

Bribery and collusion.

(a) directly or indirectly asks for or takes in connection with any of his or her duties any non-official payment or other reward, whether pecuniary or otherwise, or any promise or security for any

payment or reward, not being a payment or reward which he or she is lawfully entitled to claim or receive, or

- (b) enters into or acquiesces in any agreement to do, or abstain from doing, permit, conceal or connive at any act or thing whereby the Government is or may be defrauded which is otherwise unlawful, being an act or thing relating to an assigned matter,

and is liable on conviction to a fine not exceeding twenty thousand dollars, or to imprisonment for a term not exceeding two years, or both.

(2) If a person

- (a) directly or indirectly offers or gives to the Commissioner, an officer or to any other person appointed by the Commissioner to discharge a duty relating to an assigned matter, any payment or other reward, whether pecuniary or otherwise, or a promise or security for a payment or reward, or
- (b) proposes or enters into an agreement with the Commissioner, officer or other person so appointed

in order to induce him or her to do, abstain from doing, permit, conceal or connive at an act or thing whereby the Government is or may be defrauded or which is otherwise unlawful being an act or thing relating to an assigned matter, or otherwise to take any course contrary to his or her duty, he or she commits an offence and is liable on conviction to a fine not exceeding twenty thousand dollars, or to imprisonment for a term not exceeding two years, or both

Offences against  
officers.

**106.** (1) A person who

- (a) obstructs, hinders, molest or assaults an officer engaged in the discharge of a duty or the exercise of a power, imposed or conferred on him or her by a customs enactment, or a person acting in his or her aid,
- (b) does anything which impedes or is calculated to impede the carrying out of a search for anything

which is liable to forfeiture or the detention, seizure or removal of any thing,

- (c) rescues, damages or destroys anything calculated to prevent the procuring or giving of evidence as to whether or not anything is liable to forfeiture,
- (d) prevents the arrest of a person under a customs enactment or rescues a person so arrested, or
- (e) attempts to do any act, specified in subparagraphs (a), (b), (c) and (d) or aids and abets any person doing an act specified in subparagraphs (a), (b), (c) and (d)

commits an offence and is liable on conviction to a fine not exceeding twenty thousand dollars, or to imprisonment for a term not exceeding two years, or both.

(2) A person who fires on, maims or wounds an officer in the discharge of his or her duty commits an offence and is liable on conviction to a fine not exceeding one hundred thousand dollars or to imprisonment for a term not exceeding seven years, or both.

(3) A person who uses abusive, offensive or threatening language on an officer engaged in the discharge of a duty or the exercise of a power imposed or conferred on the officer by a customs enactment, commits an offence and is liable on conviction to a fine not exceeding five thousand dollars or to imprisonment for a term not exceeding two years, or both.

**107.** (1) If any vessel or aircraft departs from the Territory carrying an officer on board without his or her consent the master of that vessel or the commander of that aircraft commits an offence and is liable on conviction to a fine not exceeding twenty thousand dollars, or to imprisonment for a term not exceeding four years, or both.

Carrying away officers.

(2) Without prejudice to the liability of the master of a vessel or commander of an aircraft under subsection (1), the amount of any expenses incurred by the Commissioner or the Government by reason of the carrying away of an officer may be recovered from that person or from the owner of the vessel or aircraft.

**108.** (1) A person who, except for just and sufficient cause, interferes in any way with any vessel, aircraft, vehicle, buoy, anchor, chain, rope

Interfering with customs vessels.

or mark or anything which is being used by an officer in the discharge of his or her duty, commits an offence and is liable on conviction to a fine not exceeding twenty thousand dollars or to imprisonment for a term not exceeding two years, or both, and in addition that person is liable to make good any damage caused to that property.

(2) If a person fires on any vessel, aircraft or vehicle being used by an officer in the discharge of his or her duty, he or she commits an offence and is liable on conviction to a fine not exceeding one hundred thousand dollars, or to imprisonment for a term not exceeding ten years, or both.

Signalling to  
smugglers.

**109.** (1) In this section references to a “prohibited signal” or a “prohibited message” are references to a signal or message connected with the smuggling or intended smuggling of goods into or out of the Territory.

(2) A person who, by any means sends a prohibited signal or transmits a prohibited message from any place in the Territory or from any vessel or aircraft, for the information of a person in any vessel or aircraft, commits an offence and is liable on conviction to a fine not exceeding twenty thousand dollars, or to imprisonment for a term not exceeding two years, or both, and any vessel, equipment or apparatus used for the sending of the signal or message is liable to forfeiture.

(3) Subsection (2) applies whether or not the person for whom the signal or message is intended is in a position to receive it or is actually engaged at that time in smuggling.

(4) If in any proceedings against a person under subsection (2), a question arises as to whether a signal or message was a prohibited signal or a prohibited message, the burden of proof shall lie on the defendant.

(5) If an officer has reasonable grounds to believe that a prohibited signal or a prohibited message is being or is about to be made or transmitted from any vessel, aircraft, vehicle, building or other place in the Territory, the officer may board or enter that vessel, aircraft, vehicle, building or other place in the Territory and take steps reasonably necessary to stop or prevent the sending of that signal or message.

Engagement in  
smuggling.

**110.** A person who in preparation, execution, furtherance or concealment of an act of smuggling

(a) harbours a person, vessel or thing, or

- (b) does any other thing by commission or omission, calculated to aid, abet, further, conceal or facilitate any actual or contemplated smuggling operation,

commits an offence and is liable on conviction to a fine not exceeding twenty thousand dollars, or to imprisonment for a term not exceeding four years or both, and any goods, vessel or aircraft which is the subject of any contravention under this section is liable to forfeiture.

- 111.** (1) Whoever is found in possession or control of, Smuggling.
- (a) any smuggled goods, or
  - (b) any vessel, aircraft or other thing used for or designed or adapted to be used for smuggling or concealing goods,

commits the offence of being engaged in smuggling and is liable on conviction to a fine not exceeding twenty thousand dollars or to imprisonment for a term not exceeding four years, or both, and any goods in respect of which the offence was committed and any vessel, aircraft or thing used in the commission of the offence are liable to forfeiture.

(2) It's a defence for a person in possession or control of any vessel or thing in respect of which an offence is alleged to have been committed under subsection (1), to satisfy the court that he or she exercised every reasonable care and discharged every part of his or her duty with respect to the control or management of the vessel or thing to prevent the use or potential use of the same for any smuggling operation or concealment of goods.

**112.** If a person offers for sale any goods as having been imported without payment of duty, or as having been otherwise unlawfully imported, then, whether or not those goods were in fact chargeable without duty or were so imported, the goods are liable to forfeiture and the person offering them for sale commits an offence and is liable on conviction to a fine not exceeding twenty thousand dollars, or three times the value of the goods which ever is the greater, or to imprisonment for a term not exceeding two years, or both. Offering smuggled goods for sale.

**113.** Except as the Commissioner may otherwise permit, a person who on board a vessel, communicates in any way with a vessel arriving from a place outside the Territory before that arriving vessel has been cleared by an officer, commits an offence and is liable on summary conviction to a fine not exceeding Communicating with arriving vessel.

ten thousand dollars or to imprisonment for a term not exceeding two years, or both.

Special penalty where offender armed or disguised.

**114.** If a person concerned in the movement, carrying or concealment of goods

- (a) contrary to or for the purpose of contravening any prohibition or restriction for the time being in force under an enactment with respect to the importation or exportation of those goods, or
- (b) without payment having been made of or security given for any duty payable on those goods,

and, while so concerned, is armed with an offensive weapon or disguised in any way, and if a person so armed or disguised is found in the Territory in possession of anything which is liable to forfeiture under a customs enactment, the person commits an offence and is liable on conviction to a fine not exceeding twenty thousand dollars or to imprisonment for a term not exceeding five years, or both.

Untrue declarations.

**115.** (1) A person who knowingly or recklessly

- (a) makes or signs, or causes to be made or signed, or delivers or causes to be delivered to the Commissioner or an officer, a declaration, notice, certificate or other document, or
- (b) makes a statement in answer to a question put to him or her by an officer which he or she is required under an enactment to answer,

being a document or statement produced or made for the purpose of an assigned matter which is untrue in a material particular, commits an offence and is liable on summary conviction to a fine not exceeding ten thousand dollars or to imprisonment for a term not exceeding two years or both, and any goods in relation to which the document or statement was made are liable to forfeiture.

(2) Where by reason of a document or statement as is mentioned in subsection (1), the full amount of any duty payable is not paid or any overpayment is made in respect of any drawback, allowance, rebate or repayment of duty, the amount of duty unpaid or of drawback overpaid shall be payable immediately to the Commissioner, and may be recovered accordingly.

**116.** A person who

Counterfeiting documents.

- (a) counterfeits or falsifies a document which is required by an enactment relating to an assigned matter or which is used in the transaction of a business relating to an assigned matter,
- (b) knowingly accepts, receives or uses a counterfeited or falsified document,
- (c) alters a document after it has been officially issued, or
- (d) counterfeits any seal, signature, initials or other mark of, or used by, an officer for the verification of that type of document or for any other purpose relating to an assigned matter,

commits an offence and is liable on conviction to a fine not exceeding twenty thousand dollars, or to imprisonment for a term not exceeding seven years, or both.

**117.** (1) A person who is required by a customs enactment to provide scales, and provides, uses or permits to be used any scales, which do not give a true reading, commits an offence and is liable on summary conviction to a fine not exceeding ten thousand dollars.

False scales.

(2) Where an article is or is to be weighed, counted, gauged or measured for the purpose of the taking of an account or the making of an examination by an officer, then if

- (a) the person mentioned in subsection (1), or
- (b) a person by whom or on whose behalf the article is or is to be weighed, counted, gauged or measured

does anything whereby the officer is or might be prevented from, or hindered or deceived in, taking a true account or making a due examination, he or she commits an offence and is liable on summary conviction to a fine not exceeding ten thousand dollars.

(3) In this section, “scales” includes weights, measures and weighing or measuring machines or instruments.

Fraudulent evasion.

**118.** (1) Without prejudice to any other provision of a customs enactment, a person who

- (a) knowingly acquires possession of any goods,
  - (i) which have been unlawfully removed from a warehouse,
  - (ii) which are chargeable with a duty which has not been paid, or
  - (iii) with respect to the importation, or exportation of which a prohibition or restriction is in force under an enactment, or
- (b) is in any way knowingly concerned in carrying, removing, depositing, landing, harbouring, keeping or concealing or in any manner dealing with the goods in paragraph (a),

and does so with fraudulent intent, commits an offence.

(2) Without prejudice to any other provision of a customs enactment, a person commits an offence if the person is, in relation to goods, in any way concerned in any fraudulent evasion or attempt at evasion

- (a) of duty chargeable on those goods; or
- (b) of a prohibition or restriction in force with respect to the importation or exportation of those goods under an enactment.

(3) Subject to subsection (4), a person who commits an offence under subsection (1) or (2), is liable on conviction to a fine not exceeding twenty thousand dollars, or three times the value of the goods, whichever is the greater, or to imprisonment for a term not exceeding two years, or both, and any goods in respect of which the offence was committed are liable to forfeiture.

(4) In the case of an offence under this section where the goods are a controlled drug the importation or exportation of which is prohibited or restricted by virtue of section 5 of the Drugs (Prevention of Misuse) Act,

the penalty specified in Schedule 3 shall be substituted for the penalty contained in subsection (3). Schedule 3

**119.** (1) Where, in exercise of a power conferred by a customs enactment, a lock, seal or mark is used to secure or identify any goods, or place or container in which goods are kept, then if without the authority of the proper officer, Removing locks, seals or marks.

- (a) that lock, seal or mark is unlawfully removed or tampered with by any person, or
- (b) at any time before the lock, seal or mark is lawfully removed, any of the goods are wilfully removed by any person,

that person and the person then in charge of the goods commits an offence and is liable on conviction to a fine not exceeding twenty thousand dollars or three times the value of the goods, whichever is the greater or imprisonment for a term not exceeding two years, or to both, and the goods shall be liable to forfeiture.

(2) For the purposes of subsection (1), goods in a vessel or aircraft shall be deemed to be in the charge of the master of that vessel or the commander of that aircraft.

## **PART IX LEGAL PROCEEDINGS**

**120.** (1) Subject to subsection (3) and to the powers of the Director of Public Prosecutions under section 62 of the Virgin Islands Constitution Order, proceedings for an offence under a customs enactment or for condemnation under Schedule 2, shall not be commenced except Institution of proceedings. U.K.S.I. 2007 No. 1678 Schedule 2

- (a) by order of the Commissioner, in writing; and
- (b) in the name of an officer.

(2) In the case of the death, removal, discharge or absence of the officer in whose name any proceedings were commenced in accordance with subsection (1) (b), those proceedings may be continued by any officer authorised in that behalf by the Commissioner.

(3) Notwithstanding subsections (1) and (2), where a person has been arrested for an offence for which the person could be arrested under a

customs enactment, a court before which the person is brought may proceed to deal with the case although the proceedings have not been instituted by order of the Commissioner or have not been commenced in the name of an officer.

Time limit on proceedings.

**121.** Except as otherwise expressly provided for in this Act and notwithstanding any other enactment, proceedings for an offence under any customs enactment may be commenced at any time within seven years from the date of the commission of the offence.

Place of trial.

**122.** Proceedings for an offence under an enactment may be commenced

- (a) in a court within the Territory having jurisdiction in the place
  - (i) where the offence was committed; or
  - (ii) where the person charged with the offence resides or is found;
- (b) in the case of a body corporate charged with the offence, where that body corporate has its registered or principal office within the Territory; and
- (c) if anything was detained or seized in connection with the offence, in any court having jurisdiction in the place within the Territory where that thing was detained or seized or was found or condemned as forfeited.

Persons who may conduct proceedings.

**123.** Any proceedings before a Magistrate's Court in relation to an assigned matter may be conducted by an officer or any other person authorised in that behalf by the Commissioner.

Service of process.

**124.** (1) A summons or other process issued for the purpose of a customs enactment shall be deemed to have been duly served on a person

- (a) if delivered to the person personally;
- (b) if left at the person's last known place of abode or business, or in the case of a body corporate, at its registered or principal office; or

(c) if left on board a vessel or aircraft of which the person is the owner.

(2) A summons, notice, order or other document issued for the purposes of proceedings under a customs enactment, or of an appeal from a decision of a court in any proceeding, may be served by an officer.

**125.** (1) Where liability for an offence under a customs enactment is incurred by two or more persons jointly, those persons shall each be liable for the full amount of any fine and may be proceeded against either jointly or severally. Incidental provisions.

(2) Where an offence under a customs enactment alleged to have been committed by a body corporate, is proved to have been committed with the consent or connivance of, or to be attributable to a neglect on the part of, any director, manager, secretary or other similar officer of that body corporate, or a person purporting to act in that capacity, the person as well as the body corporate each commits the offence and are liable to be proceeded against and punished accordingly.

(3) Where a penalty for an offence under a customs enactment is required to be fixed by reference to the value of any goods, that value shall be taken as the price those goods might reasonably be expected to have fetched, after payment of any duty chargeable on them, if they had been sold in the open market at or about the date of the commission of the offence for which the penalty is imposed.

(4) Where, in any proceedings for an offence under a customs enactment, a question arises as to the duty or rate chargeable on any imported or exported goods, or goods which were intended to be exported, and it is not possible to ascertain the relevant time specified in section 58 (2) the duty or rate shall be determined as if the goods had been imported, exported or brought to a place for exportation at the time when the proceedings were commenced.

(5) In any proceeding for an offence under a customs enactment, or for condemnation under Schedule 2, the fact that security has been given for payment of any duty or compliance with a condition in respect of the non-payment of which or non-compliance with which the proceedings are instituted, shall not be a defence. Schedule 2

Power to compound offences and mitigate penalties.

- 126.** (1) The Commissioner may, as he or she considers fit,
- (a) compound an offence, subject to the maximum pecuniary penalty that a court may impose for that offence;
  - (b) stay the proceedings for the condemnation of any thing as being forfeited under a customs enactment; or
  - (c) restore, subject to any conditions, any thing seized under a customs enactment.

(2) The Commissioner shall give a receipt for any amount paid by way of penalty and the effect of that amount being received in full by the Accountant General shall be to discharge the accused person from all liability in respect of that offence.

(3) In any proceedings for an offence under this Act the court by whom the matter is considered may mitigate any pecuniary penalty as it considers appropriate.

Proof of certain documents.

**127.** (1) A document purporting to be signed by the Cabinet, the Minister, the Commissioner, or by their order, or by any person with under the authority of the Cabinet, Minister or the Commissioner shall, until the contrary is proved, be deemed to have been so signed, and the matters contained in that document may, in any proceedings under a customs enactment, be proved by the production of that document or any document purporting to be a copy of that document.

(2) Where a book or other document is required to be kept by virtue of a customs enactment, the production of that book or other document, or a copy of it certified as a true copy by an officer, shall in any proceedings under that enactment be sufficient evidence of the matters contained in it unless the contrary is proved.

Proof of certain matters other than documents.

**128.** (1) An averment in any process in proceedings under a customs enactment

- (a) that those proceedings were instituted by order of the Commissioner,

- (b) that any person is or was the Minister, the Commissioner, an officer or a police officer,
- (c) that a person is or was appointed or authorised by the Commissioner to discharge, or was engaged by the order or with the concurrence of the Commissioner in the discharge of any duty,
- (d) that the Commissioner is or is not satisfied as to any matter as to which he or she is required by a customs enactment to be satisfied,
- (e) that a place is within the limits of a customs port, approved wharf, customs airport or customs area, or within the territorial waters,
- (f) that any goods thrown over board, stored or destroyed were so dealt with in order to prevent or avoid their seizure, or
- (g) that a ship is a ship registered in the Virgin Islands,

shall, until the contrary is proved, be sufficient evidence of the matter in question.

(2) Where in any proceedings relating to an assigned matter instituted by or against, the Commissioner, any other officer or a police officer, any question arises as to the place from which goods have been brought or as to whether or not

- (a) a duty has been paid or secured in respect of any goods,
- (b) any goods or other thing are of the description or nature alleged in the information, writ or other process,
- (c) any goods have been lawfully imported or lawfully unloaded from any vessel or aircraft,
- (d) any goods have been lawfully loaded into any vessel or aircraft, lawfully exported or were lawfully waterborne,

- (e) any goods were lawfully brought to a place for the purpose of being loaded into any vessel or aircraft, or exported, or
- (f) any goods are or were subject to any prohibition or restriction on their importation or exportation,

the burden of proof shall lie on the party disputing the facts.

Detention of persons about to leave the Territory.

**129.** Where a person has by an action rendered himself or herself liable to be prosecuted for an offence under a customs enactment, and the Commissioner has reasonable grounds to believe that the person is about to leave the Territory without that matter being dealt with, the Commissioner may apply to a magistrate for a warrant for the arrest of that person.

Actions against officers.

**130.** Action, suit or other proceedings shall not be brought or instituted personally against an officer in respect of an act done or omitted to be done by the officer in pursuance of a power granted to or duty imposed on the officer by a customs enactment.

## **PART X FORFEITURE**

Detention, seizure and condemnation of goods.

**131.** (1) Any thing which is liable to forfeiture under a customs enactment may

- (a) be seized or detained by an officer; or
- (b) be seized or detained on behalf of the Customs, by a police officer in accordance with section 10 (1).

(2) Where any thing which is liable to forfeiture is seized or detained by a police officer,

- (a) the police officer shall immediately inform the Commissioner of the seizure or detention in writing stating the full details of the thing seized or detained and of the grounds that led to the seizure or detention;
- (b) the police officer shall, within twenty-four hours of the seizure or detention of the thing, deliver it to the

Commissioner, unless the delivery is not practicable; and

- (c) an officer may examine and take account of that thing at anytime while it remains in the custody of the police.

(3) Schedule 2 shall have effect in relation to appeals against the seizure of anything seized as liable to forfeiture under a customs enactment, and for proceedings for the condemnation of that thing as forfeited. Schedule 2.

(4) Notwithstanding that anything seized as liable to forfeiture has not been condemned as forfeited, or deemed to have been condemned as forfeited, the Commissioner may at any time,

- (a) deliver it up to a claimant upon the claimant paying to the Commissioner the sum the Commissioner thinks proper, being a sum not exceeding that which, in the Commissioner's opinion, represents the value of the thing, including any chargeable duty which has not been paid; or
- (b) where the thing seized is a living creature or is, in the Commissioner's opinion, of a perishable nature, sell or destroy it.

(5) The restoration, sale or destruction under subsection (4) of any thing seized as liable to forfeiture shall be without prejudice to any right of appeal against its seizure.

**132.** (1) Where a thing has become liable to forfeiture under a customs enactment, Forfeiture of vessels, etc. used in connection with goods liable to forfeiture.

- (a) any vessel, air craft, vehicle, animal, container (including baggage) or any other thing which has been used for the carriage, handling, deposit or concealment of the thing liable to forfeiture, either at the time when it was so liable or for the purposes of the commission of the offence for which it later became so liable, and
- (b) any other thing mixed, packed or found with the thing so liable,

is also liable to forfeiture.

(2) If while constructed, adapted, altered or fitted in any manner for the purpose of concealing goods,

- (a) a vessel is or has been within the territorial waters,
- (b) an aircraft is or has been at any place whether on land or water in the Territory, or
- (c) a vehicle is or has been within the limits of a customs port, approved wharf, customs airport or other customs area,

that vessel, aircraft or vehicle is liable to forfeiture.

(3) If, at any time while a vessel is within the territorial waters, any part of its cargo is thrown overboard or is stored or destroyed to prevent seizure, that vessel is liable to forfeiture.

(4) Where cargo has been imported into the Territory on any vessel or aircraft and a part of that cargo is afterwards found to be missing then, if the master of the vessel or the commander of the aircraft is unable to account for that missing cargo to the satisfaction of the Commissioner, that vessel or aircraft is liable to forfeiture.

(5) Where any vessel, aircraft, vehicle or animal has become liable to forfeiture, all tackle, apparel or furniture belonging to it is also liable to forfeiture.

Special provisions as to forfeiture of larger vessels.

**133.** (1) Notwithstanding any other provision of a customs enactment, a vessel of two hundred and fifty or more tons burden is not liable to forfeiture, unless

- (a) the offence in respect of or in connection with which the forfeiture is claimed
  - (i) was substantially the object of the voyage during which the offence was committed; or

- (ii) was committed while the vessel was under chase after refusing to stop when required to do so;
- (b) the vessel was constructed, adapted, altered or fitted in any manner solely for the purpose of concealing goods; or
- (c) subsection (3) applies.

(2) Where a vessel of two hundred and fifty or more tons burden would, but for subsection (1), be liable to forfeiture in connection with an offence under a customs enactment and, in the opinion of the Commissioner, a responsible officer of the vessel is implicated by his or her own act or by neglect in that offence, the Commissioner may impose a fine in respect of that vessel in any sum not exceeding twenty thousand dollars, and until the fine is paid, he or she may withhold clearance of that vessel.

(3) Where a vessel is liable to a fine under subsection (2), but the Commissioner is not satisfied that the fine is adequate in relation to the offence committed, the Commissioner may take proceedings under Schedule 2 for the condemnation of that vessel as forfeited in a sum not exceeding twenty thousand dollars or as the court may consider appropriate.

Schedule 2

(4) Where condemnation proceedings are taken under subsection (3), the Commissioner may require a sum, as the Commissioner considers fit, not exceeding twenty thousand dollars, to be deposited with the Commissioner to await his or her final decision or, as the case may be, the decision of the court, and until that sum is deposited, he or she may withhold clearance of the vessel.

(5) A claim shall not lie against the Commissioner for damages in respect of the payment of a deposit or the detention of a vessel under this section.

(6) The exemption from forfeiture of a vessel under this section shall not affect the liability to forfeiture of any goods carried on board that vessel.

(7) For the purposes of this section,

- (a) “responsible officer”, in relation to a vessel, means the master, mate or engineer of the vessel, and in the case of a vessel carrying a passenger certificate, the purser or chief steward; and
- (b) and without prejudice to any other grounds on which a responsible officer of a vessel may be held to be implicated by neglect, the officer may be so liable if goods not owned by a member of the crew are discovered in a place under that officer’s supervision in which they could not have been put if the officer had exercised proper care at the time of the loading of the vessel or subsequently.

Protection of officer seizing or detaining goods.

**134.** (1) Where in any proceedings for the condemnation of any thing seized as liable to forfeiture under a customs enactment, judgement is given for the claimant, the court may, if it considers appropriate, certify that there were reasonable grounds for the seizure.

(2) Where any proceedings are brought against the Government or the Commissioner on account of the seizure or detention of any thing as liable to forfeiture, and judgement is given for the plaintiff or prosecution, then if either

- (a) a certificate relating to the seizure has been granted under subsection (1), or
- (b) the court is satisfied that there were reasonable grounds for seizing or detaining that thing,

the plaintiff or prosecutor shall not be entitled to recover any damages or costs.

(3) Subsection (2) shall not affect the exercise of a person’s right to demand the return of the thing seized or detained or compensation in respect of any damage to the thing or in respect of the destruction of it.

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**PART XI  
SALE OF GOODS**

**135.** (1) The Commissioner may, on application in writing by the owner, allow any vessel or aircraft forfeited under this Act to be redeemed on payment to Customs of a sum not exceeding the value of the vessel or aircraft.

Power of Commissioner to redeem forfeited goods.

(2) For the purpose of subsection (1) the value of a vessel or aircraft shall be the amount at which it is valued for cover by the insurance against total loss or in the case of a vessel or aircraft not insured or not insured fully, a sum as shall be assessed by the Commissioner.

**136.** (1) Any thing condemned by the Commissioner as forfeited to the Crown by virtue of Schedule 2, or deemed to have been condemned as forfeited under that Schedule shall, with the approval and direction of the Financial Secretary, be sold by the Commissioner by public auction or by public tender, unless

Sale of goods condemned as forfeited. Schedule 2

- (a) it is a prohibited or restricted article; or
- (b) being a vessel adapted for smuggling, the adaptation has been removed or rendered unusable.

(2) An auction under this section shall be advertised in the *Gazette* not less than seven days before it is due to take place.

(3) A tender under this section shall be advertised in a newspaper that is published in the Territory not less than seven days before the closing date for tender offers.

(4) The Commissioner shall appoint a person, who may be an officer, to act as auctioneer at an auction under this section.

(5) None of the following persons is permitted to make a tender offer or bid for any thing for sale by tender or at an auction under this section:

- (a) an officer, or a person acting on an officer's behalf; and
- (b) a person who has or has had, a personal or financial interest in the thing being auctioned.

(6) A person who makes a bid in contravention of subsection (5) commits an offence and is liable on summary conviction to a fine not exceeding ten thousand dollars and anything that was the substance of that bid that was auctioned to the person is liable to forfeiture.

(7) Monies arising from the tender process and proceeds from the sale of any thing at an auction under this section shall be paid by the Commissioner into the Consolidated Fund, after

- (a) any duty payable on that thing has been paid; and
- (b) all the charges of, and incidental to the seizure, condemnation, sale, warehousing and carriage of that thing have been made,

unless otherwise directed by the Financial Secretary to be paid into a fund specified for that purpose.

(8) The value for duty of any thing sold at auction under this section shall be the price realised less the included duty.

(9) Any thing not sold at an auction under this section, and all prohibited or restricted goods condemned or deemed to be condemned as forfeited, shall be destroyed or otherwise disposed of as the Commissioner may direct.

(10) The Commissioner may with the approval of the Financial Secretary authorise the withholding from sale of any thing condemned or deemed to be condemned as forfeited, and its use by Customs or a Government Department where the retention and use would assist Customs or a Government Department in the discharge of its duty.

Sale of goods not  
condemned as  
forfeited.

**137.** (1) Where any thing, not being a thing condemned or deemed to be condemned as forfeited may, by virtue of a customs enactment be sold, it shall, unless it is of a perishable nature, be offered for sale at a public auction.

(2) An auction under this section shall be advertised in the *Gazette* and a newspaper of wide circulation in the Territory, not less than seven days before it is due to take place.

(3) The Commissioner shall appoint a person, who may be an officer, to act as auctioneer at an auction under this section.

(4) Monies arising from the sale of any thing at an auction under this section shall be used to pay

- (a) any duty payable on that thing, and
- (b) all the charges of, and incidental to the sale, warehousing and carriage of that thing,

and any residue shall be held on deposit for a period of six months.

(5) If application is made within six months of the sale, the residue shall be paid over to any person who satisfies the Commissioner that he or she was the owner of that thing at the time of its sale, where an application is not made within the period, the Commissioner shall bring the deposit to account in the Consolidated Fund.

(6) The value for duty of any thing sold at an auction under this section shall be the price realised less the included duty.

(7) The Commissioner shall offer for sale anything which is of a perishable nature in a manner the Commissioner considers most likely to realise the largest sum, bearing in mind its nature.

(8) Any thing which cannot be sold by the Commissioner at an auction under this section shall be destroyed or otherwise disposed of as the Commissioner may direct.

(9) This section shall apply to the sale of any vessel or aircraft which may be sold under section 135, except that the sum ordered to be paid under that section shall be satisfied out of the monies arising from the sale before any amount is repaid to the person who was the owner of the vessel or aircraft.

(10) A sale by auction under this section may take place at the same time and place as a sale under section 135.

(11) The Commissioner shall, with the approval of the Financial Secretary, determine a minimum sale price for all goods for auction and, notwithstanding this, the Financial Secretary may decide on whether or not any particular bid or offer is to be accepted.

**PART XII  
DETERMINATION OF DISPUTES**

Basis of valuation when evidence of value is unsatisfactory.

**138.** The Commissioner shall assess the value of imported goods on the basis of identical or similar imports, where evidence of value of the goods is unsatisfactory or insufficient.

Appeal to the Commissioner.

**139.** (1) Where an amount of duty demanded by an officer is disputed by the person required to pay that amount, that person shall pay that amount but then may, at any time before the expiration of three months from the date of payment, require the Commissioner, by a notice in writing, to reconsider the amount of duty demanded.

(2) The Commissioner shall refer to the Financial Secretary, a dispute between a person and the Commissioner arising out of an assessment made pursuant to subsection (1).

(3) Pursuant to a referral made by the Commissioner under subsection (2), the Financial Secretary may have the goods appraised by three competent persons whose written appraisal shall be considered to be the true value of the goods.

Customs may sue and be sued.

**140.** In any dispute touching on a matter arising out of this Act, Customs may sue and be sued in its own name and shall be entitled to recover and be liable to pay costs in the same manner as any other litigant.

Right of further appeal.

**141.** (1) A person may appeal to the High Court against a decision of the Commissioner which involves a question of mixed fact and law.

(2) The Commissioner or the appellant may appeal to the Court of Appeal against any decision of the High Court which involves a question of law, including a question of mixed fact and law.

(3) On an appeal to the High Court or the Court of Appeal under this section, that Court may

- (a) increase, decrease or confirm the amount of duty due;
- (b) make an order as to costs as it considers appropriate; and

- (c) make any other order as it considers appropriate.

**142.** (1) Where a decision of the High Court or the Court of Appeal in an appeal under this Part is that Payment of duty after appeal.

- (a) the amount of duty due should be increased, the appellant shall pay the amount of the increase to the Commissioner, and
- (b) the amount of duty should be decreased, the Commissioner shall pay the amount of the decrease to the appellant

within forty-two days of the decision.

(2) Where the decision referred to in subsection (1) is that of the High Court, an amount shall not be payable if, within the time limit provided under that subsection, an appeal against that decision is lodged with the Court of Appeal.

### **PART XIII MISCELLANEOUS**

**143.** (1) The Minister may make Regulations in relation to matters assigned to Customs and for the internal discipline and management of Customs. Power to make Regulations.

(2) Without limiting the generality of subsection (1), the Minister may in particular, make Regulations in respect of the following matters:

- (a) prescribing the procedure to be followed by a vessel arriving at a customs port and an aircraft arriving at a customs airport;
- (b) regulating the unloading, landing, movement and removal of goods on their importation;
- (c) prescribing the procedure on the importation and exportation of postal packets and may exempt the importation or exportation from the requirements of this Act;

- (d) prescribing the manner in which, and the conditions under which, uncleared goods or a class or description of uncleared goods may be moved within the limits of a customs port or customs airport or between a customs port or customs airport and any other place;
- (e) regulating the storage, putting alongside, making waterborne and loading, of goods intended for export or for use as stores;
- (f) prescribing the procedure to be followed by vessels intending to leave a customs port and aircraft intending to leave a customs airport for destinations outside the Territory;
- (g) the control of the depositing, marking, keeping, securing and treatment of goods in, and the removal of goods from, warehouses;
- (h) the registration and maintenance of warehouses;
- (i) the payment of licence fees;
- (j) the entering into and maintaining of a bond or undertaking for the security of duty chargeable on warehoused goods;
- (k) the entering into and maintaining of contracts of insurance for warehoused goods;
- (l) the proper conduct and management of warehouses, including the imposition of conditions and restrictions subject to which goods may be carried to or from, deposited in, kept in or removed from a warehouse, or made available to their owners for prescribed purposes;
- (m) the attendance of officers at warehouses;
- (n) the production to and making available for inspection by officers of warehoused goods;

- (o) the provision of facilities to officers;
- (p) the records to be kept by occupiers of warehouses, and the power of officers to inspect and remove documents;
- (q) the minimum quantities and types of goods which may be deposited in or removed from a warehouse at any one time;
- (r) the operations to be carried out on warehoused goods, including the taking of samples;
- (s) the goods to be removed from warehouses without payment of duty, subject to the conditions and restrictions as may be determined under the Regulations;
- (t) the goods to be destroyed or abandoned to the Commissioner without payment of duty in those circumstances, and subject to conditions and restrictions determined under the Regulations;
- (u) providing different provisions for different types of warehouses or parts of warehouses, or for goods of different classes or descriptions, or goods of the same class or description in different circumstances;
- (v) prescribing where the Commissioner is satisfied that goods are imported only temporarily with a view to subsequent re-exportation, that the goods be delivered on importation, subject to conditions the Commissioner considers fit to impose, without payment of duty and may impose different conditions for different classes of goods;
- (w) the use and protection of K-9 and K-9 facilities;
- (x) providing for different Regulations to be made in respect of vessels and aircraft; and
- (y) providing for the imposition of a fine not exceeding ten thousand dollars for any contravention of, or

failure to comply with the Regulations or an direction given under the Regulations, and for the forfeiture of any goods, vessel or aircraft involved in an offence.

Cap.136 (3) Notwithstanding section 19(10) of the Interpretation Act, Regulations made under this Act may impose a fine not exceeding one hundred and ten thousand dollars and a term of imprisonment not exceeding fifteen years, or both.

No. 14 of 2001 (4) The Dogs (Prevention of Injury to Persons, Livestock and Poultry) Act, 2001 shall not apply to a K-9 used by Customs pursuant to Regulations made under subsection (2)(w).

Forms. **144.** The Commissioner may as he or she considers appropriate give directions, specifying the forms in relation to any assigned matter.

Expenses and obligations. **145.** Expenses incurred in the handling, moving or in any way dealing with any goods for the purpose of enabling officers to carry out their duties under this Act shall be borne by the owners of the goods and Customs shall be under no obligation to provide instruments or apparatus for the purpose of weighing, measuring, assessing or otherwise dealing with the goods for customs purposes.

Repeal and savings. **146.** (1) The following enactments are repealed:

Cap. 104

(a) Customs Ordinance, 1975;

Cap.105

(b) Customs Duties Ordinance, 1974;

No. 10 of 1992

(c) Customs Duties (Amendment) Act,1992;

No. 11 of 1992

(d) Custom Duties (Special Provisions) Act, 1992; and

No. 1 of 2009

(e) Customs Duties (Amendment) Act, 2009.

(2) Notwithstanding subsection (1), any Regulations or Order made under any of the repealed Ordinances which is in force immediately prior to the commencement of this Act is deemed to be made under this Act, and until new Regulations or Order is made to replace it, be construed to bring it into consistency with this Act, and may be amended or replaced by a Regulation or Order made under this Act.

**147.** The Minister, may by an Order published in the *Gazette* and a newspaper of wide circulation in the Territory, make provision for the purpose of providing for any unforeseen or special circumstances, or for resolving, determining or adjusting a doubt, question or matter, which may arise in relation to the application of this Act or in respect of which provision is not made in this Act.

Removal of difficulties.

**148.** A reference to “Comptroller” in any other legislation or document existing prior to the commencement of this Act shall, on the commencement of this Act be construed as a reference to the “Commissioner” appointed under this Act until the legislation is repealed or revoked, or a corrected document is substituted.

Consequential amendments.

**149.** (1) Every owner of a facility referred to under section 21(1) shall register that facility with the Commissioner within sixty days of the coming into effect of this Act and the registration shall be renewed annually.

Transitional provisions.

(2) Any owner who fails to register his or her facility as is required under subsection (1), commits an offence and is liable on summary conviction to a fine not exceeding ten thousand dollars.

## **SCHEDULE 1**

[Sections 27 and 42]

### **GOODS NOT PERMITTED TO BE WAREHOUSED ON IMPORTATION**

Aircraft

Animals (living)

Arms, ammunition and explosives

Asphalt (all kinds including pitch and tar)

Cattle and other animal foods (other than in tins packed in cases)

Cheese

Chemicals

Fireworks

Fish (other than in tins packed in cases)

Fruit and nuts (other than in tins packed in cases)

Grain, flour, pulse and their preparation (other than in tins packed in cases)

Hay and chaff

Manures

Matches

Meats (Other than in tins packed in cases)

Molasses

Oil,

    edible

    fuel

    other kinds, including essential , medicinal and perfumed oils

Seeds from which oil is extracted.

Ships, boats, and launches

Sugar (unless packed in tins in cases)

Vegetables (other than in tins packed in cases)

    Any goods which, in the opinion of the Commissioner, are likely to cause damage to other goods stored in the same warehouse.

## **SCHEDULE 2**

[Sections 120 (1), 125

## FORFEITURE

1. (1) The Commissioner shall, except as provided by subparagraph (2) give notice of the seizure of any thing seized as liable to forfeiture and of the grounds of that seizure to any person who to the Commissioner's knowledge was the owner of, or one of the owners of, that thing at the time of its seizure.

(2) Notice shall not be required to be given under subparagraph (1), if the seizure was made

- (a) in the presence of the person whose offence or suspected offence occasioned the seizure;
- (b) in the presence of the owner or any of the owners of the thing seized or a servant or agent of, the owner or any of the owners; or
- (c) in the case of any thing seized in a vessel or aircraft, in the presence of the master or commander of that vessel or aircraft.

2. Notice under paragraph 1 shall be given in writing and shall be deemed to have been duly served on the person concerned

- (a) if delivered to the person personally;
- (b) if addressed to the person and left, or forwarded by post to the person, at the person's usual or last known place of abode or business, or in the case of a body corporate, at its registered or principal office; or
- (c) where the person has not an address in the Territory or the person's identity or address is unknown, by publication of the notice of seizure in the *Gazette* and one of the local newspapers.

3. Where a person who was at the time of the seizure of any thing the owner or one of the owners of it, claims that it was not liable to forfeiture, the person shall, within one month of the date of service of the notice of seizure or, where notice was not served, within one month of the date of seizure, give notice of his claim in writing to the Commissioner.

4. A notice under paragraph 3 shall specify the name and address of the claimant and in the case of a claimant who is outside the Territory shall specify the name and address of a solicitor in the Territory who is authorised to accept service and act on behalf of the claimant, and service on a solicitor so specified shall be deemed to be proper service on the claimant.

5. If, on the expiration of the relevant period under paragraph 3 for the giving of a notice of claim, notice has not been given to the Commissioner, or where notice is given, that notice does not comply with a requirement of paragraph 4, the thing seized shall be deemed to have been duly condemned as forfeited and subsequent claim that the thing was not liable to seizure shall not be valid.

6. Where notice of claim in respect of any thing seized is duly given in accordance with paragraphs 3 and 4, the Commissioner shall take proceedings for the condemnation of that thing by the court, and if the court finds that the thing was at the time of its seizure liable to be forfeited, that court shall condemn that thing as forfeited.

7. Where any thing is in accordance with paragraph 5 or 6, deemed to have been condemned or condemned as forfeited, then without prejudice to any restoration or sale, the forfeiture shall be deemed to have effect from the date when liability to forfeiture arose.

8. Proceedings for the condemnation of any thing shall be civil proceedings and may be instituted

- (a) in the Magistrate's Court having jurisdiction in the place
  - (i) where an offence in connection with that thing was committed or where any proceedings for an offence have been instituted;

- (ii) where the claimant resides or, if the claimant has specified a solicitor under paragraph 4, where that solicitor has his or her office; or
- (iii) where that thing was found, detained or seized or to where the thing was first brought after being found, detained or seized; or

(b) in the High Court.

**9.** (1) In any proceedings for condemnation, the claimant or the claimant's solicitor shall make oath that the thing was, or was to the best of his knowledge and belief, the property of the claimant at the time of the seizure.

(2) In any proceedings for condemnation before the High Court, the claimant shall give security for the costs of the proceedings as may be determined by the Court.

(3) If a requirement of this paragraph is not complied with, the Court shall give judgement for the Commissioner.

**10.** (1) A party to condemnation proceedings in a Magistrate's Court may appeal to the High Court against the decision of that Magistrate's Court in those proceedings.

(2) Where an appeal is made against the decision of a court in condemnation proceedings, the thing seized shall remain in the possession of, or be returned to the possession of the Commissioner until the final determination of the matter.

**11.** In proceedings arising out of the seizure of anything, the fact, form and manner of the seizure shall be taken to have been set forth in the process, unless the contrary is proved.

**12.** Where any thing is at the time of its seizure the property of a body corporate, or two or more partners or of any number of persons exceeding five not being in partnership, the oath required to be taken by paragraph 9, and any other thing required by this Schedule or the rules of court to be done by the claimant or owner, or by any person authorised by the claimant or owner may be taken or done by the following persons:

- (a) where the owner is a body corporate, the secretary or some other authorised officer of that body;
- (b) where the owners are in partnership, any of those owners; or
- (c) where the owners are any number of people exceeding five not being in partnership, any two of those persons on behalf of themselves and their co-owners.

**13.** (1) Where, under section 135, any thing is redeemed, sold or destroyed, and it is held in proceedings taken under this Schedule that the thing was not liable to forfeiture at the time of its seizure, the Commissioner shall on demand by the claimant, tender to the claimant,

- (a) where the thing was restored, an amount equal to any amount paid as a condition of that restoration;
- (b) where the thing was sold, an amount equal to the proceeds of sale; or
- (c) where the thing was destroyed, an amount equal to its market value at the time of its seizure.

(2) Where an amount tendered under sub-paragraph (1) includes a sum on account of the duty chargeable on the thing which has not been paid, the Commissioner may deduct so much of that amount as represents the duty.

(3) If the claimant accepts an amount tendered to the claimant under sub-paragraph (1), the claimant shall not be entitled to maintain any further action on account of the seizure, detention, restoration, sale or destruction of the thing seized.

(4) Where the claimant and the Commissioner are unable to agree on the market value of any thing destroyed under section 99 or 102, that value shall be determined by the Minister.

**14.** (1) Where the Commissioner is satisfied that goods under or liable to customs control, for reason of fire or accident, suffered total or partial loss, duty shall not be chargeable otherwise than upon the proportionate value that the salvaged part of the goods bears to the value.

(2) Compensation is not payable in respect of goods under Customs control which are damaged or destroyed by fire or accident not directly attributable to the fault of Customs.

### **SCHEDULE 3**

[Section 31(5), 39(3),  
53(5) and 118 (4)]

#### **VARIATION OF PUNISHMENT FOR OFFENCES UNDER THIS ACT WHERE THE GOODS INVOLVED ARE CONTROLLED DRUGS**

**1.** Where the goods in respect of which an offence is committed under sections 31 (5), 39(3), 53(5) and 89(4) are controlled drugs, then the following penalty shall be substituted for the penalty in those sections:

The person committing the offence is liable on summary conviction to a fine not exceeding one hundred thousand dollars, or where there is evidence of the street value of the controlled drug, three times the street value of the controlled drug, whichever is the greater, or to imprisonment for a term not exceeding ten years, or both.

**2.** In this Schedule “controlled drug” has the same meaning as in the Drugs (Prevention of Misuse) Act.

# Integrated Customs Tariff

THE HARMONIZED COMMODITY DESCRIPTION AND CODING SYSTEM, (H.S.)

## Government of the Virgin Islands

### HM (BVI) Customs

#### **How to Complete the Customs Automated Processing System (CAPS) T-12 Document/ Caribbean Single Administrative Document**

(Example at the end of this text)

All goods imported or exported must be declared to Customs. With the exception of some goods carried as passenger's baggage or some postal parcels, the declaration should be made using the revised T-12 Customs entry form. Details of the exceptions can be obtained from Customs.

It is important to know that the lodging of a declaration by an importer or a representative indicates that the person concerned is declaring the goods in question for the Customs procedure shown on the document. In doing this, the declarant is accepting responsibility under the law for the

- (a) accuracy of the information given in the declaration;
- (b) authenticity of the documents attached to the declaration; and
- (c) observance of all the obligations necessary under the declared procedure.

There is a brief pre-printed declaration on the form as to the accuracy of the information it contains, but the action of signing the document and presenting it to Customs indicates a full acceptance of all responsibilities. The form may be filled in by hand but must be legible, in ink, and in block capitals. The form may also be completed by typewriter or computer printer. There should be no erasures or overwriting on the forms, any alteration should be made by crossing out the incorrect detail and adding those required at the side or above the original. Any alterations made this way should be initialled. The form must be signed before presentation to Customs. Customs may require a fresh declaration to be completed if the original is considered to be illegible.

Details of the information to be provided on the form are explained below. The headings refer to boxes on the form.

## **1. Consignor/Exporter**

### *(a) Imports*

Enter the full name and address of the consignor, who is the first person or company selling the goods if they are imported under a contract of sale. Otherwise it is the person or company owning the goods immediately prior to their importation.

### *(b) Exports*

Enter the full name and address of the exporter, who is the person or company supplying the goods to the overseas customer.

Where No. is indicated in the box insert the reference number allocated to the exporter by Customs.

## **2. Regime**

Enter the code indicating how this entry is to be treated i.e. Import, Export, Warehousing, etc. (See Customs Procedure Codes)

## **3. No. of Pages**

Enter the total number of pages forming the entry, e.g. if there is 1 face sheet and 1 continuation sheet the figure 2 should be entered here.

## **4. No. of Items**

Enter the total number of items being declared including those on continuation sheets. The number of items corresponds to the number of “description of goods” boxes being completed.

## **5. Importer/Consignee**

### *(a) Import*

Enter the full name and address of the importer. The importer is the owner of the goods or any other person possessing the goods or beneficially interested in them at any time between importation and clearance by Customs.

Where No. is indicated in this box, insert the reference number allocated to this trader by Customs.

### *(b) Export*

Enter the full name and address of the person or company to which the goods are consigned. If the consignee is not known at the time of departure of the goods enter the name and address of the person responsible for taking delivery of the goods at destination.

**6. Total No. of Packages**

Enter the total number of packages being entered on this declaration.

**7. Declarant (Broker/Agent)**

If the declaration is being completed by an authorised agent on behalf of the importer or exporter enter the full name and address of the agent. Where No. is indicated in this box, insert the reference number allocated by Customs to the agent.

If the declaration is being completed by the importer or exporter himself or herself, enter ‘consignee’ or ‘consignor’ as appropriate and leave the space for No. blank.

Ref. is for use by the importer, exporter or agent and should be used to insert a trade reference number if one has been given to this entry. This will enable easy reference in the case of query, etc.

**8. Country from which goods are consigned**

(a) *Import*

Enter the name of the country from which the goods were despatched. This is not necessarily the country of origin or manufacture. Enter country code at the right-hand side of this box.

(b) *Export*

Leave blank.

**9. Country of 1st destination**

(a) *Import*

Leave blank

(b) *Export*

Enter the name of the country to which the goods are despatched. Enter the country code at the right-hand side of the box.

**10. Country of final destination**

(a) *Import*

Leave blank

(b) *Export*

Enter the name of the country which is known at the time of despatch to be the final country to which the goods are to be delivered. Enter the country code in the space at the right hand side of the box.

**11. Manifest No.**

The box will be used at a later date when numbers are assigned to manifests written off by computer. For the present, leave the box blank.

**12. B.L./AWB No.**

Enter the Bill of Lading or Airway Bill number.

**13. Additional information**

This box provides space on the declaration to give details for which there is no specific box and is used for information such as warehouse names and numbers, authorisations and special requests or explanations. Details on what information should be included and which part of the information given relates to procedure codes, will be given by Customs.

If special documents are required to be presented with an entry, use this box to enter the references of any documents produced.

**14. Mode of transport**

Details of modes of transport and the associated codes are given on another page of this tariff. In this box enter the description and code for the method of transport used for the carriage of the goods.

**15. Port/Airport**

Enter the name and code for the Customs office at the place where the goods enter or leave the country.

**16. Rotation No.**

If it is known, enter the number allocated by Customs to identify the voyage or flight.

**17. Identity of means of transport**

Enter the name or number identifying the vessel or flight number and date.

**18. Nationality of transport**

Enter name and code of the country in which the means of transport is registered.

**19. Date of arrival/departure**

Enter the date of arrival (or departure for exports) of the means of transport.

**20. Location of Goods**

Enter the location where the goods are available for examination if necessary. e.g. Port Purcell.

**21. Marks and Nos., Container No.**

Enter the marks (letters and/or numbers) which identify the container, case etc. in which the goods have been transported. If the goods do not completely fill the container or case enter the words “part case”, “part container” etc, as appropriate.

Enter any identification marks or numbers shown on individual packages or the word “bulk” as appropriate.

**22. Description of goods**

Enter the normal trade description of the goods to enable immediate and unambiguous identification and classification.

**23. Customs Value**

Enter the cost, insurance, freight (CIF) value of the goods for Customs purposes in United States Dollars. The value should include freight, insurance and any other charges applicable to the goods prior to the calculation of duties and taxes.

**24. CPC**

The Customs Procedure Code (CPC) identifies the treatment to be applied to the goods forming an item on the Customs declaration.

The regime has already been identified in box 2 and this code plus two further code numbers completes the CPC. Enter the complete code identifying the procedure which you are requesting in this box.

Entry of a CPC in this box constitutes a formal declaration that the conditions of the relevant regulations will be complied with and may legally bind the person signing the declaration.

**25. Tariff No.**

Enter the code number identifying the goods forming this item in accordance with the tariff.

## **26. Net weight**

Enter the net weight of the goods in kilogrammes i.e. the weight of the goods including any packing normally going with them to a buyer in a retail sale.

## **27. Supply quantity**

When more than one quantity is shown against the Tariff Number for the item in the Tariff, enter the second quantity here.

## **28. Country of origin/destination**

### *(a) Import*

Enter the name and code of the country in which the goods have been produced or manufactured.

### *(b) Export*

Enter the name and code of the country in which the goods are to be ultimately delivered.

## **29. No. and type of packages**

Enter the number of individual parts and describe the packages.

## **30. Exchange rate**

Enter the rate of exchange used in any calculation converting an invoice amount from foreign currency. The rate of exchange used should be that current on the day that the declaration is accepted by Customs. Enter the three character currency code at the right hand side of the box.

## **31-35 Duties and Taxes**

These boxes require an entry to show the basis and method of calculation of the taxes payable and must be completed with a line for each type of tax. The way in which the boxes are to be computed is described below and then a practical example is given.

### **31. Duty/Tax Type**

Enter the code in the left hand column and a description in the right hand column forming this box. Details of codes and descriptions of taxes can be obtained from Customs.

### **32. Duty/Tax Base**

Enter code in the left hand column and description in the right hand column forming the box. Details of code and descriptions of tax base can be found in the Section of this book relating to “codes to be used with CAPS.”

**33. Base Amount**

Enter the value or quantity to be taxed.

**34. Rate**

Enter the rate of duty applicable.

**35. Duty/Tax Due**

Show the amount of duty or tax due in each case.

Example, Goods which have a value for Customs of \$3,300.00 with a duty of 10%, and wharfage charge of 1% of the FOB value (which is \$3,000 in this example.)

**36. FOB**

**Value**

Duty Type	Duty Base	Base Amount	Duty Rate	Duty Due
01 Imp.	42 CIF	3300	10%	333.00
03 Whf	25 FOB	3000	1%	30.00

Enter the free on board value i.e. the cost of the goods delivered to the carrying vessel or aircraft.

**37. Freight Cost**

Enter the cost of freight to bring the goods to the territory.

**38. Insurance Cost**

Enter the cost of insurance charges incurred to cover the freight of the goods.

**39. Place and Date**

Enter the place at which the declaration is made and the date. Enter the original hand written signature of the person making the declaration.

IN SIGNING THIS BOX A LEGAL DECLARATION IS BEING MADE THAT THE DETAILS SHOWN ON THE FORM AND ON ANY CONTINUATION SHEETS ARE TRUE AND COMPLETE AND THAT THE REQUIREMENTS OF ANY LEGISLATION HAVE BEEN MET.

**40. Other Charges**

Enter in this box the code and description to identify charges other than those applicable at item level. This can be left blank when there are no such charges to be paid.

#### **41. Amount**

Enter the amount of any “other charge” due to this entry. This can be left blank when there are no “other charges” due on this entry.

#### **42. Summary**

Use this box to summarize charges due from this page and brought forward from the continuation sheet.

#### **43. Grand Total Due**

Use this box to show the total of all monies due on this declaration.

#### **Signature and name of declarant**

The declaration must be signed by the importer if the importer is an individual, and by an employee who has been authorised, if the importer is a firm or company.

Alternatively, the declaration may be signed on behalf of the importer by any firm, company or individual to whom the importer has given the authority to act as an agent for Customs purposes. The manner of authorisation is a matter of arrangement between importers and their agents, but in giving authority to an agent the importer will be assumed to have given authority to the clerks and servants authorised by the agent, to carry out all the Customs business of the importer.

The Commissioner of Customs may request verification of an agents authority to act on behalf of an importer at any time.

### **Codes to be used**

- (i) **Customs Procedure Codes**
- (ii) **Country/Currency Codes**
- (iii) **Modes of Transport**
- (iv) **Customs Office Codes**
- (v) **Duty Tax Codes**
- (vi) **Tax Base Codes**
- (vii) **Package Codes**

## (i) Customs Procedure Codes

Customs Procedure Codes (CPC's) identify the customs regimes to which goods are being entered and from which they have been removed (when this applies). The lists of Customs Procedure Codes have been compiled from lists supplied by the BVI and other national administrations and represents procedures applicable throughout the Organisation of Eastern Caribbean States (OECS) and wider region.

Effort has been given to produce a comprehensive list, but it is expected that revision may be necessary in the light of experience. Users are advised to check with the Customs Entry Processing Unit for assistance in cases of uncertainty.

### The Structure of the Codes

The code consists of two parts. The first identifies the regime e.g. Imports, Exports, Warehousing for which the goods are entered and the second part further identifies how the goods are to be processed with the regime.

The complete codes are known as Customs Procedure Codes because as the name implies they identify the procedure that Customs should apply to the declared goods.

The codes used are made up from an alphabetic character and three numeric characters. The alphabetic characters are C, E and S and represent:

C = Goods for Consumption (Import)

E = Goods for Export

S = Goods entering a duty/tax Suspense regime.

The first of the numeric characters comes from the list:

Outright exportation	—	1
Temporary exportation	—	2
Re-exportation	—	3
Home Use	—	4
Temporary importation	—	5
Re-importation	—	6
Customs Warehousing	—	7
Transit	—	8
Other procedures	—	9

Use of the alphabetic character and the first number identifies the Regime i.e. C4 — import to Home Use, E1 — export.

The next two numbers represent the procedure under a particular regime. As far as possible these numbers reflect the logic applied to the initial coding for the regimes but in some instances the logic has to be varied because of the number of procedures involved.

## CUSTOMS PROCEDURE

<u>Exports</u>	<b>CODE</b>
	<b>E</b>
<b>1. Outright Exportation</b>	<b>E1</b>
A Goods for exportation	E100
B Goods relieved of duties and/or taxes	E101
<b>2. Temporary Exportation</b>	<b>E2</b>
Goods for temporary exportation	E200
<b>3. Re-Exportation</b>	<b>E3</b>
A Re-exportation after clearance for Home Use	
(i) Drawback of duty claimed	E341
(ii) Drawback of duty not claimed	E342
B Re-exportation after temporary importation	
(i) In unaltered state	E350
(ii) After repair	E351
1) After inward processing	E352
2) After manufacturing	E353
C Re-exportation after warehousing or from other premises under Customs fiscal control	
(i) Re-exportation from Government warehouse	E371
(ii) Re-exportation from Private warehouse	E372
(iii) Re-exportation from other premises	E374
D Re-exportation from transit	E380
E Re-exportation from other procedures	E390
 <u>Consumption</u>	 <b>C</b>
<b>4. Home use</b>	<b>C4</b>
A. Direct entry for Home Use ex Ship or Aircraft	C400

B. Goods relieved of duties and/or Taxes

(i) NOT ALLOCATED

(ii) Conditional Duty exemptions

(a)	For Returning Belongers	C401
(b)	For Funeral Furniture	C402
(c)	For Samples	C403
(d)	For Scientific Goods	C404
(e)	For Aircraft	C405
(f)	For Educational and Cultural Purposes	C406
(g)	For Health	C407
(h)	For Government and Government Purposes	C408
(i)	For Military Forces	C409
(j)	For Diplomatic Missions, International Organizations and Personnel	C410
(k)	For the Movement of Persons	C411
(l)	For Uniforms	C412
(m)	For Youth Organisations	C413
(n)	For Charitable and Welfare Goods	C414
(o)	For Statutory Bodies	C415
(p)	For Water Container	C416
(q)	For Marine Engines, Fixtures and Equipment for Local Fishing Vessels	C417
(r)	For Churches	C418
(s)	For Hurricane Lanterns, Fixtures and Shutters	C419

(iii)	Specified Duty and/or tax exemptions	
	(a) Under Fiscal Incentive legislation	C420
	(b) Under special Cabinet or Ministerial concession	C421
	(c) Under Government Agreement or other legislation	C422
	(d) Approved importations under the Hotel Aid Ordinance	C424
	(e) Approved importations under the Pioneer Status Relief	C425
	C. Entered for Home Use after Temporary Admission	C450
	D. Entered for Home Use after warehousing or from other premises under Customs fiscal control	
	(i) From Government warehouse	C471
	(ii) From Private warehouse	C472
	(iii) From other premises	C474
	E. NOT ALLOCATED	
	F. NOT ALLOCATED	
	G. Entered for Home Use following diversion from Transit or Trans-shipment	C480
	H. Entered for Home Use from other procedures	
	(i) Goods sold in auction	C491
	(ii) Goods previously declared, duty and tax paid, but certified short shipped, short landed or short packed	C492
	(iii) Goods previously declared on deposit entry	C493
	(iv) Other	C494
	<b>5. Temporary Importation</b>	<b>C5</b>
	(i) For return in unaltered state	C500

(ii)	For return after repairs	C 501
(iii)	For return after inward processing	C502
(iv)	For return after manufacturing	C503
<b>6. Re-Importation</b>		<b>C6</b>
A.	After outright exportation	C600
B.	After temporary Exportation	
(i)	Returned in unaltered state	C621
(ii)	Returned after repairs	C622
(iii)	Returned after processing	C623
(iv)	Returned after manufacturing	C624
C.	NOT ALLOCATED	
<b>Suspense</b>		<b>S</b>
<b>7. Warehousing</b>		<b>S7</b>
A.	Entry to warehouse or other premises under Customs fiscal control	
(i)	In Government warehouse	S701
(ii)	In Private warehouse	S702
(iii)	Other	S704
B.	Intra-Warehouse transfers. For re-warehousing	
(i)	In Government warehouse	S771
(ii)	In Private warehouse	S772
(iii)	Other	S774
<b>8. Transit</b>		<b>S8</b>
A.	Through transit (from office of entry to office of exit)	S801
B.	Trans-shipment (within port or airport)	S802
<b>9. Other</b>		<b>S9</b>
A.	Supplies for ships and aircraft stores	
(i)	Direct supply	S900
(ii)	After warehousing	

- (a) From Government warehouse S971
- (b) From Private warehouse S972
- (c) Other S974

B. Destruction of goods

- (i) Before Customs clearance S920
- (ii) After warehousing
  - (a) In Government warehouse S921
  - (b) In private warehouse S922
  - (c) Other S924

## (ii) Country and Currency Codes

This section contains names of countries in alphabetic order and codes representing country and the currency used. The country codes are two alphabetic letters and the currency codes three alphabetic letters.

Name	Country Code	Currency Code
Afghanistan	AF	AFA
Albania	AL	ALL
Algeria	DZ	DZD
American Samoa	AS	USD
Andorra	AD	ESP
		FR F
Angola	AO	AOK
Anguilla	AI	XCD
Antarctica	AQ	
Antigua and Barbuda	AG	XCD
Argentina	AR	ARA
Aruba	AW	AWG
Ascension	SH	SHP
Australia	AU	AUD
Austria	AT	ATS
Azores	PT	PTE
Bahamas	85	BSD
Bahrain	BH	BHD
Bangladesh	BD	BDT
Barbados	BB	BBD
Belgium	BE	BEF
Belize	BZ	BZD
Benin	BJ	XOF

Bermuda	BM	BMD
Bhutan	BT	INR
		BTN
Bolivia	BO	BOB
Bonaire	AN	ANG
Botswana	BW	BWP
Bouvet Island	BV	NOK
Brazil	BR	BRN
British Indian Ocean Territory	10	USD
British Virgin Islands	VG	USD
Brunei Darussalam	BN	BND
Bulgaria	BG	BGL

Name	Country Code	Currency Code
Burma	BU	BUK
Burundi	BI	BIF
Byelorussian SSR	BY	SUR
Cameroon	CM	XAF
Canada	CA	CAD
Canary Islands	IC	ESP
Cape Verde	CV	CVE
Cayman Islands	KY	KYD
Central African Republic	CF	XAF
Chad	TD	XAF
Chile	CL	CLP
China	CN	CNY
Christmas Island	CX	AUD
Cocos (Keeling) Islands	CC	AUD
Colombia	CO	COP
Comoros	KM	KMF
Congo	CO	XAF
Cook Islands	CK	NZD
Costa Rica	CR	CRC
Cote D'Ivoire	CI	XOF
Cuba	CU	CUP
Curacao	OM	ANG
Cyprus	CY	CYP
Czechoslovakia	CS	CSK
Denmark	DK	DKK
Djibouti	DJ	DJF
Dominica	DM	XCD
Dominican Republic	DO	DOP
East Timor	TP	TPE
Ecuador	EC	ECS
Egypt	EG	EGP
El Salvador	SV	SVC
Equatorial Guinea	OQ	XAF
Ethiopia	ET	ETB
Faeroe Islands	FO	DKK
Falkland Islands (Malvinas)	FK	FKP
Fiji	FJ	FJD

Finland	FI	FIM
France	FR	FRF
French Guiana	OF	FAF
French Polynesia	PF	XPF
French Southern Territories	IF	FRF
Gabon	GA	XAF
Germany, Federal Republic	DE	DEM
Ghana	GH	GHC
Gibraltar	GI	GIP
Greece	GA	GRD
Greenland	GL	DKK
Grenada	GD	XCD
Guadeloupe	GP	FRF
Guam	GU	USD
Guatemala	GT	GTQ

<u>Name</u>	<u>Country Code</u>	<u>Currency Code</u>
Guinea	GN	GNF
Guinea Bissau	GW	GWP
Guyana	GY	GYD
Haiti	HT	HTG
		USD
Heard and McDonald Islands	HM	AUD
Honduras	HN	HNL
Hong Kong	HK	HKD
Hungary	HU	HUF
Iceland	IS	ISK
India	IN	INR
Indonesia	ID	IDA
Iran (Islamic Republic Of)	IR	IRA
Iraq	IQ	IQD
Ireland	IE	IEP
Israel	IL	ILS
Italy	IT	ITL
Jamaica	JM	JMD
Japan	JP	JPV
Jordan	JO	JOD
Kampuchea, Democratic	KH	KHR
Kenya	KE	KES
Kiribati	KI	AUD
Korea, Dem. People's Rep. Of	KP	KPW
Korea, Republic Of	KR	KRW
Kuwait	KW	KWD
Lao People's Democratic Republic	LA	LAK
Lebanon	LB	LBP
Lesotho	LS	ZAR
		ZAL
		LSL
Liberia	LA	LRD
Libyan Arab Jamahiriya	LV	LYD
Liechtenstein	LI	CHF
Luxembourg	LU	LUF
Macau	MO	MOP
Madagascar	MG	MGF
Malawi	MW	MWK
Malaysia	MY	MYR

Maldives	MV	MVR
Mali	ML	XOF
Malta	MT	MTL
Marshall Islands	MH	USD
Martinique	MQ	FRF
Mauritania	MR	MAO
Mauritius	MU	MUR
Mexico	MX	MXP
Micronesia	FM	USD
Monaco	MC	FRF
Mongolia	MN	MNT
Montserrat	MS	XCD
Morocco	MA	MAD
Mozambique	MZ	MZM
Namibia	NA	ZAR
Nauru	NA	AUD

Name	Country Code	Currency Code
Nepal	NP	NPR
Netherlands	NL	NLG
Neutral Zone	NT	SAR
		KWD
		IQD
New Caledonia	NC	XPF
New Zealand	NZ	NZD
Nicaragua	NI	NIC
Niger	NE	XOF
Nigeria	NO	NON
Niue	NU	NZD
Norfolk Island	NF	AUD
Northern Mariana Islands	MP	USD
Norway	NO	NOK
Oman	OM	OMR
Pakistan	PK	PKR
Palau	PW	USD
Panama	PA	PAB
		USD
Papua New Guinea	PG	P0K
Paraguay	PY	PYG
Peru	PE	PEI
Philippines	PH	PHP
Pitcairn	PN	NZD
Poland	PL	PLZ
Portugal	PT	PTE
Puerto Rico	PR	USD
Qatar	QA	QAR
Reunion	RE	FRF
Romania	RO	ROL
Rwanda	RW	RWF
Saba	AN	ANG
St. Barthelemy	GP	FRF
St. Eustatius	AN	ANG
St. Helena	SH	SHP
St. Kitts and Nevis	KN	XCD
St. Lucia	LC	XCD
St. Maartin (Dutch)	QN	ANG

St. Martin (French)	QO	FRF
St. Pierre and Miquelon	PM	FRF
St. Vincent and the Grenadines	VC	XCD
Samoa	WS	WST
San Marino	SM	ITL
Sao Tome and Principe	ST	STD
Saudi Arabia	SA	SAR
Senegal	SN	XOF
Seychelles	SC	SCR
Sierra Leone	SL	SLL
Singapore	SO	SOD
Solomon Islands	SB	SBD
Somalia	SO	SOS
South Africa	ZA	ZAR
Spain	ES	ESP
Sri Lanka	LK	LKR
Sudan	SD	SDP

Name	Country Code	Currency Code
Suriname	SR	SAG
Svalbard and Jan Mayen Islands	SJ	NOK
Swaziland	SZ	SZL
Sweden	SE	SEK
Switzerland	CH	CHF
Syrian Arab Republic	SY	SYP
Taiwan	TW	TWD
Tanzania	TZ	TZS
Thailand	TH	THB
Togo	TO	XOF
Tokeleau	TK	NZD
Tonga	TO	TOP
Trinidad and Tobago	TT	TTD
Tunisia	TN	TND
Turkey	TA	TRL
Turks and Caicos Islands	TC	USD
Tuvalu	TV	AUD
Uganda	UG	UGS
Ukrainian SSR	UA	SUR
Union of Soviet Socialist Rep. (USSR)	SU	SUR
United Arab Emirates	AE	AED
United Kingdom	GB	GBP
United States	US	USD
United States Minor Outlying Isi.	UM	USD
Uruguay	UY	UYP
Vanuatu	VU	VUV
Vatican City State (Holy See)	VA	ITL
Venezuela	VE	VEB
Vietnam	VN	VND
Virgin Islands, U.S.	VI	USD
Wallis and Futuna Islands	WF	XPF
Western Sahara	EH	ESP MAD
Yemen	YE	YEA
Yugoslavia	YU	YUD
Zaire	ZR	ZRZ

Zambia  
Zimbabwe

ZM  
ZW

ZMK  
ZWD

### **(iii) Transport Codes**

The Method of transport used to carry goods arriving or departing is identified by means of a code. This is an international list.

<b>Method</b>	<b>Code</b>
Sea	1
Air	4
Mail	5
Unknown	9

### **(iv) Customs Office Codes**

Codes for Customs offices where goods enter or leave the country are:

PP	Port Purcell
RT	Road Town
WE	West End
BI	Beef Island
HQ	Headquarters
AP	Anegada Airport
FTP	FTP Submissions
JV	Jost Van Dyke
VA	Virgin Gorda Airport
VM	Virgin Gorda Marina
WEB	WEB Submissions

### **(v) Duty Tax Codes**

01	Import Duty
02	Import Duty on Alcohol
03	Wharf age
04	Fossil Fuel

## **(vi) Tax Base Codes**

04	net pounds
06	litres
07	gallons
21	Number, Unit, Piece and Head
25	FOB
34	kilogrammes
40	per 100 pounds/net weight
42	CIF

## **(vii) Package Codes**

29	Barrel
34	Pack
51	Bunch
61	Cask
91	Carton/Box
95	Sheet
97	Bundle
99	Other

# LIST OF TITLES OF SECTIONS AND CHAPTERS

## Section I

### Live animals; animal products

#### Section Notes

#### Chapters

1. Live animals.
2. Meat and edible meat offal.
3. Fish and crustaceans, molluscs and other aquatic invertebrates,
4. Dairy produce; birds' eggs; natural honey; edible products of animal origin, not elsewhere specified or included.
5. Products of animal origin not elsewhere specified or included.

## Section II

### Vegetable products

#### Section Note

#### Chapters

6. Live trees and other plants; bulbs, roots and the like; cut flowers and ornamental foliage,
7. Edible vegetables and certain roots and tubers.
8. Edible fruit and nuts; peel of citrus fruit or melons.
9. Coffee, tea, mate and spices.
10. Cereals.
11. Products of the milling industry; malt; starches; inulin; wheat gluten.
12. Oil seeds and oleaginous fruits; miscellaneous grains, seeds and fruit; industrial or medicinal plants; straw and fodder.
13. Lac; gums, resins and other vegetable saps and extracts.
14. Vegetable plaiting materials; vegetable products not elsewhere specified or included.

### **Section III**

#### **Animal or vegetable fats and oils and their cleavage products; prepared edible fats; animal or vegetable waxes**

##### **Chapter**

15. Animal or vegetable fats and oils and their cleavage products; prepared edible fats; animal or vegetable waxes.

### **Section IV**

#### **Prepared foodstuffs; beverages, spirits and vinegar; tobacco and manufactured tobacco substitutes**

##### **Section Note**

##### **Chapters**

16. Preparations of meat, of fish or of crustaceans, molluscs or other aquatic invertebrates.
17. Sugars and sugar confectionery.
18. Cocoa and cocoa preparations.
19. Preparations of cereals, flour, starch or milk; pastrycooks' products.
20. Preparations of vegetables, fruit, nuts or other parts of plants.
21. Miscellaneous edible preparations.
22. Beverages, spirits and vinegar.
23. Residues and waste from the food industries; prepared animal fodder.
24. Tobacco and manufactured tobacco substitutes.

## **Section V**

### **Mineral products**

#### **Chapters**

- |   |   |
|---|---|
| 25. Salt; sulphur; earths and stone; plastering materials, lime and cement. | 27. Mineral fuels, mineral oils and products of their distillation; bituminous substances; mineral waxes. |
| 26. Ores, slag and ash.   |   |

## **Section VI**

### **Products of the chemical or allied industries**

#### **Section Notes**

#### **Chapters**

- |  |  |
|--|--|
| 28. Inorganic chemicals; organic or inorganic compounds of precious metals, of rare-earth metals, of radio- active elements or of isotopes.                    | 34. Soap, organic surface-active agents, washing preparations, lubricating preparations, artificial waxes, prepared waxes, polishing or scouring preparations, candles and similar articles, modelling pastes, 'dental waxes' and dental preparations with a basis of plaster. |
| 29. Organic chemicals.   |  |
| 30. Pharmaceutical products.   |  |
| 31. Fertilisers.   | 35. Albuminoidal substances; modified starches; glues; enzymes.  |
| 32. Tanning or dyeing extracts; tannins and their derivatives; dyes, pigments and other colouring matter; paints and varnishes; putty and other mastics; inks. | 36. Explosives; pyrotechnic products; matches; pyrophoric alloys; certain combustible preparations.  |
| 33. Essential oils and resinoids; perfumery, cosmetic or toilet preparations.  | 37. Photographic or cinematographic goods.   |
|  | 38. Miscellaneous chemical products.   |

## Section VII

### Plastics and articles made of plastics; rubber and articles made of rubber

#### Section Notes

#### Chapters

- |   |  |
|---|--|
| 39. Plastics and articles made of plastics. | 40. Rubber and articles made of rubbers. |
|---|--|

## Section VIII

### Raw hides and skins, leather, furskins and articles made of furskins; saddlery and harness; travel goods, handbags and similar containers; articles of animal gut (other than silk-worm gut)

#### Chapters

- |   |  |
|---|--|
| 41. Raw hides and skins (other than furskins) and leather,  | animal gut (other than silk-worm gut).   |
| 42. Articles of leather; saddlery and harness; travel goods, handbags and similar containers; articles of | 43. Furskins and artificial fur; manufactures made of Furskins and artificial fur. |

## Section IX

### Wood and articles of wood; wood charcoal; cork and articles of cork; manufactures of straw, or of esparto or of other plaiting materials; basketware and wickerwork

#### Chapters

- |   |  |
|---|--|
| 44. Wood and articles of wood; wood charcoal. | 46. Manufactures of straw, of esparto or of other plaiting materials; basketware and wickerwork. |
| 45. Cork and articles of cork.                |  |

## Section X

### **Pulp of wood or of other fibrous cellulosic material; waste and scrap of paper or paperboard; paper and paperboard and articles made of paper and paperboard and articles made from that**

#### Chapters

- |   |  |
|---|--|
| 47. Pulp of wood or of other fibrous cellulosic material; waste and scrap of paper or paperboard. | 49. Printed books, newspapers, pictures and other products of the printing industry; manuscripts, typescripts and plans. |
| 48. Paper and paperboard; articles made of paper pulp, of paper or of paperboard.                 |  |

## Section XI

### **Textiles and textile articles**

#### Section Notes

#### Chapters

- |   |  |
|---|--|
| 50. Silk.   | 58. Special woven fabrics; tufted textile fabrics; lace; tapestries; trimmings; embroidery.                            |
| 51. Wool, fine or coarse animal hair; horsehair yarn and woven fabric.                                | 59. Impregnated, coated, covered or laminated textile fabrics; textile articles of a kind suitable for industrial use. |
| 52. Cotton.   | 60. Knitted or crocheted fabrics.  |
| 53. Other vegetable textile fibres; paper yarn and woven fabrics of paper yarn.                       | 61. Articles of apparel and clothing accessories, knitted or crocheted   |
| 54. Man-made filaments.   | 62. Articles of apparel and clothing accessories, not knitted or crocheted.  |
| 55. Man-made staple fibres.   | 63. Other made up textile articles; sets; worn clothing and worn textile articles; rags.                               |
| 56. Wadding, felt and nonwovens; specialyarns; twine, cordage, ropes and cables and articles thereof. |  |
| 57. Carpets and other textile floor coverings.  |  |

## Section XII

**Footwear, headgear, umbrellas, sun umbrellas, walking-sticks, seat-sticks, whips, riding-crops and parts thereof; prepared feathers and articles made with prepared feathers; artificial flowers; articles of human hair**

### Chapters

- |   |  |
|---|--|
| 64. Footwear, gaiters and the like; parts of such articles.                                     |  |
| 65. Headgear and their parts.   |  |
| 66. Umbrellas, sun umbrellas, walking-sticks, seat-sticks, whips, riding-crops and their parts. |  |
|   | 67. Prepared feathers and down and articles made of feathers or of down; artificial flowers; articles of human hair. |

## Section XIII

**Articles of stone, plaster, cement, asbestos, mica or similar materials; ceramic products; glass and glassware**

### Chapters

- |  |                          |
|--|--------------------------|
| 68. Articles of stone, plaster, cement, asbestos, mica or similar materials. | 69. Ceramic products.    |
|  | 70. Glass and glassware. |

## Section XIV

**Natural or cultured pearls, precious or semi-precious stones, precious metals, metals clad with precious metal and articles thereof; imitation jewellery; coin**

### Chapter

- |  |  |
|--|--|
| 71. Natural or cultured pearls, precious or semi-precious stones, precious metals, metals clad with precious | metal and articles of clad metal and precious metal; imitation jewellery; coin |
|--|--|

**Section XV**  
**Base metals and articles of base metal**

**Section Notes**

**Chapters**

- |  |   |
|--|---|
| 71. Iron and steel.  | 78. Zinc and articles thereof.  |
| 72. Articles of iron or steel.                                   | 79. Tin and articles thereof.   |
| 73. Copper and articles of copper.                               | 80. Other base metals; cermets; articles thereof.   |
| 74. Nickel and articles nickel.                                  | 81. Tools, implements, cutlery, spoons and forks, of base metal; parts thereof of base metal. |
| 75. Aluminium and articles thereof.                              | 82. Miscellaneous articles of base metal.   |
| 76. (Reserved for possible future use in the Harmonized System). |   |
| 77. Lead and articles thereof.                                   |   |

**Section XVI**

**Machinery and mechanical appliances; electrical equipment; and their parts; sound recorders and reproducers, television image and sound recorders and reproducers, and parts and accessories of these articles.**

**Section Notes**

**Chapters**

- |  |   |
|--|---|
| 84. Nuclear reactors, boilers, machinery and mechanical appliances; and their parts. | reproducers, television image and sound recorders and reproducers, and parts and accessories of these articles. |
| 85. Electrical machinery and equipment and their parts; sound recorders and          |   |

## **Section XVII**

### **Vehicles, aircraft, vessels and associated transport equipment**

#### **Section Notes**

#### **Chapters**

- |   |  |
|---|--|
| 86. Railway or tramway locomotives, rolling-stock and their parts; railway or tramway track fixtures and fittings and their parts; mechanical (including electro-mechanical) traffic signalling equipment of all kinds. | 87. Vehicles other than railway or tramway rolling-stock, and their parts and accessories. |
|   | 88. Aircraft, spacecraft, and their parts.   |
|   | 89. Ships, boats and floating structures.  |

## **Section XVIII**

### **Optical, photographic, cinematographic, measuring, checking, precision, medical or surgical instruments and apparatus; clocks and watches; musical instruments; their parts and accessories**

#### **Chapters**

- |   |  |
|---|--|
| 90. Optical, photographic, cinematographic, measuring, checking, precision, medical or surgical instruments and apparatus; their parts and accessories. | 91. Clocks and watches and their parts.                                |
|   | 92. Musical instruments; parts and accessories of musical instruments. |

## **Section XIX**

### **Arms and ammunition; parts and accessories of arms and ammunition**

#### **Chapter**

93. Arms and ammunition; parts and accessories of arms and ammunition.

**Section XX**  
**Miscellaneous manufactured articles**

**Chapters**

- |  |   |
|--|---|
| 94. Furniture; bedding, mattresses, mattress supports, cushions and similar stuffed furnishings; lamps and lighting fittings, not elsewhere specified or included; illuminated signs, illuminated name-plates and the like; prefabricated buildings. | 95. Toys, games and sports requisites; parts and accessories thereof. |
|  | 96. Miscellaneous manufactured articles.                              |

**Section XXI**  
**Works of art, collectors' pieces and antiques**

**Chapters**

- |  |  |
|--|--|
| 97. Works of art, collectors' pieces and antiques.     | 99. (Reserved for special uses by Contracting Parties) |
| 98. (Reserved for special uses by Contracting Parties) |  |

## General Rules for the Interpretation of the Harmonized System

Classification of goods in the Nomenclature shall be governed by the following principles:

1. The titles of sections, Chapters and sub-Chapters are provided for ease of reference only; for legal purposes, classification shall be determined according to the terms of the headings and any relative section or Chapter notes and, provided such headings or notes do not otherwise require, according to the following provisions:
  2.
    - (a) Any reference in a heading to an article shall be taken to include a reference to that article incomplete or unfinished, provided that, as presented; the incomplete or unfinished article has the essential character of the complete or finished article. It shall also be taken to include a reference to that article complete or finished (or falling to be classified as complete or finished by virtue of this Rule), presented unassembled or disassembled.
    - (b) Any reference in a heading to a material or substance shall be taken to include a reference to mixtures or combinations of that material or substance with other materials or substances. Any reference to goods of a given material or substance shall be taken to include a reference to goods consisting wholly or partly of the material or substance. The classification of goods consisting of more than one material or substance shall be according to the principles of Rule 3.
  3. When by application of Rule 2(b) or for any other reason, goods are, prima facie, classifiable under two or more headings, classification shall be effected as follows:
    - (a) the heading which provides the most specific description shall be preferred to headings providing a more general description. However, when two or more headings each refer to part only of the materials or substances contained in mixed or composite goods or to part only of the items in a set put up for retail sale, those headings are to be regarded as equally specific in relation to those goods, even if one of them gives a more complete or precise description of the goods.
    - (b) Mixtures, composite goods consisting of different materials or made up of different components, and goods put up in sets for retail sale, which cannot be classified by reference to 3(a), shall be classified as if they consisted of the material or component which gives them their essential character, insofar as this criterion is applicable.
    - (c) When goods cannot be classified by reference to 3(a) or 3(b), they shall be classified under the heading which occurs last in numerical order among those which equally merit consideration.

4. Goods which cannot be classified in accordance with the above Rules shall be classified under the heading appropriate to the goods to which they are most akin.
5. In addition to the foregoing provisions, the following Rules shall apply in respect of the goods referred to:
  - (a) Camera cases, musical instrument cases, gun cases, drawing instrument cases, necklace cases and similar containers, specially shaped or fitted to contain a specific article or set of articles, suitable for long-term use and presented with the articles for which they are intended, shall be classified with the articles when they are of a kind normally sold with it. This Rule does not, however, apply to containers which give the whole its essential character;
  - (b) Subject to the Rule 5(a), packing materials and packing containers presented with the goods in it shall be classified with the goods if they are of a kind normally used for packing those goods. However, this provision does not apply when such packing materials or packing containers are clearly suitable for repetitive use.
6. For legal purposes, the classification of goods in the subheadings of a heading shall be determined according to the terms of those subheadings and any related subheading notes and, mutatis mutandis, to the above Rules, on the understanding that only subheadings at the same level are comparable. For the purposes of this Rule the relative section and Chapter notes also apply, unless the context otherwise requires.

## SCHEDULE 5

[Sections 54(3), 61(1) and 65(1)]

### EXEMPT GOODS

1. Ground equipment and technical supplies imported for use within the limits of an airport for the servicing and maintenance of aircraft; fuel and lubricants imported or taken out of bond for use in an aircraft. Aircraft.
2. Articles as specified below: Charitable and welfare goods.
  - (a) imported whether as gifts or by purchase by the Red Cross and other charitable organisations approved by the Cabinet for use or distribution in the relief of distress or suffering; and
  - (b) sent to the Territory by foreign charitable or philanthropic organisations approved by the Cabinet for use in the relief of distress or suffering.
3. Articles (including vestments and altar furnishings) imported especially for the construction, furnishing, decoration or repair of churches used for public worship on the signed declaration of the head of the denomination. Churches.
4. Articles for official use and the personal and household effects including one car of any person and his or her family of the organisations specified below Diplomatic and similar organisations.
  - (a) the head and members of any foreign, diplomatic or consular mission provided that the person or persons are not engaged in any other business or profession and that a similar privilege is accorded by the foreign country to an equivalent British mission; and
  - (b) an official of the United Nations or its associated agencies assigned to duties in the Territory in connection with any programme or projects of the United Nations or its associated agencies.
5. Drugs and appliances certified by the Chief Medical Officer as imported for the treatment of Drugs and appliances.
  - (a) tuberculosis;
  - (b) diabetes;
  - (c) venereal disease; and
  - (d) mental illness.

Educational.

**6.** (1) Articles imported for the construction, repair and furnishing of school building on a signed declaration of approval by the Chief Education Officer.

(2) School equipment including games and physical training equipment imported by an educational institution approved by the Chief Education Officer.

(3) Materials and equipment supplied to a student of a correspondence college on production of a certificate of approval signed by the Chief Education Officer.

**7.** Tombstones, memorial tablets, coffins, caskets, shrouds and grave furniture other than artificial flowers and wreaths whether artificial or not. Funeral furniture.

**8.** Articles imported or taken out of bond by or on behalf of the Government for the use of the Government. Government imports.

**9.** Articles for the use of Her Majesty's Forces as specified below: Her Majesty's Forces.

(a) goods officially imported or taken out of bond by such forces;

(b) mess plate, furniture and band instruments imported under a certificate of the Commanding Officer that they are solely for the use of the Armed Forces; and

(c) baggage, furniture, cars and horses of members of the Armed Forces on active service in the Territory provided that these imports shall not be sold in the Territory unless duty at the prevailing rate has been paid on them.

**10.** (1) Personal effects, baggage and household goods whether accompanied or not, as property of passengers entering the Territory: Passengers' baggage etc.

(a) professional equipment and tools of trade for use by hand the personal property of the passenger and not being consumer goods;

(b) personal effects and baggage of returning residents who have been outside the Territory for not more than seventy-two hours;

(c) personal effects and baggage of returning residents who have been abroad for more than seventy-two hours and purchases and gifts to the value of fifty dollars for each adult and ten dollars for each person under the age of eighteen years;

(d) personal effects and baggage compatible with the intended length of stay of tourists and other visitors not intending to stay for more than six months;

- (e) personal and used household effects to the value of one thousand dollars per adult and two hundred and fifty dollars per person intending to stay for more than six months and immigrants:

(2) A motorised form of transport shall not be considered as household effect and that in the case of unaccompanied baggage, personal and household effects, the goods shall be imported not more than three months before or after the arrival of the passenger or a longer period as the Commissioner may in special circumstances allow.

Samples.

**11.** Samples of no commercial value.

**12.** Goods imported by any office or bureau for meteorological observations or any scientific institution or organisation approved by the Cabinet.

Scientific goods.

Agricultural equipment and machinery..

**13.** (1) Equipment and machinery approved by the Chief Agricultural Officer and imported for agricultural use by a person certified by the Chief Agricultural Officer as being registered as a farmer and in the business of agriculture.

(2) The Chief Agricultural Officer may approve equipment and machinery under subparagraph (1) up to the value of one thousand dollars and values exceeding one thousand dollars must be approved by the Cabinet.

(3) An exemption under this paragraph does not apply to persons using or intending to use the equipment and machinery for the purposes of sale, resale, hire or other commercial use.

(4) Equipment and machinery falling under this paragraph include the following:

- (a) Swine Production
  - (i) hog wire;
  - (ii) nipples waterers;
  - (iii) farrowing crates;
  - (iv) silos Storage Bins;
  - (v) PVC pipes and accessories;
  - (vi) feeders bins; and
  - (vii) pig gates;

- (b) Poultry Production
- (c) feed condiments
  - (i) feed additives and vitamins;
  - (ii) feed biological and vaccines; and
  - (iii) feed stuffs;
- (d) The maintenance of equipment
  - (i) automatic waterers;
  - (ii) feeders;
  - (iii) brooding light;
  - (iv) flashing;
  - (v) chicken wire;
  - (vi) hoses; and
  - (vii) Litter, Saw dust and Wood chip;
- (e) egg collection
  - (i) Incubators;
  - (ii) egg crates;
  - (iii) bags for packaging;
  - (iv) labels; and
  - (v) vacuum-pack machine;
- (f) processing
  - (i) all processing equipment and related items
  - (ii) scalders;
  - (iii) killing cones;

- (iv) stunners;
- (v) heaters;
- (vi) plucking machines;
- (vii) viscerating table; and
- (viii) transportation trays;
- (g) Cleaning and Sanitizing
  - (i) battery-cages;
  - (ii) cleaning compound;
  - (iii) heat-resistant hoses; and
  - (iv) pressure washer;
- (h) Crop Production;
- (i) spraying equipment
  - (i) spray cans and accessories (mechanical and gas- powered);
  - (ii) chemicals (fertilizers and pesticides); and
  - (iii) protective gear;
- (j) water-testing equipment and accessories:
  - (i) pH meters;
  - (ii) alkalinity kits;
  - (iii) oxygen meter;
  - (iv) conductivity meter; and
  - (v) chlorine, ORP & Temperature meter;
- (k) soil-testing

- (i) soil density equipment;
  - (ii) soil type equipment;
  - (iii) soil pH equipment;
  - (iv) aggregate instruments; and
  - (v) centrifuge extractor;
- (l) maintenance equipment:
- (i) field wire;
  - (ii) barbed wire;
  - (iii) post (metal & wood);
  - (iv) irrigation equipment & accessories;
  - (v) pruning accessories;
  - (vi) water tanks & accessories;
  - (vii) machetes;
  - (viii) hole digger;
  - (ix) claws;
  - (x) wire pull;
  - (xi) ground cover;
  - (xii) shade cloth;
  - (xiii) hoes;
  - (xiv) sieves;
  - (xv) safety equipment;
  - (xvi) pitch forks; and

- (xvii) grafting equipment (Grafting tools and Waxes.);
- (m) protective clothing
  - (i) overalls;
  - (ii) goggles; and
  - (iii) all types of gloves;
- (n) marketing equipment
  - (i) band saws;
  - (ii) stainless-steel grinders; and
  - (iii) plastic wrap station;
- (o) weighing equipment:
  - (i) scales for livestock, marketing and crops;
- (p) veterinary equipment
  - (i) thermometer;
  - (ii) medication dosing equipment;
  - (iii) animal restraint equipment;
  - (iv) equipment for veterinary diagnostic laboratory;
  - (v) diagnostic equipment and materials;
  - (vi) animal marking and identification tools, inks and accessories; and
  - (vii) branding equipment and accessories;
- (q) dairy production equipment
  - (i) milking machines and accessories;
- (r) feed mill and equipment

- (i) mill equipment and accessories;
- (s) BIOGAS Treatment Plant
  - (i) all items and accessories related to Biogas treatment plant;
- (t) Weather Station
  - (i) all related items;
- (u) abattoir equipment
  - (i) meat cutting equipment;
  - (ii) boiler and Scraper;
  - (iii) carcass saw;
  - (iv) hoist (Electric);
  - (v) electrical tenderizer;
  - (vii) hooks;
  - (viii) stun gun;
  - (ix) tranquilizer gun;
  - (x) carcass transportation and related equipment; and
  - (xi) Safety equipment (First-Aid kits);
- (v) ventilation equipment
  - (i) extractor fans;
  - (ii) misters; and
  - (iii) cooling systems;
- (w) pest control
  - (i) rodent housing and poisons; and

partly of such material or substance. The classification of goods consisting of more than one material or substance shall be according to the principles of Rule 3.

#### Rule 3.

When for any reason, goods are, prima facie, classifiable under two or more headings, classification shall be effected as follows-

(a) The heading which provides the most specific description shall be preferred to headings providing a more general description.

(b) Mixtures and composite goods which consist of different materials or are made up of different components and which cannot be classified by reference to 3 (a) shall be classified by as if they consisted of the material or component which gives the goods their essential character, in so far as this criterion is applicable.

(c) When goods cannot be classified by reference to 3 (a) or 3 (b), they shall be classified under the heading which involves the highest rate of duty.

#### Rule 4.

Goods not falling within any heading of the Nomenclature Customs Tariff shall be classified under the heading appropriate to the goods to which they are most akin.

#### Rule 5.

Except as provided in a note to a Section or Chapter expressed to be a special note applying to subheadings only, the classification of goods within a heading is to be determined by applying as between subheadings the like Rules as are to be applied between headings and, except in so far as the contrary intention appears, terms used in a subheading are to be interpreted in the same way as in the heading.

### **SCHEDULE 7**

[Section 62(1)]

#### **Method of calculation of Duty**

1. The value of any imported goods will be taken to be the normal price, that is to say the price which they would fetch, at the time when the charge to duty arises, on a sale in the open market between a buyer and a seller independent of each other.

2. The normal price of any imported goods shall be determined on the following assumptions:

(ii) rat, roach and snake repellent; and

(x) Other:

(i) all refrigeration and related equipment.

Uniform.

**14.** Arms, ammunition, uniforms, accoutrements and prizes imported by or for the use of the Police and Civil Service including the professional robes of the judiciary, lawyers and teachers.

Youth organisation.

**15.** Accoutrements, equipment and uniforms imported for the use of

(a) the Boy Scouts, the Girl Guides, the Boys' Brigade and the Girls' Brigade;

(b) any youth organisation approved by the Cabinet.

## **SCHEDULE 6.**

[Section 58(2)]

### **RULES FOR THE INTERPRETATION OF THE NOMENCLATURE CUSTOMS TARIFF.**

Interpretation of the Nomenclature Customs Tariff shall be governed by the following principles:

#### Rule 1.

The titles of Sections, Chapters and sub-Chapters are provided for ease of reference only; for legal purposes, classification (as between headings) shall be determined according to the terms of the headings any relative Section or Chapter Notes and, provided such headings or Notes do not otherwise require, according to Rules 2 to 5 below.

#### Rule 2.

(a) Any reference in a heading to an article shall be taken to include a reference to that article incomplete or unfinished, provided that as imported, the incomplete or unfinished article has the essential character of the complete or finished article. It shall also be taken to include a reference to that article complete or finished (or failing to be classified as complete or finished by virtue of this Rule, imported unassembled or disassembled).

(b) Notwithstanding the provisions of Rule 1, identifiable parts of any article shall be treated as a complete article unless specifically referred to in any heading.

(c) Any reference in a heading to a material or substance shall be taken to include a reference to mixtures or combinations of that material or substance with other materials or substances. Any reference to goods of a given material or substance shall be taken to include a reference to goods consisting wholly or

- (a) that the goods are treated as having been delivered to the buyer at the port or place of importation; and
- (b) that the seller will bear freight, insurance, commission and all other costs, charges and expenses incidental to the sale and the delivery of the goods at the port or place of importation except buying commission not exceeding five per centum of the total value which is shown to the satisfaction of the Customs to have been paid to agents; and
- (c) that the buyer will bear any duty or tax payable in the Territory.

3. A sale in the open market between buyer and seller independent of each other pre-supposes

- (a) that the price is the whole consideration;
- (b) that the price made is not influenced by any commercial, financial or other relationship whether by contract or otherwise, between the seller or any person associated in business with him or her and the buyer or any person associated in business with him or her (other than the relationship created by the sale of goods in question); and
- (c) that a part of the proceeds of the subsequent resale, use or disposal of the goods will not accrue either directly or indirectly to the seller or any person associated in business with him or her.

4. Where the goods to be valued

- (a) are manufactured in accordance with a patented invention or are goods to which a registered design has been applied, or
- (b) are imported with a foreign trademark, or are imported for sale (whether or not after further manufacture) under foreign trademark,

the normal price will be determined on the assumption that the price covers the right to use the patent, design or trademark in respect of the goods.

5. Two persons shall be associated in business with one another if, whether

directly or indirectly, either of them has an interest in the business or property of the other, or both have a common interest in any business or property, or some third person has an interest in the business or property of both of them.

6. For the purpose of determining the price of goods under paragraph 2 which are uninsured, there shall be substituted for the cost of insurance a notional insurance cost equal to one per centum of the *free-on-board* cost of the goods.

## SCHEDULE 8

[Section 84(5) and 85(1)]

### PROHIBITION AND RESTRICTIONS

#### PART 1 – PROHIBITED GOODS

- (a) Base or counterfeit coin;
- (b) Controlled drugs schedule in the Drugs (Prevention of Misuse) Act Cap 178
- (c) Goods of which the import or export is prohibited or made an offence by any other law;
- (d) Plants whose importation of is prohibited under the Plant Protection Act, and any subsidiary legislation made under that Act. Cap. 93

#### PART II – RESTRICTED GOODS

- (a) Firearms or ammunition unless accompanied by a permit issued by the Commissioner of Police;
- (b) Explosives, other than gunpowder or blasting powder;
- (c) Caravans and houseboats not including house cruisers;
- (d) Jet skiis;
- (e) Motor cycles exceeding 150 cc and their parts.
- (f) All plants the importation of which is restricted under the Plant Protection Act, and any subsidiary legislation made under that Act. Cap. 93

## SCHEDULE 9

[Section 57]

### LIST OF ITEMS

- (a) Watches, clocks, and any component parts;
- (b) Jewelry made of precious metals or with precious and semi-precious stones or with pearls;
- (c) Articles made of precious metals or fully plated with precious metals;
- (d) Precious and semi-precious stones , and pearls;
- (e) Crystal and glassware (but not glassware sold to restaurants and hotels for institutional use);
- (f) Motion picture cameras, still cameras, and items used with and related to the use of the cameras;
- (g) Hand-held calculating machines with solid state circuitry;
- (h) Original works of art;
- (i) China and porcelain (but not China and porcelain sold to restaurants and hotels for institutional use);
- (j) Earthenware, stoneware and ceramics;
- (k) Tablecloths and napkins (but not tablecloths and napkins sold to restaurants and hotels for institutional use);
- (l) Baskets and bags of unspun fibrous vegetable materials;
- (m) Wood tableware and wood carvings;
- (n) Binoculars and telescopes;
- (o) Music boxes;
- (p) Handkerchiefs;
- (q) Handbags, shoes and luggage made of leather;
- (r) Articles made of shell or ivory;

(s) Cigars; and

(t) Perfumes.

Passed by the House of Assembly this 19<sup>th</sup> day of August, 2010.

(Sgd.) ROY HARRIGAN,  
Speaker.

(Sgd.) JOANN HODGE,  
Acting Deputy Clerk of the House of Assembly.

**VIRGIN ISLANDS**  
**SERVICE COMMISSIONS ACT, 2011**  
**ARRANGEMENT OF SECTIONS**

*Section*

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I Assent

(Sgd.) Boyd McCleary, CMG, CVO,  
Governor

19<sup>th</sup> July, 2011

**VIRGIN ISLANDS**

**No. 8 of 2011**

An Act to provide for the performance of the functions of the Public Service Commission, the Teaching Service Commission and the Judicial and Legal Services Commission and for matters connected thereto.

[Gazetted 25<sup>th</sup> July, 2011]

ENACTED by the Legislature of the Virgin Islands as follows:

**PART I**

**PRELIMINARY**

Short title and  
commencement.

**1.** This Act may be cited as the Service Commissions Act, 2011 and shall come into force on such date as the Governor may, by Proclamation published in the *Gazette*, appoint.

Interpretation.

**2.** In this Act, unless the context otherwise requires,

“acting appointment” means the temporary appointment of an officer to a higher office whether or not that office is vacant;

“appointment” shall be construed in accordance with section 4 of the Constitution;

“Authorised Officer” means a person to whom the functions of the Governor have been delegated under or pursuant to section 92(8) or 93(3) of the Constitution;

“Chairman” means the Chairman of a Commission and includes any person who temporarily acts as the Chairman of the Commission or any other member presiding at a meeting of the Commission;

- “Chief Education Officer” has the meaning assigned to it under section 2 of the Education Act No. 10 of 2004;  
2004;
- “Commission”, except for the purposes of section 7, means the Public Service Commission, the Teaching Service Commission or the Judicial and Legal Services Commission;
- “Constitution” means the Virgin Islands Constitution Order 2007; U.K.S.I. 2007 No.1678
- “court” means a court of competent jurisdiction;
- “Devolution Regulations” means the Appointment to Public Office (Devolution of Human Resource Functions) Regulations, 2008; S.I. No. 19 of 2008
- “Director” means the person holding or acting in the office of Director of Human Resources;
- “Head of Department” means an officer charged with the responsibility for the management of a particular Department;
- “institution of learning” means a high school, training centre, college or university;
- “Judicial and Legal Services Commission” means the Commission established under section 94 of the Constitution;
- “member” means a person appointed to a Commission, and includes a temporary member;
- “office” means a pensionable or non-pensionable post in the public service;
- “officer” means a person who is appointed to an office in the public service and includes a person appointed to act in such office;
- “pensions law” means the Pensions Act and any regulations made thereunder; Cap. 161
- “Permanent Secretary” means a person who holds or acts in the office of Cabinet Secretary, Permanent Secretary or Financial Secretary;
- “public service” means the service of the Crown in a civil capacity in respect of the Government of the Virgin Islands;
- “Public Service Commission” means the Commission established under section 91 of the Constitution;
- “relevant Commission”, in relation to an office or officer, means the Commission that is responsible for the office or officer under section 92, 93 or 95 of the Constitution, as the case may be;

“relevant office”, in relation to a Commission, means an office in the public service for which the relevant Commission is responsible under section 92, 93 or 95 of the Constitution, as the case may be;

“relevant officer”, in relation to a Commission, means a person who holds or acts in a relevant office;

“relevant service”, in relation to a Commission, means service in relevant offices;

“salary” means basic salary;

“Secretariat” means

(a) in the case of the Public Service Commission, the Department of Human Resources, and

(b) in the case of the Teaching Service Commission, the Department of Education;

“Secretary” means

(a) in the case of the Public Service Commission or the Teaching Service Commission, a person who holds or acts in the office of Secretary to that Commission, or

(b) in the case of the Judicial and Legal Services Commission, the person who serves as secretary to that Commission;

“seniority” means the ranking order of a position in relation to another or the date on which the officer entered the public service;

“Teaching Service Commission” means the Commission established under section 93 of the Constitution.

## **PART II**

### **FUNCTIONS AND MEETINGS OF THE COMMISSIONS**

Functions of  
the  
Commissions.

**3.** (1) Subject to the Constitution, this Act and any Regulations made thereunder, the functions of a Commission shall be to

(a) advise the Governor with respect to appointments, promotions and transfers of relevant officers,

(b) advise the Governor with respect to the confirmation of individual officers to the relevant service and the passing of promotional or efficiency bars,

- (c) advise the Governor on any disciplinary matter pertaining to a relevant officer,
- (d) conduct or cause to be conducted any proceedings for the hearing of disciplinary proceedings for misconduct and complaints made by the public in relation to a relevant officer,
- (e) advise the Governor with respect to the removal from office of a relevant officer,
- (f) review and recommend legislation pertaining to appointments to, or removals from, relevant offices, or to the exercise of disciplinary control over relevant officers,
- (g) identify and address factors which inhibit and undermine discipline in a relevant service,
- (h) perform such other related functions as the Governor may from time to time direct.

(2) Without derogating from subsection (1), a Commission shall advise the Governor on the selection of persons for appointment to the relevant service, for the grant of study leave and for the award of scholarships for special training for the public service.

(3) Without derogating from subsection (1), where the relevant Commission is the Judicial and Legal Services Commission and, the relevant officer is a person holding the office of

- (a) Attorney General,
- (b) Director of Public Prosecutions,
- (c) Magistrate,

the Judicial and Legal Services Commission shall, in the exercise of its functions under subsection (1) (c), (d) or (e), act in compliance with section 95 (9) of the Constitution.

(4) Subsection (1) (c) shall not apply to disciplinary proceedings relating to minor misconduct that are delegated to Authorised Officers under the Devolution Regulations.

(5) Nothing in this section shall derogate from the provisions of section 92(9), 93 (2) and 96 (2) of the Constitution.

U.K.S.I.  
2007  
No.1678

Oaths of office and confidentiality.

4. (1) A person who is appointed to a Commission shall, as soon as practicable after being appointed, take the oath or make the affirmation set out in Form I of Schedule 1.

Schedule 1

(2) A person who is appointed or serves as Secretary, or as a member of the Secretariat, to a Commission shall, as soon as practicable after being appointed or assuming duty, take the oath or make the affirmation set out in Form II of Schedule 1.

(3) The deliberations, proceedings, and the records of the Commission are secret and confidential and shall not be made public, except as required to be produced under a court order in connection with any court proceedings or enquiry in respect of any matter under this Act.

(4) A member and a person who is appointed or serves as Secretary, or as a member of the Secretariat shall treat all records or information relating to a Commission as secret and confidential and shall not disclose or communicate same to any unauthorised person or allow any such person to have access to any such records or information.

(5) A member who contravenes subsection (4) commits misbehaviour and may be dealt with in accordance with section 91 (4) (d) or 94 (4) (d) of the Constitution.

(6) A person who is appointed or serves as Secretary or as a member of the Secretariat who contravenes subsection (4) commits misconduct.

(7) For purposes of this section, an “unauthorised person” is a person other than a person authorised to receive information under this Act or pursuant to a court order.

(8) Where an unauthorised person publishes information which comes to his or knowledge in contravention of this section, commits an offence and is liable on summary conviction to a fine of one thousand dollars.

Gazetting of appointments to a Commission.

5. The first appointments to a Commission and every subsequent appointment to, or change in, the membership of a Commission shall be published in the *Gazette*.

Remuneration.

6. The members of a Commission shall be paid such remuneration as the Cabinet may determine.

Meetings.

7. (1) This section does not apply to the Judicial and Legal Services Commission.

(2) A Commission shall meet as often as may be necessary for the purpose of performing its functions and such meetings shall be held on such days and at such time and place as the Chairman shall determine.

(3) In any case where the Chairman is absent from a meeting of a Commission, the members present may elect one of them to preside at the meeting.

**8.** (1) Decisions of a Commission shall be made in accordance with sections 91(6) and (7), 93(2) and 94(6) of the Constitution.

Decisions of Commissions.

(2) Subject to subsection (3), questions may also be decided by a Commission without a meeting by circulation of the relevant papers among the members and the expression of their views in writing and in such case the decision shall be the view of the majority of the members.

(3) If a member of the Public Service Commission or the Teaching Service Commission requires that a matter or question being dealt with by circulation of the relevant papers shall be reserved for consideration at the next following meeting of the Commission, a decision shall not be made on that matter or question except at a meeting of the Commission.

**9.** (1) The Secretary or Secretariat to a Commission shall ensure that

Minutes of meetings.

- (a) minutes of its meetings and all decisions taken by it are recorded,
- (b) copies of its minutes and decisions are presented for confirmation by the Commission in a timely manner,
- (c) copies of its minutes and decisions are forwarded to the Governor in a timely manner after they are confirmed by the Commission.

(2) Where a member dissents on a decision, that member may request that his or her dissent and reasons for dissenting are recorded in the minutes or in relation to the decision and the Secretary or Secretariat shall so record such dissent and reasons.

**10.** (1) Where a member fails to attend three consecutive meetings of the Commission without reasonable excuse, the Chairman shall report the member's absence to the Governor.

Absences and vacancies.

(2) A member shall vacate office in accordance with the provisions of section 91(4), 93(2) or 94(4) of the Constitution, as the case may be.

Consultation with other persons.

**11.** In considering any matter or issue, a Commission may consult with any officer or other person whom the Commission considers proper and desirable for the purposes of the Commission, and may require that officer or person to attend before the Commission for the purpose of providing information, or to produce any official document relating to the matter or issue.

Failure to comply with request from Commission.

**12.** An officer who without reasonable cause or excuse

- (a) fails to appear before a Commission when required to do so, or
- (b) fails to comply with a request made by a Commission in accordance with section 11,

commits misconduct.

Supplying false information.

**13.** (1) An officer who, in connection with an application by a person for employment or promotion in the public service, or with any matter upon which it is the duty of a Commission or a Permanent Secretary or Head of Department to advise the Governor to make any decision, wilfully gives to the Commission or to any member thereof, or to any person or body of persons appointed to assist the Commission or a Permanent Secretary or Head of Department in the discharge of its, or his or her, duties, any information which he or she knows to be false or does not believe to be true, commits misconduct.

(2) A person, other than an officer, who in connection with an application by a person for employment or promotion in the public service, or with any matter upon which it is the duty of a Commission or a Permanent Secretary or Head of Department to advise the Governor to make any decision, wilfully gives to the Commission or to any member thereof, or to any person or body of persons appointed to assist the Commission or a Permanent Secretary or Head of Department in the discharge of its, or his or her, duties, any information which he or she knows to be false or does not believe to be true, commits an offence.

### **PART III**

#### **APPOINTMENTS, PROMOTIONS AND TRANSFERS**

**14.** (1) When it becomes known that a vacancy will occur in the public service, a Permanent Secretary or Head of Department shall report the vacancy to the Secretariat and shall make recommendations regarding the filling of the vacancy, and the Secretariat shall forward all such reports to the Commission responsible for advising the Governor on the filling of the vacancy.

Vacancies in the public service.

(2) The Secretariat shall by circular and in any newspaper published and circulating in the Territory, give notice of a vacancy in the relevant service and, the Secretariat may notify a vacancy through any other public mediums whether in or outside the Territory.

(3) Subsections (1) and (2) shall not apply to those matters that are delegated to Authorised Officers under the Devolution Regulations.

- 15.** (1) Subject to subsection (3), a Commission shall be responsible for
- (a) the conduct of interviews for appointment to relevant offices,
  - (b) considering and determining, in accordance with this Act, whether an applicant has the necessary qualifications and is suitable for appointment to a relevant office,
  - (c) advising the Governor of the applicant that it is recommending for appointment to a relevant office.

Procedure for appointments.

- (2) Subject to subsection (3), the Secretary shall be responsible for
- (a) the form and manner in which applications are to be made for appointments to relevant offices,
  - (b) receiving applications for appointment to relevant offices and short listing eligible applicants,
  - (c) the conduct of any examinations for appointment to relevant offices.

(3) Subsections (1) and (2) shall not apply to those matters that are delegated to Authorised Officers under the Devolution Regulations.

(4) Notwithstanding subsection (2) (b), the Teaching Service Commission shall be responsible for receiving applications for appointment to offices in the Teaching Service and short listing eligible applicants.

Interviews.

**16.** A Commission may interview an applicant for appointment and shall, in respect of each applicant, consider

- (a) any educational qualifications or specialised training,
- (b) his or her ability to meet the specific requirements of the job,
- (c) any previous employment or experience in the public service or otherwise,
- (d) any letters of commendation,
- (e) any reports which the Commission may request the applicant to provide from
  - (i) the principal or president of an institution of learning that the applicant attended,
  - (ii) a previous employer, or
  - (iii) any referees named by the applicant.

Principles for selection for appointments and promotions.

**17.** (1) A Commission shall advise on the appointment of an applicant and promotion of an officer based on merit and ability and an assessment of the relative suitability of the applicant or officer for that position.

(2) In the performance of its functions under this section, a Commission shall take into account the following matters in addition to those referred to in section 16:

- (a) the competencies of the applicant,
- (b) the results of any examination taken in preparation for appointment to the particular office or another office in the public service,
- (c) the two most recent evaluations of an applicant's overall performance as reflected in annual performance management reports by any Permanent Secretary, Head of Department or other senior officer under whom the applicant worked, if the applicant is an officer,
- (d) any specific recommendation of the Director, Chief Education Officer, Permanent Secretary or the Head of Department for filling of the particular office,

- (e) any specifications which may be required from time to time in relation to the particular office,
- (f) the applicant's knowledge and understanding of the duties of the office,
- (g) any relevant special reports for which the Commission may call not being a report referred to in section 16 (e),
- (h) the capability of the applicant to perform the duties of the office to which he seeks to be appointed,
- (i) the applicant's most recent police clearance certificate,
- (j) the most recent Succession Planning Reports provided by the Permanent Secretary or Head of Department.

(3) A Commission shall make decisions relating to appointments, transfers and promotions without discrimination on the grounds of political affiliation, race, colour, ethnic origin, religion, sex, sexual preference, marital status, physical disability, age, sexual orientation, family relations or economic status.

**18.** (1) The Director, Permanent Secretary or Head of Department shall ensure that any recommendations made in relation to an acting appointment as a prelude to a substantive appointment are based on the principles specified in section 17.

Principles for selection for an acting appointment as a prelude etc.

(2) An officer selected for an acting appointment, in consequence of a recommendation made under subsection (1), shall not have any special claim to the post in which he or she was acting.

(3) An officer appointment to act in consequence of a recommendation made under subsection (1), may not be appointed to act for a period in excess of a year.

(4) In considering the claims of eligible officers for a substantive appointment, a Commission shall take into account the claims of all eligible officers.

**19.** In order to assist the Commissions in performing their duties,

- (a) Permanent Secretaries and Heads of Department shall, furnish to the Secretariat performance management reports on the anniversary date of officers serving in their Ministries or Departments.

Confidential reports to assist the Commission.

- (b) Permanent Secretaries and Heads of Department shall in each year on or before the last day of February, furnish to the Secretariat comprehensive succession plans in respect of officers serving in their Ministries or Departments and the reports shall relate to the twelve months ended on the preceding 31st day of December.

#### **PART IV**

##### **PROBATIONARY APPOINTMENTS**

Probationary period.

**20.** (1) On first appointment to the public service, an officer may be required to serve a probationary period of one year unless a shorter term is specified in the letter of appointment of that officer.

(2) On promotion in the public service, an officer may be required to serve a probationary period of one year unless a shorter term is specified in the letter of appointment of that officer.

#### **PART V**

##### **SECONDMENT AND DETERMINATION OF APPOINTMENTS**

Secondment.

**21.** (1) An officer may be seconded to or from any statutory body or private or public sector organisation with the approval of the Governor, on the advice of the relevant Commission, and such secondment may involve a change of designation and duties.

(2) For the purposes of the pensions law, the secondment of an officer to an agency pursuant to this section shall not be considered as a break in the employment of that officer in the public service.

(3) The secondment of an officer made contrary to subsection (1) is void.

Abandonment as reason for termination of appointment.

**22.** Unless declared otherwise by the Governor, an officer who is absent from duty for a continuous period of ten working days without reasonable excuse, shall be deemed to have resigned from the relevant service and thereupon his or her office becomes vacant and the officer ceases to be an officer.

23. The modes by which an officer may leave the public service are as follows: Modes of leaving the public service.

- (a) where the officer holds a permanent and pensionable appointment,
  - (i) on dismissal or removal in consequence of disciplinary proceedings under Regulations made under this Act,
  - (ii) on retirement under the pensions law,
  - (iii) on retirement for medical reasons,
  - (iv) on being retired in the public interest,
  - (v) on resignation with or without benefits payable under any enactment providing for the grant of pensions, gratuities or compensation,
  - (vi) on abolition of office,
  - (vii) on abandonment of office in accordance with section 22,
  - (viii) on conviction for a criminal offence with a sentence of imprisonment,
- (b) where the officer holds a temporary appointment,
  - (i) on the expiry or other coming to an end of an appointment for a specified period,
  - (ii) where the office itself is of a temporary nature and is no longer necessary,
  - (iii) on the termination of appointment in the case of an officer on probation,
  - (iv) on the termination of appointment in the case of an officer holding a non-pensionable office with no service in a pensionable office,
  - (v) on the termination of appointment in the public interest,
  - (vi) on dismissal or removal in consequence of disciplinary proceedings,
  - (vii) on grounds of being declared medically unfit to work,
  - (viii) on conviction for a criminal offence with a sentence of imprisonment,

- (c) where the officer is on contract, his or her services shall be terminated in accordance with the terms of the contract.

Retirement.

**24.** (1) An officer whether holding a pensionable or non-pensionable post shall retire from the public service in accordance with the pensions law.

(2) An officer who is eligible to retire in accordance with the pensions law may be permitted by the Governor to remain in the public service where

- (a) the prospects of serving officers are not jeopardised,
- (b) the vacancy cannot otherwise be filled immediately, and
- (c) the retired officer is certified to be medically fit for re-engagement.

Termination of appointment on abolition of office etc.

**25.** (1) Where a post, being one of a number of like posts, has been abolished, but one or more of the posts remain, the Permanent Secretary or Head of Department shall submit to the Secretariat for consideration by the relevant Commission, a report thereon containing his or her recommendations, with reasons therefor, as to which substantive holder of such post ought to have his or her appointment terminated and the Commission shall advise the Governor as it may think proper and, if it thinks fit, may advise that the officer concerned be transferred to another post not lower in status than that which has been abolished.

(2) Subsection (1) shall apply in relation to the termination of appointments for the purpose of facilitating improvement in the organisation of a Ministry or Department in order to effect greater efficiency or economy.

(3) Where a Permanent Secretary or Head of Department makes a recommendation under this section, the Permanent Secretary or Head of Department shall, at the same time, notify the officer concerned in writing of the recommendation, and such officer may, within seven days of the receipt of the notification, make representations thereon and any such representations shall be forwarded in their original form through the Secretariat to the relevant Commission by the Permanent Secretary or Head of Department together with such comments as the Permanent Secretary or Head of Department thinks fit.

Retirement in the public interest.

**26.** (1) Where it is represented to a Commission, or a Commission considers it desirable in the public interest, that a relevant officer ought to be required to retire from the public service on grounds which cannot suitably be dealt with under any other provision of this Act, it shall call for a full report on the officer from the Permanent Secretary or Head of Department of every Ministry or Department in which the officer has served during the last preceding ten years.

(2) If after considering such reports and giving the officer an opportunity of submitting a reply to the grounds on which his or her retirement is contemplated, and

having regard to the conditions of the relevant service and the usefulness of the officer thereto, and all the other circumstances of the case, the Commission is satisfied that it is desirable in the public interest to do so, it shall advise the Governor that the officer be required to retire.

**27.** Where the appointment of an officer is terminated under section 25 or 26, his or her service shall terminate on such date as the Governor may decide and the question of his or her pension shall be dealt with in accordance with the provisions of the pensions law.

Pension.

## PART VI

### DISCIPLINE AND DISCIPLINARY PROCEDURES

**28.** (1) A Commission shall deal with disciplinary proceedings against relevant officers in the light of reports from Permanent Secretaries and Heads of Departments or otherwise.

Functions of Commissions with regard to discipline.

(2) Where a Commission is of the opinion that disciplinary proceedings should be instituted against a relevant officer, the Commission may advise the Governor that such proceedings be instituted.

(3) A Commission may, before advising the Governor under subsection (2), obtain the advice of the Attorney General.

(4) The conduct of disciplinary proceedings shall be in accordance with Regulations made under this Act.

**29.** (1) Where criminal proceedings are instituted in any court against an officer, proceedings for his or her dismissal upon any grounds arising out of the criminal charge shall not be taken until after the court has given judgment and the time allowed for an appeal from the judgment has expired, and where an officer after conviction has appealed, proceedings for his or her dismissal shall not be taken until after the withdrawal or determination of the appeal.

Disciplinary proceedings following criminal charges.

(2) Nothing in this section shall prevent an officer being interdicted from duty pursuant to section 30.

**30.** (1) Where disciplinary or criminal proceedings have been or are about to be instituted against an officer and the relevant Commission is of the opinion that the public interest requires that the officer should forthwith cease to perform the functions of his or her office, the Commission may advise the Governor to

Interdiction.

(a) interdict the officer from the performance of the functions of his or her office, and

- (b) permit the officer, subject to section 32, to receive such proportion of the salary of his or her office, not less than one half as the Commission considers appropriate taking into account all the relevant circumstances.

(2) Notwithstanding subsection (1), where the relevant Commission is of the opinion that the officer's continued presence on the job is not likely to jeopardise or influence the investigation, the relevant Commission may advise the Governor to

- (a) allow the officer to remain in his or her current position, or
- (b) assign the officer to another office temporarily where such assignment is not likely to hinder in any way the disciplinary proceedings.

(3) If disciplinary proceedings against any such officer result in his or her exculpation, the officer shall be entitled to the full amount of the salary and other benefits which he or she would have received if he or she had not been interdicted but if the proceedings result in any punishment other than dismissal, the relevant Commission shall advise the Governor that the officer be allowed such salary as the Commission thinks fit or as the Commission considers appropriate taking into account all the relevant circumstances.

(4) An officer who is under interdiction from duty may not leave the Territory without first notifying the Secretariat of his or her intention to leave the Territory.

**31.** An officer in respect of whom a disciplinary enquiry is to be held shall be entitled without charge to him or her to receive copies of or to be allowed access to any documentary evidence relied on for the purpose of the enquiry, and the officer shall also be given upon request a copy of the evidence, including copies of documents tendered in evidence, after the enquiry is closed.

**32.** An officer acquitted in any court of a criminal charge shall not be dismissed or otherwise punished in respect of any charge of which he or she has been acquitted, but nothing in this section shall prevent disciplinary proceedings being brought in accordance with this Act in respect of any other lesser charge arising out of his or her conduct in the matter unless such other proceedings relate substantially to the same charge as that in respect of which he or she has been acquitted.

**33.** (1) An officer convicted of an offence and sentenced to imprisonment, shall be dismissed from the public service with effect from the date of judgment by the court, but may, with the approval of the Governor, be re-appointed to the relevant service in accordance with section 92, 93 (3) or 95 of the Constitution.

(2) An officer dismissed from the public service pursuant to this section shall not receive any of his or her emoluments after the date of judgment by the court.

Copies of evidence at enquiries.

Officer acquitted of a criminal charge.

Non-payment of emoluments on conviction of a criminal charge.  
U.K.S.I. 2007  
N.O.1678

Disciplinary penalties.

**34.** (1) The penalties which may be imposed on an officer against whom a disciplinary charge has been established are

- (a) dismissal,
- (b) demotion,
- (c) deferment or withholding of increment,
- (d) severe reprimand,
- (e) reprimand.

(2) Corrective measures as prescribed by Regulations made under this Act, may also be applied.

**35.** Where following disciplinary proceedings a relevant officer is found guilty of misconduct, and the Commission is of the opinion that the misconduct does not warrant proceedings under section 36 with a view to dismissal, the Commission may advise the Governor to impose such punishment other than dismissal as may seem just. Misconduct not warranting dismissal.

**36.** (1) Where a report on an officer alleges misconduct, the Permanent Secretary or Head of Department shall in his or her report to the relevant Commission state the charge or charges against the officer and the disciplinary proceedings shall be conducted in accordance with Regulations made under this Act. Disciplinary Proceedings.

(2) Before making a report under subsection (1), the Permanent Secretary or Head of Department may consult the Attorney General for his or her advice.

## PART VII

### MISCELLANEOUS

**37.** Every member shall observe the Code of Conduct specified in Schedule 2. Code of conduct.  
Schedule 2.

**38.** (1) A Commission may from time to time appoint one or more committees to assist with conducting investigations in relation to disciplinary proceedings under this Act. Special committees.

(2) In relation to any committee selected under subsection (1), a Commission may

- (a) determine the composition and form in which any report of the committee is to be submitted, and
- (b) where it considers it necessary, carry out interviews with any member of a committee.

**39.** No suit shall lie against a member of a Commission, a member of a special committee or a member of a Secretariat for an act done in good faith in the execution of his or her functions under this Act.

Immunity from suit.

**40.** A person, not being a member of a Commission, who contravenes section 13 (2) commits an offence and is liable on summary conviction to a fine not exceeding two thousand dollars, and in default of payment, to imprisonment for a term not exceeding two years.

Offences and penalties.

**41.** (1) The Governor, acting after consultation with the relevant Commission, may make regulations for the purposes of giving effect to this Act.

(2) Without prejudice to the generality of subsection (1), regulations under this section may provide for

- (a) the manner in which information required under this Act shall be collected or obtained,
- (b) the forms to be used for the purposes of this Act and the nature of particulars to be furnished therein,
- (c) the manner in which notices and other communications issued under this Act shall be served or issued,
- (d) anything required or authorised by this Act to be prescribed.

**SCHEDULE 1**

**[Section 4]**

**OATH / AFFIRMATION OF OFFICE AND CONFIDENTIALITY  
Form I**

**Oath / Affirmation of Office and Confidentiality  
for Members of a Commission**

I..... do swear (or solemnly affirm) that I will faithfully execute the office of Chairman/Member of the Public Service Commission / Teaching Service Commission / Judicial and Legal Services Commission and without fear or favour, affection or ill-will and that in the execution of the functions of that office I will know, uphold and preserve the Constitution of the Virgin Islands.

I further solemnly swear / affirm that I will not reveal to any person or persons, not being the Governor or Secretariat, otherwise than in the course of duty any information in connection with the business of the Commission or the nature or content of any document which may come to my knowledge in the course of my duties as Chair / a Member of the said Commission.

So help me God (To be omitted in affirmation).

Sworn/Declared before me this.....day of.....20.

**Form II**

**Oath / Affirmation of Office and Confidentiality for Members of  
the Secretariat of a Service Commission**

I, ..... do solemnly swear (or affirm) that I will faithfully execute the office of ..... without fear or favour, affection or ill-will and that in the execution of the functions of that office I will know, uphold and preserve the Constitution of the Virgin Islands.

I further solemnly swear (or affirm) that I will faithfully and honestly serve the public with integrity, impartiality, and with transparency.

I..... do swear (or solemnly affirm) that I will not directly reveal to any unauthorised person or persons otherwise than in the course of duty any information in connection with the business of the Commission which may come to my knowledge in the course of my duties as Secretary / a Member of the Secretariat to the said Commission.

So help me God (To be omitted in affirmation).

Sworn/Declared before me this.....day of.....20....

**SCHEDULE 2**  
**CODE OF CONDUCT**

**[Section 37]**

A member of the Commission shall

- (a) not in return for anything done, or to be done, or omitted to be done in the execution of his or her duties, ask for or accept for himself or herself or any person, any money, property benefits or favours of any kind over and above that which he or she is lawfully entitled to receive for the performance of his or her duties;
- (b) make decisions relating to appointments, transfers and promotions without discrimination on the grounds of political affiliation, race, colour, ethnic origin, religion, sex, sexual preference, marital status, physical disability, age, sexual orientation, family relations or economic status;
- (c) not for himself or herself or for anyone else accept any gifts, benefit or advantage from anyone in the performance of his or her official functions.
- (d) not allow private interests to conflict with his or her duties or improperly influence his or her conduct in the performance of his or her public duties;
- (e) not allow the pursuit of his or her private interest to interfere with the proper discharge of his or her public duties;
- (f) not for his or her personal advantage, benefit or gain, make use of, or communicate to any unauthorised person, except in the performance of his or her official duties, the contents of any document, or any information, or matter required in the course of his or her official duties which are not available to the public;
- (g) while he or she is a member of the Commission shall disclose any contract or any other interest which they have or have had with the Government during the tenure of his or her office.

Passed by the House of Assembly this 28<sup>th</sup> day of June, 2011.

(Sgd.) Roy Harrigan,  
Speaker.

(Sgd.) Phyllis Evans,  
Clerk of the House of Assembly.

**No. 13 of 2011**

**VIRGIN ISLANDS**

**CUSTOMS MANAGEMENT AND DUTIES (AMENDMENT) ACT, 2011**

**ARRANGEMENT OF SECTIONS**

*Section*

- 1... Short title.
- 2... Section 55 amended.
- 3... Section 84 amended.
- 4... Schedule 5 amended.

**I Assent**

**Boyd McCleary, CMG, CVO**  
**Governor**  
26<sup>th</sup> August, 2011

**VIRGIN ISLANDS**

**No. 13 of 2011**

An Act to amend the Customs Management and Duties Act, 2010 (No.6 of 2010).

[Gazetted 2<sup>nd</sup> September, 2011]

ENACTED by the Legislature of the Virgin Islands as follows:

- Short title.                    **1.** This Act may be cited as the Customs Management and Duties (Amendment) Act, 2011.
- Section 55 amended.  
No. 6 of 2010.                    **2.** Section 55 of the Customs Management and Duties Act, 2010 (referred to in this Act as “the principal Act”) is repealed and the following section substituted:
- “Additional levy on import duty. Schedule 4.                    **55.** (1) Subject to subsection (3) and notwithstanding anything to the contrary in this Act or in any other Act, there shall be paid in respect of the goods enumerated in Chapter 27 heading number 27.09 and number 27.10 of Schedule 4, an additional levy of ten cents per gallon.
- (2) Moneys collected under subsection (1) shall be credited to the Transportation Network (Land, Sea and Air) Improvement Fund established by the Transportation Network (Land, Sea and Air) Improvement Fund Act, 1992.
- (3) The additional levy imposed under subsection (1) shall not apply in respect of the goods enumerated in subheadings number 2710.93 to number 2710.99.”.

3. Section 84 of the principal Act is amended in subsection (5) by inserting after the words “Schedule 4,” the words “in Schedule 5,”. Section 84 amended.

4. Schedule 5 to the principal Act is amended Schedule 5 amended.

(a) in paragraph 3 by renumbering the paragraph as subparagraph (1);

(b) by inserting immediately after subparagraph (1) as renumbered, the following subparagraph:

“(2) A vehicle imported by a Church on the signed declaration of the head of the denomination of that Church, except that

- (a) this exemption applies only to one vehicle imported by the church in any period of five years from the date of importation of the vehicle;
- (b) the vehicle is of an approved passenger capacity of ten or more persons and is not for hire or reward;
- (c) the Church provides Customs with a valid registration licence issued by the Commissioner for Motor Vehicles in respect of the vehicle under the Road Traffic Act; and
- (d) the Church undertakes to notify Customs before transfer of ownership of the vehicle and pays duty at the prevailing rate upon transfer of ownership of the vehicle,

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and for the avoidance of doubt, it is declared that the exemption under this paragraph does not include spare parts and accessories imported in respect of such vehicle.”.

(c) by inserting after paragraph 15, the following paragraphs:

“Returning  
belongs.

16. (1) Personal and household effects, including one motor vehicle per family, of returning belongs who have not been resident in the Territory for a period of three years or more and who intend to permanently reside in the Territory for a minimum period of twelve months.

(2) Personal and household effects including the motor vehicle must have been owned and used abroad for at least twelve months prior to their importation and shall not be sold in the Territory unless duty at the prevailing rate is paid on them.

Hurricane equipment.

17. (1) Hurricane lamps, lanterns and fixtures, hurricane shutters imported into the Territory.

(2) Materials imported for the construction of hurricane shutters must be of the type and quality approved or certified by the Director Public Works Department.

Water containers

18. Water containers of a capacity not exceeding five gallons and caps of such containers imported for use in the resale of water within the Territory.

Computer hardware.

19. Computer hardware except mainframe computers.

Taxi-cabs.

20. A motor vehicle imported, or purchased in the Territory, by a licensed taxi-cab driver for the sole purpose of being used as a taxi-cab, except that

(a) this exemption applies only to one vehicle imported by the taxi-cab driver in any period of five years from the date of importation of the vehicle,

(b) the taxi-cab driver provides Customs with

(i) a valid registration licence issued by the Commissioner for Motor Vehicles in respect of the vehicle under the Road Traffic Act,

(ii) a certificate of good standing issued to him by the Inland Revenue Department within the preceding twelve months,

(iii) an up-to-date certificate of good standing issued to him by the Social Security Board,

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- (iv) an up-to-date certificate of good standing issued to him by the Government Department responsible for trade licences,
- (c) the taxi-cab driver undertakes to notify Customs before disposal of the vehicle and pays duty upon disposal of the vehicle, and
- (d) in the case of a vehicle purchased in the Territory and in respect of which duty has been paid, the amount of duty so paid shall be treated as a credit line and payable to
  - (i) the licensed taxi cab driver, if the purchase price of the vehicle includes the amount of duty on the vehicle, or
  - (ii) the seller of the vehicle, if he is a licensed vehicle dealer and the vehicle is sold without the amount of duty paid on the vehicle,

and for the avoidance of doubt, it is declared that the exemption under this paragraph does not include spare parts and accessories imported in respect of such vehicle.

Car safety seats.

21. Car safety seats designed for the purpose of transporting infants and young children within motor vehicles.

Construction materials.

22 . (1) Construction materials including steel, lumber, corrugated metal roofing and cement, except that this exemption applies only to belongers desirous of owning and constructing a home for the first time.

(2) A person referred to under subparagraph (1) shall provide Customs with

- (a) a certified copy of a bill of quantity from a licensed quantity surveyor in relation to the construction to be undertaken; and
- (b) any other information which the Commissioner may reasonably require.

(3) An exemption granted under subparagraph (1) shall apply only for a period of five years from the date the exemption was first granted, but the Commissioner may, upon application, extend the period for a further period of not more than five years.”

Passed by the House of Assembly this 11<sup>th</sup> day of August, 2011.

(Sgd.) Roy Harrigan,  
Speaker.

(Sgd.) Phyllis Evans,  
Clerk of the House of Assembly.

No. 9 of 2012

**VIRGIN ISLANDS**

**PUBLIC FINANCE MANAGEMENT (AMENDMENT) ACT, 2012**

**ARRANGEMENT OF SECTIONS**

*Section*

1. Short title.
2. General amendments.
3. Section 3 amended.
4. Section 16 amended.
5. Section 17 amended.
6. Sections 17A and 17B inserted.
7. Section 18 amended.
8. Sections 36A, 36B, 36C and 36D inserted.
9. Section 44 amended.
10. Sections 45A and 45B inserted.
11. Section 46 amended.

No. 9 of 2012

**Public Finance Management  
(Amendment) Act, 2012**

**Virgin  
Islands**

**I Assent**

**(Sgd.) Boyd McCleary, CMG, CVO,  
Governor.  
14<sup>th</sup> November, 2012**

**VIRGIN ISLANDS**

**No. 9 of 2012**

An Act to amend the Public Finance Management Act, 2004 (No. 2 of 2004).

[Gazetted 26<sup>th</sup> November, 2012]

ENACTED by the Legislature of the Virgin Islands as follows:

Short title.

1. This Act may be cited as the Public Finance Management (Amendment) Act, 2012.

General  
amendments.  
No. 2 of  
2004.

2. The Public Finance Management Act, 2004 (referred to in this Act as “the principal Act”) is amended by replacing the following references wherever they occur

(a) the words “Legislative Council” with the words “House of Assembly”;

(b) the words “Executive Council” with the word “Cabinet”;

(c) the words “Virgin Islands (Constitution) Order, 1976” with the words “Virgin Islands Constitution Order, 2007”.

Section 3  
amended.

3. Section 3 of the principal Act is amended by inserting the following new definitions in the proper alphabetical order:

““budget” means the financial plan for the delivery of the Government’s programmes and policies for a fiscal year;

“budget document” means the document prepared in accordance with section 36B;

“Minister” means the Minister to whom the responsibility for Finance is assigned;”.

4. Section 16 of the principal Act is amended by inserting after subsection (5), the following new subsection: Section 16 amended.

“(6) Yearly appropriations to the reserve fund shall be at least two percent of the budgeted expenditure.”

5. Section 17 of the principal Act is repealed and the following section substituted: Section 17 amended.

“Additional powers and responsibilities of the Minister.

17. The Minister shall

- (a) ensure that the Financial Secretary prepares and submits a macro-fiscal report to the Minister every six months;
- (b) submit a macro-fiscal report to Cabinet within thirty days after receipt;
- (c) ensure that, at least every six months, the Financial Secretary prepares combined financial statements to be submitted to the Minister within thirty days after the end of the period to which the financial statements relate at the end of each quarter;
- (d) present to the House of Assembly, within thirty days after receipt, the combined financial statements prepared by the Financial Secretary pursuant to this Act. ”.

6. The principal Act is amended by inserting after section 17, the following new sections:

Sections 17A and 17B inserted.

“Economic and Fiscal Advisory Council.

17A. (1) The Minister may from time to time appoint an Economic Advisory Council for the purpose of advising on economic and fiscal issues.

(2) The Council shall consist of such number of persons as the Minister may determine and who possess the requisite skills and expertise in financial and economic matters.

Strategic Plan.

17B. The Minister shall, within six months after a General Election, cause to be prepared and published a Strategic Plan for the term of office of the Government, which relates to the financial affairs of the Government.

7. Section 18 of the principal Act is amended by

Section 18 amended.

- (a) renumbering the section as subsection (1); and

- (b) inserting after subsection (1) so renumbered the following new subsection:

“(2) Every accounting officer shall prepare and submit monthly financial statements and statistics to the Financial Secretary in such form as the Financial Secretary may instruct, in respect of but not limited to

- (a) liquid assets fund balances and variance analysis;
- (b) revenue and capital and recurrent expenditure, outturn and forecast reports and accompanying variance analysis.”.

Sections 36A,  
36B, 36C and  
36D inserted.

8. The principal Act is amended by inserting after section 36, the following new sections:

“Basis of  
public  
accounts.

36A.(1) All accounts shall be prepared in accordance with the international financial reporting standards and in accordance with specific guidelines as prescribed by regulations made under this Act.

(2) Accounting Officers shall

- (a) measure the performance of government departments and other bodies in receipt of public funds and shall ensure that Ministries remain within their expenditure budgets;
- (b) allocate expenditure budgets, profile expenditure and monitor outturn against profile;
- (c) determine revenue targets, profile receipts and monitor outturn against profile;
- (d) track and quantify, the evolution of risk to determine the value of actual and contingent liabilities to assess calls on current expenditure budgets;
- (e) undertake timely internal and external audits and act on the findings

and shall provide the information to the Financial Secretary in accordance with a schedule provided by the Financial Secretary.

Budget  
document.

36B(1) The Minister shall cause to be prepared and shall submit to the House of Assembly annually, a budget document which details the Government’s fiscal objectives with respect to the

funds to be spent.

(2) The budget document shall include

- (a) a Budget Policy Statement;
- (b) a Medium Term Fiscal Plan (MTFP); and
- (c) a Multi-year Budget Document.

(3) The budget shall include the

- (a) cash flow for the Government, and
- (b) individual cash flow statements for each Ministry.

(4) The Minister shall present the budget policy statement and medium term fiscal plan to the House of Assembly for approval, prior to the multi-year budget document being tabled in the House of Assembly.

(5) The budget policy statement shall set out the overarching policy goals that will guide the Government's priorities for the forthcoming budget term.

36C (1) The Minister shall, within six months of the beginning of the financial year, table the Medium Term Fiscal Plan in the House of Assembly.

Medium term  
fiscal plan.

(2) The Medium Term Fiscal Plan shall be prepared in accordance with specific guidelines as prescribed by regulations made under this Act and shall include but not be limited to the following:

- (a) a statement of the Government's economic and fiscal objectives;
- (b) a summary of the broad outcomes, the specific outcomes, and the links between them, that the Cabinet intends to achieve in the next financial year and for at least the following two financial years;
- (c) a summary of recent economic statistics, trends and forecasts;
- (d) a statement of past fiscal performance, an analysis of variance from previous plans and projections on future fiscal targets;

- (e) a statement of existing public sector borrowing, including
    - (i) borrowing by statutory bodies, whether guaranteed by the Government or not; and
    - (ii) the amount, currency, date and origin of issue, maturity and interest rate structure of each loan;
  - (f) a statement of expenditure and revenue arrears;
  - (g) an analysis of operating expenditure needs for the next financial year and for each of the following two financial years;
  - (h) a statement of the Government's strategy for managing contingent and actual liabilities and progress in delivering the strategy;
  - (i) a capital investment plan for the next financial year and for each of the following two financial years;
  - (j) new and continuing major projects for the next financial year and for each of the following two financial years;
  - (k) anticipated revenue and expenditure measures for the next financial year and for each of the following two financial years;
  - (l) quantified risk assessments, including consideration of the actuarial risks posed by pensions and health care insurance;
  - (m) a statement of the current fiscal position and forecasts for the next financial year and for each of the following two financial years in accordance with regulations made under this Act.
- (3) The Minister shall cause the Medium Term Fiscal Plan to be updated semi-annually and shall table the updated plan in House of Assembly within three months after the update.

Allocations  
for projects.

36D. (1) The Minister shall be responsible for justifying allocations for projects in every budget cycle, and shall ensure that all unexpended balances return to the Consolidated Fund.

(2) The Financial Secretary shall advise the Minister on allocations for projects in every budget cycle based on written justifications received from accounting officers.

(3) Accounting Officers shall make justifications to the Financial Secretary for allocations for projects in every budget cycle, who shall then advise the Minister.

9. Section 44(1) of the principal Act is amended by

Sections 44 amended.

(a) deleting the full stop after paragraph (e) and substituting it with a semi-colon;

(b) inserting after paragraph (e) the following:

“ (f) prescribing for anything which under this Act may be prescribed.”.

10. The principal Act is amended by inserting after section 45, the following new sections:

Sections 45A and 45B inserted.

“ Risk management. 45A. (1) The Financial Secretary shall carry out tri-annual assessments on liabilities to the Government including, but not limited to, pensions, healthcare and contractual obligations.

(2) The liabilities referred to in subsection (1) shall be analysed in a manner commensurate with the risks involved.

(3) The evaluation of pensions and insurance shall be based on actuarial assessments.

(4) Ministries and statutory bodies shall provide to the Financial Secretary,

(a) within six months of the end of the financial year

(i) annual audit reports;

(ii) debt and public private partnerships breakdown;

(b) annual updates on GDP component figures, employment, and the performance of key sectors where the budget

documentation does not separately identify that information.

(5) The Minister shall, after consultation with the Financial Secretary, ensure that specific and deliberate allocations are made to repay loans by ensuring that arrangements are made to repay the loan principal including

(a) agreeing to a fully amortized structure with the lending

institution; or

- (b) establishing a dedicated sinking fund with a binding contribution schedule capable of offsetting the outstanding principal repayment on maturity of the debt.

Major projects.

45B. (1) Every major project embarked upon by the Government shall be consistent with the strategic plan and shall include a business case and appraisal.

(2) The requirements of the business case and appraisal referred to in subsection (1) shall be provided for by regulations made under this Act.

(3) Every project shall be subject to analytical assessments before being considered for financing.

(4) The assessments referred to in subsection (3) shall be subject to the following conditions:

(a) where a project exceeds five percent of the annual budgeted revenues of the budget, that project shall be subject to an assessment by registered professionals who will use established industry standards and procedures in carrying out the assessment.

(b) public private partnerships shall be subject to in-depth reviews on all aspects of the project and the relationship with the Government, before being brought to the Cabinet for consideration.”.

Section 46 amended.

11. Section 46 of the principal Act is amended by deleting

(a) the words “the Public Service Commission Regulations, 1969” and inserting the words “relevant law addressing the conduct of disciplinary action against public officers”;

(b) the words “S.R.O. 29 of 1969” in the marginal notes.

Passed by the House of Assembly this 15<sup>th</sup> day of October, 2012.

(Sgd.) Ingrid Moses-Scatliffe,  
Speaker.

(Sgd.) Phyllis Evans,  
Clerk of the House of Assembly.

**VIRGIN ISLANDS**

**NON-PROFIT ORGANISATIONS ACT, 2012**

**ARRANGEMENT OF SECTIONS**

**PART I  
PRELIMINARY**

*Section*

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2. Interpretation.

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ESTABLISHMENT OF REGISTRATION BOARD AND ITS FUNCTIONS**

3. Non-Profit Organisation Registration Board and membership.
4. Functions of the Board.
5. Tenure of office of members.
6. Meetings of the Board.
7. Resignation of a member.
8. Disclosure of interests.
9. Fees for members.

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10. Registrar.
11. Requirement to register.
12. Application for registration.
13. Duration of registration.
14. Power to grant or renew registration.
15. Deregistration of non-profit organisations.
16. Register of non-profit organisations.
17. Publication of non-profit organisations.

**PART IV  
SUPERVISION AND MONITORING OF NON-PROFIT  
ORGANISATIONS**

18. Supervisory role of the Agency.
19. Power to enter premises and inspect records.
20. Power to institute inquiry.
21. Giving inaccurate or misleading information or withholding of information.

**PART V**  
**OBLIGATIONS OF REGISTERED NON-PROFIT ORGANISATIONS**

- 22. Notification of changes.
- 23. Maintenance of records.
- 24. Accounts.

**PART VI**  
**MISCELLANEOUS**

- 25. Administrative penalties.
- 26. Procedure to be followed by Agency.
- 27. Determination of appropriate penalty.
- 28. Appeal against an administrative penalty.
- 29. Limitation period.
- 30. Confidentiality.
- 31. Transitional provisions.
- 32. Amendment of Schedules
- 33. Non-applicability.
- 34. Offences by bodies corporate.
- 35. Regulations.

SCHEDULE 1

SCHEDULE 2

SCHEDULE 3

I Assent

Governor

, 2012

**VIRGIN ISLANDS**

**No.10 of 2012**

An Act to provide for the registration, supervision and monitoring of non-profit organisations and for other connected matters.

[Gazetted , 2012]

ENACTED by the Legislature of the Virgin Islands as follows:

**PART I  
PRELIMINARY**

Short title and commencement.

1. This Act may be cited as the Non-Profit Organisations Act, 2012 and shall come into force on a date the Governor may, by Proclamation published in the *Gazette*, appoint.

Interpretation.

2. In this Act, unless the context otherwise requires,

No. 19 of 2003

“Agency” means the Financial Investigation Agency established under section 3 of the Financial Investigation Agency Act, 2003;

“accountant” means a person who is professionally certified and has the requisite skills to keep and inspect financial records;

“Board” means the Non-Profit Organisation Registration Board established under section 3;

“document” includes information recorded in writing regardless of form or medium;

“employee” means any person who provides services or labour for an employer for wages or other remuneration, but does not include a volunteer;

“FATF” means the Financial Action Task Force;

“FATF Recommendations” means the revised FATF recommendations on International Standards on Combating Money Laundering and the Financing of Terrorism and Proliferation and such other amendments as may be made;

“gross annual income” of a non-profit organisation includes

- (a) income received from the provision of goods and services;
- (b) rental income;
- (c) interest on other income derived from investments;
- (d) donations of money or other property;
- (e) any grants;

“Minister” means the Minister charged with the responsibility for Voluntary Organisations;

“non-profit organisation” or “organisation” means a body of persons whether incorporated or unincorporated, established solely or primarily for the promotion of charitable, religious, cultural, educational, social or fraternal purposes, or other activities or programmes for the benefit of the public, or a section of the public and which raises or disburses funds in pursuance of its objectives primarily within the Territory;

“records” means recorded information regardless of form or medium created, received and maintained by a non-profit organisation or individual in the pursuance of its or his or her legal obligations;

“register” means the register of non-profit organisations established and kept under section 16;

“Registrar” means the Registrar designated under section 10;

“relevant legislation” includes

- (a) the BVI Business Companies Act 2004; No. 16 of 2004
- (b) the Financial Services Commission Act 2001; No. 12 of 2001
- (c) the Financial Investigation Agency Act 2003; No. 19 of 2003
- (d) the Proceeds of Criminal Conduct Act 1997; No. 5 of 1997

(e) the Anti-money Laundering Regulations 2008;

S.I No. 12 of  
2008

(f) the Anti-money Laundering and Terrorist Financing Code of Practice, 2008; and

S.I. No. 13 of  
2008

(g) any other terrorist financing legislation that are applicable to non-profit organisations in the Virgin Islands.

“remuneration” includes any additional emoluments, except wages, whether payable directly or indirectly, whether in cash or in kind;

“volunteer” means a person who performs services for an organisation for charitable or humanitarian reasons without expectation of, or receipt of wages or other remuneration for services rendered.

## PART II

### ESTABLISHMENT OF REGISTRATION BOARD AND ITS FUNCTIONS

Non-Profit  
Organisation  
Registration Board  
and membership.

3. (1) There is established by this Act a Non-Profit Organisation Registration Board (in this Act referred to as the “Board”).

(2) The Board shall comprise not more than seven persons appointed by the Minister, with the approval of Cabinet, as follows:

- (a) three representatives from the community who are active members of an existing non-profit organisation, to be chosen by the Minister;
- (b) the Permanent Secretary of the Ministry Responsible for voluntary organisations, *ex officio*;
- (c) a representative from the Joint Anti-Money Laundering and Terrorist Financing Advisory Committee, practicing in the private sector;
- (d) the Registrar, *ex officio*;
- (e) one member nominated by the Leader of the Opposition.

(3) The Minister shall appoint a member to be the Chairman of the Board and another member to be the Deputy Chairman.

(4) The Registrar shall be the Secretary to the Board.

(5) For the purposes of subsection (2)(e), the Leader of the Opposition shall submit the name of his or her nominee within fourteen days after receipt of the request from the Minister.

(6) Where the Leader of the Opposition fails to provide the name of the nominee pursuant to subsection (5), the Minister may appoint any person he or she considers suitable.

4. The functions of the Board are

Functions of the Board.

- (a) to receive and determine applications for registration by non-profit organisations;
- (b) to register non-profit organisations;
- (c) to receive and review financial statements and reports from organisations;
- (d) to facilitate the development of the non-profit sector in the Virgin Islands and to promote an understanding of the role of non-profit organisations in the Virgin Islands;
- (e) to receive and investigate complaints arising out of any matter covered in the Act;
- (f) to discharge such other functions as may be assigned to it by the Minister under this Act.

5. (1) Members of the Board, other than *ex officio* members, shall hold office for a period not exceeding three years, but are eligible for re-appointment.

Tenure of office of members.

(2) Notwithstanding subsection (1), a member who is not an *ex officio* member shall not hold office for more than two consecutive terms, but such member is eligible for re-appointment following the expiration of one year thereafter.

(3) The Minister may, by written notice, remove a member, other than an *ex officio* member, from office if satisfied that the member

- (a) has, without the consent of the Chairman, been absent from three consecutive meetings of the Board;
- (b) has become bankrupt, that his or her estate has been sequestered or that he or she has made an arrangement with, or granted a trust deed in favour of, his or her creditors;
- (c) has been convicted of an indictable offence or any offence involving dishonesty;
- (d) is or becomes disqualified from being appointed as a member under section 3;
- (e) has an interest that is likely to prejudicially affect the exercise and performance by him or her of his or her functions as a member;
- (f) is unable or unfit to discharge his or her functions as a member.

(4) If a member dies, resigns, is removed from or otherwise vacates his or her office prior to the expiry of the term for which he or she has been appointed,

the Minister shall appoint a new member to replace him or her and the appointment shall be for the unexpired period of the term of office of the member in whose place he or she is appointed or for a new term not exceeding three years.

(5) Notwithstanding subsection (1) and (2), a member who represents an organisation or institution shall cease to be a member of the Board on ceasing to be a member of or, to be employed by the organisation or institution he or she represents.

Meetings of the Board.

6. (1) The Board shall meet at least once in every quarter at such time and place as determined by the Chairman.

(2) At every meeting of the Board, the Chairman shall preside and in his absence the Deputy Chairman shall preside.

(3) The quorum of the Board shall be four.

(4) At any meeting for the conduct of its business, the Board shall take its decision by a majority vote of the members present and in the event of a tie the Chairman or Deputy Chairman, as the case may be, shall have a casting vote.

(5) The Chairman, or in his or her absence, the Deputy Chairman, shall at any time convene a special meeting of the Board upon receipt of a requisition signed by at least three members calling upon him or her to do so, and such meeting shall be held not later than fourteen days after receipt of the requisition.

(6) No act or proceeding of the Board shall be invalid by reason only of the existence of a vacancy among its members or of any defect in the appointment of a member.

(7) Notwithstanding anything contained in this section, the Chairman may, in any matter he or she considers exceptional, make arrangements for a decision of the Board to be taken on such matter through a process of consultation without the need for an actual meeting.

(8) In the conduct of its meetings, the Board shall establish its own rules of procedure, subject to the provisions of this section.

Resignation of a member.

7. A member, other than an *ex officio* member, may resign his or her office by giving one month's notice, in writing to the Minister.

8. (1) Where a matter is to be decided by the Board at a meeting, any member present at the meeting who has an interest in the matter shall, at the meeting, disclose the nature of the interest in advance of any consideration of the matter.

Disclosure of interests.

(2) Where a member discloses an interest under this section

- (a) the disclosure shall be recorded in the minutes of the meeting; and
- (b) the member shall not, unless the Board otherwise determines

- (i) be present during any deliberations by the Board on that matter;  
or
- (ii) take part in any decision of the Board relating to the matter.

9. A member who is not a public officer may be paid such stipend as determined by the Minister, acting on the advice of the Minister of Finance. Fees for members.

### **PART III REGISTRATION OF NON-PROFIT ORGANISATIONS**

10. There shall be a Registrar of non-profit organisations who shall be a public officer designated by the Minister. Registrar.

11. (1) A person shall not operate a non-profit organisation in the Virgin Islands unless the organisation is registered under this Act. Requirement to register.

(2) A person who contravenes this section commits an offence and is liable on summary conviction to a fine not exceeding ten thousand dollars or imprisonment for a term not exceeding six months, or both.

12. (1) An application for registration shall be submitted to the Board through the Registrar, in the form set out in Schedule 1. Application for registration. Schedule 1

(2) An application under subsection (1) shall be

(a) signed by a person acting on behalf of the organisation; and

(b) accompanied by

- (i) a copy of the constitutional documents of the organisation;
- (ii) a statement of the purpose, objectives and activities of the organisation; and
- (iii) the fee prescribed in Schedule 2;

Schedule 2

(c) any other document or information pertaining to the registration of the organisation, as the Board may reasonably require.

(3) The constitutional documents of the organisation shall include

- (a) the name of the organisation;
- (b) the officers of the organisation;
- (c) the manner of electing the governing body of the

- organisation;
- (c) the organisational structure of the organisation;
- (d) the duties and powers of the governing body;
- (e) provisions limiting the objects of the organisation to
  - (i) pursue solely or primarily charitable or non-profit purposes and requiring the organisation to apply its income primarily to promoting those purposes, and
  - (ii) prohibit the organisation from distributing any part of the dividends generated to members or shareholders.

(4) The Board shall, within thirty working days from the date of receipt of an application and upon being satisfied that the application is in order and complies with this Act and any regulations made under the Act, approve the application.

(5) A person who knowingly provides false information on registration commits an offence and is liable on summary conviction to a fine of five thousand dollars or imprisonment for a term not exceeding one year, or both.

Duration of registration.

13. (1) A certificate of registration issued under this Act is valid for a period of one year from the date of issue.

(2) An application for the renewal of a certificate of registration shall be made no later than one month after the certificate expires.

Schedule 1  
Schedule 2

(3) A certificate issued under this Act may be renewed upon application in the form prescribed in Schedule 1, and upon payment of the fee prescribed in Schedule 2 and on the Board being satisfied that the applicant complied with the provisions of this Act.

(4) An organisation that submits an application for renewal may continue to operate until a decision is made by the Board.

Power to grant or renew registration.

14. (1) The Board may, refuse to register or renew the registration of a non-profit organisation

(a) if the application for registration does not comply with the requirements of this Act or any regulations made under it;

(b) where the Board determines that

(i) the organisation does not qualify to be an organisation within the meaning of this Act;

(ii) it is contrary to the public interest for the organisation to be registered;

(c) where on the advice of the Agency it determines that the organisation is used for financing terrorism or money laundering or it is intended or likely to be used for financing terrorism or money laundering; or

(d) where the organisation, having been previously registered under this Act has been deregistered under section 15.

(2) Where the Board approves the registration, or renewal of registration of an organisation pursuant to this Act, the Registrar shall register the organisation in the register and issue a certificate of registration in the prescribed form.

(3) For the purposes of subsection (1)(c), it does not matter whether the organisation is aware that it is being used or has been used, for financing terrorism or money laundering.

(4) An organisation may appeal to the Minister against the decision of the Board under subsection (1) within twenty-one days of receipt of notice of the decision of the Board.

(5) The Minister shall, after hearing the appeal

(a) affirm the decision;

(b) vary the decision; or

(c) set aside the decision appealed against and remit the matter concerned for reconsideration by the Board with such direction as the Minister may consider fit.

Deregistration of non-profit organisations.

15. (1) The Board

(a) shall deregister a non-profit organisation where

(i) the organisation has contravened any provision of this Act or the relevant legislation;

(ii) subject to subsection (2), a person authorised on behalf of the organisation requests in writing that the organisation be deregistered;

(iii) the organisation no longer exists or is not carrying out and is not likely to carry out, the activities for which it was registered;

- (b) may deregister an organisation where the Board considers it in the public interest, and shall only take into account matters that suggest that the organisation is being used, or may be used, for, or to assist in, the financing of terrorism or money laundering.

(2) An organisation that fails to renew its registration under this Act, for a period of at least two consecutive years, shall be deregistered for the purposes of subsection (1)(a)(iii).

(3) The Board shall not deregister a non-profit organisation at the request of the authorised person referred to under subsection (1)(a)(ii) where the Board considers that deregistration would hinder the Agency in the exercise of its functions.

(4) The Board shall, before deregistering an organisation under this section, issue a written notice to the organisation stating

- (a) the grounds upon which it intends to deregister the organisation; and
- (b) that unless the organisation, by written notice, shows good reason why it should not be deregistered, it will be deregistered on a date not less than thirty days after the date of the notice.

(5) The Registrar shall upon deregistration of an organisation under this Act

- (a) cancel the registration if it is still valid; and
- (b) amend the register accordingly.

16. (1) The Registrar shall maintain a register of all non-profit organisations registered in accordance with this Act.

Register of non-profit organisations.

(2) The Register shall include

- (a) the name, address in the Virgin Islands and telephone number of the organisation;
- (b) the purpose, objectives and activities of the organisation;
- (c) the identity of persons who are in control of or direct the activities of the organisation; and
- (d) such other information as the Board considers appropriate.

(3) The register shall be open to inspection, at the office of the Registrar by the members of the public, during regular working hours.

(4) The Registrar shall forward to the Agency a list of all non-profit

organisations registered or deregistered under this Act and shall notify the Agency of any changes to the list.

17. The Registrar shall publish annually, the names of registered non-profit organisations, in the *Gazette* and in at least one newspaper circulating in the Territory and where applicable a list of organisations which were deregistered.

Publication of non-profit organisations.

**PART IV  
SUPERVISION AND MONITORING OF NON-PROFIT  
ORGANISATIONS**

18. (1) The Agency shall be responsible for the supervision and monitoring of non-profit organisations in the Virgin Islands and shall

Supervisory role of the Agency.

- (a) ensure compliance by organisations with requirements of this Act and the relevant legislation;
- (b) monitor the effectiveness of the relevant legislation in
  - (i) providing for the protection of organisations from being used for terrorist financing and money laundering; and
  - (ii) ensuring compliance by the Virgin Islands with FATF recommendations as they apply to organisations;
- (c) undertake periodic reviews of the non-profit organisations sector in the Virgin Islands for the purposes of
  - (i) identifying the features and types of organisations that are at risk of being used for terrorist financing or money laundering; and
  - (ii) determining whether an organisation is being used or has been used for terrorist financing or money laundering;
- (d) undertake outreach to non-profit organisations with the objective of protecting the non-profit organisations sector in the Virgin Islands from being used for terrorist financing and money laundering;
- (e) make recommendations to the Board where it determines that an organisation is used for, or is likely to be used for, financing terrorism or money laundering;
- (f) make recommendations to the Minister on any matter relating to non-profit organisations; and

(g) discharge such other functions as may be assigned to it under this Act.

(2) A periodic review carried out under subsection (1)(c) may include an audit of the accounts of an organisation.

(3) The outreach activities referred to in subsection (1)(d) shall include

- (a) raising awareness of organisations concerning the risks of terrorist financing, money laundering and the measures available to protect against such activities; and
- (b) promoting transparency, accountability, integrity and public confidence in the administration and management of organisations.

Power to enter premises and inspect records.

19. For the purposes of monitoring compliance by a non-profit organisation, the Agency may, with or without notice, where it reasonably believes that there is a risk of terrorist financing or money laundering activities being carried out by an organisation, have the power to enter the premises of the organisation to inspect records and take copies or extracts of the records relevant to the performance of its functions.

Power to institute inquiry.

20. (1) For purposes of performing its functions under this Act the Agency may, institute an inquiry with respect to any non-profit organisation where it reasonably believes that there is a risk of terrorist financing or money laundering activities being carried out by, or through the organisation.

(2) The Agency may by written notice, direct any person who controls or directs the activities of the organisation to provide

- (a) specified information, or
- (b) the Agency with any or all of the records the organisation is required to keep under section 23,

which relate to the organisation and which are necessary to enable the Agency to discharge its functions under this section.

(3) A notice given under subsection (2) shall, in addition to specifying the records which the organisation is required to produce, specify

- (a) the period within which the records are to be produced;

and  
(b) the place where the records are to be produced.

(4) The Agency may require the person who produced the records or a representative of the organisation to provide an explanation of the records.

(5) The Agency may retain original records of the organisation for a period not exceeding one year or such longer period as the Court may, on the application of the Agency, specify.

(6) A disclosure of records under this section shall not be treated as a breach of any law or agreement restricting the disclosure of information and shall not give rise to civil proceedings.

(7) For the purposes of the inquiry, evidence may be taken on oath and the person conducting the inquiry may for that purpose administer oaths or instead of administering an oath require the person examined to make and subscribe a declaration of the truth of the matters about which he or she is examined.

(8) A person who

(a) does not comply with a notice issued under subsection (2);

(b) is required to provide an explanation of any records under this section, who without reasonable excuse, fails to provide the explanation,

Schedule 3 commits an offence and is liable to the penalty specified in Schedule 3.

Giving inaccurate or misleading information or withholding of information.

21. A person who

(a) deliberately provides inaccurate information to the Agency which information is purported to be in compliance with a requirement imposed by or under this Act,

(b) alters, suppresses, conceals or destroys a document that he or she is required under this Act to keep or produce to the Agency,

(c) withholds information when requested by the Agency to produce such information or fails to discharge a duty imposed by or under this Act,

Schedule 3 commits an offence and is liable to the penalty specified in Schedule 3.

## **PART V OBLIGATIONS OF REGISTERED NON-PROFIT ORGANISATIONS**

Notification of changes.

22. (1) A non-profit organisation shall, where there is any change in information provided to the Board at the time of registration, issue written notification of the change to the Board within fourteen days.

(2) Any change required under this section includes changes to the principal place of business and the purposes, objectives and activities of the organisation.

(3) An organisation that fails to give notice under subsection (1) commits an offence and is liable to the penalty specified in Schedule 3.

Schedule 3

23. (1) A non-profit organisation shall keep at its principal place of operation in the Virgin Islands records that are sufficient

Maintenance of records.

(a) to show

- (i) its purposes, objectives and activities; and
- (ii) the identity of persons who control or direct its activities including as appropriate, senior officers, board members, directors and trustees;

(b) to show and explain the organisations' transactions, within and outside the Virgin Islands and that are sufficiently detailed to establish that its funds have been used in a manner consistent with its purposes, objectives and activities;

(c) to show the sources of its gross annual income;

to enable its financial position to be determined with reasonable accuracy.

(2) For the purposes of this section, section 24 and paragraphs (d) and (e) of the definition of " gross annual income" in section 2, a non-profit organisation registered pursuant to this Act shall comply with the Anti-money Laundering Regulations, 2008 and the Anti-money Laundering and Terrorist Financing Code of Practice, 2008.

S.I. No 12 of 2008

S.I. No 13 of 2008

(3) Where a non-profit organisation has five or fewer employees, the Board may exempt that organisation from the requirement to appoint a Money Laundering Reporting Officer pursuant to regulation 13 of the Anti-money Laundering Regulations, and the provisions of the Anti-money Laundering and Terrorist Financing Code of Practice in relation to that organisation shall, subject to sub-section (3), be disapplied.

S.I. No 12 of 2008

(4) Any exemption from appointing a Money Laundering Reporting Officer shall not be construed as exempting the non-profit organisation from performing the Money Laundering Reporting Officer functions.

(5) An organisation shall keep the records specified in subsection (1) for a period of at least five years after the completion of the transaction to which they relate.

S.I. No 13 of  
2008

(6) An organisation that contravenes this section commits an offence and is liable to the penalty specified in Schedule 3.

Schedule 3

24. (1) A non-profit organisation shall prepare and submit annually to the Board, financial statements of the organisations' revenue and expenditure.

Accounts.

(2) The organisation shall submit

(a) financial statements, certified by an accountant, where the gross annual income of the organisation exceeds two hundred fifty thousand dollars;

(b) financial statements, in a form approved by the Board, where the gross annual income of the organisation does not exceed two hundred fifty thousand dollars,

(3) The financial statements required by subsection (2) shall include

(a) a list of donors who have donated in excess of ten thousand dollars as a single donation or cumulatively, during the year;

(b) a breakdown of any funds raised, or donations received, and disbursed, by any association of persons operating under and subject to the control of the organisation.

(4) The statements required by subsection (2)(a) shall be submitted, within six months after the end of the year, unless prior written approval of an extension has been granted by the Board.

(5) A financial statement prepared pursuant to this section shall be prepared in accordance with generally accepted accounting standards or such other accounting standards as may be prescribed.

## **PART VI MISCELLANEOUS**

25. (1) The Agency may, subject to subsection (2), impose an administrative penalty on a person who fails to comply with a requirement imposed by this Act.

Administrative  
penalties.

(2) The Agency shall not impose a penalty if it is satisfied that the person took all reasonable steps and exercised due diligence to ensure that the requirement would be complied with.

(3) The Agency, in deciding whether to impose a penalty on a person under subsection (1), shall take into account the matters specified in section 28.

(4) A person who commits the offences outlined in Column 1 of Schedule 3 is liable to the penalties prescribed in Column 3 of Schedule 3.

Schedule 3  
Schedule 3

(5) Where a person fails to comply with more than one provision of this Act and becomes liable to more than one penalty, the Agency may compound the penalties.

(6) The Agency may recover a penalty imposed by virtue of this section in civil proceedings as a debt.

(7) A penalty imposed by virtue of this section shall be paid into the Consolidated Fund.

26. (1) The Agency shall, before imposing penalty under section 25, give written notice to the person stating

Procedure to be followed by Agency.

- (a) the intention to impose and the reason for the intention to impose the penalty;
- (b) the amount of the proposed penalty; and
- (c) the entitlement of the person to make representation to the Agency in accordance with subsection (2).

(2) Where a person receives a penalty notice, that person shall, within twenty-one days from the date of the notice, make representation to the Agency as to why he or she should not be required to pay the penalty or as to why the proposed penalty should be reduced.

(3) The Agency may at any time prior to the issuing of a penalty notice under subsection (1), withdraw the notice and substitute a new notice stating a different penalty.

(4) The Agency shall notify the person of its decision under subsection (3) and, where it varies the penalty, of the further steps (if any) it has taken in relation to the person.

(5) Before imposing an administrative penalty on a person, the Agency shall consider any representations received under subsection (2).

(6) Subject to subsection (7), a person that receives a penalty notice shall pay the penalty stated in the notice to the Agency within such period as the Agency may determine.

(7) The Agency may agree to the payment of an administrative penalty in instalments over such period of time as it considers appropriate.

Determination of appropriate penalty.

27. In determining the administrative penalty to be imposed on a person, the Agency

(a) shall take into account the following matters:

- (i) the nature and seriousness of the contravention;
- (ii) whether the person has previously contravened the Act or any relevant legislation;
- (iii) whether the contravention was caused by the negligence of the person; and
- (iv) the ability of the person to pay the penalty, including any gain resulting to the person as a result of the contravention; and

(b) may take into account such other matters as it considers appropriate.

Appeal against an administrative penalty.

28. (1) A person who is aggrieved by a decision of the Agency imposing a penalty under section 26, may, within fourteen days of receiving the penalty notice, appeal to the Appeal Board.

(2) An appeal of a decision of the Agency to impose a penalty does not operate as a stay on the obligation of the person to pay the penalty.

(3) The Appeal Board shall, after hearing an appeal,

- (a) affirm the decision appealed against;
- (b) vary the decision appealed against; or
- (c) set aside the decision appealed against and remit the matter concerned for reconsideration by the Agency in accordance with such direction as the Appeal Board may consider fit.

(4) For the purposes of this section, "Appeal Board" means the Board of the Agency established under section 3 (2) of the Financial Investigation Agency Act, 2003.

No.19 2003

<p>29. (1) The Agency shall not issue a penalty notice to a person with respect to a contravention after the end of the period of two years commencing on the date that the Agency first knew of the contravention.</p>	<p>Limitation period.</p>
<p>(2) For the purposes of subsection (1), the Agency is deemed to know of a contravention if it has information from which the contravention can reasonably be inferred.</p>	
<p>30. (1) A person shall keep confidential all information relating to a non-profit organisation which he or she has acquired in his or her capacity as an employee of the Agency or as a member of the Board, except as required for an inquiry in respect of any matter under this Act or on the order of a court of competent jurisdiction.</p>	<p>Confidentiality.</p>
<p>(2) A person who contravenes subsection (1) commits an offence and is liable on summary conviction to a fine of up to ten thousand dollars.</p>	
<p>31. (1) A non-profit organisation which is in existence at the commencement of this Act shall apply for a certificate of registration in accordance with the provisions of this Act, within ninety days of the coming into force of this Act.</p>	<p>Transitional provisions.</p>
<p>(2) For the avoidance of doubt, a Friendly Society registered under the Friendly Society Act shall be deemed a non-profit organisation for the purposes of this Act.</p>	<p>Cap 268</p>
<p>32. The Minister may, by Order, and after consultation with the Board and with the approval of Cabinet, amend the Schedules to this Act in such manner as he or she considers necessary.</p>	<p>Amendment of Schedules.</p>
<p>33. This Act does not apply to</p> <ul style="list-style-type: none"> <li>(a) an organisation that is licensed under the Banks and Trust Companies Act, 1990;</li> <li>(b) any charitable or non-charitable purpose trust, where the trustee is licensed under the Banks and Trust Companies Act, 1990.</li> </ul>	
<p>34. Where an offence under this Act is committed by a body corporate, and is proved to have been committed with the consent or connivance of, or to be attributable to neglect on the part of, any director, manager, secretary or other similar officer of that body corporate, or a person purporting to act in that capacity, the person as well as the body corporate each commits the offence and are liable to be proceeded against and punished accordingly.</p>	<p>Offences by bodies corporate.</p>
<p>35. The Minister may, after consultation with the Board and with the approval of Cabinet, make Regulations for</p>	<p>Regulations.</p>

- (a) the format of any reports and financial returns to be submitted by an organisation;
- (b) prescribing anything that is required to be prescribed by this Act;
- (c) generally for the purposes of carrying this Act into effect.

**SCHEDULE 1**

[Sections 12 (1)]



REGISTRATION FORM

**Non-Profit Organisation (NPO)  
Application for Registration  
(In Accordance with the NPO Act, 2012)**

**(Tick One) Is this a...**

**New Application** (*complete sections 1 through 3 only*) (\$50 or \$100)

**Renewal Application** (*complete all sections*) (\$50 or \$100)

**Change Information Application** (*Section 1 and all applicable sections*) (\$0)

**1. ORGANISATION'S CONTACT DETAILS**

**DATE:**

<b>Name (or Proposed Name) of NPO</b>			
<b>Contact Details for the Organisation</b>	<b>Office Telephone</b>	<b>Cell Phone</b>	<b>Email</b>
	<b>Address</b>		<b>Website (if any)</b>
<b>Contact Person</b>	<b>Name</b>		<b>Position in the Organisation</b>
	<b>Telephone (if different from above)</b>		

**2. ORGANISATION'S OPERATING DETAILS**

<b>NPO Mission Statement</b>	<b>NPO Vision Statement</b>

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In full detail, please describe the **PURPOSE** (or intended purpose) of the NPO:

In full detail, please describe the **ACTIVITIES** (or intended activities) of the NPO:

Please provide a copy of the organisation's **CONSTITUTION** (or intended constitution).

Is your Organisation incorporated? YES/NO

Does your Organisation have subsidiary Organisation(s)? YES/NO  
*(Example- Girls' Brigades is a subsidiary organisation of the Methodist Church)*

Name these Subsidiary Organisations:

1. _____	9. _____
2. _____	10. _____

3. _____	11. _____
4. _____	12. _____
5. _____	13. _____
6. _____	14. _____
7. _____	15. _____
8. _____	16. _____

**NOTE:** If your organisation has subsidiary organisations, in addition to completing sections 4-6 for your organisation, please copy and complete sections 4-6 for each subsidiary organisation.

What are the criteria (s) for becoming a member?

Total Members \_\_\_\_\_

# of Adults \_\_\_\_\_

# of Children under 16 \_\_\_\_\_ Please attach a sample of your parental consent form.

Sample of proof of Membership (*circle and attach at least one*)

- Membership Certificate/Card
- Official Letter given to Members
- Annual Membership Registration List
- Other \_\_\_\_\_

Names of Executive Body	Date of Election:
-------------------------	-------------------

President: _____ Vice President: _____ Treasurer: _____ Secretary: _____ Other: _____	<i>Note: Any Changes to the Executive Body must be reported within 14 days of the change to avoid penalty fee.</i>
---	--

How often does the organisation have the following meetings?
--

Membership Meeting: \_\_\_\_\_

Executive Body: \_\_\_\_\_

Board of Directors: \_\_\_\_\_

### 3. ORGANISATION'S EXPENDITURE REPORT

*Organisations that earn \$250,000 or more are asked to attach a certified copy of their financial statements in addition to completing sections 3-6 of this form.*

A. When is the organisation's Financial Year End? \_\_\_\_\_

Is there a first time Membership Fee?      YES/NO      Yes, how much?  
\_\_\_\_\_

Is there an Annual Membership Fee?      YES/NO      Yes, how much?  
\_\_\_\_\_

Does your organisation have operational Costs?      YES/NO  
If yes, please complete the fields below.

Name of Operational Cost (All non-income payments, ex. Rent, gas, electricity etc),	Total Annual Cost Incurred
1.	
2.	
3.	
4.	
5.	
6.	
7.	
8.	

9.	
10.	
11.	
12.	
13.	
14.	
15.	
16.	
17.	
18.	

*Please attach a separate sheet of paper if additional space is required.*

**3B. Are any wages, salaries, and/or personal emoluments paid by the organisation?**

**YES/NO**

If yes, please complete the fields below.

Name	Position	Hourly Wage/Annual Salary/Personal emolument
1.		
2.		
3.		
4.		
5.		
6.		
7.		
8.		
9.		
10.		
11.		
12.		
13.		
14.		
15.		

16.		
17.		
18.		
19.		
20.		
21.		
22.		
23.		
24.		
25.		
What percentage % of funds raised is used towards wages, salaries, and/or personal emoluments? _____		
<i>Please attach a separate sheet of paper if additional space is required</i>		

**4. REPORT ON FUNDS RAISED ANNUALLY**

**NOTE:** If an activity, for example a bake sale is held more than once in the period under review; indicate the total funds collected from all sales instead of listing individually.

Total funds raised in your last calendar year?	Total Amount	Total amount raised from <b>within</b> the BVI	Total amount raised from <b>outside</b> the BVI
Details of Fundraising			
Date	Event(s)	Purpose of Event	Amount Raised
1.			
2.			
3.			
4.			
5.			
6.			
7.			
8.			

9.			
10.			
11.			
12.			
13.			
14.			
15.			
16.			
17.			
18.			
<i>Please attach a separate sheet of paper if additional space is required</i>			

**5. FUNDS RECEIVED THROUGH DONATIONS**

*If \$10,000 is donated by one individual at one time or collectively throughout the year, the name of the donor(s) should be listed in this section.*

Total funds received through donation in your last calendar year?	Total Amount	Total amount received through donations <b>within</b> the BVI	Total amount received through donations <b>outside</b> the BVI
Details of Donations			
Date	Reason for donation	Name of Donor	Amount Donated
1.			
2.			
3.			
4.			
5.			
6.			
7.			

8.			
9.			
10.			
11.			
12.			
13.			
14.			
15.			
16.			
<i>Please attach a separate sheet of paper if additional space is required</i>			

**6. REPORT ON FUNDS DISTRIBUTED ANNUALLY**

Total funds distributed in your last calendar year?	Total Amount	Total amount distributed <b>within</b> the BVI	Total amount distributed <b>outside</b> the BVI
Details of Distributions			
Date	Event	Purpose	Amount Distributed
1.			
2.			
3.			
4.			
5.			
6.			
7.			

8.			
9.			
10.			
11.			
12.			
13.			
14.			
15.			
16.			
17.			
<i>Please attach a separate sheet of paper if additional space is required</i>			

**Annual Earning - United States Dollar**

**NOTE:**

**“Funds”** means assets of every kind, whether tangible or intangible, movable or immovable. Example, money, property, vehicles, furniture, artwork, etc.

**“Raised”** , in respect to the funds of an NPO, includes funds given to the NPO but does not include-

- a. income earned on the funds of the NPO, i.e. bank interest etc; or
- b. new or remaining members fees.

**“Distributed”**, in respect of the funds of an NPO, does not include the disbursement of funds paid to the NPO by person to become or remain members of the NPO if those funds only benefits members of the NPO

<b>Summary of Annual Financial Report</b>	
Total Funds Raised <i>(section 4)</i>	_____
Plus	+
Total Funds by Donation <i>(section 5)</i>	_____
Equals	
<b>TOTAL ANNUAL INCOME</b>	_____

Total Operational Cost (section 3A)		_____
Plus	+	
Total Emoluments (section 3B)		_____
Plus	+	
Total Funds Distributed (section 6)		_____
Equals		
<b>TOTAL ANNUAL EXPENDITURE</b>		_____
		_____
Minus	-	
<b>TOTAL ANNUAL EXPENDITURE</b>		_____
Equals		
<b>TOTAL YEAR END BALANCE</b>		_____

Please use this area to provide any additional information you think might help the Board when reviewing your application.

I \_\_\_\_\_ certify that the information provided in this application is true. I understand that false or incomplete statements are grounds for refusal of registration. I also understand that knowingly providing false information on this registration form is an offence under section 12(5) of the Non-profit

Organisation Act 2012 and if convicted, I may be liable to a fine \$5,000 dollars or to imprisonment for a term not exceeding one year, or both.

Signature \_\_\_\_\_

Name in BLOCK Letters \_\_\_\_\_

Position Held in NPO \_\_\_\_\_

Date \_\_\_\_\_

OFFICE USE ONLY

**SCHEDULE 2**

**[Sections 12 (2),  
13 (2)]**

**FEEES**

(1) Application for registration	
(a) for newly formed organisations	\$100.00
(b) for existing organisations	
(i) where gross annual income does not exceed two hundred and fifty thousand dollars	\$50.00
(ii) where gross annual income exceeds two hundred and fifty thousand dollars	\$100.00
(2) Application for renewal of registration	
(a) where gross annual income does not exceed two hundred and fifty dollars	\$50.00
(b) where gross annual income exceeds two hundred and fifty thousand dollars	\$100.00
(3) to replace a certificate of registration or for an additional certificate of registration	\$25.00
(4) for a certified copy of a document	\$25.00
(5) for an uncertified copy of a document	\$10.00

**SCHEDULE 3**

[Sections 20(8),  
21(3), 22(3), 23(3),  
26(4)(5)(6)]

**ADMINISTRATIVE PENALTIES**

<b>Section of Act Breached</b>	<b>Type of Breach</b>	<b>Penalty Range</b>
Section 20	(a) Failure to comply with Notice as required by the Act where the Agency decides to institute an inquiry	\$3,000 up to \$20,000
	(b) Failure to provide explanation of records produced, where required to do so	\$3,000 up to \$20,000
Section 21	Supplying inaccurate or misleading information or withholding of information	\$3,000 up to \$20,000
Section 22	Failure to notify the Board of changes to registration information	\$1,000 up to \$10,000
Section 23	Failure to maintain any records required to be maintained	\$1,000 up to \$10,000

Passed by the House of Assembly this 11<sup>th</sup> day of October, 2012.

Ingrid Moses-Scatliffe,  
Speaker.

Phyllis Evans,  
Clerk of the House of Assembly.

## LEGAL REPORT

Non-profit organisations play an essential and complementary role in the social and economic development of society. Their efforts complement the activity of the government and business sectors in providing essential services, comfort and hope to those in need. The ongoing international campaign against terrorist financing has demonstrated that terrorist organisations exploit the non-profit sector to raise funds, among other things.

The Government of the Virgin Islands recognises this fact and seeks to facilitate the work and contribution of non-profit organisations through enactment of an appropriate legal and regulatory framework that provides stability and certainty for non-profit organisations and increases public confidence in the work and programmes of such organisations. The Government of the Virgin Islands will support initiatives that increase public understanding of the role and contributions of non-profit organisations.

By creating an environment in which nonprofit organisations can flourish, and freely and independently engage in activities for the benefit of the general public the Government of the Virgin Islands seeks to increase the understanding of philanthropy in the Virgin Islands, thereby promoting the betterment of Virgin Islands society, while protecting the non-profit sector from terrorist abuse.

In 2012, the FATF published its revised International Standards on Combating Money Laundering and the Financing of Terrorism and Proliferation. The FATF Recommendations are used by more than 180 governments around the world to guide their efforts to combat terrorist financing and money laundering and provide a benchmark to assess each country's terrorist financing and anti-money laundering regime through a process of mutual evaluations.

Recommendations 8 of the FATF International Standards on Combating Money Laundering and the Financing of Terrorism and Proliferation concerns non-profit organisations. It requires countries to review the adequacy of laws and regulations that relate to entities that can be abused for the financing of terrorism.

It is against this background that the proposed Non-Profit Organisations Act, 2012 is premised. The Act seeks to register and monitor the operations of non-profit organisations in the Virgin Islands.

This Act consists of six Parts.

Part I provides for preliminary provisions. Section 1 provides for the short title and commencement of the legislation. Section 2 deals with the definitions of various terms for the purposes of the legislation.

Part II provides for the establishment of the non-profit organisation Registration Board and the functions of the Board.

Section 3 provides for the establishment of a Non-profit Organisation Registration Board and the membership of the Board which shall comprise seven persons appointed by the Minister.

Section 4 provides for the functions of the Non-Profit Organisation Registration Board.

Section 5 provides for the tenure of office of the members of the Board.

Section 6 provides for the meetings, quorum and conduct of meetings the Board.

Section 7 provides for the resignation of members of the Board other than *ex officio* members.

Section 8 provides for a member of the Board to disclose any interest in a matter to be decided by the Board in advance of any consideration of the matter.

Section 9 provides that members who are not public officers may be paid a stipend as determined by the Minister, acting on the advice of the Minister of Finance.

Part III of the Act provides for the registration of non-profit organisations.

Section 10 provides for a public officer to be designated the Registrar of non-profit organisations in the Virgin Islands.

Section 11 requires non-profit organisations to register before they commence operations in the Virgin Islands.

Section 12 provides non-profit organisations to apply to the Board, through the Registrar, for registration. It would also provide for the documents to be lodged with the application.

Section 13 provides for the duration and renewal of the certificate of registration.

Section 14 authorises the Board to refuse to register or renew the registration of a non-profit organisation where the applicant does not comply with requirements of the Act or where the organisation is being used, or likely to be used for financing terrorism or money laundering. It also provides for an organisation to appeal to the Minister, within twenty-one days, decisions of the Board.

Section 15 provides for deregistration of non-profit organisations by the Agency where the non-profit organisation has contravened any provision of the law or

where a person authorised by the non-profit organisation requests the Agency to deregister it.

Section 16 requires the Registrar to maintain a register of non-profit organisations registered in accordance with the Act and to forward a list of all registered and deregistered organisations to the Agency.

Section 17 provides for the Registrar to publish annually, the names of all registered non-profit organisations as well as, the organisations which were deregistered.

Part IV of the Act provides for the supervision and monitoring of non-profit organisations.

Section 18 provides for the Financial Investigation Agency to be responsible for the supervision and monitoring of non-profit organisations in the Territory, in so doing Agency would monitor compliance by non-profit organisations with registration requirements and the relevant legislation, as well as monitor the effectiveness of the relevant legislation in protecting non-profit organisations against use for terrorist financing.

Section 19 gives the Agency the power, where it reasonably believes that there is a risk of terrorist financing or money laundering activities being carried out by an organisation to enter the premises of a non-profit organisation to inspect records and to take copies or extracts of the records which are relevant to the performance of its functions.

Section 20 gives power to the Agency to institute an inquiry, for purposes of carrying out its functions, where it reasonably believes that there is a risk of terrorist financing or money laundering activities being carried out by the organisation.

The Agency is authorised to require a person who directs or controls the activities of a non-profit organisation to furnish specific information including the records required to be kept under the Act, for the purpose of assessing the extent to which a non-profit organisation is used or may be used in the future for terrorist financing or money laundering.

Section 21 provides that a person who gives the Agency information that is false or misleading or withholds relevant information from the Agency commits an offence and is liable to pay a penalty.

Part V of the Act provides for the obligations of registered non-profit organisations.

Section 22 requires organisations to notify the Board of any changes in information provided to the Board at the time of registration.

Section 23 requires non-profit organisations to maintain records of its purposes, objectives and activities, as well as financial records explaining its transactions within and outside the Virgin Islands.

Section 24 provides for non-profit organisations to submit annual financial statements to the Board and where the gross annual income of the organisation exceeds two hundred-fifty thousand dollars the statements must be certified by a qualified accountant.

Part VI of the Act deals with miscellaneous provisions.

Section 25 gives the Agency the power to impose administrative penalties for failure to comply with the requirements of this Act.

Section 26 provides for the procedure to be followed by the Agency before imposing administrative penalties.

Section 27 provides for the matters to be taken into account in determining the appropriate administrative penalty.

Section 28 provides for an appeal to be made to the Minister where a person is aggrieved by a decision of the Agency to impose an administrative penalty.

Section 29 provides for a limitation period within which a penalty notice may be issued.

Section 30 provides for employees of the Agency and members of the Board to keep confidential any information relating to a non-profit organisation, except as required by a court or for the purposes of an inquiry under this Act.

Section 31 deals with transitional provisions. It would provide for existing non-profit organisations to register within ninety days of the Act coming into force. It would also provide for registered Friendly Societies to be treated as non-profit organisations for the purposes of this Act.

Section 32 provides for the Minister, after consultation with the Board, and on the approval of Cabinet to amend the schedules to the Act by Order.

Section 33 provides for the non-applicability of this Act to organisations licensed under the Banks and Trust Companies Act.

Section 34 provides a body corporate as well as officers of a body corporate to be liable for offence committed under the Act.

Section 35 gives the Minister power to make regulations for the better carrying into effect the provisions of the Act.

This Act was introduced in the House of Assembly on the 13<sup>th</sup> day of September, 2012, taken through its remaining stages and passed on the 11<sup>th</sup> day of October, 2012.

In my opinion, His Excellency the Governor may properly assent to this Act in the name and on behalf of Her Majesty.

Dr. Christopher P. Malcolm  
Attorney General

Date: October, 2012

**No. 1 of 2013**

**VIRGIN ISLANDS**  
**POLICE (AMENDMENT) ACT, 2013**  
**ARRANGEMENT OF SECTIONS**

*Section*

1. Short title.
2. Section 2 amended.
3. Part IIIA inserted.
4. Section 47 amended.
5. Section 88A inserted.
6. Section 95A inserted.
7. Schedule 2 inserted.

**I Assent**

**(Sgd.) Boyd McCleary, CMG, CVO,  
Governor  
24<sup>th</sup> April, 2013**

**VIRGIN ISLANDS**

**No. 1 of 2013**

An Act to amend the Police Act, (Cap. 165)

[Gazetted 23<sup>rd</sup> May, 2013]

ENACTED by the Legislature of the Virgin Islands as follows:

Short title.

**1.** This Act may be cited as the Police (Amendment) Act, 2013.

Section 2  
amended.

**2.** Section 2 of the Police Act (hereinafter referred to as “the principal Act”) is amended by inserting in their correct alphabetical order the following definitions:

“police dog” means a dog certified by the Commissioner as being a police dog for the purposes of this Act;

“police dog handler” means a member of the Force who at the material time

(a) is certified by the Commissioner as a police dog handler; and

(b) is performing his duties as a police dog handler;”.

Part IIIA  
inserted.

**3.** The principal Act is amended by inserting after Part III the following new Part IIIA;

**“PART IIIA  
POLICE DOGS, PROTECTION OF  
POLICE DOGS AND THEIR HANDLERS**

Power of  
Commissioner to  
certify dog  
handlers.

**32A.** The Commissioner may, in writing, certify a member of the Force to be a dog handler for purposes of this Part.

Police dogs may  
accompany  
police dog  
handlers.

**32B.** (1)The Commissioner may acquire a police dog if he considers it necessary for the maintenance and preservation of law and order or for the prevention or detection of crime.

(2) A police dog under the control of a police dog handler may enter and be in any place, vehicle or vessel that the police dog handler as a member of the Force may lawfully enter or be upon.

(3) The Commissioner and a police dog handler in charge of a police dog shall not be liable in any way by reason only that the police dog entered or was in any place, vehicle or vessel in accordance with subsection (2).

Obstruction of  
police dog  
constitutes  
obstruction of  
police dog  
handler.

**32C.** A person who

- (a) obstructs or hinders; or
- (b) aids or incites another to obstruct or hinder;

a police dog working under the control of a police dog handler while the police dog handler is performing his duties as a member of the Force obstructs or, as the case may be, hinders that officer.

Killing or  
injuring police  
dogs.

**32D.** (1) A person shall not kill, maim, wound or otherwise injure a police dog or attempt so to do unless the person has lawful excuse for so doing.

(2) A person who contravenes subsection (1) commits an offence and is liable on summary conviction to a fine not exceeding ten thousand dollars or imprisonment for a term not exceeding two years or both.

(3) A court which convicts a person of an offence under this section may, in addition to any penalty which may be imposed, order the person to pay to the Commissioner a reasonable sum for

(a) the treatment, care, rehabilitation and retraining of the police dog concerned; and

(b) where it is necessary to replace the police dog, the acquisition and training of its replacement.

No. 14 of  
2001

(4) The provisions of the Dogs (Injury to Persons, Cattle and Poultry) Act, 2001 do not apply in respect of a police dog.

Evidentiary  
provisions.

**32E.** In any proceedings a document purporting to be signed by the Commissioner stating that at a specified period that

(a) a person specified therein was a police dog handler; or

(b) a dog identified therein was a police dog, shall, upon its production in that proceedings, be evidence and, in the absence of evidence to the contrary, conclusive evidence of the matters contained in the document.

Power of arrest.

**32F.(1)** A member of the Force who has reasonable grounds to believe that a person has committed an offence under this Part may, without a warrant, arrest the person and take that person as soon as practicable before the Magistrate to be dealt with according to law.

(2) This section does not limit the power and authority to proceed against an offender by way of complaint and summons under any applicable law.

Power to require  
name, address  
etc.

**32G.(1)**A member of the Force who

(a) finds a person committing or reasonably suspects the person of having committed an offence or being about to commit an offence under this Part; or

(b) is making inquiries or investigations with a view to establishing whether or not an offence under this Part, has been committed or is about to be committed by a person and

believes on reasonable grounds that such information will assist in the conduct of the investigations; or

(c) arrests a person in the exercise of a power conferred by this Part;

may require the person to state such particulars of the person's name and address as required by that officer and, where that officer suspects on reasonable grounds that any particular stated is false, may require evidence as to the correctness thereof.

(2) A person required under this section to state any particulars who

(a) refuses or otherwise fails to state any of those particulars; or

(b) states any false particular;

commits an offence and is liable on summary conviction to a fine not exceeding two thousand dollars or imprisonment for a term not exceeding one year or both.

(3) A person required under this section to produce evidence as to the correctness of any particulars who

(a) fails to produce that evidence;

(b) produces false evidence with respect to those particulars;

commits an offence and is liable on summary conviction to a fine not exceeding two thousand dollars or to imprisonment for a term not exceeding one year or both.”.

4. The principal Act is amended in section 47 by

(a) deleting the word “ good conduct pay”; and

(b) by deleting the word “ rent” and substituting therefor the words “National Security”.

Section 47  
amended.

**5.** The principal Act is amended by inserting the following new section 88A:

“Additional services and fees chargeable.

**88A.** (1) A person who requires

(a) the issue of

(i) a visa waiver;

(ii) a police certificate;

(iii) a police report;

(b) fingerprinting,

shall apply to the Commissioner in the prescribed form.

(2) An application under subsection (1) (a) (i) and (ii) shall be accompanied by

(a) the full name, address and occupation of the applicant, including particulars of any aliases and change of name by marriage or deed poll;

(b) the applicant’s valid passport;

(c) one passport size photo;

(d) the prescribed application fee,

and any other relevant information which the Commissioner may reasonably request.

(3) An application under subsection (1) (a) (iii) shall be accompanied by the prescribed application fee.

(4) An application under subsection (1) (b) shall be accompanied by

(a) the applicant’s valid passport;

(c) the prescribed application fee.

(5) Where a person provides false information on an application under this section, that person commits an offence and is liable on summary conviction to a fine not exceeding three thousand dollars or to imprisonment for a term not exceeding one year, or to both.

(6) Upon a satisfactory application being made, the relevant document shall be issued in the prescribed form.

(7) Where fingerprints have been taken pursuant to an application under this section, such fingerprints shall be destroyed or handed over to the applicant at his or her option.

(8) The fees received by the Commissioner pursuant to this section shall be paid into the Consolidated Fund.”.

6. The principal Act is amended by inserting a new section 95A as follows: Section 95A inserted.

“ Amendment of **95A.** (1) The Governor may by Order, amend Schedule 1. Schedules.

(2) The Cabinet may by Order amend, Schedule 2.”.

7. The principal Act is amended by renaming the existing Schedule as “Schedule 1” and by adding the following new Schedule 2: Schedule 2 inserted.

“Schedule 2

[Section 88A]

**Fees for Additional Services**

Issue of visa waiver	<b>\$30.00</b>
Issue of a police certificate	<b>\$20.00</b>
Issue of a police report	<b>\$20.00</b>
Fingerprinting	<b>\$30.00.”.</b>

Passed by the House of Assembly this 8<sup>th</sup> day of April, 2013.

(Sgd.) Ingrid Moses-Scatliffe,  
Speaker.

(Sgd.) Phyllis Evans,  
Clerk of the House of Assembly.

**VIRGIN ISLANDS**

**VIRGIN ISLANDS CLIMATE CHANGE TRUST FUND ACT, 2015**

**ARRANGEMENT OF SECTIONS**

*Section*

**PART I  
PRELIMINARY**

1. Short title and commencement.
2. Interpretation.
3. Functions of the Minister.

**PART II  
ESTABLISHMENT, OBJECTIVES FUNCTIONS AND STATUS OF THE TRUST**

4. Establishment of the Trust.
5. Objectives of the Trust.
6. Functions and duties of the Trust.
7. Powers of the Trust.
8. Acceptance of contributions.
9. Dedication to non-political purpose.
10. Status of the Trust.
11. Seal of the Trust.

**PART III  
MANAGEMENT AND ADMINISTRATION OF THE TRUST**

12. Establishment of the Board of Trustees.
13. Appointment of non-government members of the Board.
14. Functions and powers of the Board.
15. Terms of office.
16. Resignation and removal.
17. Vacancy in office.
18. Filling of vacancy.
19. Remuneration.
20. Immunity from suit.
21. First meeting.
22. Secretariat of the Trust.
23. Appointment and duties of the Chief Executive Officer.
24. Application for funding.
25. Qualifying recipients.
26. Review committees.
27. Disclosure of interests.

**PART IV  
OPERATIONS OF THE TRUST**

28. Trust to conduct activities in accordance with business plan.
29. Consideration of business plan.
30. Amendment of plan.
31. New plan to be prepared at certain intervals.

**PART V  
FINANCIAL MATTERS OF THE TRUST**

32. Establishment of the Trust Fund.
33. Funds and resources of the Trust.
34. Financial year.
35. Use of Trust monies.
36. Procedures with respect to disbursement of funds.
37. Investment of Trust monies.
38. Borrowing funds.
39. Trust to establish accounts.
40. Asset management.
41. Accounts and audit.
42. Annual budget.
43. Limits on administrative expenses.
44. Recovery of money by Trust.

**PART VI  
MISCELLANEOUS**

45. Annual Report.
46. Dissolution of the Trust.
47. Review of Act.
48. Power to amend schedules.
49. Regulations.

SCHEDULE 1  
SCHEDULE 2  
SCHEDULE 3

**I ASSENT**

(Sgd.) John S. Duncan, OBE,  
Governor.  
15<sup>th</sup> May, 2015

**VIRGIN ISLANDS**

**No. 12 of 2015**

An Act to provide for the establishment and management of the Virgin Islands Climate Change Trust Fund and for other connected matters.

[Gazetted 22<sup>nd</sup> May, 2015]

ENACTED by the Legislature of the Virgin Islands as follows:

**PART I  
PRELIMINARY**

Short title and commencement.

**1.** This Act may be cited as the Virgin Islands Climate Change Trust Fund Act, 2015 and shall come into force on a date the Minister may, by Notice published in the *Gazette* appoint.

Interpretation.

**2.** (1) In this Act, unless the context otherwise requires,

“administrative expenses” means Secretariat staff salaries, legal and audit fees and other expenses, including costs related to the operations of the Trust, as approved by the Board;

“Asset Manager” means the person appointed pursuant to section 40;

“biodiversity” means the variability among living organisms from all sources, including terrestrial, marine and other aquatic ecosystems and the ecological complexes of which they are part, and includes diversity within species and between species and of ecosystems;

“Board” means the Board of Trustees of the Trust appointed under section 12;

“Chairperson” means a person appointed by the Minister to chair meetings of the Board and includes a person who temporarily acts in that capacity;

“climate change” means a change of climate which is attributed directly or indirectly to human activity that alters the composition of the global atmosphere and which is in addition to natural climate variability observed over comparable time periods;

“climate change adaptation” means any adjustment in natural or human systems in response to actual or expected climatic stimuli or their effects, which moderates harm or exploits beneficial opportunities, and includes various types of adaptation, including anticipatory and reactive adaptation, private and public adaptation, autonomous and planned adaptation, and disaster risk reduction measures;

“Climate Change Committee” means the Committee established by the Cabinet on the recommendation of the Minister;

“climate change mitigation” includes any anthropogenic intervention that can either reduce the sources of greenhouse gas emissions or enhance carbon sinks;

“Convention” means the United Nations Framework Convention on Climate Change concluded on the 9<sup>th</sup> of May, 1992;

“ecosystem” means a dynamic complex of plant, animal and micro-organism communities and their non-living environment, interacting as a functional unit;

“entity ordinarily resident in the Territory” means any agency or organisation, including Government and its agencies, private enterprise, registered associations, academia or non-governmental organisation, that carries out its principal business operations in the Territory;

“greenhouse gas” means atmospheric gases responsible for causing climate change, such as carbon dioxide (CO<sub>2</sub>), methane (CH<sub>4</sub>); nitrous oxide (N<sub>2</sub>O); hydrofluorocarbons (HFCs), perfluorocarbons (PFCs) and sulphur hexafluoride (SF<sub>6</sub>);

“incremental costs of addressing climate change” means the full incremental costs of implementing measures that are covered by paragraph 1 of Article 4 of the Convention;

“low-carbon, climate-resilient development” means social, environmental and economic development that has a

minimal output of greenhouse gas (GHG) emissions into the environment while implementing appropriate climate change adaptation measures to address risks from climate change;

“Minister” means the Minister to whom responsibility for climate change is assigned;

“persons who belong to the Virgin Islands” has the same meaning as provided in Section 2 (2) of the Virgin Islands Constitution Order, 2007;

“Secretariat” means the Secretariat of the Trust established under section 22;

“Trust” means the Virgin Islands Climate Change Trust Fund established under section 4;

“Virgin Islands Climate Change Adaptation Policy” or “the Policy” means the Virgin Islands Climate Change Adaptation Policy: Achieving Low Carbon, Climate Resilient Development approved by Cabinet;

“vulnerable groups, communities and sectors” means any target group of individuals or businesses recognised as at risk from the impacts of climate change.

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Functions  
of the  
Minister.

**3.** (1) The Minister shall be responsible for reviewing and further developing the Virgin Islands Climate Change Adaptation Policy consistent with the purposes of this Act.

(2) In the exercise of his or her functions under this Act, the Minister shall consult with the Climate Change Committee.

## **PART II**

### **ESTABLISHMENT, OBJECTIVES, FUNCTIONS AND STATUS OF THE TRUST**

Establishment  
of the Trust.

**4.** (1) There is established by this Act a body to be known as the Virgin Islands Climate Change Trust Fund.

(2) The Trust shall be a body corporate with perpetual succession and a common seal, capable of entering into contracts, acquiring, holding and disposing of real and personal property, of suing and being sued and of doing and performing such acts as a body corporate may legally perform.

Objectives of  
the Trust.

**5.** The Trust shall

(a) seek to facilitate a link between domestic and international climate change finance sources with national climate change investment strategies;

- (b) serve as a catalyst to attract investments to implement a range of priority climate change adaptation and mitigation projects and programmes in the Virgin Islands; and
- (c) serve as the National Implementing Entity for the Virgin Islands, being the official organisation designated on behalf of the Territory under the Convention to receive direct financing from any external source in order to carry out climate change adaptation and climate change mitigation projects and programmes in the Virgin Islands.

**6.** (1) The functions of the Trust are

- (a) to establish and administer the governance, fiduciary management and administrative arrangements to finance the activities of the Trust;
- (b) set annual funding priorities informed by any Strategy and Implementation Plan under the Policy;
- (c) to finance innovative climate change initiatives;
- (d) to support capacity building, education, research and studies related to the incremental costs of climate change;
- (e) to raise public knowledge, appreciation and understanding of climate change impacts affecting the Territory;
- (f) to support measures related to disaster risk reduction and response to natural disasters associated with climate change;
- (g) to support actions to build ecosystem resilience to the impacts of climate change;
- (h) to provide support to reduce the vulnerability of the most vulnerable groups, communities and sectors which may be impacted by climate change;
- (i) to provide financial support, during periods of disaster response and recovery and rehabilitation, for disaster relief to vulnerable groups, communities and sectors when the Trust considers it appropriate to do so;
- (j) to utilise its funds to support both climate change adaptation and climate change mitigation projects and programmes with a focus on supporting priority adaptation actions across the relevant sectors, within the scope of

Functions and duties of the Trust.

- (i) enhancing the resilience and natural adaptive capacity of the Territory's natural resources including terrestrial ecosystems, coastal and marine ecosystems, fisheries resources and biodiversity, to climate change impacts;
- (ii) assisting the fisheries sector in adapting to the impacts of climate change by encouraging sustainable fisheries practices, and training and investing in new technologies in sustainable fisheries management;
- (iii) strengthening food security by expanding local agricultural production and increasing its resilience to climate change and climate change induced hazards;
- (iv) creating and maintaining a sustainably managed, diverse, low carbon and environmentally responsible tourism industry that is more resilient to climate fluctuations, disaster events and market changes;
- (v) minimising the vulnerability of existing and new critical infrastructure and settlements to climate change impacts;
- (vi) encouraging wide and adequate insurance coverage for natural hazard events throughout the Territory and ensure adequate resources to recover from natural disasters exacerbated by climate change including but not limited to hurricanes, storm surges and floods;
- (vii) enhancing the capacity of the health care sector and the public to deal with climate change related health impacts;
- (viii) promoting water conservation and efficiency, and enhancing the capacity of the water supply system to handle drought and severe weather events;
- (ix) increasing the resilience of the Territory to heavy rain and flood events;
- (x) promoting energy conservation and efficiency, and encouraging use of renewable energy to reduce the national energy bill and carbon emissions while increasing energy security.

- (k) to do or cause to be done such other things as the Trust consider expedient or necessary in carrying out the purpose of this Act.

(2) In carrying out its functions the Trust shall act in accordance with the policies of the government designed to manage, protect, enhance and conserve the environment from the effects of climate change.

(3) The Board may from time to time receive inputs from the Climate Change Committee on any emergent priorities.

(4) The Trust shall, in furtherance of its functions discharge the following duties:

- (a) raise funds, from domestic and international sources;
- (b) negotiate, enter into, monitor and enforce compliance with international and domestic funding agreements;
- (c) administer, disburse and monitor the use of such funds as are appropriate to its activities and ensure that the most beneficial use is made of such funds;
- (d) ensure that all entities ordinarily resident in the Territory have equal access to funding, with special consideration being given to vulnerable groups, communities and sectors, in addition to non-governmental organisations and community-based organisations;
- (e) maintain complete financial records of all financial transactions of the Trust;
- (f) maintain a complete record and account of all activities of the Trust and provide to the public, free access to information concerning the work of the Trust, except where the Trust may determine that it is necessary to impose a fee for access to specified information.

Powers of the Trust.

**7.** The Trust shall

- (a) invest money of the Trust not immediately required for the furtherance of its objectives in the same way as trustees may invest trust funds in securities within the scope of investments authorised under the Trustees Ordinance 1961;
- (b) pay all or any part of its Funds into a deposit or savings account of a bank carrying on business in the Territory, with all interest if any, payable in respect thereof applied as income;

- (c) borrow from time to time from a bank on the security of its investment to an amount not exceeding in the aggregate the sum estimated to be the total of its investments and the income therefrom;
- (d) act as trustee of money or other property vested in the Trust;
- (e) use money of the Trust to further the objects of the Trust or to meet the Trust's commitments under any agreement to which the Trust is a party;
- (f) make and enter into contracts or other arrangements for the carrying out of works, the performance of services or the supply of goods or materials;
- (g) engage in strategic planning for the Trust;
- (h) approve all procedures for grants and other funding requests supported by the Trust;
- (i) review and approve requests for grants and other funding activities supported by the Trust in accordance with the provisions of this Act;
- (j) decide on issues concerning the employment conditions of the Secretariat and staff of the Trust, including but not limited to their hiring, functions, terms of employment and dismissal, their supervision, performance review, and benefits to be paid;
- (k) approve, periodically review and modify as necessary, the operational manual and annual work plan for the Trust;
- (l) authorise the opening of bank accounts for the Trust;
- (m) contract a suitable asset manager, investment consultant, custodian, registered agent or any other professional service provider that is engaged in the interest of sound operation of the Trust;
- (n) control the use of funds of the Trust;
- (o) appoint or replace an independent outside auditor for the Trust.

**8.** (1) The Trust may accept donations from lawful sources subject to such conditions as may be imposed by the donor if doing so would not

Acceptance of contributions.

- (a) cause the Trust to violate any provision of this Act; and

(b) be reasonably expected to impair the Trust's ability to achieve its purpose.

(2) Contributions to the Trust designated for specific projects or made subject to specific conditions shall be preserved and utilised solely for the designated purpose.

**9.** (1) Notwithstanding any other provision of this Act, the Trust shall not engage in any activities or exercise any powers that are not in furtherance of its purpose.

Dedication to non-political purpose.

(2) The Trust shall not attempt to influence legislation other than in a manner consistent with its purpose.

(3) The Trust shall not participate or intervene in any political campaign on behalf of or in opposition to any candidate for political office or any political party.

**10.** (1) The Trust Fund is not a Government fund of the Territory and the capital and revenue of the Trust is not public money of the Virgin Islands and as such not subject to control and accounting except as provided by this Act.

Status of the Trust.

(2) The Trust is exempt from paying taxes, including but not limited to

(a) stamp duty;

(b) customs duty;

(c) trust duty under the Trustee Act .

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(3) The Trust

(a) is not entitled to any immunity or privilege in the Territory;

(b) cannot render the Government of the Virgin Islands liable for any debts, liabilities or obligations of the Trust;

(c) is not a public authority for any purpose and is taken not to have been constituted or established for a public purpose.

**11.** The seal of the Trust shall

Seal of the Trust.

(a) be kept in the custody of the Chairperson; and

(b) be affixed to all documents issued by the Board in the presence of the Secretary and at least one other member of the Board and shall be authenticated by the signatures of the Secretary and that member.

**PART III**  
**MANAGEMENT AND ADMINISTRATION OF THE TRUST**

Establishment  
of the Board  
of Trustees.

**12.** (1) There is established by this Act a Board of Trustees of the Trust (in this Act referred to as the “Board”).

(2) The Board shall comprise the following persons:

- (a) the Permanent Secretary of the Ministry of Natural Resources and Labour, *ex officio*;
- (b) the Financial Secretary, *ex officio*;
- (c) the Chief Executive Officer of the Trust or his or her designate, *ex officio*;
- (d) six other members appointed with the approval of Cabinet, by the Minister by instrument in writing as follows:
  - (i) a private sector representative of the tourism industry;
  - (ii) a private sector representative of the financial services sector;
  - (iii) a private sector representative of any sector responsible for making contributions to the Fund, not already represented on the Board;
  - (iv) a representative from an academic or research organisation ordinarily resident in the Territory;
  - (v) a representative from a non-governmental organisation or community-based organisation ordinarily resident in the Territory; and
  - (vi) an individual ordinarily resident in the Territory, who may possess relevant knowledge, expertise or experience related to the purposes of the Act.

(3) In appointing persons under section (2)(d), the Minister shall be satisfied that such persons have

- (a) the necessary experience and involvement in the sector for which they seek appointment;
- (b) no conflict of interest in regards to their position on the Board, including related to political affiliation;
- (c) the capacity to do one or more of the following:

- (i) attract financial support for the Trust;
- (ii) ensure effective financial management of the Trust;
- (iii) provide sound and effective decision-making leading to the attainment of identified functions of the Trust; and
- (iv) provide effective leadership and direction to the Board.

(4) The Minister shall ensure that the composition of the Board has a simple majority of persons who belong to the Virgin Islands.

(5) The Minister shall appoint a chairperson and a deputy chairperson from among the members of the Board.

(6) The Chief Executive Officer shall serve as the Secretary of the Board.

(7) Schedule 1 shall have effect in relation to the procedure for meetings of the Board. Schedule 1

**13.** (1) The Minister shall appoint the persons referred to in section 12 (2) after Appointment of non-government members of the Board.

- (a) the public advertisement of the qualifications and other criteria required for eligibility to be appointed to the Board; and
- (b) affording the public the opportunity to nominate candidates for appointment to the Board.

(2) For the purposes of subsection (1)(a), the Minister shall cause an advertisement inviting written applications and nominations of persons for appointment to the Board to be published in the *Gazette* and in at least one newspaper published and circulating throughout the Territory and the advertisement shall specify the following:

- (a) the number of non-government members to be appointed to the Board;
- (b) the particular capacity or capacities that an appointee or a nominee will be required to have, including affiliation to one of the sectors or organisations mentioned in section 12 (2) (d);
- (c) the supporting documents to be provided by each applicant or nominee, which shall include

- (i) three references;
  - (ii) a recent police report attesting to whether the applicant or the nominee has any criminal record;
  - (iii) if the applicant or the nominee is a person who belongs to the Virgin Islands, proof of their belonger status; and
  - (iv) the nomination or a letter of support from a registered organisation operating in the relevant sector referred to in section 12 (2)(d);
- (d) the closing date for applications and nominations which shall be at least twenty-eight days after the date of the advertisement;
  - (e) the address to which applications and nominations are to be sent; and
  - (f) that nomination shall not be accepted unless the nominee's written consent to the nomination is forwarded with the nomination.

(4) After the close of the application process, the Minister shall disclose to the public the names of all applicants and the sectors that they wish to represent on the Ministry's website.

(5) Any member of the public who may wish to submit written comments to the Ministry on the suitability of any applicant or nominee may do so within a period of thirty days after applications and nominations have been closed.

**14.** (1) The Board shall have executive control and management of the affairs of the Trust, and shall exercise and perform the functions, powers and duties of the Trust on its behalf, and shall be responsible for its effective and efficient administration.

Functions and powers of the Board.

(2) The Board may appoint such committees or advisory bodies as it thinks fit on such terms and conditions as it may determine, to assist in the performance of its functions.

(3) The Board may engage consultants for the purpose of obtaining expert advice as it considers necessary in the execution of its functions.

(4) The Board shall develop an operational manual which provides generally for the procedures which shall guide its operations and specifically for the matters set out in Schedule 2.

Schedule 2

(5) The Board may delegate any of its functions, other than this power of delegation, to the Chief Executive Officer or any other member of the staff of the Trust.

(6) Any act, matter or thing done in the name of, or on behalf of, the Trust by the Board is taken to have been done by the Trust.

**15.** (1) A member shall hold office for a period not exceeding three years, but is eligible for re-appointment, if otherwise qualified. Term of office.

(2) Notwithstanding the provisions of subsection (1), appointment of non Government members shall be staggered to ensure that no more than two non-government representatives are re-appointed in any calendar year.

**16.** (1) A member of the Board may resign at any time by notice in writing addressed to the Minister, and such resignation becomes effective upon receipt by the Minister, unless specified to take effect at a specified date. Resignation and removal.

(2) The Minister may, with the approval of Cabinet, revoke the appointment of a member of the Board, other than a government member if the Minister is satisfied that the member

- (a) is guilty of misconduct;
- (b) failed to attend four (4) consecutive meetings of the Board, of which the member had notice except where leave was granted by the Board, or where the member is excused by the Board for having been absent from those meetings; or;
- (c) knowingly failed to notify the Board of a conflict of interest;
- (d) no longer fulfills the conditions of appointment as set forth in section 12; or
- (e) acts in a way that is detrimental to the Trust.

**17.** (1) The office of a member of the Board becomes vacant if the member Vacancy in office.

- (a) dies; or
- (b) completes a term of office and is not re-appointed; or
- (c) resigns the office by giving written notice addressed to the Minister; or
- (d) is removed from office by the Minister; or
- (e) is an undischarged bankrupt or has compounded with his or her creditors; or

- (f) has been certified by a medical practitioner to be of unsound mind; or
- (g) is convicted of an offence involving dishonesty that is punishable by imprisonment for six months or more, or is convicted of any offence that is punishable by imprisonment for twelve months or more, or is convicted in another country of an offence that, if committed in the Territory, would be an offence so punishable; or
- (h) in the case of a member referred to in section 12 (2) (d), ceases to be qualified for appointment.

Filling of vacancy. **18.** If any vacancy occurs in the membership of the Board such vacancy shall be filled by the appointment of another qualified person who shall hold office for the remainder of the period for which the previous member was appointed.

Remuneration **19.** A member of the Board who is not a public officer shall be paid such remuneration as the Cabinet may determine and the payments shall be made out of the funds of the Trust.

Immunity from suit. **20.** No suit shall lie against a member of the Board or a person acting under the direction of the Board for an act done in good faith in the execution of his or her functions under this Act.

First meeting. **21.** The Minister shall, no later than ninety days after the commencement of this Act, call the first meeting of the Board in such manner as the Minister thinks fit.

Secretariat of the Trust. **22.** (1) There shall be a Secretariat for the Trust comprising a Chief Executive Officer, and such other staff as may be necessary to enable the Trust to exercise its functions.

(2) The Secretariat shall be responsible for providing administrative support to the Board, which shall include, *inter alia*:

- (a) developing the Business Plan pursuant to the requirements of section 28;
- (b) developing an operational manual in accordance with such direction as the Board may specify;
- (c) preparing an annual work plan including a cash flow management system that shall ensure timely disbursement and access to money as needed, both by the Trust and by projects and programmes supported by the Trust;
- (d) identifying a suitably qualified Asset Manager pursuant to the provisions of section 40;

- (e) receiving all applications for funding by the Trust and ensuring that all documentation is complete and accurate;
- (f) receiving and reviewing reports from persons and organisations implementing activities supported by the Trust;
- (g) ensuring that all projects and programmes are implemented in accordance with legal, technical and financial requirements of the Board;
- (h) establishing, implementing and monitoring enforcement of standards and procedures to ensure compliance with social and environmental safeguards for all activities of the Trust in accordance with the Virgin Islands Constitution Order 2007;
- (i) producing periodic and annual reports of the Trust;
- (j) maintaining a central public database of all past and ongoing projects and programmes funded by the Trust including information concerning their relationship to the Policy and other important project details;
- (k) maintaining a Trust Fund website to provide information on the operations and disbursements of the Trust;
- (l) monitoring, evaluating and verifying projects and programmes supported by the Trust and reporting on outcomes to the Board;
- (m) ensuring that un-coordinated duplication of activities supported by the Trust is avoided;
- (n) developing mechanisms to replicate successful projects and programmes supported by the Trust;
- (o) seeking and obtaining sources of funding for the Trust.

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(3) The Board shall fix the salary, wages and other conditions of its Secretariat staff.

Appointment  
of the Chief  
Executive  
Officer and  
other staff.

**23.** (1) The Board shall appoint a Chief Executive Officer on such terms and conditions as the Board may determine.

(2) The Chief Executive Officer shall

- (a) be responsible for carrying on the day-to-day affairs of the Board and implementation of its strategic direction as directed by the Board;
- (b) be responsible for the economical and efficient administration of the affairs of the Trust; and
- (c) have custody of the records and books of the Trust, other than books of account;
- (d) exercise all other such authority and perform such functions as may be determined by the Board.

(3) The Board shall appoint such number of other staff as it considers necessary and proper for the administration, management and performance of the Trust.

Application for funding.

**24.** (1) Applications for support under the Trust shall be submitted in response to periodic calls for proposals by the Trust.

(2) A person who desires to receive funding from the Trust in support of a project or programme shall submit an application to the Board in the manner and form determined by the Board, accompanied by such documents as may be required.

(3) The Board shall make final decisions on which application for funding by the Trust are to be supported taking into consideration the funding priorities of the Trust.

Qualifying recipients.

**25.** Applications for support under the Trust shall be submitted by an entity ordinarily resident in the Territory which may partner with entities that are not ordinarily resident in the Territory.

Review committees.  
Schedule 3

**26.** (1) Where the Board is satisfied that an application is in order, the Board shall appoint a committee to be known as a Review Committee from among the persons specified in Schedule 3 and who possess the relevant knowledge and expertise to assess the merits of the application under consideration.

(2) The Review Committee may co-opt other expertise, as may be necessary, to satisfactorily perform its functions.

**27.** (1) Where a matter is to be decided by a Body at a meeting, any member present at the meeting who has an interest in the matter shall, at that meeting, disclose the nature of the interest in advance of any consideration of the matter.

Disclosure of interests.

(2) Where a member discloses an interest under this section

- (a) the disclosure shall be recorded in the minutes of the meeting; and

- (b) the member shall not, unless that Body otherwise determines
  - (i) be present during any deliberations by that Body on that matter; or
  - (ii) take part in any decision of that Body relating to the matter.

(3) In this section “Body” means the Board or any committee or other body set up by the Board in exercise of its functions under this Act.

(4) Failure to make a disclosure under this section shall invalidate any decision concerning the matter in which the member has an interest.

#### **PART IV OPERATIONS OF THE TRUST**

**28.** (1) The Board shall conduct its activities, as far as is practicable, in accordance with a business plan prepared in accordance with this Act.

Trust to conduct activities in accordance with business plan.

(2) The Board shall, no later than one year after the commencement of the Act, prepare and deliver to the Minister a draft business plan specifying the following:

- (a) viable fundraising options for the Trust, taking into consideration options presented in the Virgin Islands Climate Change Adaptation Policy on financing options including, but not limited to, acquiring proportional access to the international aviation industry carbon levy charged to passengers departing to the Virgin Islands from European airports;
- (b) activities to be undertaken to mobilise funds for the Trust;
- (c) proposed investment policy and strategy in order to generate long-term sustainable financing for carrying out the objectives of the Fund;
- (d) projected flow of funds that will accrue to the Trust;
- (e) the strategy that the Trust proposes to adopt for the following five years to further its objectives;
- (f) the annual budget required for the following five years for the Trust to carry out its objectives;
- (g) the strategy for efficiently utilising the funds of the Trust;
- (h) the criteria that the Trust will meet when entering into funding agreements and parameters for accepting funding;

- (i) the performance indicators by which the Trust's achievement of its objectives are to be measured;
- (j) the remuneration and allowances, if any, to be paid to the members of the Board, the Secretariat and the Review Committee.

(3) The Business Plan prepared pursuant to this section shall be consistent with

- (a) the evolving funding priorities based on the Virgin Islands Climate Change Adaptation Policy and any national energy policy that may be approved; and
- (b) established criteria to ensure that the funds of the Trust are effectively distributed in a coordinated approach to achieve low-carbon, climate-resilient development within the Territory.

Consideration of business plan.

**29.** (1) The Minister, in consultation with the Minister for Finance shall, within sixty days of receipt of the draft business plan, endorse the draft business plan if he is satisfied that it complies with the requirements of this Act or refuse to endorse the business plan.

(2) Where the Minister refuses to endorse the business plan the Minister shall return the plan to the Trust and shall notify the Trust in writing of the refusal, giving reasons for the decision and informing the Trust that the plan may be revised and resubmitted.

(3) Where no decision is made within sixty days of receipt of the business plan, the business plan shall be deemed to have been endorsed by the Minister, in consultation with the Minister for Finance.

Amendment of plan.

**30.** The Board may amend the business plan with the approval of the Minister, acting in consultation with the Minister of Finance.

New plan to be prepared at certain intervals.

**31.** (1) The Board shall prepare a new business plan at least six months before the expiry of its existing business plan.

(2) Nothing in this section prevents the Board from preparing new business plans at more frequent intervals than those required by subsection (1).

(3) If a new business plan is not endorsed before the expiry of the five years to which the business plan under which the Board is conducting its activities relates, the Board shall continue to conduct its activities in accordance with the priorities and strategies specified in that plan, in so far as is practicable, until the priorities and strategies specified in the new plan are endorsed.

**PART V**  
**FINANCIAL MATTERS OF THE TRUST**

- 32.** There is established a fund to be known as the Climate Change Trust Fund, referred to in this Act as the “Fund”. Establishment of the Trust Fund.
- 33.** (1) The funds and resources of the Trust shall comprise Funds and resources of the Trust.
- (a) gifts and bequests;
  - (b) donations;
  - (c) such monies as may be appropriated by the House of Assembly for the purposes of the Trust;
  - (d) any fees, levies, taxes and fines that are specifically allocated to the Trust;
  - (e) revenues from investments, proceeds from the sale, lease or transfer of tangible and intangible property, or other income derived from the assets of the Trust;
  - (f) proceeds from services provided by the Trust; and
  - (g) any other sources of revenue deemed appropriate by the Board.
- (2) The Board may reject any gifts, bequests, or donations that may be offered to the Trust.
- 34.** The financial year for the Trust shall be for the period commencing 1<sup>st</sup> July and ending 30<sup>th</sup> June in each year. Financial year.
- 35.** (1) The funds of the Trust shall be applied in accordance with this Act and in the payment of the following: Use of Fund monies.
- (a) expenses incurred or incidental to the administration and management of the Fund including,
    - (i) remuneration and other payments to the members of the Board, the Review Committee and any committees established pursuant to this Act;
    - (ii) salaries, remuneration, allowances, pensions, gratuities and other benefits of the staff of the Secretariat or other persons employed in or in connection with the activities carried on by the Trust;

(b) any other expenditure authorised by the Board and properly related to the objectives of the Trust.

(2) The Trust shall principally finance projects and programmes associated with the incremental costs of addressing climate change in order to minimise the threats and impacts of climate change.

(3) The Trust shall not be used to support the operational costs of Government, civil society or the private sector related to the implementation of the Virgin Islands Climate Change Adaptation Policy if such actions could reasonably be expected to be covered under the normal day-to-day business costs of Government, civil society or the private sector.

(4) No part of the earnings of the Trust shall inure to the benefit of any individual or political party, or be distributed to the Board, officers or other private persons except in accordance with this Act.

Procedures  
with respect  
to  
disbursement  
of funds.

**36.** (1) Disbursements of funds under the Trust shall be in accordance with the following principles:

- (a) subject to paragraph (b), there shall be no overall limit on granting of funds by sector, theme or class of recipient;
- (b) unless otherwise specified by the Board during any given year, no more than fifty percent of funds disbursed in any year may be accessed by Government agencies unless qualifying proposals from other applicants do not absorb the remaining funding capacity;
- (c) awards shall be based on priorities, demand and the meeting of criteria as specified by the Board, in addition to the report of the Review Committee;
- (d) upper funding limits shall be established for any single award and these may vary by recipient and activity type;
- (e) the Trust shall not implement any project or programme that it funds.

(2) The Trust may provide support subject to such terms and conditions it considers necessary.

**37.** (1) All monies which comprise the Trust Fund and which do not have to be used immediately to defray expenses of the Trust, shall be invested in such a manner as the Board considers fit to preserve the principal and achieve a reasonable rate of return.

Investment  
of Trust  
monies.

(2) The Board may either directly or through authorised agents, undertake investments pursuant to subsection (1), including the buying and selling of such securities or other obligations as the Board determines to be appropriate.

**38.** (1) Subject to such general or specific conditions as the Minister for Finance may specify, the Board may borrow such money as it considers necessary to discharge its functions.

Borrowing funds.

(2) Without limiting the generality of subsection (1), the Minister for Finance may specify conditions with respect to

- (a) the amount of a loan;
- (b) the sources of borrowing; and
- (c) the terms and conditions of a loan.

(2) The Board shall not pledge the assets of the Fund as security for any loan, without the written approval of the Minister for Finance.

**39.** (1) The Board shall establish, with one or more authorised deposit-taking institutions, such accounts as it thinks appropriate for the money received and expended by the Trust.

Trust to establish accounts.

(2) There shall be paid into the account of the Trust

- (a) all money received by or on account of the Trust;
- (b) all money directed to be paid into the accounts of the Trust by or under this or any other Act.
- (c) all interest received in respect of the investment of money belonging to the Trust;
- (d) all money borrowed by or advanced to the Trust.

(3) The money in the accounts of the Trust may, subject to the terms of any trust or condition affecting that money or any part of it, be applied for any one or more of the following purposes:

- (a) providing the remuneration of the members of the Board, the Secretariat and other staff of the Trust;
- (b) covering the administrative expenses and operating costs of the Trust;
- (c) discharging the liabilities incurred by the Trust in the exercise of its functions, including the provision of grants;

(d) any other purpose authorised by or under this or any other Act.

(4) No monies shall be paid out of the Trust's accounts except with the authority, and in accordance with any general or special directions, of the Board.

(5) The bank accounts of the Trust shall be subject to inspection by the Board.

Asset  
management.

**40.** (1) The Board shall appoint an internationally recognised Asset Manager to invest and manage the assets of the Trust.

(2) The Asset Manager shall be selected through a transparent and competitive public tender process from a list of qualified financial management individuals or organisations.

(3) The contract with the Asset Manager shall be for a term of no more than five years, but may be renewed subject to satisfactory performance as determined through an independent performance review commissioned by the Board.

(4) The Board shall pay the Asset Manager a management fee of no more than two percent of the value of the assets of the Trust under management by the Asset Manager.

(5) The Asset Manager shall oversee the investment of the Trust's assets and other financial activities as directed by the Board, including receiving and disbursing funds of the Trust, maintaining financial records, development and implementation of an investment strategy for funds of the Trust, financial reporting, fund management and provision of an overdraft or short term loan facility to cover cash flow needs, subject to the orders of the Board.

(6) The Asset Manager shall keep all funds of the Trust on deposit with banks or trust companies approved by the Board.

(7) The Asset Manager shall submit reports to the Board upon request.

(8) All accounts associated with the management of the Trust Fund shall be open at all times to the inspection of the Board.

(9) With approval of the Board, the Asset Manager may delegate certain functions of his or her office to employees of the Board, but he or she shall continue to be responsible for the proper performance of such functions.

**41.** (1) The Board shall keep proper accounts of all sums of money received and expended or invested in any form by the Board and of the matters in respect of which such receipts, expenditures or investments take place and the assets and liabilities of the Trust.

Accounts  
and audit.

(2) The accounts of the Trust shall be subject to inspection by the Board, the Minister, and the Minister of Finance, subject to reasonable restrictions which may be provided in the operational manual.

(3) The Board shall prepare or cause to be prepared quarterly financial statements which the Trust shall transmit to the Minister, the Minister of Finance and any interested party.

(4) The Board shall appoint an independent external auditor of internationally recognised standing and competence, approved by the Minister of Finance, to audit the financial accounts of the Trust annually.

(5) The Auditor appointed pursuant to subsection (4) shall verify the Trust's balance sheet and other financial accounts for each fiscal year and shall prepare a comprehensive, detailed written report in accordance with international standards for auditing.

(6) The Board shall make the Auditor's completed annual report publicly available and provide a copy of such report to the Minister and the Minister of Finance.

**42.** The Board shall, not later than the first day of April in each year, prepare in such form as the Minister and the Minister of Finance may direct, a budget for the next fiscal year which sets forth

Annual budget.

- (a) projected revenue of the Trust from all sources;
- (b) costs for Trust administration; and
- (c) costs of grants and other financial commitments to projects consistent with the Trust's purpose.

**43.** (1) Until completion of the Trust's first twelve month fiscal year, the Trust may use up to twenty percent (20%) of its annual budget for administrative expenses as determined by the Business Plan.

Limits on administrative expenses.

(2) In the Trust's second twelve month fiscal year, and in each fiscal year thereafter, the Trust shall use no more than fifteen percent (15%) of its annual budget to pay for administrative expenses as determined by the Business Plan.

Recovery of money by Trust.

**44.** Any fee or other money due to the Trust may be recovered by the Trust as a debt in a court of competent jurisdiction.

## PART VI MISCELLANEOUS

Annual report.

**45.** (1) As soon as practicable after the 30 June in each year, and in any event no later than the last business day in October of each year, the Trust shall

prepare and deliver to the Minister and the Minister of Finance a report of the activities of the Trust during the financial year.

(2) The report prepared pursuant to subsection (1) shall include copies of the audited financial statements and accounts of the Trust for the financial year to which the report relates and the auditor's report on the statements and accounts prepared by the auditor.

(3) The Minister shall forward the report delivered pursuant to subsection (1) to Cabinet for consideration and as soon as practicable thereafter cause a copy to be laid before the House of Assembly.

(5) The first report prepared pursuant to this section shall contain a report on the activities of the Trust from the date of commencement of this Act to the end of the first fiscal year immediately following that date.

Dissolution  
of the  
Trust.

**46.** (1) The Board may, by resolution, voluntarily dissolve the Trust in the following circumstances only:

- (a) in the event of bankruptcy of the Trust;
- (b) if the Trust's tax-exempt status provided for in section 9 is revoked; or
- (c) if it has become impracticable to achieve the objectives of the Trust.

(2) Where the Trust is dissolved pursuant to subsection (1), the assets of the Trust shall be distributed to any organisation which has as its purpose a charitable, educational or scientific purpose for the benefit of the public that is substantially similar to that of the Trust.

(3) For the purposes of subsection (2), the assets of the Trust shall not be distributed to any organisation that is affiliated with any government, Ministry or government agency.

Review of  
Act.

**47.** (1) The Minister shall periodically review this Act to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives.

(2) The review shall be undertaken as soon as possible after a period of five years from the commencement of this Act.

(3) The Minister shall within twelve months after the end of the period of five years referred to in subsection (2) table the report of the review of the Act.

**48.** The Minister may, on the advice of the Board, amend the schedule by Order published in the *Gazette*.

Power to  
amend the  
schedule.

**49.** (1) The Minister, in consultation with the Minister of Finance, may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.

Regulations.

(2) Without limiting the generality of subsection (1), regulations may be provide for

- (a) the guidelines and criteria for applications for funding;
- (b) the levies and charges to be paid with respect to climate change issues, including charges to offset energy use;
- (c) the investment of fund monies;
- (d) to provide for the winding up of the Trust
- (e) prescribing anything that is required to be prescribed by this Act.

## SCHEDULE 1

[Section 12 (7)]

### MEETINGS OF THE BOARD

Meetings  
of the  
Board.

**1.** The Board shall meet at least once in every quarter for the transaction of its business and such meeting shall be held at a time and a place the Board may determine.

**2.** At every meeting of the Board, the Chairperson shall preside and in his or her absence the deputy chairperson shall preside.

**3.** (1) The quorum for a meeting of the Board is five members, of whom one shall be a government representative.

(2) If a quorum is not present within one (1) hour from the time appointed for the Meeting, or during a Meeting a quorum ceases to be present, the Meeting shall be adjourned to such time and place as the Members of the Board shall determine.

**4.** The decisions of the Board shall be by a majority of the votes of the members present and voting and in the event of a tie the chairperson shall together have the casting vote.

Notice of  
meetings.

**5.** (1) Notice of any meeting of the Board shall be given to each member of the Board at least ten (10) working days before such meeting is to be held.

(2) A notice issued pursuant to subsection (1) shall be sent to each member of the Board at her or his residential address or usual place of business, and shall be given by mail, telefax or electronic mail.

(3) Every notice issued pursuant to this section shall state the time and place of the meeting and the business to be transacted or the purpose of the meeting.

Extraordinary  
meetings of the  
Board.

**6.** (1) The Board may, if it thinks fit, transact any of its business

(a) by the circulation of papers among all the members of the Board for the time being; or

(b) by telephone, closed-circuit television, video-conferencing or other means with all or some of its members,

and a resolution in writing by a majority of those members is taken to be a decision of the Board.

(3) For the purposes of this section the Chairperson and each member shall have the same voting rights as they have at an ordinary meeting of the Board.

(4) A resolution approved under subsection (1) shall be recorded in the minutes of the meetings of the Board.

(5) For the purposes of subsection (1), the Board may circulate papers among the members in hard copy, by facsimile or other electronic transmission of the information in the papers concerned.

(6) Service of any document on a Chairperson of the Board, or the Chief Executive Officer shall be deemed to be service on the Trust.

**9.** The names of all members of the Board as first constituted and any change in the membership thereof shall be published in the *Gazette*.

Publication of membership.

**10.** Subject to the provisions of this Act the Board may regulate its own proceedings.

Regulating proceedings.

## SCHEDULE 2

[Section 14(4)]

### MATTERS TO BE PROVIDED FOR IN OPERATIONAL MANUAL

1. The administration of the Trust, with particular emphasis on
  - (a) the proposed organisational structure of the Trust;
  - (b) the terms of reference for the Board, the Secretariat and the Review Committee;
  - (c) office management and administrative requirements for the Trust;
  - (d) procedures for record keeping and the management of information, including the management of confidential information and information to be accessed by the public;
  - (e) operational safeguards and procedures to monitor, evaluate and verify that the operations of the Trust achieve its stated objectives;
  - (f) procedures to evaluate the effectiveness of the governance structures and funding operations of the Trust;
  - (g) management of promotional activities;
  - (h) requirements for an annual work plan to achieve the objectives of the Trust.
  
2. The framework for fiduciary management with particular emphasis on the
  - (a) qualifications and terms of reference for the asset manager;
  - (b) procedures for asset manager performance evaluations;
  - (c) process for tracking funds with the asset manager;
  - (d) process for notifying the asset manager of the timing of transfers of investment proceeds;
  - (e) parameters for investment of funds;
  - (f) instructions for the Asset Manager on allocating of funds and new capital to benefit specific Trust endowments;
  - (g) cash flow management system that shall ensure timely disbursement and access to money as needed, both by the Trust and by projects supported by the Trust;

- (h) book-keeping and accounts management procedures;
  - (i) procedures for management of fund transfers;
  - (j) procedures for financial reporting including reports of investment returns
  - (k) procedures for procurements of goods and services;
  - (l) results based and performance based disbursement process;
  - (m) internal and external audit procedures;
  - (n) terms of reference for auditors;
3. The procedures and guidelines for grants including
- (a) procedures for coordination and review of annual funding requests;
  - (b) reporting process for grant recipients;
  - (c) operational guidelines concerning what may be considered as incremental costs, operational costs and normal day-to-day business costs, when considering applications for funding by the Trust;
  - (d) procedures establishing calls for proposals (including their frequency and timing) for priority climate change adaptation and climate change mitigation actions, which may be revised annually, for funding by the Trust as determined by the Climate Change Committee in their Strategy and Implementation Plan;
  - (e) operational procedures and application forms for applying for support from the Trust;
  - (f) guidelines and criteria for considering and approving applications for funding support by the Trust, including guidelines concerning the amount to be dedicated to management fees by any applicant;
  - (g) eligibility criteria for entities ordinarily resident in the Territory submitting applications that may receive funding support from the Trust;
  - (h) procedures whereby the Trust can actively support capacity building in the non-governmental sector in particular capacity building support to small non-governmental organisations through a small grant not exceeding ten thousand dollars in order that they may subsequently meet eligibility criteria to receive funding support from the Trust.

### SCHEDULE 3

[Section 26]

#### PERSONS ELIGIBLE TO BE APPOINTED TO THE REVIEW COMMITTEE

1. The following officers or their designees:

- (a) the Chief Conservation and Fisheries Officer, *ex officio*, who shall be the Chairperson;
- (b) the Director of the British Virgin Islands Tourist Board, *ex officio*;
- (c) the Director of the Department of Disaster Management, *ex officio*;
- (d) a Senior Technical Officer in the Ministry of Communication and Works, *ex officio*;
- (e) the Chief Planner, *ex officio*;
- (f) the Chief Agricultural Officer, *ex officio*;
- (g) the Chief Medical Officer, *ex officio*;
- (h) the Director of the National Parks Trust, *ex officio*;
- (i) the General Manager of the BVI Electricity Corporation, *ex officio*;

2. The following technical experts from outside government:

- (a) an economist;
- (b) an energy production/distribution expert;
- (c) an environmental scientist;
- (d) a renewable energy expert;
- (e) a water resources expert;
- (f) a civil engineer; and
- (g) a representative from a community-based organisation.

Passed by the House of Assembly this 24<sup>th</sup> day of March, 2015.

(Sgd.) Ingrid Moses Scatliffe,  
Speaker.

(Sgd.) Phyllis Evans,  
Clerk of the House of Assembly.

No. of 2017

**VIRGIN ISLANDS**  
**BRITISH VIRGIN ISLANDS PORTS AUTHORITY**  
**(AMENDMENT) ACT, 2017**

**ARRANGEMENT OF SECTIONS**

*Section*

1. Short title.
2. General amendments.
3. Section 3 amended.
4. First Schedule amended.

No. of 2017

**British Virgin Islands Ports  
Authority (Amendment) Act, 2017**

**Virgin  
Islands**

**I Assent**

**Governor**

, 2017

**VIRGIN ISLANDS**

**No. of 2017**

**A Bill for**

An Act to amend the British Virgin Islands Ports Authority Act, 1990 (No.12 of 1990).

[Gazetted , 2017]

ENACTED by the Legislature of the Virgin Islands as follows:

Short title.

**1.** This Act may be cited as the British Virgin Islands Ports Authority (Amendment) Act, 2016.

General amendments.

**2.** The British Virgin Islands Ports Authority Act, 1990 (referred to in this Act as “the principal Act”) is amended by replacing the following references wherever they occur:

- (a) the words “Legislative Council” with the words “House of Assembly”;
- (b) the words “Governor in Council” with the word “Cabinet”.

Section 3 amended.

**3.** Section 3 of the principal Act is amended by inserting after subsection (3) the following new subsection:

“(4) The Minister may, by Order, amend the First Schedule.”.

First Schedule amended.

**4.** The First Schedule to the principal Act is amended by replacing paragraph 1(1)(c) with the following:

“(c) four *ex officio* members as follows:

- (i) the Permanent Secretary or his nominee;
- (ii) the Managing Director or his nominee;
- (iii) the Financial Secretary or his nominee; and
- (iv) the Director of the Tourist Board or his nominee.”.

Passed by the House of Assembly this            day of            , 2017.

Speaker.

Clerk of the House of Assembly.

## OBJECTS AND REASONS

This Bill seeks to amend the British Virgin Islands Ports Authority Act, 1990 (No.12 of 1990) (referred to hereinafter as “the principal Act”).

Clause 1 sets out the short title.

Clause 2 would amend the principal Act generally by replacing the words “Legislative Council” wherever they occur in the Act with the words “House of Assembly” and the words “Governor in Council” with the word “Cabinet”.

Clause 3 would amend section 3 to provide for the Minister to amend the First Schedule by Order.

Clause 4 would amend the First Schedule to the principal Act by increasing the number of *ex officio* members serving on the Board.

In addition, it would provide for the Permanent Secretary to nominate a representative to act on his or her behalf.

Minister for Communications and Works.

**VIRGIN ISLANDS**

**BENEFICIAL OWNERSHIP SECURE SEARCH SYSTEM ACT, 2017**

**ARRANGEMENT OF SECTIONS**

*Section*

- 1...Short title and commencement.
  - 2...Interpretation.
  - 3...Application.
  - 4...Implementation of the Exchange of Notes.
  - 5...Establishment of Beneficial Ownership Secure Search System.
  - 6...Beneficial owners.
  - 7...Exempt person.
  - 8...Registrable legal entities.
  - 9...Duty of registered agent to identify beneficial owners.
  - 10...Duty to maintain RA database.
  - 11...Retention period.
  - 12...Duty to keep beneficial ownership information up to date.
  - 13...Designated person to use Beneficial Ownership Secure Search System.
  - 14...Confidentiality.
  - 15...Protection for registered agents.
  - 16...Giving false or misleading information.
  - 17...Regulations.
- SCHEDULE 1  
SCHEDULE 2  
SCHEDULE 3

**I Assent**

**(Sgd.) John S. Duncan, OBE,  
Governor  
12<sup>th</sup> June, 2017**

**VIRGIN ISLANDS**

**No. 15 of 2017**

An Act to establish a secure search system to facilitate the effective and efficient storage and retrieval of beneficial owner information for all corporate and legal entities using the system and to provide for matters incidental thereto.

[Gazetted 12<sup>th</sup> June, 2017]

ENACTED by the Legislature of the Virgin Islands as follows:

Short title and  
commencement.

**1.** (1) This Act may be cited as the Beneficial Ownership Secure Search System Act, 2017.

(2) The provisions of this Act shall come into force on the 30<sup>th</sup> June, 2017.

Interpretation.

**2.** (1) In this Act, unless the context otherwise requires,

No. 5 of 1997  
S.I. 2008 No. 12  
S.I. 2008 No. 13

“AML/CFT legislation” means the Proceeds of Criminal Conduct Act, 1997, the Anti-money Laundering Regulations, 2008 and the Anti-money Laundering and Terrorist Financing Code of Practice, 2008;

“beneficial owner” has the meaning specified in section 6;

“Beneficial Ownership Secure Search system” means the Secure Search system, an electronic platform or system to be established and

maintained by the competent authority under this Act to provide access to prescribed information contained in RA databases;

“corporate and legal entity” means

(a) a company as defined under section 3 of the BVI Business Companies Act, 2004; and

No. 16 of 2004

(b) a Limited Partnership as defined under section 2 of the Partnership Act, 1996;

No. 5 of 1996

“competent authority” means the Financial Investigation Agency established under the Financial Investigation Agency Act, 2003;

No. 19 of 2003

“designated person” has the meaning assigned under section 13;

“exempt person” means a person specified in section 7;

“exchange of notes” means

(a) the UK exchange of notes; and

(b) any similar agreement or arrangement made to which this Act applies by virtue of an Order made under section 4(3);

“foreign regulated person” has the meaning assigned to it under section 2(1) of the Anti-Money Laundering Regulations, 2008;

S.I. 2008 No. 12

“licensee” has the meaning assigned to it under section 2 of the Financial Services (Regulatory Code), 2009;

S.I. 2009 No. 60

“Minister” means the Minister responsible for Finance;

“prescribed information” means information prescribed under section 10;

“RA database” means an IT solution established and maintained by a registered agent, to hold the prescribed information for each relevant corporate and legal entity for which it acts as registered agent in accordance with this Act;

“recognised stock exchange” has the meaning assigned to it under section 2(1) of the Financial Services (Regulatory Code), 2009;

“registered agent” means a person who holds

(a) a licence to conduct company management business under the Company Management Act, 1990; or

No. 8 of 1990

No. 9 of 1990 (b) a licence under the Banks and Trust Companies Act, 1990 authorising it to provide registered agent services;

No. 16 of 2004 “Registrar of Companies” has the meaning assigned to it under section 2 of the BVI Business Companies Act, 2004;

“registrable legal entity” has the meaning specified in section 8;

Schedule 2 “requesting law enforcement authority” means a law enforcement authority specified in Schedule 2 which issues a request for a search to be conducted in the Beneficial Ownership Secure Search System under this Act; and

Schedule 1 “UK exchange of notes” means the exchange of notes between the Government of the United Kingdom of Great Britain and Northern Ireland, and the Government of the Virgin Islands, for the exchange of beneficial ownership information as set out in Schedule 1.

(2) Where in this Act reference is made to Schedule 1, this shall be construed to include any Schedule set out in an Order made by the Minister pursuant to section 4.

Application. 3. This Act applies to all corporate and legal entities.

Implementation of the Exchange of Notes. 4. (1) This Act shall apply for the purposes of giving effect to the exchange of notes.

(2) Where an exchange of notes is amended by the parties thereto, the Minister may, by Order, amend Schedule 1 accordingly.

(3) Where the Government enters into an exchange of notes similar to the UK exchange of notes, the Minister may, with the approval of the Cabinet, by Order, provide that this Act shall apply to that exchange of notes with such necessary modifications as may be specified in the Order and the text of that exchange of notes shall be set out in a Schedule to the Order.

(4) For the avoidance of doubt and notwithstanding anything to the contrary contained in this Act or in any exchange of notes

(a) the Government shall exchange beneficial ownership information in accordance with the relevant exchange of notes;

(b) the designated person shall exchange beneficial ownership information with an authority specified in section 13(6); and

(c) anything required of the Government pursuant to a request made under or in accordance with the exchange of notes shall be dealt

with in such manner as would be consistent with and satisfy the requirements of the exchange of notes, and the doing of such thing by the Government shall be treated as a power the Government has by virtue of this Act to exercise.

5. (1) The Government shall establish a Beneficial Ownership Secure Search System to enable

Establishment of Beneficial Ownership Secure Search System.

- (a) each registered agent to establish an RA database; and
- (b) the designated person to access each RA database.

(2) The Beneficial Ownership Secure Search System shall

- (a) be secure and accessible only by the designated person;
- (b) be accessible only from a designated secured location within the Virgin Islands;
- (c) be able to search simultaneously all RA databases connected to the Beneficial Ownership Secure Search System by either the name of an individual or the name of a corporate and legal entity; and
- (d) prevent communication to any person of the fact that a search is being made or has taken place except where the designated competent authority expressly discloses such communication.

6. (1) A beneficial owner is the natural person who ultimately owns or controls a corporate or legal entity and includes, though not restricted to

Beneficial owners.

- (a) in the case of a legal person other than a corporate and legal entity whose securities are listed on a recognised stock exchange, a natural person who ultimately owns or controls, whether directly or indirectly, twenty five or more per cent of the shares or voting rights in the legal person;
- (b) in the case of a legal person, a natural person who otherwise exercises control over the management of the legal person;
- (c) in the case of a legal arrangement
  - (i) the partner or partners who control the partnership;
  - (ii) the trustee or other person who controls the legal arrangement; or

(iii) the settlor or other person by whom the legal arrangement is made;

(d) in the case of a corporate and legal entity which is in insolvent liquidation, administration or administrative receivership under the Insolvency Act, 2003, the natural person who is appointed as a liquidator, administrator or administrative receiver of the corporate and legal entity; or

(e) in the case of a receiver being appointed over twenty five or more per cent of the shares or voting rights in a corporate and legal entity, the creditor who appoints the receiver; or

(f) in the case of a shareholder in the corporate and legal entity who would otherwise be a beneficial owner under this subsection but is deceased, the natural person acting as an executor or a personal representative of the deceased's estate.

(2) Where there is a *bona fide* legal dispute as to the beneficial ownership of any interest in a corporate and legal entity which is in the process of being adjudicated by a court or tribunal, no change should be recorded with respect to the beneficial ownership of that interest in a RA database prior to the determination of that matter unless the court or tribunal so orders.

(3) A person shall not be treated as a beneficial owner only by reason of

(a) having the benefit of a security interest over shares or voting rights in a corporate and legal entity; or

(b) having a commercial exposure to the financial performance of a corporate and legal entity pursuant to financial derivatives or similar contractual arrangements.

(4) Where two or more persons hold any qualifying interest jointly, whether as joint owners or tenants in common, then each joint owner shall be a beneficial owner.

(5) The Minister may issue Guidance Notes in relation to the determination of who is a beneficial owner of a corporate and legal entity.

Exempt person.

**7.** (1) An exempt person shall be exempt from the provisions of section 10(3)(b).

(2) For the purposes of subsection (1), an exempt person is a person who meets one or more of the following conditions:

- (a) a corporate and legal entity which is recognised, registered or otherwise approved as a mutual fund under the Securities and Investment Business Act, 2010 including an approved fund, an incubator fund, a public fund, a professional fund and a private fund;
- (b) a corporate and legal entity the securities of which are listed on a recognised stock exchange;
- (c) a licensee;
- (d) a corporate and legal entity which is a subsidiary of a corporate and legal entity that falls within paragraph (a) or (b); or
- (e) a corporate and legal entity exempted by regulations.

(3) A corporate and legal entity (the “subsidiary”) is a subsidiary of another corporate and legal entity (the “parent”) if the parent

- (a) holds, directly or indirectly, a beneficial interest in 75% or more of the shares in the subsidiary; or
- (b) holds, directly or indirectly, more than 75% of the voting rights in the subsidiary.

8. A registrable corporate and legal entity in relation to a corporate and legal entity is a legal entity which

Registrable legal entities.

- (a) would be a beneficial owner of the corporate and legal entity if it were an individual; and
- (b) one or more of the following applies to it:
  - (i) it is a legal entity which is an exempt person;
  - (ii) it is a legal entity the securities of which are listed on a recognised stock exchange;
  - (iii) it is a licensee or a foreign regulated person; or
  - (iv) it is a sovereign state or a wholly owned subsidiary of a sovereign state.

9. (1) A registered agent shall take reasonable steps to

Duty of registered agent to identify beneficial owners.

- (a) identify the beneficial owners and registrable legal entities of each corporate and legal entity for which it acts as registered agent;

(b) collect the prescribed information with respect to each corporate and legal entity for which it acts as registered agent,

in accordance with this Act.

(2) A corporate and legal entity shall identify any person who is a beneficial owner or a registrable legal entity of that corporate and legal entity and notify the registered agent of those persons so identified as beneficial owners and those legal entities so identified as registrable legal entities within 15 days of identifying such person or entity;

(3) A registered agent is not required to identify any beneficial owner of a corporate and legal entity under subsection (1) who holds its interest, directly or indirectly, in the corporate and legal entity through a registrable legal entity if the registered agent identifies that registrable legal entity for that purpose.

(4) For the purposes of this section, a registered agent who takes steps to identify and verify the identity of the beneficial owners of a corporate and legal entity in accordance with its obligations under the AML/CFT legislation shall have taken all reasonable steps in accordance with this section, and references to beneficial owners and registrable legal entities of a corporate and legal entity shall be interpreted accordingly.

(5) Nothing in this section limits or affects the separate obligation of each registered agent to obtain and verify beneficial ownership information under applicable AML/CFT legislation.

(6) Where a corporate or legal entity fails to comply with a requirement of this section without reasonable cause he or she commits an offence and is liable

(a) on summary conviction to a fine not exceeding forty thousand dollars or to imprisonment for a term not exceeding six months or both; or

(b) on conviction on indictment, to a fine not exceeding two hundred and fifty thousand dollars or to imprisonment for a term not exceeding five years, or both.

(7) Where a registered agent fails to comply with a requirement of this section without reasonable cause he or she commits an offence and is liable

(a) on summary conviction to a fine not exceeding twenty thousand dollars; or

(b) on conviction on indictment, to a fine not exceeding forty thousand dollars.

**10.** (1) Each registered agent shall establish and maintain an RA database in accordance with this section.

Duty to maintain RA database.

(2) Each registered agent shall enter in the RA database particulars of the prescribed information obtained by it under this Act with respect to each corporate and legal entity for which it acts as registered agent.

(3) The prescribed information with respect to each corporate and legal entity is

(a) the particulars of each corporate and legal entity including

- (i) the name, including alternative names;
- (ii) the incorporation number or its equivalent;
- (iii) date of incorporation;
- (iv) status;
- (v) registered address; and
- (vi) any other particulars as the Minister may by Order prescribe.

(b) with respect to each beneficial owner of the corporate or legal entity:

- (i) name;
- (ii) residential address;
- (iii) date of birth; and
- (iv) nationality.

(c) with respect to each registrable legal entity of the corporate and legal entity:

- (i) details of the registrable legal entity as outlined in subsection (3)(a);
- (ii) jurisdiction in which the registrable legal entity is formed;
- (iii) the basis or bases upon which the legal entity is designated as a registrable legal entity;

- (iv) where the registrable legal entity is a foreign regulated person, the name of the jurisdiction of regulation and the name of the foreign regulator; or
- (v) where the registrable legal entity is a sovereign state or a wholly owned subsidiary of a sovereign state the name of that sovereign state and (if applicable) wholly owned subsidiary.

(d) with respect to an exempt person

- (i) the details of the exempt person as outlined in subsection (3)(a); and
- (ii) the basis or bases upon which the exempt person is designated as an exempt person.

(4) Where a registered agent fails to comply with a requirement of this section without reasonable cause he or she commits an offence and is liable

- (a) on summary conviction to a fine not exceeding twenty thousand dollars; or
- (b) on conviction on indictment, to a fine not exceeding forty thousand dollars.

Retention period.

**11.** Information maintained by a registered agent on an RA database shall be maintained on the RA database for all corporate and legal entities

- (a) for five years following the dissolution of the corporate and legal entity; or
- (b) for five years after the corporate and legal entity ceasing to be a corporate and legal entity.

Duty to keep beneficial ownership information up to date.

**12.** (1) A corporate and legal entity shall within 15 days of becoming aware of a change of any of the prescribed information relating to beneficial owners or registrable legal entities notify its registered agent of such changes and the date such changes took place.

(2) A registered agent shall within 15 days of being notified by a corporate and legal entity of a change or otherwise becoming aware of a change of any of the prescribed information relating to beneficial owners or registrable legal entities cause the updated information provided under subsection (1) to be included on the RA database.

(3) Nothing in subsection (2) shall affect the obligations of a registered agent under AML/CFT legislation to verify the beneficial owner or owners and the particulars relating to each with respect to a corporate and legal entity.

(4) Where a corporate and legal entity fails to comply with a requirement of this section without reasonable cause he or she commits an offence and is liable

(a) on summary conviction to a fine not exceeding five thousand dollars; or

(b) on conviction on indictment, to a fine not exceeding ten thousand dollars.

(5) Where a registered agent fails to comply with the requirements of this section without reasonable cause he or she commits an offence and is liable

(a) on summary conviction to a fine not exceeding twenty thousand dollars; or

(b) on conviction on indictment, to a fine not exceeding forty thousand dollars.

**13.** (1) There shall be one or more designated persons who shall have access to the Beneficial Ownership Secure Search System from a physically secure premise and a secure IT system.

Designated person to use the Beneficial Ownership Secure Search System.

(2) A designated person shall have passed security vetting tests, be fit and proper and be so designated by the Minister by Order.

(3) A designated person shall, prior to being designated by the Minister, subscribe to the Oath of Confidentiality set out in Schedule 3.

Schedule 3

(4) The Minister shall keep a record of all Oaths of Confidentiality taken pursuant to this section.

(5) A designated person shall provide the results of any search of the Beneficial Ownership Secure Search System requested under this Act within 15 days of the submission of a request for information unless it is notified that the request is urgent, in which case it will provide the information sought of it within one hour, or such other time period to be agreed between the requesting law enforcement authority or an authority named in subsection (6) and the designated person in accordance with the individual circumstances of the request.

(6) A designated person shall execute a search of the Beneficial Ownership Secure Search System if formally requested to do so by a senior officer of any of the following authorities:

- (a) the Financial Investigation Agency;
- (b) the Financial Services Commission;
- (c) the International Tax Authority;
- (d) the Attorney General's Chambers.

(7) A search conducted under subsection (6) shall not be executed without certification that the request for the search

- (a) is proper and lawful and in compliance with the legislation governing the affairs of the authority making the request and any international agreement administered by it; or
- (b) is in response to a request from a designated law enforcement authority listed in Schedule 2.

Schedule 2

(8) A record shall be maintained of all searches conducted by a designated person under this Act.

(9) A designated person who fails to comply with a requirement of this section commits an offence and is liable to a fine not exceeding seventy five thousand dollars or to imprisonment for a term not exceeding two years or both.

(10) No person other than a designated person shall have access to the Beneficial Ownership Secure Search System to conduct a search of an RA database or access any data therein except the designated person or persons.

(11) The Minister may, by Order, amend Schedules 2 and 3.

Schedules 2  
and 3

Confidentiality.

**14.** (1) The particulars of and all matters relating to a request made under this Act shall be treated as confidential, and no designated person who is notified of a request, or is required to take any action, or supply any information in response to or in relation to any matters to which a request relates or in any way becomes aware of a request, shall disclose the fact of the receipt of such request or any of the particulars required or information supplied to any other person except in accordance with this Act.

(2) A person who contravenes subsection (1) commits an offence and is liable

- (a) on summary conviction to a fine not exceeding fifty thousand dollars or to imprisonment for a term not exceeding two years or both; or

(b) on conviction on indictment, to a fine not exceeding seventy thousand dollars or to imprisonment for a term not exceeding five years or both.

(3) All information maintained on each RA database is confidential, and shall not be accessible by any person except

(a) a designated person through the Beneficial Ownership Secure Search System; and

(b) the registered agent to whom the RA database relates.

(4) Any person who accesses data on an RA database except as authorised by this Act commits an offence and is liable

(a) on summary conviction to a fine not exceeding twenty thousand dollars or to imprisonment for a term not exceeding two years or both; or

(b) on conviction on indictment, to a fine not exceeding seventy thousand dollars or to imprisonment for a term not exceeding five years, or both.

(5) A person who discloses information or produces documents as required by this Act is not in breach of any enactment, rule of law, agreement or professional code of conduct to which that person is subject only by reason of complying with the requirements of this Act, and no civil, criminal or disciplinary proceedings shall lie against him in respect thereof.

**15.** Where a registered agent has collected the prescribed information in accordance with the laws of the Virgin Islands or includes information on the RA database not specified in this Act, the collection of and inclusion of such information by the registered agent shall be treated as done in accordance with this Act and the registered agent is not in breach of any agreement, professional code of conduct or rule of law to which they are subject.

Protection for registered agents.

**16.** (1) A registered agent who intentionally provides false information relating to a corporate and legal entity on its RA database commits an offence.

Giving false or misleading information.

(2) A corporate and legal entity which intentionally provides false information under section 9(2) or 12(1) commits an offence.

(3) A person who commits an offence under this section is liable to

(a) on summary conviction to a fine not exceeding forty thousand dollars or to imprisonment for a term not exceeding two years or both, or

- (b) on conviction on indictment, to a fine not exceeding seventy five thousand dollars or to imprisonment for a term not exceeding five years, or both.

Regulations.

**17.** The Minister, with the approval of the Cabinet, may make regulations with respect to anything required to be carried out in this Act or prescribing anything required to be prescribed under this Act, including

- (a) specifying the manner or form in which a registered agent must keep the RA database; and
- (b) prescribing fees in relation to the establishment and maintenance of the Beneficial Ownership Secure Search System.

## SCHEDULE 1

(Sections 2, 2(2), 4(2))

### **Exchange of Notes between the Government of the United Kingdom and the Government of the Virgin Islands in respect of the sharing of beneficial ownership information**

1. This commitment between the Government of the United Kingdom and the Government of the Virgin Islands (“the Participants”) is an important demonstration of our partnership to enhance the effectiveness of the long-standing law enforcement cooperation between the Participants in respect of the on-going sharing of beneficial ownership information.
2. The participants recognise the importance of the provision of beneficial ownership information for the prevention and detection of corruption, money laundering, terrorism financing, financing of the proliferation of weapons of mass destruction and other serious and organised crime. It also recognises the importance of facilitating timely and secure access for law enforcement agencies to such information whilst ensuring individuals concerned are not informed that a request has been made.
3. This commitment is made in the context of a number of international initiatives to improve access to beneficial ownership information, including the Fourth Money Laundering Directive of the European Union, Financial Action Task Force (FATF) Recommendations and Guidance on Transparency and Beneficial Ownership, the G20 High Level Principles on Beneficial Ownership Transparency and the UK Government’s decision to establish a public central register of beneficial ownership information.
4. It also recognises the Virgin Islands’ commitment on international cooperation matters, including the recent reforms to its legislative regime on beneficial ownership and its commitment to the Multilateral Convention on Mutual Administrative Assistance in Tax Matters, the signing of 28 Tax Information Exchange Agreements and enactment of legislation to implement the US FATCA, UK FATCA and OECD Common Reporting Standards. The Participants further recognise that the Virgin Islands is in the process of having beneficial ownership information of corporate and legal entities updated to ensure their adequacy and the process is expected to be completed at the end of 2016.

5. Through this exchange of notes, each Participant commits to providing the law enforcement authorities of the other Participant with beneficial ownership information for corporate and legal entities incorporated in their respective jurisdiction and will implement this commitment as set out in the attached Technical Protocol, which is to be read as part of the commitment of both Participants.

6. The Participants will hold adequate, accurate and current beneficial ownership information for corporate and legal entities incorporated in their own jurisdictions. This information will be held in a secure central electronic database or similarly effective arrangement.

7. Law enforcement authorities of the Participants will have the automatic right to the provision of unrestricted, timely (where urgently required, within one hour) beneficial ownership information held in the other jurisdiction for the law enforcement purposes set in Paragraph 2 above.

8. The Participant in whose jurisdiction the requested beneficial ownership information is held will be responsible for ensuring that searches are carried out securely, in particular ensuring that those interested in or otherwise connected to the corporate and legal entities concerned are not informed that a search is in progress or has been conducted and ensuring that the information that a search has been requested or conducted is not made known publicly, in accordance with the terms of the attached Technical Protocol.

8. Furthermore, the Participants will monitor the practical application of this commitment so that action can be taken to ensure it is implemented effectively and efficiently.

.....  
Signed on behalf of the  
Government of the UK

.....  
Signed on behalf of the  
Government of the  
Virgin Islands

Date: 8<sup>th</sup> April, 2016

## **Technical Protocol**

1. This Technical Protocol is appended to the Exchange of Notes dated 8 April 2016 between the Governments of the United Kingdom and the Virgin Islands in respect of the sharing of beneficial ownership information and is to be used in accordance with Paragraph 2 of the Exchange of Notes.

### **Beneficial Ownership Information in respect of Corporate and Legal Entities Incorporate in the UK**

2. The Government of the United Kingdom has established a comprehensive central register of people with significant control (“PSC register”), to be held and maintained by Companies House. This will be a publicly accessible central register in respect of companies, limited liability partnerships (LLPs) and Societas Europaeae (SEs) incorporated in the United Kingdom. This will be online and searchable free of charge by both name of corporate entity and name of individual. Some PSC information is suppressed from the public central register under exceptional circumstances. All PSC information, including the information suppressed from the public central register, is available to the United Kingdom law enforcement authorities.

3. Acting only in furtherance of their functions, Virgin Islands law enforcement authorities will be able to request from the United Kingdom law enforcement authorities all of their non-public adequate, accurate and current beneficial ownership information from the PSC register.

### **Beneficial Ownership Information in respect of Corporate and Legal Entities Incorporated in the Virgin Islands**

4. The Government of the Virgin Islands will establish and maintain an electronic platform (“the Virgin Islands Platform”) that will allow it to immediately access adequate, accurate and current beneficial ownership information on corporate and legal entities incorporate in the Virgin Islands.

5. The Virgin Islands Platform will be held electronically and will be searchable by both name of corporate and legal entity and name of individual.

6. Acting only in furtherance of their functions, United Kingdom law enforcement authorities will be able to request from the Virgin Islands law enforcement authorities all of their adequate, accurate and current beneficial ownership information contained on the Virgin Islands Platform on corporate and legal entities incorporated in the Virgin Islands.

## **Obligations of Participants**

7. The Participants will establish designated points of contact, whose function will be to receive and respond to each other's law enforcement authorities' requests for beneficial ownership information.

i) Requests for information will be submitted to the designated point of contact on a form, the template for which is attached to this protocol.

ii) The designated point of contact will be permanently staffed by individuals who have passed security vetting tests to a standard agreed with the National Crime Agency.

iii) The designated point of contact will provide the information sought of it within twenty-four hours of the submission of a request for information unless it is notified that the request for information is urgent, in which case it will provide the information sought of it within one hour, or such time period as may be agreed between the requesting law enforcement authority and the designated point of contact in accordance with the individual circumstances of the request. In calculating these periods of time, no allowance will be made for office hours, weekends or public holidays.

iv) Members of the designated point of contact will provide beneficial ownership information that is both complete and helpful to the requesting law enforcement authorities. As such, the designated point of contact will accept and reply to requests for such information, which include requests for sequential searches to be carried out. Such requests may include a request to identify the beneficial owner of a named company incorporate in the Participant's jurisdiction and then to identify all other corporate and legal entities incorporated in the Participant's jurisdiction in which the beneficial owner has an interest as well as the names of other individuals with interests in those corporate and legal entities. Multiple or sequential search requests may be made at the same time, and will be conducted within the same twenty-four hour period (or one hour in urgent cases).

v) Members of the designated point of contact will have full authority to respond to requests for information made in accordance with this Protocol. It follows that no member of the point of contact will be required to seek any further authorisation or confirmation that they may respond to a request for information.

vi) The Participants will ensure the security of the request and any information provided by:

a. criminalising any disclosures of information relating to requests made in accordance with this Protocol, and reinforcing the severity of the offence with a suitably dissuasive penalty;

b. ensuring that each member of the designated point of contact has imposed as part of his or her terms and conditions of service an instruction not to disclose any information relating to requests made in accordance with this Protocol, and by bringing enforcement action in the case of any breach; and

c. providing the designated point of contact with physically secure premises and secure IT systems from which to operate.

vii) The criminal and administrative controls referred to in paragraphs vi) a. and b. above will not apply to any request for information or any supply of information to Participants' law enforcement authorities made in accordance with the terms of this Protocol.

viii) Arrangements for the supply of information by the designated point of contact in accordance with the terms of this Protocol are intended to mirror the ability of the Participants' law enforcement authorities to obtain beneficial ownership information held in each other's jurisdiction. It follows that information supplied through the designated point of contact to law enforcement authorities in accordance with the terms of this Protocol may be used by them free from any further procedural conditions. For the avoidance of doubt, the Participants accept that the information may be used in criminal and/or civil proceedings and may be disclosed by law enforcement authorities in accordance with applicable legal provisions, including data protection and freedom of information legislation.

ix) Any mutual legal assistance or other legal mechanism that either Participant may require in order to render information received in accordance with this Protocol admissible in criminal and/or civil proceedings will be sought and supplied in accordance with existing arrangements.

x) All requests for information will be subject to the Participants' duties and responsibilities under constitutional and international obligations, where applicable.

### **Amendments**

8. Amendments to the commitment set out in the Exchange of Notes may be agreed in writing by both Participants.

### **Review**

9. In recognition of our joint commitment to fighting serious and organised crime, the Premier of the Virgin Islands and the Secretary of State will review together the operation of these arrangements in consultation with law enforcement agencies six months after the coming into force of these arrangements, and

thereafter annually. This will be in addition to ongoing monitoring of the practical application of the commitment by both Participants.

### **Transition**

10. These arrangements will come into effect no later than 30 June 2017. Each Participant will ensure that any necessary legislative regulatory or technical changes are made to allow implementation by this date.

### **Date for coming into effect**

11. The commitment set out in the Exchange of Notes will be effective upon signature by the Participants.

### **Definitions of the Terms used in the Exchange of Letters and Technical Protocol**

12. For the purposes of the commitment set out in the Exchange of Notes and Technical Protocol, the following definitions will apply:

“automatic” has the meaning set out in paragraph 7(v) of this Protocol,

“beneficial owner” means any natural person(s) who ultimately owns or controls a corporate or legal entity through direct or indirect ownership of more than 25% of the shares or voting rights or ownership interest in that entity, or through control via other means. This is abbreviated from Article 3(6) of the Fourth Money Laundering Directive’s definition of a beneficial owner.

“the Virgin Islands Platform” means such an electronic platform as the Virgin Islands develops to access and provide beneficial ownership information.

“corporate and legal entities” has an ordinary meaning. Participants should ensure that the widest possible range of corporate and legal entities incorporated in their jurisdiction is covered.

“designated point of contact” means in the case of the:

Virgin Islands, the Financial Investigation Agency; and

UK, the UKFIU, being the United Kingdom’s Financial Intelligence Unit.

“law enforcement authorities” means law enforcement and tax authorities.

“secure” has the meaning set out at paragraph 7(ii) and vi) of this Protocol, and means the fact that a search has been requested or conducted will not be made public or communicated to any person whatsoever apart from those suitably

security cleared individuals who have responsibility for processing a request, including the officials conducting the search.

“similarly effective arrangement to a secure central electronic database” is defined as one which meets the following criteria:

- a) law enforcement agencies and tax authorities can obtain corporate and legal entities beneficial ownership information which restriction, and this information is to be available in accordance with Paragraph 2 of the Exchange of Notes for use in both civil and criminal proceedings;
- b) law enforcement authorities of the Participants are to be able to identify quickly all corporate and legal entities connected to a beneficial owner without needing to submit multiple and repeated requests; and
- c) corporate and legal entities or those to whom the beneficial ownership information relates are not to be alerted to the fact that a request has been made or an investigation is underway.

“suitably security cleared individuals” has the meaning set out in paragraph 7ii) of this Protocol.

“timely” has the meaning set out in paragraph 7iii) of this Protocol.

**INTERNATIONAL REQUEST FOR BENEFICIAL OWNERSHIP  
INFORMATION**

**Any unauthorised disclosure of information relating to this request may  
constitute a criminal offence.**

**Request or details:**

<b>Name:</b>		<b>Competent Authority*:</b>	
<b>Telephone:</b>		<b>Email:</b>	

**\*Competent Authority refers to any UK or Virgin Islands Law Enforcement or Tax Authority**

<b>URN</b>	
<b>Operation / Case Ref:</b>	
<b>Jurisdiction for Request:</b>	
<b>Date and Time of Submission:</b>	
<b>Authorising Officer Grade/Rank:</b>	
<b>Urgent I Return</b>  Appropriate rationale must be given as to reason for urgency e.g. threat to life, immediate risk of asset flight, time critical Court applications	<b>Rationale:</b>

**REQUEST RELATES TO SERIOUS & ORGANISED CRIME**

**Information Requested:**

- |   |
|---|
| <ol style="list-style-type: none"><li>1. Accurate and current beneficial ownership information on all legal person named in this request;</li><li>2. Identification of the beneficial owner of any named company;</li><li>3. Identification of all other legal persons in which the beneficial owner has an interest as well as the names of other individuals with interest in those legal person.</li></ol> |
|---|

**Subject details:**

(If you are enquiring about more than one subject, copy and paste this section as required. The boxes will expand automatically)

<b>Surname:</b>		<b>Forename:</b>	
<b>DOB:</b>		<b>Where born:</b>	
<b>Nationality:</b>		<b>Occupation:</b>	
<b>Alias:</b>		<b>Gender:</b>	
<b>Address(es):</b>			

<b>Subject link to the overseas jurisdiction:</b>	
---	--

**Company details:**

(If you are enquiring about more than one company, copy and paste this section as required)

<b>Company name:</b>			
<b>Registration number:</b>		<b>Country of Registration:</b>	
<b>Company address(es):</b>			

<b>Subject link to the overseas jurisdiction:</b>	
---	--

**IT SHOULD BE NOTED THAT ANY INFORMATION OBTAINED AS A RESULT OF THIS REQUEST MAY BE USED BY RELEVANT UK COMPETENT AUTHORITIES IN ANY CRIMINAL OR CIVIL PROCEEDINGS WITHOUT PRIOR RECOURSE.**

**SCHEDULE 2**

(Sections 2, 13(7)(b))

Part I - Designated countries	Part II – Designated law enforcement authorities	Part III – Relevant agreement
United Kingdom	National Crime Agency - Financial Intelligence Unit	Exchange of Notes between the Government of the United Kingdom and the Government of the Virgin Islands dated 8th April, 2016

**SCHEDULE 3**

(Section 13(3))

**OATH OF CONFIDENTIALITY**

I, \_\_\_\_\_, being a (insert post of the employee) of (insert name of agency) solemnly swear / affirm\* that I shall keep confidential all information which comes to my knowledge in my capacity as a designated person and I shall not divulge such information except as authorised by and in accordance with law.

So help me God! (omit if affirming)

Sworn / Affirmed before me, a Magistrate / Additional Magistrate / Registrar of the High Court / Justice of the Peace\* this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
(Name of person swearing / affirming)

\_\_\_\_\_  
(Magistrate / Additional Magistrate/  
Registrar of the High Court/  
Justice of the Peace)\*

\* Delete as appropriate

Passed by the House of Assembly this 12<sup>th</sup> day of May, 2017.

(Sgd.) Ingrid Moses-Scatliffe,  
Speaker.

(Sgd.) Joann Vanterpool,  
Deputy Clerk of the House of Assembly.

**VIRGIN ISLANDS**

**VIRGIN ISLANDS RECOVERY AND DEVELOPMENT  
AGENCY ACT, 2018**

**ARRANGEMENT OF SECTIONS**

*Section*

1. Short title and commencement.
2. Interpretation.
3. Role of the Cabinet.
4. Establishment of the Agency.
5. Functions of the Agency.
6. Establishment and functions of the Board.
7. Composition of the Board.
8. Disqualification for membership.
9. Tenure of office and vacancy.
10. Disclosure by members of certain interests.
11. Procedure of the Board.
12. Committees of the Board.
13. Chief Executive Officer and other staff.
14. Disclosure by staff of Agency, etc., of certain interests.
15. Establishment of the Trust.
16. Application of property of the Trust.
17. Access to property of the Trust by Agency.
18. Agency to establish accounts.
19. Accounts and audit.
20. Annual budget.
21. Annual report.
22. Dissolution of Agency.
23. Dissolution of the Trust.
24. Prohibition on unauthorised disclosure of confidential information.
25. Power to amend the Schedule.
26. Regulations.

**SCHEDULE**

I Assent  
(Sgd.) Augustus J. U. Jaspert,  
Governor.  
12<sup>th</sup> April, 2018

**VIRGIN ISLANDS**

**No. 1 of 2018**

An Act to provide for the establishment of the Virgin Islands Recovery and Development Agency and for other connected matters.

[Gazetted 16<sup>th</sup> April, 2018]

ENACTED by the Legislature of the Virgin Islands as follows:

Short title and  
commencement.

1. (1) This Act may be cited as the Virgin Islands Recovery and Development Agency Act, 2018.

(2) The provisions of this Act shall come into force on such date as the Minister may, by Notice published in the *Gazette*, appoint.

Interpretation.

2. In this Act, unless the context otherwise requires,

“Board” means the Virgin Islands Recovery and Development Board established under section 7;

“Chairperson” means a person appointed as such under section 8 and includes a person who temporarily acts in that capacity;

“Internet Site” means [www.bvirecovery.vg](http://www.bvirecovery.vg) or any successor internet site used by the Agency for informing the public of the affairs of the Agency;

“Minister” means the Premier or any other Minister to whom the subject for recovery and development is assigned;

“Plan” means the Virgin Islands Recovery and Development Plan developed pursuant to section 3;

“property” includes money;

“Trust” means the Virgin Islands Recovery Trust established pursuant to section 15.

3. (1) The Minister with the approval of Cabinet shall, consistent with the purposes of this Act, be responsible for developing and further reviewing the Virgin Islands Recovery and Development Plan which Plan is for the recovery and development of the Virgin Islands following the disasters affecting the Territory in August and September, 2017. Role of the Cabinet.

(2) The development of the Plan shall be based on a consultative process involving consultations with a wide sector of stakeholders whether within the Virgin Islands or outside.

(3) The Plan shall seek to make provision for matters dealing with, but not limited to, the following:

- (a) governance;
- (b) security, justice and disaster management;
- (c) infrastructure;
- (d) health and social development;
- (e) education;
- (f) business and economy;
- (g) natural resources and climate change.

(4) The Minister shall with the approval of Cabinet cause a copy of the Plan to be laid before the House of Assembly.

(5) The Plan referred to in subsection (4), shall be laid before the House of Assembly within 60 days following its approval by Cabinet and, it shall be subject to an affirmative resolution of the House.

(6) For purposes of subsection (1), a review of the Plan shall include

- (a) the addition to the Plan of new projects; or
- (b) the removal of existing projects from the Plan; or
- (c) the modification of projects in the Plan.

(7) For the removal of doubt, this section shall not be construed so as to affect in any manner the undertaking of development projects by the Government.

Establishment of the Agency.

4. (1) There is hereby established a body to be known as the Virgin Islands Recovery and Development Agency (referred to in this Act as the “Agency”), to perform the functions conferred on it by or under this Act.

Cap. 136

(2) The Agency shall be a body corporate to which section 21 of the Interpretation Act shall apply.

(3) The Agency shall have a seal which shall

- (a) be kept in the custody of the Secretary to the Board; and
- (b) be affixed to all documents issued by the Board in the presence of at least one other member of the Board and shall be authenticated by the signatures of the Chairperson and that member.

Functions of the Agency.

5. (1) The functions of the Agency shall be to

- (a) ensure the timely and proper implementation and execution of the Plan;
- (b) review business case options and full business cases for all potential investments in the Plan and in so doing, the Agency will seek to incorporate all available evidence and where necessary commission research to inform its submissions to the Board;
- (c) administer the procurement of services or goods required to implement projects under the Plan to ensure that projects under the Plan are executed in a manner that provides the greatest benefit relative to the cost;
- (d) conduct an assessment to determine the best source of expertise to implement specific projects;
- (e) set the specification to be captured in invitations to tender for Projects under the Plan based on the statement of requirement and the business developed for an investment;
- (f) manage the tendering process including evaluating bids and making recommendation on same to the Board;

- (g) prepare and publish the monthly progress and performance reports and submit same to the Board for onward transmission to the Minister;
- (h) provide administrative support to the Board;
- (i) provide internal audit reports to the Board;
- (j) provide policy advice, research, analysis and technical assistance to the Ministries when requested;
- (k) in collaboration with Ministries and other implementation agencies, prepare business cases for recovery, reconstruction and development projects including costs and scope of same;
- (l) undertake procurement functions or appoint external agencies to do so;
- (m) monitor and report, including establishing performance monitoring framework, on individual project implementation and procurement;
- (n) coordinate and provide support and advice to technical advisors and contractors;
- (o) recommend recovery timeframes for all activities;
- (p) apply for, or undertake work in relation to applications for planning permissions or approvals or licenses as required to deliver the projects in the Plan;
- (q) recommend standards to be used in the recovery process consistent with the law and internationally accepted standards;
- (r) assess the effectiveness of the implementation of projects;
- (s) establish public grievance redress system through online and offline options;
- (t) appoint, remunerate, make pension provision for staff and, shall have power to dismiss Agency staff;
- (u) build capacity in skill sets required to execute the Plan by assisting Virgin Islanders to take advantage of business and

employment opportunities in diverse areas arising out of the implementation of the Plan and generally widening the skills base of persons in the community so that they can respond to the needs of the Territory during recovery and development and beyond;

- (v) to make recommendations to Cabinet on such amendments or revisions to legislation as the Agency considers necessary or appropriate to facilitate or promote the execution of the Plan;
- (w) carry out such other functions as may be necessary for the execution of the Plan.

(2) The Agency shall have all such powers as are reasonably necessary to enable it in the performance of its functions.

(3) The Agency may, with the consent of the Board, enter into arrangements with other persons to perform on behalf of the Agency such of its functions as the Agency considers necessary.

(4) In carrying out its functions under this Act, the Agency shall comply with and meet international anti-corruption standards.

(5) The Minister shall, within 60 days after receiving a copy of a report pursuant to subsection (1) (h), cause the copy to be laid before the House of Assembly.

**6. (1)** There shall be a Board of the Agency to be known as the Virgin Islands Recovery and Development Board (hereinafter referred to as the “Board”) which shall be the governing body of the Agency.

(2) The functions of the Board are to

- (a) administer the procurement procedures made in accordance with regulations;
- (b) develop the procurement procedures for submission of and approval of options and business cases for implementation;
- (c) approve business cases;
- (d) approve procurement contracts which in its opinion, comply with the procurement procedures;
- (e) ensure good governance and that projects under the Plan

Establishment  
and functions of  
the Board.

are executed in a manner that provides the greatest benefit relative to cost;

- (f) assure the independence of the Agency in accordance with this Act;
- (g) protect and oversee the independent delivery of the Plan;
- (h) be responsible for all procurement and to approve allocation of the property of the Trust based on the Plan and based on the recommendations from the Agency;
- (i) discharge such other functions as may be properly discharged under this Act.

(3) In carrying out its functions under this Act, the Board shall seek to ensure the proper implementation of the Plan.

7. (1) The Board shall comprise not less than seven and not more than nine persons appointed as follows:

Composition of the Board.

- (a) a chairperson, by the Governor in agreement with the Premier who shall first consult the Leader of the Opposition;
- (b) a deputy chairperson, by the Governor in agreement with the Premier after a joint selection process from a list of candidates;
- (c) by the Governor:
  - (i) one person from the Sister Islands selected by the Premier;
  - (ii) one person selected by the Governor;
  - (iii) one person selected by the United Kingdom Government;
  - (iv) one person, who shall be between the age of 18 and 35 years selected by the Leader of the Opposition;
  - (v) one donor representative;
  - (vi) one person representing civil society jointly selected by the Cabinet and the Governor;
  - (vii) one person representing the private sector jointly

selected by the Cabinet and the Governor.

(2) A person referred to in subsection (1) (a) shall be a person who belong to the Virgin Islands within the meaning of section 2 (2) of the Virgin Islands Constitution Order, 2007.

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Disqualification for  
membership.

**8.** (1) A person shall not be qualified to be appointed to the Board unless that person is a fit and proper person.

(2) A person shall not be appointed as a member of the Board if that person

- (a) is a member of the House of Assembly;
- (b) is an un-rehabilitated insolvent;
- (c) has been convicted of an offence involving fraud or dishonesty; or
- (d) has been convicted of an offence under any other written law and sentenced to a term of imprisonment of not less than six months, without the option of a fine.

Tenure of office  
and vacancy.

**9.** (1) A member of the Board, including the Chairperson and Deputy Chairperson, shall be appointed for a term not exceeding three years and shall be eligible for re-appointment for one further term.

(2) On the expiration of the period for which a member is appointed, the member shall continue to hold office until the successor to the member is appointed, but in no case shall such further period exceed three months.

(3) The office of a member shall become vacant

- (a) upon resignation;
- (b) upon the death of the member;
- (c) if that member is unable to perform the functions of a member arising from infirmity of body;
- (d) if that member without good cause or approval of the Chairperson is absent from three consecutive meetings of the Board of which that member had notice;
- (e) if that member becomes insolvent;

- (f) if the member is party to or participates in the profits of any contract with the Agency;
- (g) if that member is declared to be of unsound mind; or
- (h) if that member is convicted of an offence and sentenced to a term of imprisonment for a period exceeding six months without the option of a fine or is convicted of any offence involving dishonesty.

(4) A member may resign from office by giving three months notice in writing to the authority which appointed that member and such resignation becomes effective upon receipt of the notice by that authority.

(5) Whenever the office of a member becomes vacant before the expiry of the term of office, the authority which appointed that member may, in the same manner, appoint another member in place of the member who vacates office and such member shall hold office only for the unexpired term.

**10. (1)** Where at a meeting of the Board any matter arises relating to an arrangement to which the Agency is a party or a proposed such arrangement, or a contract or other agreement with the Agency or a proposed such contract or other agreement, then, any member of the Board present at the meeting who otherwise than in his or her capacity as such a member has an interest in the matter shall

Disclosure by members of certain interests.

- (a) at the meeting disclose the fact of such interest and the nature thereof;
- (b) neither influence nor seek to influence, either prior to or during the meeting, a decision to be made in relation to the matter;
- (c) absent himself or herself from the meeting or that part of the meeting during which the matter is discussed;
- (d) take no part in any deliberation of the Board relating to the matter, and
- (e) not vote on a decision relating to the matter.

(2) Where an interest is disclosed pursuant to this section, the disclosure shall be recorded in the minutes of the meeting concerned and, for so long as the matter to which the disclosure relates is being considered or discussed by the meeting, the member by whom the disclosure is made shall not be counted in the quorum for the meeting.

(3) Where at a meeting of the Board a question arises as to whether or not a course of conduct, if pursued by a member of the Board, would constitute a failure by him or her to comply with the requirements of subsection (1), the question may be determined by the Board, whose decision shall be final, and where such a question is so determined, particulars of the determination shall be recorded in the minutes of the meeting.

(4) Where the Chairperson is satisfied that a member of the Board has failed to comply with subsection (1), the Chairperson may if he or she thinks fit, recommend to the authority which appointed that member, the removal of that member from office or take such other action as he or she considers appropriate and, in the case of a person removed from office pursuant to this subsection, he or she shall thereafter be disqualified from membership of the Board.

(5) For the purposes of this section, a person shall not be regarded as having an interest in any matter by reason only of an interest of that person, or of any company in which he or she has an interest, which is so remote or insignificant that it cannot reasonably be regarded as likely to influence a person in considering, discussing or in voting on, any question relating to the matter, or in performing any function in relation to that matter.

Procedure of the Board.  
Schedule

**11.** The provisions of the Schedule shall apply to the proceedings of the Board.

Committees of the Board.

**12. (1)** The Board may establish committees to advise it on matters relating to any of its functions and may determine the terms of reference and regulate the procedure of any such committee.

(2) A committee established under this section may include persons who are not members of the Board.

(3) A member of a committee established under this section may be removed at any time from membership of the committee by the Board.

(4) The Board may at any time dissolve a committee established under this section.

(5) The Board may appoint a person to be chairperson of a committee established under this section.

(6) There may be paid by the Board to members of a committee established under this section such reimbursement of expenses incurred by them as the Board may, with the consent of the Cabinet, determine.

Chief Executive Officer and other staff.

**13. (1)** The day to day management of the Agency shall be headed by a Chief Executive Officer to be appointed by the Board in concurrence with Cabinet upon such terms and conditions as the Board may determine.

(2) The Chief Executive Officer shall be assisted by

- (a) a Chief Financial Officer who shall be appointed by the Board in concurrence with Cabinet on such terms and conditions as the Board may determine; and
- (b) such other staff, including senior managers and technical experts, as may be necessary to enable the Agency to exercise its functions.

(3) The persons referred to in subsection (2) (b) shall be appointed by the Board on the recommendation of the Chief Executive Officer and shall be appointed on such terms and conditions as the Board determines.

(4) The persons referred to in subsection (2) (b) shall have such functions as the Chief Executive Officer may determine.

(5) In addition to the provisions of subsection (1), the functions of the Chief Executive Officer shall be to

- (a) coordinate and monitor activities relating to the implementation and execution of the Plan, including capacity-building;
- (b) implement, or cause to be implemented, the directions and decisions of the Board;
- (c) prepare and submit drafts of the Agency's policies and plans relating to reconstruction submitted to the Board for approval;
- (d) prepare and submit monthly reports to the Board on the activities undertaken by the Agency;
- (e) ensure that funds are used as prescribed by the Board;
- (f) make recommendations on staffing of the Agency to the Board;
- (g) be responsible for the recruitment process and performance of the Agency's staff;

- (h) dismiss, with the approval of the Board, junior staff of the Agency based on fair and due procedure that includes full disclosure of the reasons for dismissal;
- (i) proactively pursue financial investment to support the Virgin Islands recovery and development efforts;
- (j) perform, or cause to be performed, such other functions relating to the recovery effort as may be prescribed.

(6) In addition to the provisions of subsection (4), the functions of the Chief Financial Officer shall be to

- (a) serve as the accountable officer to the Chief Executive Officer and Board for the financial reporting and financial management of the Agency;
- (b) ensure that there are annual externally audited accounts for all Agency expenditure and that these are published within three months of the end of the financial year which shall run from 1 January to 31 December in any given year.

Disclosure by staff of Agency, etc., of certain interests.

**14. (1)** Where a member of staff of the Agency or a committee, or a consultant or adviser engaged by the Agency under this Act, has an interest, otherwise than in his or her capacity as such in any, or any proposed contract, agreement or arrangement, to which the Agency is or is proposed to be a party, that person

- (a) shall disclose to the Agency his or her interest and the nature thereof;
- (b) shall take no part in the negotiation of the contract, agreement or arrangement or in any deliberation by the Agency or members of staff of the Agency in relation thereto;
- (c) shall not influence or seek to influence a decision to be made in the matter; and
- (d) shall not make any recommendation in relation to the contract, agreement or arrangement.

(2) The provisions of subsection (1) do not apply to a person as regards a contract or proposed contract of employment of that person as a member of staff of the Agency.

(3) In this section “member of staff” includes the Chief Executive Officer.

(4) Where a person to whom subsection (1) applies fails to comply with a requirement of this section, the Board shall decide the appropriate action (including removal from office or termination of contract) to be taken.

**15** The Government shall establish a trust, to be known as the Virgin Islands Recovery Trust for the purpose of receiving all contributions from diverse sources for the recovery and development efforts pursuant to the Plan including

Establishment of the Trust.

- (a) gifts and bequests;
- (b) donations;
- (c) proceeds from loans and other arrangements negotiated by the Government;
- (d) such monies as may be appropriated by the House of Assembly for the purposes of the Plan.

**16. (1)** The property of the Trust shall be applied in accordance with the terms of the Trust.

Application of property of the Trust.

(2) The Trust shall principally finance projects and programmes under the Plan.

(3) The property of the Trust shall not be used to support the operational costs of the Government.

(4) No part of the earnings of the Trust shall inure to the benefit of any person or group of persons except in accordance with the terms of the Trust.

**17.** The Agency shall only be able to access the property of the Trust required for the implementation of the Plan.

Access to property of the Trust by Agency.

**18.** The Board shall establish, with one or more authorised deposit-taking institutions, such accounts as it thinks appropriate for the money received from the Trust or any other source.

Agency to establish accounts.

**19. (1)** The Chief Financial Officer, following the agreement of the Chief Executive Officer, shall submit estimates of income and expenditure to the Board in such form, in respect of such periods and at such times, as may be required by the Board and shall furnish to the Board any information which the Board may require in relation to such estimates, including proposals and future plans relating to the discharge by the Agency of its functions over a period of years, as required.

Accounts and audit.

(2) The Chief Financial Officer, under the direction of the Board, shall cause to be kept, on a continuous basis and in either or both a legible and a machine readable form, all proper books and records of account of all income and expenditure of the Agency, and of the sources of such income and the subject matter of such expenditure, and of the property, assets and liabilities of the Agency and shall keep and shall account to the Board for all such special accounts as the Board or the Agency, with the consent of the Board, may from time to time direct should be kept.

(3) The Agency, the Chief Financial Officer and any relevant member of the staff of the Agency shall, whenever so requested by the Board, permit any person appointed by the Board to examine the records of account, books or other records of the Agency in respect of any financial year or other period and shall facilitate any such examination, and the Agency shall pay such fee therefor as may be fixed by the Board.

(4) In this subsection “relevant member of the staff of the Agency” means a member of the staff of the Agency in respect of whom there have been duly assigned duties which relate to any of the records referred to in subsection (3).

(5) The accounts of the Agency for each financial year shall be kept in such a form and manner as may be specified by the Board and be prepared by the Chief Financial Officer and approved by the Board as soon as practicable but not later than 3 months after the end of the financial year to which they relate.

(6) A copy of the accounts referred to in subsection (5) and the report of the person referred to in subsection (3), shall as soon as practicable be presented to the Cabinet by the Board and the Cabinet shall cause a copy of the accounts to be laid before the House of Assembly.

(7) A copy of the estimates of operating expenditure of the Agency shall as soon as practicable be submitted by the Board, through the Minister for onward transmission to the Cabinet for approval.

(8) The Cabinet shall as soon as practicable, consider the estimates of operating expenditure of the Agency with a view to

- (a) approving them, with or without modification; or
- (b) remitting them back to the Board without approval.

(9) Where Cabinet remits the estimates of operating expenditure of the Agency to the Board, it shall provide the Board with the reasons for its non-

approval of the estimates of the operating expenditure, including any specific recommendations for modifications.

(10) Where the estimates of the operating expenditure of the Agency are approved by Cabinet, Cabinet shall within three months of the approval cause a copy of same to be laid before the House of Assembly.

(11) The Board shall, through the Minister, at the request of Cabinet provide Cabinet with the information on projects, together with all financial implications thereof, to be undertaken during the financial year.

(12) The financial year of the Agency shall run from 1 January to 31 December in any given year.

**20.** The Board shall, not later than the first day of September in each year, prepare a budget for the next fiscal year which sets forth Annual budget.

- (a) projected revenue of the Trust from all sources;
- (b) costs for Agency administration; and
- (c) costs of grants and other financial commitments to projects consistent with the Agency's purpose.

**21.** (1) As soon as practicable after the 30 June in each year, and in any event no later than the last business day in October of each year, the Agency shall prepare and deliver to the Board a report of the activities of the Agency during the financial year of the Agency. Annual report.

(2) The report prepared pursuant to subsection (1) shall include copies of the audited financial statements and accounts of the Agency for the financial year to which the report relates and the auditor's report on the statements and accounts prepared by the auditor.

(3) The Board shall forward the report delivered pursuant to subsection (1) to the Minister for the consideration of the Cabinet and the Cabinet shall cause a copy to be laid before the House of Assembly within 60 days.

(4) The first report prepared pursuant to this section shall contain a report on the activities of the Agency from the date of commencement of this Act to the end of the first fiscal year immediately following that date.

**22.** The Agency shall be dissolved at the end of five years unless it is otherwise determined by the Cabinet with the approval of the House of Assembly. Dissolution of Agency.

Dissolution of the Trust.

**23.** The Trust shall be dissolved in accordance with the terms of the Trust.

Prohibition on unauthorised disclosure of confidential information.

**24.** (1) Save as otherwise provided by law, a person shall not, without the consent of the Agency, disclose confidential information obtained by him or her while performing, or as a result of having performed, duties as

- (a) the member of the Board;
- (b) a member of staff of the Agency;
- (c) a member of a committee formed under this Act, or
- (d) a consultant or adviser or an employee of such person engaged by the Agency under this Act, unless he or she is duly authorised to do so.

(2) A person who contravenes subsection (1) commits an offence and shall be liable on summary conviction to a fine not exceeding five thousand dollars.

(3) Nothing in subsection (1) shall prohibit the disclosure of information by means of a report made

- (a) to the Agency; or
- (b) by or on behalf of the Agency to the Cabinet or the House of Assembly.

(4) In this section “confidential information” includes

- (a) information that is expressed by the Agency or a committee, as the case may be, to be confidential either as regards particular information or as regards information of a particular class or description;
- (b) commercial information in relation to contractors, consultants, providers of finance, or any other person, and
- (c) proposals of a commercial nature or tenders submitted to the Agency by contractors, consultants, or any other person.

Power to amend the Schedule.

**25.** The Minister may, on the advice of the Board, amend the Schedule by Order published in the *Gazette*.

Regulations.

**26.** (1) The Cabinet, on the advice of the Board, may make regulations, not inconsistent with this Act, for or with respect to any matter that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.

(2) Without limiting the generality of subsection (1), regulations may, in conformity with international best practice, provide for

- (a) the guidelines and criteria for applications for funding;
- (b) the framework for interaction, responsibilities and exchange of information between the Ministries and the Agency relating to projects under the Plan;
- (c) guidelines and procedures for procurement of services and goods under the Plan;
- (d) guidelines for capacity building during recovery and development for the immediate and long term benefit of the Territory;
- (e) investment of the Trust monies;
- (f) prescribing anything that is required to be prescribed by this Act.

(3) Any regulations made under this section shall be subject to an affirmative resolution of the House of Assembly.

## SCHEDULE

[Section 12]

### PROCEEDINGS OF THE BOARD.

1. Subject to the provisions of this Act, the Board may regulate its own proceedings.

2. The Board shall hold its first meeting on such date, place and time as the Chairperson may determine and in any event no later than 2 weeks after there are sufficient members to make a quorum and thereafter the Board shall meet (in person or by telephone) for the transaction of business at such places and at such times as the Chairperson may determine.

3. The Chairperson may, upon giving notice of not less than fourteen days, call a meeting of the Board and shall call a special meeting to be held within fourteen days of receipt of a written request to the Chairperson by at least three members.

4. If the urgency of any particular matter does not permit the giving of such notice as is required under subparagraph (3), a special meeting may be called by the Chairperson upon giving a shorter notice.

5. Five members, not including the Chief Executive Officer, shall form a quorum at any meeting of the Board.

6. There shall preside at any meeting of the Board

(a) the Chairperson;

(b) the Deputy Chairperson in the absence of the Chairperson;  
or

(c) in the absence of both the Chairperson and the Deputy Chairperson, any member as the members present may elect to be Chairperson for the purposes of that meeting.

7. A decision of the Board on any question shall be by a majority of the members present and voting at the meeting and in the event of an equality of votes, the person presiding at the meeting shall have a casting vote in addition to the deliberative vote.

8. The validity of any proceedings, act or decision of the Board shall not be affected by any vacancy in the membership of the Board or any defect in the appointment of any member or by reason that any person not entitled to do so took part in the proceedings.

**9.** Notwithstanding anything contained in this Schedule, the Chairperson may, in any matter he or she considers exceptional, make arrangements for a decision of the Board to be taken with notice to all members on such matter through a process of consultation recorded in written resolutions without the need for an actual meeting.

**10.** The Board shall cause minutes of all proceedings of and decisions taken at every meeting of the Board to be entered in books kept for the purpose.

**11.** The Board shall cause such minutes of all proceedings of and decisions taken at every meeting of the Board to be published on the Internet Site within fourteen days of each meeting.

Passed by the House of Assembly this 27<sup>th</sup> day of March, 2018.

(Sgd.)Ingrid Moses-Scatliffe,  
Speaker.

Phyllis Evans,  
(Sgd.)Clerk of the House of Assembly.

**VIRGIN ISLANDS**

**ECONOMIC SUBSTANCE (COMPANIES AND LIMITED  
PARTNERSHIPS) ACT, 2018**

**ARRANGEMENT OF SECTIONS**

*Section*

1. Short title and commencement.
2. Interpretation.
3. Meaning of finance and leasing business.
4. Meaning of financial period.
5. General obligations.
6. Meaning of relevant activities.
7. Meaning of Core income-generating activities.
8. Economic substance requirements.
9. Presumptions of non-compliance for intellectual property business.
10. Assessment of compliance.
11. Requirement to provide information.
12. Penalties for non-compliance with economic substance requirements.
13. Right of appeal.
14. Procedure on appeal.
15. Time for compliance with section 12 notice.
16. Amendments to the 2017 Act.
17. Regulations and Rules.

**SCHEDULE**

I Assent

(Sgd.) Augustus J U Jaspert,  
Governor  
20<sup>th</sup> December, 2018

**VIRGIN ISLANDS**

**No. 12 of 2018**

An Act to introduce the substantive economic substance requirements; to amend the Beneficial Ownership Secure Search System Act, 2017 (No. 24 of 2017) ("the BOSS Act") so as to impose reporting requirements and provide for matters incidental thereto.

[Gazetted 28<sup>th</sup> December, 2018]

ENACTED by the Legislature of the Virgin Islands as follows:

Short title and commencement.

1. (1) This Act may be cited as the Economic Substance (Companies and Limited Partnerships) Act, 2018.

(2) The provisions of this Act shall come into force on 1<sup>st</sup> January, 2019.

Interpretation.

2. In this Act, unless the context otherwise requires,

No. 15 of 2017

“2017 Act” means the Beneficial Ownership Secure Search System Act, 2017;

S.I. 2012 No. 23

“affiliate” bears the same meaning as an “affiliated company” specified in regulation 2(2) of the BVI Business Companies Regulations, 2012, modified so that references to a company include references to a limited partnership, and other expressions appropriate to companies shall be construed as including references to the corresponding persons, documents or organs, as the case may be, appropriate to limited partnerships;

“banking business” has the meaning specified in section 2(1) of the Banks and Trust Companies Act, 1990;

“Commission” means the Financial Services Commission established under the Financial Services Commission Act, 2001; No. 12 of 2001

“company” includes

- (a) a company within the meaning of section 3(1) of the BVI Business Companies Act, 2004; No. 16 of 2004
- (b) a foreign company within the meaning of section 3(2) of the BVI Companies Act, 2004 which is registered under Part XI of that Act,

but does not include a non-resident company;

“competent authority” means the International Tax Authority established under section 3 of the International Authority Act of 2018; No. 7 of 2018

“core income-generating activities” has the meaning given by section 7;

“Court” means the High Court;

“distribution and service centre business” means the business of either or both of the following

- (a) purchasing from foreign affiliates
  - (i) component parts or materials for goods; or
  - (ii) goods ready for sale; and
  - (iii) reselling such component parts, materials or goods;
- (b) providing services to foreign affiliates in connection with the business,

but does not include any activity included in any other relevant activity except holding business;

“economic substance requirements” shall be understood within the context of section 8;

“finance and leasing business” has the meaning given by section 3;

“financial period” is defined in section 4;

No. 2 of 2010

“fund management business” means the conduct of an activity that requires the legal entity to hold an investment business license pursuant to section 4 and category 3 of Schedule 3 of the Securities and Investment Business Act, 2010;

S.I. 2012 No. 23

“group” has the meaning specified in regulation 2(1) of the BVI Business Companies Regulations, 2012, modified so that references to a company include references to a limited partnership, and other expressions appropriate to companies shall be construed as including references to the corresponding persons, documents or organs, as the case may be, appropriate to limited partnerships;

“headquarters business” means the business of providing any of the following services to an entity in the same Group:

- (a) the provision of senior management;
- (b) the assumption or control of material risk for activities carried out by any of those entities in the same Group; or
- (c) the provision of substantive advice in connection with the assumption or control of risk referred to in paragraph (b),

but does not include banking business, financing and leasing business, fund management business, intellectual property business, holding company business or insurance business;

“high risk IP legal entity” is a legal entity which carries on an intellectual property business and which

- (a) acquired the intellectual property asset
  - (i) from an affiliate; or
  - (ii) in consideration for funding research and development by another person situated in a country or territory other than the Virgin Islands; and
- (b) licences the intellectual property asset to one or more affiliates or otherwise generates income from the asset in consequence of activities (such as facilitating sale agreements) performed by foreign affiliates;

“holding business” means the business of being a pure equity holding entity;

“income” in respect of an intellectual property asset includes

- (a) royalties;

- (b) capital gains and other income from the sale of an intellectual property asset;
- (c) income from a franchise agreement; and
- (d) income from licensing the intangible asset;

“insurance business” has the meaning specified in section 3(1) of the Insurance Act, 2008; No. 1 of 2008

“intellectual property business” means the business of holding intellectual property assets;

“intellectual property asset” means any intellectual property right in intangible assets, including but not limited to copyright, patents, trade marks, brand, and technical know-how, from which identifiable income accrues to the business (such income being separately identifiable from any income generated from any tangible asset in which the right subsists);

“legal entity” means a company and a limited partnership;

“limited partnership” includes

- (a) an existing limited partnership within the meaning of section 2 of the Limited Partnership Act, 2017; No. 24 of 2017
- (b) a limited partnership within the meaning of section 2 of the Limited Partnership Act, 2017; and
- (c) a foreign limited partnership within the meaning of section 2 of the Limited Partnership Act, 2017 which is registered under Part VI of that Act,

but does not include a non-resident limited partnership or a limited partnership where the general partners have elected pursuant to either section 8(2)(b) or section 67(1)(c) of the Limited Partnership Act, 2017 that the limited partnership shall not have legal personality;

“Minister” means the Minister responsible for Finance;

“non-resident company” means a company which is resident for tax purposes in a jurisdiction outside the Virgin Islands which is not on Annex 1 to the EU list of non-cooperative jurisdictions for tax purposes;

“non-resident limited partnership” means a limited partnership which is resident for tax purposes in a jurisdiction outside the Virgin Islands which is not on Annex 1 to the EU list of non-cooperative jurisdictions for tax purposes;

“pure equity holding entity” means a legal entity that only holds equity participations in other entities and only earns dividends and capital gains;

“Register of Companies” means the Register of Companies maintained in accordance with section 230(1)(a) of the BVI Business Companies Act, 2004;

No. 24 of 2017

“Register of Limited Partnerships” includes the register maintained in accordance with section 54(1) of the Partnership Act, 1996 and the register maintained in accordance with section 108(1) of the Limited Partnership Act, 2017;

“relevant activities” has the meaning given in section 6;

No. 13 of 2001

“ship” has the meaning specified in section 2(1) of the Merchant Shipping Act, 2001 but does not include a fishing vessel, a pleasure vessel or a small ship (in each case, as defined by section 2(1) of that Act);

“shipping business” means any of the following activities involving the operation of a ship anywhere in the world other than solely within Virgin Islands waters (as defined in section 2(2)(a) of the Merchant Shipping Act, 2001)

- (a) the business of transporting, by sea, persons, animals, goods or mail;
- (b) the renting or chartering of ships for the purpose described in paragraph (a);
- (c) the sale of travel tickets or equivalent, and ancillary services connected with the operation of a ship;
- (d) the use, maintenance or rental of containers, including trailers and other vehicles or equipment for the transport of containers, used for the transport of anything by sea;
- (e) the management of the crew of a ship.

Meaning of  
finance and  
leasing business.

**3. (1)** In this Act, unless the context otherwise requires, “finance and leasing business” means the business of providing credit facilities of any kind for consideration.

(2) For the purposes of subsection (1) but without limiting the generality of that section

- (a) consideration may include consideration by way of interest;
- (b) the provision of credit may be by way of instalments for which a separate charge is made and disclosed to the customer in connection with
  - (i) the supply of goods by hire purchase;
  - (ii) leasing other than any lease granting an exclusive right to occupy land; or
  - (iii) conditional sale or credit sale.

(3) Where an advance or credit repayable by a customer to a person is assigned to another person, that other person is deemed to be providing the credit facility for the purposes of sub section (1).

(4) Any activity falling within the definition of “banking business”, “fund management business” or “insurance business” is excluded from the definition in sub section (1).

4. In this Act, unless the context otherwise requires, “financial period” means Meaning of financial period.

- (a) in the case of a company incorporated on or after 1 January 2019, such period of not more than one year from the date of incorporation as the company shall notify to the competent authority and thereafter each successive period of one year running from the end of that period;
- (b) in the case of a limited partnership formed on or after 1 January 2019, such period of not more than one year from the date of formation as the limited partnership shall notify to the competent authority and thereafter each successive period of one year running from the end of that period;
- (c) in any other case such period of one year commencing on a date no later than 30 June 2019 as the legal entity shall notify to the competent authority and thereafter each successive period of one year running from the end of that period.

(2) On an application by the legal entity the competent authority may permit an alteration in the legal entity's financial period by shortening or (where the legal entity's existing financial period is less than 12 months) lengthening a financial period so as to alter the commencement date for successive financial periods but so that no such altered period shall exceed twelve months in length.

General obligation.

5. (1) A legal entity which carries on a relevant activity during any financial period must comply with the economic substance requirements in relation to that activity.

(2) A legal entity which carries on more than one relevant activity shall comply with the economic substance requirements.

Meaning of relevant activities.

6. In this Act, unless the context otherwise requires, "relevant activities" mean any of the following activities:

- (a) banking business;
- (b) insurance business;
- (c) fund management business;
- (d) finance and leasing business;
- (e) headquarters business;
- (f) shipping business;
- (g) holding business;
- (h) intellectual property business;
- (i) distribution and service centre business.

Meaning of core income-generating activities.

7. The expression "core income-generating activities" includes, in relation to relevant activities

- (a) in respect of banking business
  - (i) raising funds, managing risk including credit, currency and interest risk;
  - (ii) taking hedging positions;

- (iii) providing loans, credit or other financial services to customers;
  - (iv) managing regulatory capital;
  - (v) preparing regulatory reports and returns;
- (b) in respect of distribution and service centre business
  - (i) transporting and storing goods;
  - (ii) managing stocks;
  - (iii) taking orders;
  - (iv) providing consulting or other administrative services;
- (c) in respect of insurance business
  - (i) predicting and calculating risk;
  - (ii) insuring or re-insuring against risk;
  - (iii) providing insurance business services to clients;
- (d) in respect of fund management business
  - (i) taking decisions on the holding and selling of investments;
  - (ii) calculating risks and reserves;
  - (iii) taking decisions on currency or interest fluctuations and hedging positions;
  - (iv) preparing relevant regulatory or other reports for government authorities and investors;
- (e) in respect of finance or leasing business
  - (i) agreeing funding terms;

- (ii) identifying and acquiring assets to be leased (in the case of leasing);
- (iii) setting the terms and duration of any financing or leasing;
- (iv) monitoring and revising any agreements;
- (v) managing any risks;
- (f) in respect of headquarters business
  - (i) taking relevant management decisions;
  - (ii) incurring expenditures on behalf of affiliates;
  - (iii) co-ordinating group activities;
- (g) in respect of shipping business
  - (i) managing the crew (including hiring, paying and overseeing crewmembers);
  - (ii) hauling and maintaining ships;
  - (iii) overseeing and tracking deliveries;
  - (iv) determining what goods to order and when to deliver them;
  - (v) organising and overseeing voyages;
- (h) in respect of intellectual property business
  - (i) where the business concerns intellectual property assets such as patents, research and development;
  - (ii) where the business concerns non-trade intangible assets such as brand, trademark and customer data, marketing, branding and distribution.

Economic substance requirements.

**8.(1)** Subject to subsection (2), a legal entity complies with the economic substance requirements if

- (a) the relevant activity is directed and managed in the Virgin Islands;
- (b) having regard to the nature and scale of the relevant activity
  - (i) there are an adequate number of suitably qualified employees in relation to that activity who are physically present in the Virgin Islands (whether or not employed by the relevant legal entity or by another entity and whether on temporary or long-term contracts);
  - (ii) there is adequate expenditure incurred in the Virgin Islands;
  - (iii) there are physical offices or premises as may be appropriate for the core income-generating activities; and
  - (iv) where the relevant activity is intellectual property business and requires the use of specific equipment, that equipment is located in the Virgin Islands;
- (c) the legal entity conducts core income-generating activity; and
- (d) in the case of income-generating activity carried out for the relevant legal entity by another entity
  - (i) no core income generating activity is carried on outside the Virgin Islands;
  - (ii) only that part of the activities of that other entity which are solely attributable to generating income for the relevant legal entity and not for any other legal entity shall be taken into account when considering if the relevant legal entity meets the economic substance requirements;
  - (iii) the relevant legal entity is able to monitor and control the carrying out of that activity by the other entity.

(2) A pure equity holding entity, which carries on no relevant activity other than holding equity participations in other entities and earning dividends and capital gains, has adequate substance if it

No. 13 of 2004  
No. 5 of 1996  
No. 24 of 2017

- (a) complies with its statutory obligations under the BVI Business Companies Act, 2004 or the Limited Partnership Act, 2017 (whichever is relevant);
- (b) has adequate employees and premises for holding equitable interests or shares and, where it manages those equitable interests or shares, has adequate employees and premises for carrying out that management.

Presumptions of non-compliance for intellectual property business.

9. (1) This section applies where the relevant activity carried on by the legal entity from within the Virgin Islands is an intellectual property business.

(2) There is a presumption that a legal entity does not conduct core income-generating activity if

- (a) the activities being carried on from within the Virgin Islands do not include any of the activities identified in section 7(h); or
- (b) the legal entity is a high risk IP legal entity.

(3) The presumption in subsection (2)(a) may be rebutted where the activities being carried on from within the Virgin Islands include

- (a) taking the strategic decisions and managing (as well as bearing) the principal risks relating to the development and subsequent exploitation of the intangible asset generating income;
- (b) taking the strategic decisions and managing (as well as bearing) the principal risks relating to acquisition by third parties and subsequent exploitation of the intangible asset;
- (c) carrying on the underlying trading activities through which the intangible assets are exploited and which lead to the generation of revenue from third parties.

(4) The presumption in subsection (2)(b) may be rebutted where a high degree of control over the development, exploitation, maintenance, enhancement

and protection of the intellectual property asset is exercised by suitably qualified employees of the relevant legal entity who are physically present and perform their functions from within the Virgin Islands and who are on long-term contracts.

**10. (1)** The competent authority may determine that a legal entity has not complied with the economic substance requirements during any financial period of the legal entity ending on or after 31<sup>st</sup> December 2019, provided that such determination is made no later than 6 years after the end of the financial period to which the determination relates.

Assessment of compliance.

(2) The time limit in subsection (1) does not apply if the competent authority is not able to make a determination within the 6 year period by reason of any deliberate misrepresentation or negligent or fraudulent action by the legal entity or by any other person.

**11. (1)** In addition to its reporting requirements under section 10(3) of the 2017 Act, a legal entity shall provide any information reasonably required by the competent authority in order to assist the competent authority in making a determination under section 10.

Requirement to provide information.

(2) The competent authority may serve notice on any person requiring the person to provide, within the period specified in the notice and at such place as is specified in the notice, such documents and information as the competent authority may reasonably require for the purpose of facilitating the competent authority's exercise of functions under this Act.

(3) A person who fails to provide information without reasonable excuse, or who intentionally provides false information in response to a request under this section commits an offence and is liable

- (a) on summary conviction, to a fine not exceeding forty thousand dollars or to imprisonment for a term not exceeding two years or both; or
- (b) on conviction on indictment, to a fine not exceeding seventy five thousand dollars or to imprisonment for a term not exceeding five years; or both.

**12. (1)** On a first determination of non-compliance under section 10, the competent authority shall issue a notice to the legal entity notifying it

Penalties for non-compliance with economic substance requirements.

- (a) that the competent authority has determined that the legal entity has not complied with the economic substance requirements for that financial period;

- (b) of the reasons for that determination;
- (c) of the amount of penalty imposed on the legal entity under subsection (2);
- (d) of the date from which the penalty under subsection (2) is due, being not less than 28 days after the issue of the notice;
- (e) of what action the competent authority considers should be taken by the legal entity to meet the economic substance requirements and the date by which such action needs to have been taken; and
- (f) of the legal entity's right of appeal under section 13.

(2) The amount of penalty referred to in subsection (1)(c) is such amount as is determined by the competent authority subject to a minimum penalty of five thousand dollars and to a maximum penalty of

- (a) in the case of a high risk IP legal entity, fifty thousand dollars; and
- (b) in the case of all other legal entities, twenty thousand dollars.

(3) If a legal entity fails to comply with any requirements imposed upon it under paragraph (e) of subsection (1) within the time there stated, or within such longer period as the competent authority may allow, the competent authority shall issue a second determination.

(4) On a second determination of non-compliance under section 10, the competent authority shall issue a further notice to the legal entity notifying it

- (a) that the competent authority has determined that the legal entity has not complied with the economic substance requirements;
- (b) of the reasons for that determination;
- (c) of the amount of the additional penalty imposed on the legal entity under subsection (5);

- (d) of the date from which the penalty under subsection (5) is due, being not less than 28 days after the issue of the notice;
- (e) that the competent authority may make a report to the Commission under subsection (6);
- (f) of what action the competent authority considers should be taken by the legal entity to meet the economic substance requirements and the date by which such action needs to have been taken; and
- (g) of the legal entity's right of appeal under section 13.

(5) The amount of the additional penalty referred to in subsection (4)(c) is such amount as is determined by the competent authority subject to a minimum penalty of ten thousand dollars and to a maximum penalty of

- (a) in the case of a high risk IP legal entity, four hundred thousand dollars; and
- (b) in the case of all other legal entities, two hundred thousand dollars.

(6) Following the issue of a notice under subsection (4), the competent authority shall consider whether to provide the Commission with a report of the matters referred to in that notice together with any additional information.

(7) In its report to the Commission under subsection (6), the competent authority may, if it considers it appropriate to do so having regard to all the circumstances of the case, recommend to the Commission to strike the legal entity off the Register of Companies or the Register of Limited Partnerships, as appropriate.

(8) If at any time following the service of a first determination of non-compliance under section 10 the competent authority decides that there is no realistic possibility of the legal entity meeting the economic substance requirements, it may serve notice on the Commission requiring it to strike the legal entity off the Register of Companies or the Register of Limited Partnerships, as appropriate.

**13.** A legal entity upon whom a notice has been served by the competent authority under section 12 may Right of appeal.

- (a) appeal against the determination under section 10; and

(b) appeal against the amount of any penalty imposed, including where the amount of the penalty is the minimum prescribed under section 12(2) or section 12(5).

Procedure on appeal.

**14. (1)** Notice of an appeal under section 13 stating the ground of appeal shall be filed at the Court within 30 days of the date of the notice issued under section 12.

(2) The notice under subsection (1) shall be served on the competent authority who shall be entitled to appear and be heard at the hearing of the appeal.

(3) On an appeal, the Court may

(a) confirm, vary or revoke the determination;

(b) confirm, vary or cancel the penalty.

Time for compliance with section 12 notice.

**15.** The time for complying with the requirements specified in a notice issued under section 12 shall run from the later of

(a) the date of the notice; or

(b) if notice of appeal under section 13 is filed, the date on which the appeal is finally determined or withdrawn.

Amendments to the 2017 Act. Schedule

**16.** The Schedule to this Act contains amendments to the 2017 Act which shall have effect.

Regulations and Rules.

**17. (1)** The Minister, with the approval of the Cabinet, may make regulations with respect to any obligations imposed by this Act or prescribing anything requiring to be prescribed under this Act, including:

(a) expanding upon the meaning of any of the terms defined or referred to in section 2;

(b) making more detailed provision for how a legal entity is to meet the economic substance requirements.

(2) The power conferred by subsection (1) includes power to make such incidental, supplementary, consequential or transitional provision as appears to the Minister to be expedient for the purposes of the regulations.

(3) The competent authority may issue rules on how the economic substance requirements may be met, including without prejudice to the generality of the foregoing, rules on the interpretation meaning of any expression used in this Act or in regulations made under this section.

(4) Regard shall be had to any rules under subsection (3) concerning the interpretation of any expression.

(5) The competent authority may revise the rules issued under subsection (3) from time to time and a reference to published rules includes a reference to revised rules.

(6) The rules issued under subsection (3) shall be published by the competent authority in a manner which the competent authority considers will bring the rules to the attention of those most likely to be affected by them.

## SCHEDULE

[section 16]

The 2017 Act is amended as follows:

- (a) in section 2(1) (Interpretation), by inserting the following new or amended definitions in their appropriate alphabetical order:

“core income-generating activity” has the meaning given to it for the purpose of the Economic Substance (Companies and Limited Partnerships) Act, 2018;

“corporate and legal entity” means

No. 16 of 2004                      (a) a company as defined under section 3 of the BVI Business Companies Act, 2004;

No. 24 of 2017                      (b) an existing limited partnership as defined under section 2 of the Limited Partnership Act 2017;

(c) a limited partnership as defined under section 2 of the Limited Partnership Act 2017;

(d) a foreign company as defined under section 3 of the BVI Business Companies Act 2004;

(e) a foreign limited partnership as defined under section 2 of the Limited Partnerships Act 2017;

No. 7 of 2018                      “competent authority” means the International Tax Authority established under the International Tax Authority Act 2018;

“economic substance requirements” means the requirements for economic substance in the carrying out of relevant activities which are imposed by the Economic Substance (Companies and Limited Partnerships) Act, 2018;

“financial period” has the meaning given to it for the purpose of the Economic Substance (Companies and Limited Partnerships) Act, 2018;

“non-resident company” has the meaning assigned to it under section 2 of the Economic Substance (Companies and Limited Partnerships) Act, 2018;

“non-resident limited partnership” has the meaning assigned to it under section 2 of the Economic Substance (Companies and Limited Partnerships) Act, 2018;

“overseas competent authority” means the competent tax authority for an overseas territory or country, as specified in regulations

“parent” has meaning given by section 7(3);

“relevant activity” has the meaning assigned to it under section 2 of the Economic Substance (Companies and Limited Partnerships) Act, 2018;

“intellectual property business” has the meaning assigned to it under section 2 of the Economic Substance (Companies and Limited Partnerships) Act, 2018.

(b) in section 4 (Implementation of the exchange of notes)

(i) by replacing subsection with the following:

“(1) This Act shall apply for the purposes of

(a) giving effect to the exchange of notes;

(b) giving effect to the EU Information Exchange Protocol;

(c) the provision of information to facilitate the monitoring and enforcement of the economic substance requirements.”.

(ii) by inserting the following new subsection (5):

“(5) The government may make, or procure that the competent authority makes, disclosures of information held on RA databases to the persons, in the circumstances and on the terms set out Schedule 4”;

(c) in section 7 (Exempt person), by inserting in subsection (1), before the full stop the words, “unless it carries on a relevant activity.”

(d) in section 9 (Duty of registered agent to identify beneficial owners)

(i) by replacing subsection (2) with the following:

“(2) A corporate and legal entity shall

(a) identify any person who is a parent, a beneficial owner or registrable legal entity of that corporate and legal entity, or, if it is

registered on a recognised stock exchange, shall give details of its stock exchange registration;

- (b) identify whether it carries on one or more relevant activities, and if so which relevant activities; and
- (c) ascertain the information prescribed in sections 10(3)(e) and (f).”.

(ii) by inserting the following new subsection (6A):

“(6A) A corporate and legal entity shall notify the registered agent of any relevant activities carried on during the relevant financial period and any information prescribed in section 10(3)(f) to (h) within a period following the end of the financial period to be fixed by regulations.”.

(e) in section 10 (Duty to maintain RA database)

(i) by inserting the following new subsection (3)(a)(vi):

“(3)(a)(vi) any relevant activities which it carries on, and”;

(ii) by re-numbering the existing subsection (3)(a)(vi) as (3)(a)(vii);

(iii) by inserting the following new subsection (3)(e) to (j):

“(e) with respect to the parent (if any) of the corporate and legal entity:

- (i) details of the parent as outlined in subsection (3)(a);
- (ii) jurisdiction in which the parent is formed;

(f) with respect to any corporate and legal entity which is registered on a recognised stock exchange, details of the stock exchange listing.

(g) with respect to any corporate and legal entity which carries on a relevant activity and is a non-resident company or a non-resident limited partnership, the jurisdiction in which it is tax resident together with evidence to support that tax residence.

(h) with respect to any corporate and legal entity which carries on a relevant activity, and which is not a non-resident company or a non-resident limited partnership, in relation to each such activity which it carries on

during a financial period ending after 31<sup>st</sup> December 2019, and in respect of that period

- (i) the total turnover generated by the relevant activity;
  - (ii) the amount of expenditure incurred on the relevant activity within the Virgin Islands;
  - (iii) the total number of employees engaged in the relevant activity;
  - (iv) the number of employees engaged in the relevant activity within the Virgin Islands;
  - (v) the address of any premises within the Virgin Islands which is used in connection with the relevant activity and the address of each such premises;
  - (vi) the nature of any equipment located within the Virgin Islands which is used in connection with the relevant activity;
  - (vii) the names of the persons responsible for the direction and management of the relevant activity, together with their relationship to the company and whether they are resident in the Virgin Islands;
- (i) with respect to any corporate or legal entity which carries on an intellectual property business, in addition to the particulars supplied under section 10(3)(f), in relation to that activity
- (i) whether or not the corporate or legal entity is a high risk IP legal entity within the meaning of section 2 of the Economic Substance (Companies and Limited Partnerships) Act, 2018;
  - (ii) whether the corporate or legal entity wishes to contest the rebuttable presumption introduced by section 9(2)(a) or, as the case may be 9(2)(b) of the Economic Substance (Companies and Limited Partnerships) Act, 2018;
  - (iii) if the corporate or legal entity wishes to contest such a rebuttable presumption the facts and matters relied upon for that purpose.
- (j) with respect to any corporate or legal entity which carries on a relevant activity and which is not a non-resident company or a non-resident limited partnership, but for which core income-generating activity is carried out by another entity, the name of the entity which carries out that activity on its behalf, together with details of the resources deployed by that entity in carrying out the activity on its behalf.”.

(f) by inserting after section 10, the following new section 10A:

“Duty of registered agent with respect to section 10(3)(g) and 10(3)(h)(ii). 10A. (1) For each corporate and legal entity which carries on a relevant activity the registered agent acting in respect of that corporate or legal entity shall supply the particulars required by section 10(3)(g) within a period following the end of the relevant financial period to be fixed by regulations.

(2) For each corporate and legal entity which carries on a relevant IP activity and which has stated that it wishes to contest the rebuttable presumption referred to in section 10(3)(h)(ii) the registered agent acting in respect of that company shall supply the evidence relied on for that purpose within a period following the end of the relevant financial period to be fixed by regulations.”.

(g) in section 17 (Regulations)

(i) by renumbering the existing section as subsection (1).

(ii) by adding the following new subsection (2):

“(2) The power conferred by sub-section (1) includes power to make such incidental, supplementary, consequential or transitional provision as appears to the Minister to be expedient for the purposes of the regulations or order.”.

(h) by adding the following new Schedule 4

#### **SCHEDULE 4 – ECONOMIC SUBSTANCE REQUIREMENTS**

“1. In this Schedule unless the context otherwise requires:

“economic substance requirements” has the meaning given by 2 of the Economic Substance (Companies and Limited Partnerships) Act, 2018;

“relevant overseas competent authority” means, in relation to any corporate or legal entity, the competent authority for each state in which

(a) a beneficial owner resides; or

(b) within which a registrable legal entity is registered; or

- (c) within which the corporate or legal entity is registered; or
- (d) within which a parent of the corporate or legal entity is registered; or
- (e) within which the corporate or legal entity claims to be tax resident;

“required information” means all the information stored in the RA database for the corporate or legal entity in question.

2. The competent authority shall disclose or procure the disclosure of the required information to each relevant overseas competent authority in respect of any company or legal entity which satisfies one or more of the following conditions:

- (a) it has been determined to be in breach of the economic substance requirements in accordance with section 10 of the Economic Substance (Companies and Limited Partnerships) Act, 2018;
- (b) it carries on an IP relevant activity and has either
  - (i) stated pursuant to section 10(3)(h)(ii) that it does not wish to contest the rebuttable presumption introduced by section 9(2)(a) of the Economic Substance (Companies and Limited Partnerships) Act, 2018 to the effect that it does not carry on the relevant IP activity in the Virgin Islands; or
  - (ii) has stated pursuant to section 10(3)(h)(ii) that it does wish to contest the rebuttable presumption introduced by section 9(2)(a) of the Economic Substance (Companies and Limited Partnerships) Act, 2018 to the effect that it does not carry on the relevant IP activity in the Virgin Islands; or
  - (iii) it is a high risk IP legal entity within the meaning of section 2 of the Economic Substance (Companies and Limited Partnerships) Act, 2018.
- (c) it claims to be resident for tax purposes in a jurisdiction outside the Virgin Islands.”

Passed by the House of Assembly this 19th day of December, 2018.

Ingrid Moses-Scatliffe  
Speaker.

Phyllis Evans  
Clerk of the House of Assembly.

**No. 14 of 2018**

**VIRGIN ISLANDS**  
**POLICE (AMENDMENT) ACT, 2018**  
**ARRANGEMENT OF SECTIONS**

*Section*

1. Short title.
2. Section 68 amended.
3. Section 78 amended.

**I Assent**  
**(Sgd.) Augustus J. U. Jaspert,**  
**Governor.**  
**9<sup>th</sup> January, 2019**

**VIRGIN ISLANDS**

**No. 14 of 2018**

An Act to amend the Police Act (Cap. 165).

[Gazetted 17<sup>th</sup> January, 2019]

ENACTED by the Legislature of the Virgin Islands as follows:

- Short title.                   **1.**        This Act may be cited as the Police (Amendment) Act, 2018.
- Section 68 amended.  
Cap. 165                   **2.**        Section 68 of the Police Act (hereinafter referred to as “the principal Act”) is amended by repealing subsection (3) and substituting with the following;
  - “**(3)** The Association shall continue to be entirely independent of and unassociated with any body outside the Force, except where permitted in writing by the Commissioner.”
- Section 78 amended.                   **3.**        Section 78 of the principal Act is amended by inserting after subsection (4) the following new subsection
  - “**(4a)** Where the proceeds of sale under subsection (4) exceeds five hundred thousand dollars, the amount in excess shall be deposited in the Consolidated Fund.”.

Passed by the House of Assembly this 20<sup>th</sup> day of December, 2018.

(Sgd.) Ingrid Moses-Scatliffe,  
Speaker.

(Sgd.) Phyllis Evans,  
Clerk of the House of Assembly.

**No. 5 of 2019**

**VIRGIN ISLANDS**

**IMMIGRATION AND PASSPORT (AMENDMENT) ACT, 2019**

**ARRANGEMENT OF SECTIONS**

*Section*

1. Short title.
2. Section 16 amended.
3. Section 18 amended.
4. Section 24 amended.
5. Insertion of section 24A.
6. Section 2 (a) and (b) and section 3 ceases to apply and savings.

**No. 5 of 2019**

**Immigration and Passport  
(Amendment) Act, 2019**

**Virgin  
Islands**

**I Assent**

**(Sgd.) David Archer, Jr.  
Acting Governor  
12<sup>th</sup> June, 2019**

**VIRGIN ISLANDS**

**No. 5 of 2019**

An Act to amend the Immigration and Passport Act (Cap. 130).

[Gazetted 18<sup>th</sup> June, 2019]

ENACTED by the Legislature of the Virgin Islands as follows:

Short title.

**1.** This Act may be cited as the Immigration and Passport (Amendment) Act, 2019.

Section 16  
amended.  
Cap. 130  
Revised edition  
at 30 June 2013

**2.** The Immigration and Passport Act (referred to in this Act as “the principal Act”) is amended in section 16

(a) by deleting subsection (4) and substituting with the following:

“(4) Where in the exceptional circumstances of any case or for any other reason, Cabinet considers it fit to do so, it may, in its own discretion grant a certificate referred to in subsection (1) to any person who applies for same in the prescribed manner and who

(a) is of good character;

(b) is at the date of making the application for such a certificate, ordinarily resident in the Territory; and

(c) has been so ordinarily resident for the period of not less than 7 years immediately prior to his or her application.”.

(b) by deleting subsection (5) and substituting with the following:

“(5) Where in the exceptional circumstances of any case, the Cabinet considers it fit to do so, it may, in its own discretion grant a certificate referred to in subsection (1) to any person who applies for same in the prescribed manner and who, in its opinion,

(a) has made significant and consistent contributions to the economic and social development of the Territory;  
or

(b) has been ordinarily resident in the Territory,

for a period of at least 20 years.”.

(c) by inserting after subsection (5) the following subsection:

“(5a) Where Cabinet considers it fit to do so, it may, in its own discretion grant a certificate referred to in subsection (1) to a person who is born outside of the Virgin Islands of a father or mother who belongs to the Virgin Islands by virtue of section 2(d) of the Constitution, upon application for same in the prescribed manner.”.

U.K. S.I. 2007  
No. 1678

3. Section 18 of the principal Act is amended by inserting after subsection (1) the following new subsection:

Section 18  
amended.

“(1A) Where in the exceptional circumstances of any case or for any other reason, Cabinet considers it fit to do so, it may, in its own discretion grant a certificate of residence referred to in subsection (1) to any person who applies for same in the prescribed manner and who

(a) is of good character;

(b) in his or her application has stated an intention to reside permanently in the Territory; and

(c) has been ordinarily resident in the Territory for a period of a least 19 years;”.

Section 24 amended.

**4.** The principal Act is amended by deleting section 24 and substituting with the following new section:

“Special leave to land by Chief Immigration Officer.

**24.** Subject to section 24A, where any person is not granted leave to land in the Territory by an immigration officer under section 23 the Chief Immigration Officer may, in his or her discretion, permit such person in writing to land and remain in the Territory for such period and subject to such conditions as may be prescribed or as the Chief Immigration Office may deem fit to impose.”.

Insertion of section 24A.

**5.** The principal Act is amended by inserting after section 24 the following section

“Special leave to land by Minister.

**24A.** The Minister, may in his or her discretion grant permission in writing to religious leaders, entertainers, activists, national heroes, sports personalities, motivational speakers and tourism promoters as he or she may determine to land and remain in the Territory for such period and subject to such conditions as may be prescribed by the Minister, where such persons may not qualify for entry under section 23.”.

Section 2 (a) and (b) and section 3 ceases to apply and savings.

**6. (1)** Section 2(a) and (b) and section 3 of this Act shall cease to apply on the 1<sup>st</sup> October, 2019.

(2) For the avoidance of doubt, section 16(4) and (5) of the principal Act shall be read as if it was not amended when section 2(a) and (b) of this Act ceases to apply.

Passed by the House of Assembly this 3<sup>rd</sup> day of June, 2019.

(Sgd.) Julian Willock,  
Speaker.

(Sgd.) Khauesten Industrious,  
Acting Clerk of the House of Assembly.

**No. 6 of 2019**

**VIRGIN ISLANDS**

**IMMIGRATION AND PASSPORT (AMENDMENT) (NO. 2) ACT, 2019**

**ARRANGEMENT OF SECTIONS**

*Section*

1. Short title.
2. Section 16 amended.

No. 6 of 2019

**Immigration and Passport  
(Amendment) (No. 2) Act, 2019**

**Virgin  
Islands**

**I Assent**

**(Sgd.) Augustus J. U. Jaspert,**

**Governor**

**26<sup>th</sup> August, 2019**

**VIRGIN ISLANDS**

**No. 6 of 2019**

An Act to amend the Immigration and Passport Act (Cap. 130).

[Gazetted 2<sup>nd</sup> September, 2019]

ENACTED by the Legislature of the Virgin Islands as follows:

Short title.

**1.** This Act may be cited as the Immigration and Passport (Amendment) (No. 2) Act, 2019.

Section 16  
amended.  
Cap.130

**2.** The Immigration and Passport Act is amended in section 16 by replacing

(a) the words “the 1<sup>st</sup> October, 2019” with the words “the 1<sup>st</sup> February, 2020”;

(b) subsection (5a) with the following:

“(5a) Where Cabinet considers it fit to do so, it may, in its own discretion grant a certificate referred to in subsection (1) to a person who is a great grandchild of a person who belongs to the Virgin Islands by virtue of section 2(d) of the Constitution, upon application for same in the prescribed manner.”.

Passed by the House of Assembly this 1<sup>st</sup> day of August, 2019.

(Sgd.) Julian Willock,  
Speaker.

(Sgd.) Phyllis Evans,  
Clerk of the House of Assembly.

**No. 15 of 2020**

**VIRGIN ISLANDS**  
**STAMP (AMENDMENT) ACT, 2020**  
**ARRANGEMENT OF SECTIONS**

*Section*

1. Short title.
2. Schedule amended.

**I Assent**  
**(Sgd.) Augustus J. U. Jaspert,**  
**Governor.**  
**23<sup>rd</sup> July, 2020**

**VIRGIN ISLANDS**

**No. 15 of 2020**

An Act to amend the Stamp Act (Cap. 212) and for connected matters.

[Gazetted 28<sup>th</sup> July, 2020]

ENACTED by the Legislature of the Virgin Islands as follows:

Short title.

**1.** This Act may be cited as the Stamp (Amendment) Act, 2020.

Schedule  
amended.  
Cap. 212

**2.** The Schedule to the Stamp Act is amended by inserting after the heading “*General Exemptions from all Stamp Duties*” the following new heading:

*“Special Exemptions from Stamp Duties – Covid 19 Relief Measures*

- (a) Instruments for the sale or transfer of property to a Belonger executed from 7<sup>th</sup> May 2020 to 31<sup>st</sup> May, 2021, subject to paragraph (c);
- (b) Where an exemption is granted in respect of property, pursuant to paragraph (a), and the property is subsequently sold or transferred to a non-Belonger within a period of seven years, the sums waived by way of exemption shall become due and payable by the Belonger to whom the exemption was granted;
- (c) Any stamp duty that was paid by a Belonger on the instrument of sale or transfer of any property executed from 7<sup>th</sup> May 2020 shall be reimbursed;
- (d) For the removal of doubt, the stamp duty of four percent prescribed in this Schedule in relation to instruments for the

conveyance or transfer of property, pursuant to section 60, shall not apply to the instruments specified in paragraphs (a) and (c) during the period stipulated in those paragraphs.”.

Passed by the House of Assembly this 19<sup>th</sup> day of June, 2020.

(Sgd.) Julian Willock,  
Speaker.

(Sgd.) Phyllis Evans,  
Clerk of the House of Assembly.

**No. 2 of 2021**

**VIRGIN ISLANDS**

**REGISTER OF INTERESTS (AMENDMENT) ACT, 2021**

**ARRANGEMENT OF SECTIONS**

*Section*

1. Short title.
2. Section 2 amended.
3. Section 9 amended.
4. Section 13 amended.

**I Assent**  
**(Sgd.) John Rankin,**  
**Governor.**  
**12<sup>th</sup> March, 2021**

**VIRGIN ISLANDS**

**No. 2 of 2021**

An Act to amend the Register of Interests Act, 2006 (No. 5 of 2006) and to provide for other matters connected therewith.

[Gazetted 15<sup>th</sup> March, 2021]

ENACTED by the Legislature of the Virgin Islands as follows:

Short title.

**1.** This Act may be cited as the Register of Interests (Amendment) Act, 2021.

Section 2  
amended.  
No. 5 of 2006

**2.** The Register of Interests Act 2006 (referred to in this Act as “the principal Act”) is amended in section 2 by inserting the following definition directly after the definition of “child of the family”:

Cap 237

“Commissioner of Inquiry” means a Commissioner of Inquiry appointed in accordance with section 2 of the Commissions of Inquiry Act;”.

Section 9  
amended.

**3.** The principal Act is amended in section 9

(a) in subsection (1)

(i) by deleting the word “or” in paragraph (b); and

(ii) by inserting after paragraph (b) the following new paragraph:

“(ba) on the written request of a Commissioner of Inquiry; or”; and

(b) by inserting after subsection (1) the following new subsection:

“(1a) Where a request is made to the Registrar for inspection of the Register pursuant to subsection (1)(a) to (c), the Registrar may provide copies or extracts thereof but only of those parts of the Register that in his opinion are strictly necessary to fulfill the request and upon such conditions as to the preservation of confidentiality after the purpose for same has been exhausted as he shall deem appropriate.”.

4. The principal Act is amended in section 13

Section 13  
amended.

- (a) in subsection (1)(b) by inserting the words “or a written request from a Commissioner of Inquiry” after the words “court order”; and
- (b) by inserting after subsection (1) the following new subsection:

“(1a) Where a request for information is made to the Registrar pursuant to subsection (1)(b), the Registrar may provide information that in his opinion is strictly necessary to fulfill the request and upon such conditions as to the preservation of confidentiality after the purpose for same has been exhausted as he shall deem appropriate.”.

Passed by the House of Assembly this 4<sup>th</sup> day of March, 2021.

(Sgd.) Julian Willock,  
Speaker.

(Sgd.) Phyllis Evans,  
Clerk of the House of Assembly.

as the cause of action or right of action may be revived by an acknowledgment or part payment made in accordance with provisions of this Ordinance; or

(b) affect any action or arbitration commenced before the commencement of this Ordinance or the title to any property which is the subject of any such action or arbitration.

- 10/1891
- 3/1892
- 6/1897
- 19/1897
- 2/1903
- 6/1909
- 4/1910
- 8/1918
- 9/1920
- 4/1921
- 8/1922
- 13/1924
- 4/1925
- 3/1931
- 26/1932
- 11/1939
- 21/1939
- 7/1942
- 1/1944
- 10/1945
- 2/1946
- 14/1948
- 10/1949
- 14/1949
- 11/1950
- 13/1954
- 18/1955
- 5/1956
- S.R.O. 22/1956
- 7/1960
- 25/1961
- 33/1961
- 5/1962
- 10/1974
- 4/1975
- 8/1977
- 12/1977
- 14/1979
- 2/1981
- 4/1985
- 11/1985
- 10/1988
- 16/1989

**CHAPTER 44.**

**MAGISTRATE'S CODE OF PROCEDURE.**

(10th February, 1892.)

1. This Act may be cited as the Magistrate's Code of Procedure Act.

Short title.

2. In this Act—

Interpretation.

“Act” includes Ordinance;

“past Act” means any Act or Ordinance passed before the commencement of this Act;

“future Act” means any Act or Ordinance passed subsequent to the commencement of this Act;

"adult" means a person who in the opinion of the Magistrate before whom he is brought is of the age of sixteen years or upwards;

"child" means a person who in the opinion of the Magistrate before whom he is brought is under the age of fourteen years and of sufficient age and capacity to commit crime;

"civil proceedings" mean all civil actions triable by a Magistrate and all proceedings in relation to the making of an order for the payment of any sums of money declared to be a civil debt as hereinafter mentioned or for the doing or abstaining from doing of any act or thing not enforceable by fine or imprisonment in the first instance as hereinafter mentioned;

"complaint" means a charge made not on oath and whether or not reduced into writing;

"conviction" means any summary conviction on a complaint or an information and includes any order made by a Magistrate on any matter brought before him on complaint or information;

"fine" means and includes penalty and also includes any pecuniary forfeiture or any sum of money or any cost payable under a conviction but does not include compensation awarded under the provisions of section 87A;

"guardian" in relation to a child includes any person who in the opinion of the Court having cognisance of any case in which a child is concerned has for the time being the charge of or control over such child;

"imprisonment in the first instance" means imprisonment imposed at the time of the making of a conviction or order;

"information" means a charge laid on oath and reduced to writing;

"offence" means any contravention of any law in force in the Territory or of the Common Law which is punishable or enforceable either on indictment or on summary conviction by fine penalty or imprisonment;

10/1988

"parent" includes the mother of and any person adjudged to be the putative father of a child;

"peace officer" means any member of the Police Force and any auxiliary constable, and every other person lawfully authorised to discharge police duties;

"person" includes a child, young person, and adult and also includes a body corporate;

11/1985.

"Training School" means any reformatory, industrial or other school established under any Act of the Territory for the reformation, education and training of children and young persons or a Training School outside the Territory as provided in section 97 (2);

"young person" means a person who in the opinion of the Magistrate before whom he is brought is of the age of fourteen years and under the age of sixteen years.

## PART I.

### PERSONAL.

3. The Governor may in accordance with the provisions of section 55 of the Virgin Islands (Constitution) Order, 1976, appoint a Magistrate and Additional Magistrate.

Power to  
Governor to  
appoint  
Magistrate and  
Additional  
Magistrate.  
10/1974

4. The Governor for the time being of the Virgin Islands shall be *ex officio* Magistrate of the Territory, unless the Governor appoints any other person to be the Magistrate for the Territory.

*Ex officio*  
Magistrate.

5. The Magistrate shall have and possess all the powers and jurisdiction and shall perform all the duties which are now vested in or imposed upon Magistrates or Justices of the Peace either at common law or by virtue of any Act now in force, or which may hereafter be vested in or imposed upon Magistrates by virtue of any such Act.

Powers and  
duties of  
Magistrate.

6. In the event of the absence or illness of the Magistrate, or in any case where it appears to be expedient, it shall be lawful for the Governor, acting after consultation with the Chief Justice, to direct a fit and proper person to act for such Magistrate, and any such person so acting for such Magistrate

Trial of cases  
during illness or  
absence of  
Magistrate.  
10/1974.

12/1977

shall have the same powers and jurisdiction, and be entitled to the same immunities and protections as the Magistrate for whom he is acting has and is entitled to.

7. (1) The Magistrate and the Additional Magistrate shall be *ex officio* Justices of the Peace of the Territory.

(2) Every elected member of the Legislative Council of the Territory shall be an *ex officio* Justice of the Peace of the Territory.

(3) Except as is otherwise provided in any Act, the Governor may, by Warrant under his hand, appoint any fit and proper person to be a Justice of the Peace for the Territory and may, in like manner, for such cause as may appear to him sufficient, remove any Justice of the Peace from his office.

(4) Every appointment or removal of a Justice of the Peace shall be notified in the Gazette.

(5) Any person in the Territory, who on the first day of July, 1956, was already duly appointed or gazetted as a Justice of the Peace, shall continue to hold such appointment and be deemed to have been appointed a Justice of the Peace in accordance with the provisions of this section.

(6) Subject to the provisions of this Act and of any other Act or written law, every Justice of the Peace shall have the same power as a Magistrate to issue a warrant of arrest or search warrant in any case in which and under the same conditions as a Magistrate might issue such a warrant, to take bail by recognisance with security for the appearance of any person before a Magistrate on a day to be mentioned in such recognisance to be dealt with according to law, and to administer oaths in cases allowed by law, and for such purposes any such Justice of the Peace shall be entitled to the same immunities and protections as a Magistrate has and is entitled to:

Provided always that any warrant issued by a Justice of the Peace under the authority of this section shall be returnable only before a Magistrate, and in any case in which such warrant is issued by a Justice of the Peace he shall forthwith forward to a Magistrate the sworn information on which it was issued:

Provided further that nothing herein contained shall impose on a Justice of the Peace any obligation to exercise the power reserved to him by this subsection.

Justices of the Peace.

2/1981

Preservation of appointments of Justices of the Peace.

12/1977

8. Repealed.

9. The salary of every Magistrate and Additional Magistrate appointed under this Act shall be such as may be provided by the Legislative Council and shall be payable out of the Public Treasury.

10. The Governor in Council may by Order appoint the places where and the time when the Magistrates' Courts shall be held in the Territory.

11. When the Magistrate is unable to attend at any time appointed for the holding of a Magistrate's Court it shall be lawful for such Magistrate, by writing under his hand, to adjourn such Magistrate's Court for any period not exceeding one week.

12. Suitable offices for holding the Magistrate's Court shall be provided in the Territory. And it shall be lawful for the Governor to appoint such persons to act as clerks and bailiffs to such Court as he shall think necessary at such salaries as shall be from time to time voted by the Legislative Council.

13. It is hereby expressly declared and enacted that all and singular the powers and authorities heretofore vested in and exercised by Justices of the Peace under any Act, shall continue and may be exercised by such Justices, save and except the investigation and adjudication of charges and complaints, which shall be investigated and adjudicated upon by the Magistrate or an Additional Magistrate.

14. Every action hereafter to be brought against the Magistrate for any act done by him in the execution of his duty as such Magistrate, with respect to any matter within his jurisdiction as such Magistrate, shall be in the nature of an action on the case as for a tort; and in the plaint it shall be expressly alleged that such act was done maliciously, and without reasonable and probable cause.

15. For any act done by a Magistrate in a matter of which by law he has not jurisdiction, or in which he shall have exceeded his jurisdiction, any person injured thereby, or by any act done under any conviction or order made or warrant issued by such Magistrate in any such matter, may maintain an action against such Magistrate in the same form and in the same case as he might have done before the passing of this Act,

12/1977.

Salary of Magistrates and Additional Magistrates.

Sittings to be appointed by Order in Council.

Adjournment of sittings in Magistrate's absence.

Offices, clerks, and bailiffs.

Exclusive duty of Magistrate to investigate charges and complaints.

Every action must allege that the act was done maliciously.

Conditions under which action may be brought.

without making any allegation in his plaint that the act complained of was done maliciously and without reasonable and probable cause:

Provided that no action shall be brought for anything done under such conviction or order until after such conviction shall have been quashed, nor shall any such action be brought for anything done under any such warrant which shall have been issued by such Magistrate to procure the appearance of such party, and which shall have been followed by a conviction or order in the same matter, until after such conviction or order shall have been so quashed as aforesaid; or if such last mentioned warrant shall not have been followed by any such conviction or order, or if it be a warrant upon an information for an alleged indictable offence, nevertheless, if a summons were issued previously to such warrant and such summons were served upon such person, either personally, or by leaving the same for him with some person at his last or most usual place of abode, and he did not appear according to the exigency of such summons, in such case, no such action may be maintained against such Magistrate for anything done under such warrant.

10/1974

Action to be brought against convicting Magistrate.

**16.** Where a conviction or order shall be made by a Magistrate, and a warrant of distress or commitment shall be granted thereon by some other Magistrate bona fide and without collusion no action shall be brought against the Magistrate who granted such warrant by reason of any defect in such conviction or order or for any want of jurisdiction in the Magistrate who made the same, but the action (if any) shall be brought against the Magistrate who made such conviction or order.

Mandamus to Magistrate refusing to act.

10/1974.

**17.** In all cases where a Magistrate shall refuse to do any act relating to the duties of his office as such Magistrate, it shall be lawful for the party requiring such act to be done to apply to the High Court or any Judge thereof, upon an affidavit of the facts, for a rule calling upon such Magistrate and also the party to be affected by such act, to show cause why such act should not be done; and if, after due service of such rule, good cause shall not be shown against it, the said Court or any Judge thereof may make the same absolute with or without or upon payment of costs as to them shall seem meet; and the said Magistrate, upon being served with such rule absolute, shall obey the same, and shall do the act required, and no action or proceeding whatsoever shall be commenced or prosecuted

against such Magistrate for having obeyed such rule and done such act so thereby required as aforesaid.

**18.** In all cases where a warrant of distress or warrant of commitment shall be granted by a Magistrate upon any conviction or order, which either before or after the granting of such warrant shall have been or shall be confirmed upon appeal, no action shall be brought against such Magistrate who so granted such warrant for anything which may have been done under the same by reason of any defect in such conviction or order.

Defect in conviction must not operate against Magistrate issuing warrant of distress.

**19.** In all cases, where by this Act it is enacted that no action shall be brought under particular circumstances, if any such action shall be brought, it shall be lawful for a Judge of the Court in which the same shall be brought upon application of the defendant, and upon an affidavit of facts, to set aside the proceedings in such action, with or without costs, as to him shall seem meet.

Judge may set aside proceedings in action.

Damages.

**20.** In all cases where the plaintiff in any such action as aforesaid shall be entitled to recover, and he shall prove the levying or payment of any penalty or sum of money under any conviction or order as parcel of the damages he seeks to recover, or if he prove that he was imprisoned under such conviction or order, and shall seek to recover damages for any such imprisonment, he shall not be entitled to recover the amount of such penalty or sum so levied or paid, or any sum beyond the sum of four cents as damages for such imprisonment, or any costs of suit whatsoever if it shall be proved that he was actually guilty of the offence of which he was so convicted, or that he was liable by law to pay the sum he was so ordered to pay, and (with respect to such imprisonment) that he had undergone no greater punishment than that assigned by law for the offence of which he was so convicted, or for non-payment of the sum he was so ordered to pay.

Costs.

**21.** If the plaintiff in any such action as aforesaid shall recover a verdict or the defendant shall allow judgment to pass against him by default, such plaintiff shall be entitled to costs, in such manner as if this Act had not been passed; or if in such case it be stated in the plaint that the act complained of was done maliciously and without reasonable and probable cause, the plaintiff, if he recover a verdict for any damages, or if the

defendant allow judgment to pass against him by default, shall be entitled to his full costs of suit, to be taxed as between attorney and client.

## PART II.

### PRELIMINARY PROCEEDINGS.

**22.** The Magistrate shall have jurisdiction—

- (a) to receive complaints and information of all offences and to cause to be brought before him either by summons or warrant, all persons charged with such offences;
- (b) to issue search warrants as hereinafter provided;
- (c) to investigate all charges which he is not empowered to try summarily and to dismiss the accused or to commit him for trial before the High Court;
- (d) (i) to try summarily and to convict and sentence all persons charged with committing offences which he is empowered to try summarily by any Act;
- (ii) to make orders for the support, education, and burial of illegitimate children, and for the support of wives deserted by their husbands;
- (iii) to make and give all such other convictions, sentences, and orders as under any Act he is authorised to make or give and which may be carried out and enforced by fine or imprisonment in the first instance;
- (e) to arbitrate in disputes relating to salvage and the title to wreck where the amount in dispute does not exceed one thousand dollars;

Jurisdiction of Magistrates.

10/1974

10/1974

10/1974

10/1988

(iii) to make orders for the paying of any sum of money declared by any Act to be a civil debt and to be recoverable summarily;

(iv) to make orders for the doing or the abstaining from doing of any act prescribed to be done or not to be done by any Act where such Act does not prescribe that such order is to be enforced by fine or by imprisonment in the first instance;

(g) to bind over persons to keep the peace and be of good behaviour;

(h) to admit to bail persons charged with or committed for trial for any offence save only as hereinafter mentioned;

(i) to bind over prosecutors and witnesses by recognisances to prosecute and give evidence;

(j) to order the condemnation and sale of any vessel or thing liable to forfeiture on the committing of any offence punishable by a court of summary jurisdiction;

(k) to enforce the payment of any fine imposed by them by warrant of distress or imprisonment;

(l) to administer oaths to any person or persons for the purpose of levying penalties or making distresses directed to be levied or made by any Act thereof or for the purpose of justifying upon oath the sufficiency of any bail;

(m) to exercise the jurisdiction and powers given to a Magistrate under the Fugitive Offenders Act, 1881 of the Imperial Parliament, or any Acts amending the same of the Imperial Parliament;

(n) to exercise all the powers of a Justice of the Peace or two Justices of the Peace and also of two Justices of the Peace in the United Kingdom under the Merchant Shipping Acts of the Imperial Parliament;

(o) to exercise such other powers and do such other acts not hereinbefore mentioned as may be prescribed by this Act or by any other past or future Act thereof or any Act of the Imperial Parliament.

**23.** In all cases where a charge or complaint is made before a Magistrate—

(a) that any person has committed or is suspected of having committed any indictable offence within the limits of the jurisdiction of such Magistrate or that any person

When Magistrate may issue his summons.

guilty or suspected to be guilty of having committed such offence as aforesaid out of the jurisdiction of such Magistrate is to be found or likely to be found within the limits of the same;

(b) that any person, being within the jurisdiction of such Magistrate has committed or is suspected of having committed any offence punishable on summary conviction;

(c) that any person being within such jurisdiction as aforesaid, has done any act or omitted to do any act for which commission or omission as aforesaid he is liable to have an order made against him by such Magistrate for the payment of any fine or for the doing or the abstaining from doing any act;

(d) that any person within such jurisdiction as aforesaid is likely to commit a breach of the peace,

the Magistrate may issue his summons directed to such person requiring him to appear before the Magistrate's Court at the time to be therein mentioned to answer the said charge or complaint and to be further dealt with according to law.

How complaint to be laid.

**24.** The charge shall (subject as hereinafter mentioned) be laid on complaint and the complaint may, in the discretion of the Magistrate, be reduced into writing.

To be of one matter only at a time.

**25.** Every complaint shall be for one matter only and not for two or more matters. But it shall be lawful for the prosecutor to lay one or more complaints against the same person at the same time. And the Magistrate hearing the complaint may where he considers it necessary, deal with such complaints either together or separately.

Information and complaint.

**26.** (1) It shall be lawful for any person to make a complaint against any person committing an offence punishable on summary conviction unless it appears from the enactment on which the complaint is founded that any complaint for such offence shall be made only by a particular person or class of persons.

(2) (a) It shall be lawful for any police officer to lay any information or make any complaint in the name of the Commissioner of Police and conduct any such proceedings on his behalf.

(b) Every such information or complaint shall be signed by the police officer laying or making the same and such police officer shall be deemed for all purposes of this Act other than those specified in this subsection to be the complainant; and proceedings under any such information or complaint shall not lapse or be determined by reason of any change of the police officer in charge as aforesaid.

(c) No such proceedings shall be dismissed by reason only of the failure of the police officer in charge as aforesaid to appear in person or by counsel or solicitor, provided that he be represented by any police officer for the time being present in Court.

Magistrate has discretion to refuse summons.

**27.** Nothing hereinbefore contained shall oblige any Magistrate to issue any such summons, and if the Magistrate in his discretion refuses to issue a summons, the person applying for the same may require the Magistrate to give him a written certificate of refusal and may apply to any Judge of the High Court for an order directing the Magistrate to issue the summons sought for on such summons as the Judge shall direct.

10/1974.

How summons is to be served.

**28.** Every summons shall be served by a peace officer or other person to whom the same may be delivered upon the person to whom it is directed by delivering it to him personally or if he cannot be conveniently found by leaving it with some person for him at his last or most usual place of abode.

Offences committed on vessels within the waters of the Territory.

**29.** Where any person has committed or is suspected of having committed any offence punishable on summary conviction in or upon any ship, vessel or boat—

(a) within the waters of the Territory, or

(b) without the waters of the Territory and such ship, vessel or boat subsequently anchors in or comes within the waters of the Territory,

such offence may be heard and determined by the Magistrate, and any summons or warrant issued by the Magistrate in respect of the commission or supposed commission of such offence may be served or executed, as the case may be, on board such ship, vessel or boat while, or on any subsequent occasion when, such ship, vessel or boat is within the waters of the Territory.

How service is to be proved.

**30.** The person who serves the summons shall attend before the Magistrate at the time and place mentioned therein to depose if necessary to the service thereof.

If the person summoned does not appear warrant may issue.

**31.** If the person served with the summons does not appear at the time and place mentioned in the summons and it be made to appear to the Magistrate on oath that the summons was duly served within a reasonable time before the time of his appearance as aforesaid the Magistrate after taking such evidence on oath to substantiate the matter of the complaint as he shall consider necessary may issue his warrant to apprehend the person so summoned as aforesaid and to bring him before a Magistrate to answer to the said complaint and be further dealt with according to law.

When a warrant may issue in the first instance.

**32.** In all cases where a charge is made in respect of an offence punishable either on indictment or on summary conviction the Magistrate, if he thinks it expedient that a warrant be issued in the first instance, may take an information and require such evidence in that behalf as he considers necessary to substantiate the matter of the information and may issue his warrant in the first instance to apprehend such person as aforesaid and to cause him to be brought before him or any other Magistrate to answer the charge and to be dealt with according to law. And the Magistrate may issue such warrant as aforesaid notwithstanding that a summons in respect of the matter charged has been issued at any time before the time of appearance in such summons mentioned:

Provided that where a warrant is issued in the first instance the Magistrate shall furnish a copy or copies thereof and cause a copy to be served on each party apprehended.

Magistrate or Justice may direct surety to be taken.  
12/1977

**32A.** (1) Every Magistrate or Justice of the Peace issuing a warrant under this Act for the arrest of any person in respect of any offence other than murder or treason, shall if in his opinion such person should be admitted to bail on his arrest, by endorsement on the warrant direct that if such person executes a recognisance with sufficient sureties for his attendance before a Court at a specified time and thereafter until otherwise directed by the Court the officer in charge of the Police Station to which such person is brought on his arrest shall take such security and release such person from custody and the provisions of section 197 shall apply to such recognisance.

(2) The endorsement shall state—

- (a) the number of sureties;
- (b) the amount in which they and the person for whose arrest the warrant is issued are to be respectively bound; and
- (c) the time at which he is to attend before the Court.

(3) The officer in charge of any Police Station to which any such person is brought on his arrest shall comply with the directions endorsed on the warrant of arrest and whenever security is taken under this section he shall forward the recognisance to the Court.

As to warrant when offence is committed on the high seas and beyond sea.

**33.** In all cases of indictable offences committed on the high seas or in any creek, harbour or in other place in which the Admiralty of England have or claim to have jurisdiction and in all cases of offences committed on land beyond the seas for which an indictment may be preferred or the offender may be arrested in the Territory the Magistrate may on information laid as in the last preceding section mentioned issue his warrant to apprehend such person to be dealt with as herein and hereby directed.

As to form of warrant.

**34.** Every warrant issued by a Magistrate to apprehend any person may be issued at any time or on any day and shall be under the hand and seal of the Magistrate; and may be directed to a member of the Police Force and to all peace officers of the Territory; and it shall state shortly the act charged and shall name or otherwise describe the person to be apprehended and it shall order the person or persons to whom it is directed to apprehend the person so named or described as aforesaid and bring him before the Magistrate issuing the warrant or before some other Magistrate to answer the charge and to be further dealt with according to law.

When and where warrant may be executed.

**35.** It shall not be necessary to make the warrant returnable at any particular time but the same may remain in force until executed. And it may be executed by any peace officer in any part of the Territory.

Proceedings on arrest.

**36.** When a person has been apprehended under a warrant he shall be brought before the Magistrate so issuing the warrant, or any Magistrate acting for him, who shall thereupon either by his warrant commit him to prison or

verbally to the custody of the officer apprehending him, or to such other safe custody as he thinks fit and may order him to be brought up at a certain time and place before him, and shall give notice of such order to the person laying the information or complaint but no committal under this section shall exceed one week.

**37.** A person taken into custody for any offence without a warrant shall be brought before a Magistrate as soon as practicable after he is so taken into custody and if it is not, or will not be practicable to bring him before a Magistrate within 24 hours after he has been so taken into custody any member of the Police Force in charge of any police station shall enquire into the case and except where the offence appears to him to be of a serious nature shall discharge the prisoner upon his entering into a recognisance with or without sureties for a reasonable amount to appear before some Magistrate at the time and place mentioned in the recognisance.

**38.** (1) Where a Magistrate is satisfied on evidence upon oath that there is reasonable cause to believe that any property whatsoever on or with respect to which any larceny or other felony has been committed is in any place or places he may grant a warrant to search such place or places for such property. And if the same or any part thereof be there found to bring the same before the Magistrate granting the warrant or some other Magistrate.

(2) Any search warrant may be issued and executed at any time, and may be issued and executed on a Sunday.

**39.** A warrant or summons issued by a Magistrate shall not be avoided by reason of the Magistrate who signed the same dying or ceasing to hold office.

**40.** It shall not be necessary that the Magistrate who acts before or after the hearing of a case should be the Magistrate by whom the case is or was heard and determined.

### PART III.

#### PRELIMINARY INQUIRIES.

**41.** The room or place in which a Magistrate shall hold a preliminary inquiry shall not be deemed an open Court for

Proceedings on arrest without warrant.

Search warrant.

Warrant not to lapse on death or removal of Magistrate.

Different Magistrates.

Court House not to be an open Court.

that purpose. It shall be lawful for the Magistrate in his discretion to order that no person shall have access to or be or remain in such room or place, the counsel or solicitor of any person then being in Court as a prisoner only excepted, without the consent of the Magistrate if it appears to him that the ends of justice will be best answered by so doing.

**42.** Whenever any charge has been brought against any person of an offence not triable summarily a preliminary inquiry shall be held as hereinafter provided.

**43.** Where a child or young person is charged with an indictable offence other than homicide the Magistrate may, without consulting the parent or guardian of the child or young person, deal with him summarily and shall so deal with him unless some other person who is charged jointly with him and is not a child or young person is committed for trial, in which case the Magistrate may, if in the interests of justice he thinks it necessary so to do, also commit the child or young person for trial.

**44.** Where the parent or guardian of such child or young person as aforesaid is not present when the charge is being heard by the Magistrate the Magistrate may remand such child or young person as aforesaid for the purpose of causing notice to be served on such parent or guardian with a view as far as practicable of securing his attendance at the hearing of the charge, or the Magistrate may deal with the case summarily.

**45.** Where an adult is charged with any indictable offence set forth in the second column of the First Schedule the Magistrate at any time during the hearing of the case may having regard to all the circumstances of the case cause the charge to be reduced into writing and read to the person charged and he shall then question him to the following effect—

“Do you desire to be tried by a jury or do you consent to the case being dealt with summarily?”

and shall add a statement if necessary of the meaning of the case being dealt with summarily and of the time at which he would probably be tried by the High Court and if he does not object to be tried summarily the Magistrate may deal summarily with the case as hereinafter provided.

Preliminary inquiry where case not triable summarily.

Summary trial of juvenile for indictable offences.

Power to remand in order to secure the presence of parent or guardian.

Where an adult may be tried summarily. First Schedule.

10/1974

Where an adult pleading guilty may be dealt with summarily.

**46.** Where an adult is charged with an indictable offence set forth in the first column of the First Schedule and the Magistrate at any time during the hearing of the case becomes satisfied that the evidence is sufficient to put the person so charged on his trial and also satisfied that the case, having regard to all the circumstances, is one which may be properly dealt with and adequately punished under this Act, he may cause the charge to be reduced into writing and read to the person charged and shall then explain to such person as aforesaid that he is not obliged to plead or answer and that if he pleads guilty he will be dealt with summarily and that if he pleads not guilty he will be dealt with in the usual course and shall if necessary add a statement of the meaning of the case being dealt with summarily and in the usual course and a statement as to the time at which he would probably be tried by the High Court and shall further explain to him that he is not obliged to say anything unless he desires to do so, but that whatever he says will be taken down in writing and may be given in evidence upon his trial and shall give him clearly to understand that he has nothing to hope from any promise of favour and nothing to fear from any threat which may have been held out to him to induce him to make any admission or confession of his guilt but that whatever he then says may be given in evidence upon his trial notwithstanding such promise or threat and shall then ask him whether he is guilty or not of the charge and if he says that he is guilty the Magistrate shall thereupon deal with him summarily as hereinafter provided. And if he says that he is not guilty, the Magistrate shall proceed as herein provided for the procedure at a preliminary inquiry.

10/1974.

Reduction of charge from indictable to summary offence.

**47.** Where, on the holding of any preliminary inquiry on a charge of an indictable offence, the Magistrate is of opinion that the evidence establishes, or appears likely to establish, the commission of a summary offence of a like kind to the offence charged, or an abatement of, or an attempt or incitement to commit, that summary offence, the Magistrate may, if he thinks fit, inform the accused person accordingly, and all further proceedings in the matter thereafter shall be the same as if a complaint had been made against the person for the latter offence or abatement, attempt, or incitement.

Power to remand in order to ascertain if case should be dealt with summarily.

**48.** Where a person is charged with an indictable offence with which the Magistrate may have power to deal summarily, the Magistrate may for the purpose of ascertaining whether it is expedient to deal with the case summarily, either

before or during the hearing of the case, from time to time adjourn the case and remand the person accused.

Evidence to be taken on oath.

**49.** When the accused appears or is brought before the Magistrate, the Magistrate, except where otherwise in this Act provided, shall take the evidence upon oath of the witnesses called in support of the charge offered on the part of the prosecution.

Witness to be examined in presence of accused who may cross-examine.

**50.** The evidence of every witness shall be given in the presence of the accused and he or his counsel or solicitor shall be entitled to cross-examine such witness upon all facts relevant to the charge, but not, except with leave of the Court, upon matter relevant only as affecting his credit.

Depositions.

**51.** As each witness gives his evidence the material part of it shall be taken down in writing by the Magistrate in narrative form, or, if and so far as the Magistrate may think fit, in the form of question and answer:

Provided that if the Magistrate is from any cause unable to take down the evidence in writing, the same shall be taken down in writing by the Clerk of the Court under the Magistrate's direction.

The evidence of a witness so taken down shall be read over to the witness and shall be signed by him and by the Magistrate, and such evidence so taken down and read over and signed as aforesaid shall be deemed to be a deposition.

Magistrate to take notes of evidence.

**52.** A Magistrate shall in all cases other than criminal cases to which section 51 applies take notes in writing of the evidence, or of so much thereof as is material, in a book to be kept for that purpose, and such book shall be signed by the Magistrate at the conclusion of each day's proceedings:

Provided that if the Magistrate is from any cause unable to take such notes the same shall be taken by the Clerk of the Court under the Magistrate's direction.

Magistrate to dismiss the charge or call on accused for his defence.

**53.** When the examination of all the witnesses for the prosecution is completed, the Magistrate may either dismiss the charge and if the accused is in custody make an order for his release or he may call upon the accused for his defence as hereinafter provided.

Mode of calling on accused for his defence.

**54.** If the Magistrate shall not dismiss the charge he shall say to the accused these words or words to the like effect:

"Having heard the evidence do you wish to say anything in answer to the charge? You are not obliged to do so unless you desire to do so, but whatever you say will be taken down in writing and may be given in evidence upon your trial. And I give you clearly to understand that you have nothing to hope from any promise of favour and nothing to fear from any threat that may have been held out to you to induce you to make any admission or confession of your guilt, but whatever you now say may be given in evidence on your trial notwithstanding such promise or threat"

and whatever the prisoner then says in answer thereto shall be taken down in writing and read over to him and shall be signed by the Magistrate and kept with the depositions of the witnesses and shall be transmitted with them as hereinafter mentioned:

Provided that nothing herein contained shall prevent any prosecutor from giving in evidence any admission or confession or other statement made at any time by the person accused or charged which by law would be admissible in evidence against him.

Accused may show cause and call witnesses.

**55.** The accused or his counsel or solicitor may then show cause why the Magistrate should not commit him for trial and may call witnesses in his defence and their evidence shall be taken in the same manner and form as that of the witnesses for the prosecution and if duly taken, read over, and signed, shall be deemed to be depositions.

Magistrate to dismiss the charge or to commit for trial.

**56.** When the accused has been heard and his witnesses (if any) examined, the Magistrate shall either dismiss the charge and if the accused be in custody make an order for his release, or shall commit him for trial to the next sitting of the High Court:

10/1974.

Provided that if the day of committal shall be so near the day for the holding of the next sitting of the said Court that in the opinion of the Magistrate it would not be practicable for the case to be tried by such Court as aforesaid, it shall be lawful for him to commit the accused to the sitting of the High Court next following.

10/1974.

Prosecutor and witnesses to be bound over to appear at trial of accused. 10/1974.

**57.** It shall be lawful for any Magistrate upon committing any accused person for trial to bind by recognisance as hereinafter prescribed the prosecutor and all witnesses giving evidence to appear at the High Court then and there to prosecute, or to prosecute and give evidence or to give evidence, as the case may be. And the Magistrate shall except where in this Act it is otherwise provided cause the several recognisances so taken together with the written information (if any) the depositions, the statement of the accused and the recognisances of bail (if any) to be forthwith delivered to the Registrar:

Provided that if any witness shall refuse to enter into or acknowledge such recognisance as aforesaid it shall be lawful for the Magistrate by his warrant to commit him to prison there to be safely kept until after the trial of such accused person as aforesaid unless in the meantime such witness shall duly enter into such recognisance before a Magistrate.

Accused on committal to be committed to prison, unless bailed.

**58.** When the Magistrate has committed the accused person for trial he shall, unless he shall admit such person to bail, as hereinafter provided, commit him by his warrant to the prison to which he may by law be committed, to be there safely kept until delivered in due course of law.

Peace officer to convey him to prison and deliver him to gaoler.

**59.** The peace officer or other person to whom any warrant of commitment is directed shall convey the accused person therein named or described to the prison therein mentioned and there deliver him together with the warrant to the keeper of such prison who shall thereupon give to such peace officer or other person as aforesaid a receipt for the prisoner setting forth the state and condition of the prisoner when delivered into his custody.

Right of accused persons to bail.

**60.** (1) Where the offence with which the accused person is charged is a misdemeanour punishable with fine or with imprisonment, with or without hard labour, for any term not exceeding two years, the accused person shall be entitled to be admitted to bail as is hereinafter mentioned.

(2) Where the offence with which the accused person is charged is a misdemeanour punishable otherwise than as is hereinbefore in this section mentioned, or, subject to the exceptions hereafter in this section mentioned, is a felony, the Magistrate may, in his discretion, admit the accused person to bail as is hereinafter mentioned.

(3) A Magistrate shall not admit to bail any person charged with treason, misprision of treason, treason felony or murder.

(4) A Judge of the High Court may order a Magistrate to admit a person to bail in any case.

10/1974

Magistrate may admit to bail at any time.

**61.** In cases mentioned in section 60 the Magistrate at any time before the first day of the sitting of the Court at which the accused is to be tried, may admit him to bail as hereinafter provided or may certify on the back of the warrant of committal, the amount of bail to be required in which case any other Magistrate may admit the accused to bail in such amount at any time before such first sitting of the Court as aforesaid.

When Magistrate may admit to bail on adjournment of hearing.

**62.** Where any person appears or is brought before a Magistrate charged with a misdemeanour or a felony other than treason or felony punishable with death, and it becomes necessary to adjourn the inquiry and to remand the accused, then in the case of a charge of misdemeanour as aforesaid and in the case of a charge of a felony as aforesaid where the Magistrate shall not consider the evidence given to be sufficient to put the accused upon his trial, or to raise a strong presumption of guilt, the Magistrate may admit the accused to bail as hereinafter prescribed until such time as the inquiry shall be resumed.

Warrant of deliverance.

**63.** In all cases where the Magistrate admits to bail any person charged with the offence for which he is so admitted to bail he shall cause to be lodged with the keeper of the prison in which such accused person is detained a warrant of deliverance under his hand and seal requiring such keeper to discharge the person so admitted to bail if he be not detained for any other offence, and upon such warrant being lodged with the keeper as aforesaid he shall forthwith obey the same.

Person bailed to enter into recognisances for his reappearance.

**64.** Every accused person before being admitted to bail shall enter into recognisances as hereinafter prescribed either with or without a surety or sureties at the discretion of the Magistrate before whom they are taken conditioned for his appearance at the time and place mentioned in such recognisance.

Judge may order accused to be admitted to bail.

**65.** In all cases of felony or suspicion of felony and in all cases of misdemeanour when an accused person has been committed for trial as hereinbefore provided or as provided by any Act in force in the Territory relating to the duties of Coroners any Judge of the High Court may on application made to him for that purpose and on notice to the Attorney General or in his absence then to the Commissioner of Police, order such accused person to be admitted to bail on entering into recognisances with sufficient sureties before a Magistrate in such amount as the Judge shall direct and thereupon the Magistrate shall issue a warrant of deliverance and shall attach thereto a copy of the order directing the admission of such person to bail.

10/1974.

Notice of application to Judge to be given to committing Magistrate or Coroner. 4/1975.

**66.** When any person has been committed for trial by any Magistrate or Coroner, the prisoner, his counsel or solicitor may notify to the committing Magistrate or Coroner that he will so soon as counsel can be heard, move before one of the Judges of the High Court to admit the prisoner to bail. Whereupon such committing Magistrate or Coroner if the same are in his possession shall with all convenient speed transmit to the Registrar all informations and evidence touching the offence with which the prisoner has been charged together with a copy of the warrant of commitment and inquest (if any).

Accused entitled to a copy of depositions on payment.

**67.** At any time after all the witnesses have been examined and before the first sitting of the Court to which the accused is committed for trial the accused may require and shall be entitled to have from the officer having the custody of the same, copies of the depositions on which he has been committed on payment of a reasonable sum for the same not exceeding the rate of four cents for each folio of 100 words.

Provision for issuing of certificates by Magistrate in certain circumstances. 10/1988.

**67A.** (1) Where it is necessary to prove whether the Magistrate has complied with any provisions contained in this Part, such proof may be given—

(a) by a certificate of the Magistrate on the deposition;

(b) by a certificate of the Magistrate issued by him subsequent to such deposition; or

(c) by the sworn evidence of the Magistrate, or Clerk or of any other witness.

(2) Where it has been proved by an accused person that the Magistrate has failed to comply with any provision contained in this Part, such failure shall not be deemed to have invalidated a preliminary inquiry unless the Court is satisfied that on a balance of probabilities the accused has been thereby prejudiced in his defence.

#### PART IV.

##### SUMMARY JURISDICTION (CRIMINAL).

**68.** The room or place in which the Magistrate sits shall be deemed an open Court.

**69.** The person bringing the charge and the person charged may conduct their own case or may appear by counsel or solicitor.

**70.** In all cases where no time is specially limited for making any charge in the Act or law relating to the particular case such charge shall be made within six months from the time when the matter of the charge arose.

**71.** When a person is charged with any offence punishable on summary conviction with imprisonment for a period exceeding twelve months the Magistrate shall address him to the effect following—

"You are charged with an offence in respect to the commission of which you are entitled if you desire it instead of being dealt with summarily to be tried by a jury. Do you desire to be tried by a jury?"

and he shall add a statement if necessary of the meaning of being dealt with summarily and of the probable time at which such person would be tried if tried at the High Court. And if such person shall elect to be tried by a jury the Magistrate shall deal with the case as though such person had been charged with an indictable offence not triable summarily and the offence with which he is charged shall be deemed to be an indictable offence:

Provided that this section shall not apply to a child unless the parent or guardian of such child is present and if the parent or guardian of such child is present the Magistrate shall address the above question to such parent or guardian:

Court house to be an open Court.

Either party may appear in person or by counsel.

Limitation six months unless otherwise provided.

Where accused liable to imprisonment for more than six months he may claim to be committed for trial.  
4/1975.  
11/1985.

Provided also that nothing in this section or Act contained shall in any way interfere with or curtail the summary jurisdiction of Magistrates in trials of offences—

(a) under the Small Charges Act; Cap. 72.

(b) under the Obeah Act; Cap. 52.

(c) where the Magistrate himself is given a discretion to try the case summarily or commit the offender for trial for an indictable offence;

(d) under the Sedition and Undesirable Publications Act. Cap. 70.

If defendant does not appear Magistrate may proceed *ex parte*.

**72.** If at the time and place of hearing mentioned in a summons the defendant does not appear and it be proved on oath that the summons was duly served on him a reasonable time before the time appointed for his appearance, and if the Magistrate does not think it expedient to issue his warrant for the apprehension of such person the Magistrate may proceed *ex parte* to adjudicate on the case as fully as if the defendant had duly appeared.

If prosecutor does not appear Magistrate may dismiss or adjourn.

**73.** If at the time and place appointed the defendant appears, or is brought before the Magistrate, and the person making the charge, having had due notice does not appear, the Magistrate shall dismiss the charge unless he thinks it proper to adjourn the hearing till some other day.

If neither party appears Magistrate may dismiss or adjourn.

**74.** If at any time and place appointed neither party appears the Magistrate may dismiss or adjourn the case as to him shall seem fit.

If on adjourned hearing either party does not appear Magistrate may proceed.

**75.** If at the time and place appointed for any adjourned hearing either or both parties do not appear the Magistrate may then and there proceed with the further hearing of the case as if the party or parties were present.

If both parties appear case to proceed.

**76.** If both parties appear the Magistrate shall cause the substance of the charge to be stated to the defendant and shall ask him if he has any cause to show why he should not be convicted.

If defendant pleads guilty Magistrate to convict him.

**77.** If the defendant admits the truth of the charge and if he shows no cause as aforesaid, the Magistrate shall convict him.

If defendant pleads not guilty Magistrate to hear evidence of both parties.

**78.** If he does not admit the truth of the charge the Magistrate shall hear the prosecutor, and such evidence as he may adduce and shall also hear the defendant and such evidence as he shall adduce in his defence and also such evidence as shall be tendered in reply if the defendant has given any evidence other than as to his character.

Cross-complaints.

**79.** Where a complaint is laid by one or more parties against another party or parties, and there is a cross-complaint by the defendant or defendants in such first named case either by himself or themselves or together with another person or other persons against the complainant or complainants in the first named case either by himself or themselves or together with another person or other persons, and such cross-complaints are with reference to the same matter, the Magistrate may, if he thinks fit, hear and determine such complaints at one and the same time.

Neither party to have right of reply on the other.

**80.** The prosecutor shall not be entitled to make any observations in reply upon the evidence given by the defendant nor the defendant upon the evidence given in reply by the prosecutor, but this shall not preclude counsel on either side from addressing the Court on the whole case.

Magistrate then to determine the case.

**81.** The Magistrate shall then consider the whole matter and determine the same, and shall either dismiss the charge or convict the defendant.

Offence charged—attempt proved. Attempt charged—full offence proved.

**82.** (1) Where the complete commission of the offence charged is not proved, but the evidence establishes an attempt to commit the offence, the defendant may be convicted of such attempt and punished accordingly:

Provided that, after conviction for such attempt, the defendant shall not be liable to be prosecuted again for the same offence which he was charged with committing.

(2) Where an attempt to commit an offence is charged, but the evidence establishes the commission of the full offence, the defendant shall not be entitled to have the complaint dismissed, but he may be convicted of the attempt and punished accordingly:

Provided that, after conviction for such attempt, the defendant shall not be liable to be prosecuted again for the offence which he was charged with attempting to commit.

**83.** If he shall dismiss the case upon the merits he may when required to do so make an order of dismissal and give the defendant a certificate thereof which shall without further proof be a bar to any subsequent charge for the same matter against the same party.

If he dismisses the case defendant entitled to certificate of dismissal.

**84.** If he shall convict the defendant a minute or memorandum therefor shall be then made for which no fee shall be paid and the conviction shall subject to any rules made in pursuance of this Act, afterwards be drawn up by the Magistrate in proper form under his hand and seal.

If he convicts conviction to be drawn up.

**85.** In all cases of summary conviction the Magistrate may in his discretion award and order that the defendant shall pay to the prosecutor such costs as to the Magistrate shall seem reasonable not exceeding fifty dollars.

Magistrate may award costs to prosecutor. 10/1974

**86.** In all cases where the Magistrate dismisses the charge he may in his discretion award and order that the prosecutor shall pay to the defendant such costs as to the Magistrate may seem reasonable not exceeding fifty dollars.

Magistrate may award costs to the defendant. 10/1974.

**87.** The sums so allowed for costs shall in all cases be specified in the conviction or order of dismissal and the same shall be recoverable in the same manner and by the same warrants as any fine adjudged to be paid by the conviction is to be recovered, and where there is no fine to be recovered such costs shall be recoverable by distress as hereinafter provided, and in default of distress by imprisonment with or without hard labour for any time not exceeding one month which may be made to commence at the termination of the imprisonment the defendant shall be then undergoing, unless such costs and all costs and charges of the distress and also the costs and charges of the commitment and conveying of the defendant to prison, if the Magistrate shall think fit so to order, are sooner paid.

Costs recoverable with the fine.

**87A.** (1) It shall be lawful for the Magistrate, if he shall think fit, upon the application of any person aggrieved and immediately after the conviction of any person for any offence, to award any sum of money, not exceeding one thousand dollars, by way of satisfaction or compensation for loss or injury suffered by the applicant through or by means of the said offence, and the amount awarded for such satisfaction or compensation shall be deemed a judgment debt due to the person entitled to receive the same from the person so

Compensation to persons defrauded or injured. 10/1974.

convicted and the order for payment of such amount may be enforced in the same manner as in the case of any costs ordered by the Magistrate to be paid under the last preceding section.

(2) If any person, having been convicted, has paid the whole amount adjudged, or has suffered the imprisonment, or imprisonment with hard labour, awarded, in every such case he shall be released from all further civil proceedings for the same cause.

Defendant's  
costs recoverable  
by distress.

**88.** Where any charge is dismissed with costs the sum awarded for costs in the order of dismissal may be recovered by distress in the same manner as costs may be recovered under the last preceding section.

No costs if fine  
does not exceed  
\$5.00.  
10/1974.

**89.** Where a fine adjudged by a conviction to be paid does not exceed five dollars then except so far as the Magistrate may think fit expressly to order otherwise an order shall not be made for payment by the defendant to the prosecutor of any costs; and the Magistrate shall except so far as he thinks fit expressly to order otherwise direct all fees payable or paid by the prosecutor to be remitted or re-paid to him and he may also order the fine or any part thereof to be paid to the prosecutor in or towards the payment of his costs.

Powers re  
imprisonment  
and fine.

**90.** In all cases where a Magistrate has jurisdiction to inflict imprisonment he may order the imprisonment to be without hard labour, and reduce the prescribed period thereof or do either of such acts.

Where he has jurisdiction to impose a fine, if it be in respect of a first offence, he may reduce the prescribed amount thereof.

Where he is authorised to inflict imprisonment and has not the option of imposing a fine he may impose a fine not exceeding three hundred dollars:

10/1974.

Provided that the amount of the fine so inflicted will not subject the offender in default of payment to any greater term of imprisonment than that to which he would have been otherwise liable.

Where in case either of fine or imprisonment there is prescribed a requirement for the offender to enter into his recognisances and to find sureties for keeping the peace and observing some other condition or to do any of such things the Magistrate may dispense with any such requirement or any part thereof:

Provided that this section shall not apply to any proceedings taken under any Act relating to Her Majesty's regular or auxiliary forces:

Provided also that this section shall not authorise a Magistrate to reduce the amount of a fine where the Act prescribing such amount carries into effect a treaty, convention, or agreement with a foreign state and such treaty, convention, or agreement stipulates for a fine of a minimum amount.

**91.** Where a Magistrate shall convict a person and order him to be imprisoned without the option of a fine he shall by his warrant commit him to prison there to be imprisoned for the period mentioned in the warrant.

Imprisonment  
without option of  
a fine.

Consecutive  
sentences of  
imprisonment.

**92.** (1) Where a sentence of imprisonment for a summary offence is passed on any person the Magistrate may order that the sentence shall commence at the expiration of any other term of imprisonment to which that person has been previously sentenced, so, however, that where two or more sentences of a Magistrate are ordered to run consecutively the aggregate term of imprisonment shall not exceed six months, unless such sentences include at least—

(a) two sentences for indictable offences dealt with summarily by consent; or

(b) a sentence for an offence for which the Magistrate was empowered to order a term of imprisonment of more than six months, in which case the aggregate term of imprisonment shall not exceed twelve months.

(2) In subsection (1) "sentence of imprisonment" includes cases where imprisonment is imposed on any person either with or without the option of a fine, or in respect of non-payment of any sum of money, or for failing to do or abstaining from doing any act or thing required to be done or left undone.

(3) Where a person has been sentenced to imprisonment in default of payment of a fine, the Magistrate may, notwithstanding the provisions of subsection (1), order that the sentence shall begin at the expiration of any term of imprisonment imposed for that offence on that person in addition to the fine.

Where convict is already undergoing imprisonment.

**93.** Where a Magistrate adjudges the defendant to be imprisoned and the defendant is then undergoing imprisonment upon conviction for any other offence the warrant of commitment for the subsequent offence shall be forthwith delivered to the officer to whom it is directed.

Punishment of children. Cap. 37. 10/1974.

**94.** No child convicted under the provisions of this Act or the Juvenile Act shall be liable to be imprisoned or to pay a fine exceeding twenty dollars.

Fine etc., to be paid by parent or guardian

**95.** (1) Where a child is charged with any offence for the commission of which a fine, damages or costs may be imposed and the Magistrate or a Juvenile Court is of opinion that the case would be best met by the imposition of a fine, damages or costs, whether with or without any other punishment, the Magistrate or a Juvenile Court shall order that the fine, damages or costs awarded be paid by the parent or guardian of the child instead of by the child, unless the Magistrate or a Juvenile Court is satisfied that the parent or guardian cannot be found or that he has not conduced to the commission of the offence by neglecting to exercise due care of the child.

10/1974.

(2) An order under this section may be made against a parent or guardian who, having been required to attend, has failed to do so, but, save as aforesaid, no such order shall be made without giving the parent or guardian an opportunity of being heard.

(3) Any sums imposed and ordered to be paid by a parent or guardian under this section may be recovered from him by distress or imprisonment in like manner as if the order had been made on the conviction of the parent or guardian of the offence with which the child was charged.

Punishment of young persons and adults. 10/1974.

**96.** (1) A young person convicted under this Act shall be liable to be imprisoned without hard labour for a period not exceeding three months or to pay a fine not exceeding one hundred dollars.

(2) An adult convicted under this Act shall be liable to be imprisoned with or without hard labour for a period not exceeding six months or to pay a fine not exceeding two hundred dollars.

Sentence to Training School. 11/1985.

**97.** (1) Where a child or young person is convicted under the provisions of this or any other Act the Magistrate or

a Juvenile Court may send such child or young person to a Training School.

(2) Where—

(a) there is no Training School in the Territory; or  
 (b) there exists an agreement or arrangement between the Government of the Virgin Islands and another country or place whereby a convicted child or young person in the Virgin Islands may be admitted into a Training School in that other country or place,  
 the Magistrate may, if he thinks fit, make an order committing the convicted child or young person to a Training School in that other country or place.

(3) A committal to a Training School shall not be for a greater period than 5 years.

Review of sentences to Training Schools. 11/1985.

**97A.** Where a child or young person has been ordered to be committed to a Training School, the Magistrate who made the order or any other Magistrate may, upon application made to him, review the order and, if necessary, reduce the length of the period for which the child or young person was ordered to be committed.

**98.** (1) Where a child or young person is convicted as in the preceding sections mentioned the Magistrate if he thinks it inexpedient to inflict any punishment may discharge the accused.

Magistrate may discharge child or young person or order whipping.

(2) In any case where any child or young person, being a male, is convicted before a Magistrate's Court or a Juvenile Court either Court may, in addition to or in lieu of any other punishment which it is empowered to inflict, order him to be whipped.

Warrant of distress.

**99.** Where a conviction adjudges a fine to be paid and the amount so adjudged is not paid forthwith the Magistrate may issue his warrant of distress for the levying of the same and such warrant shall be in writing under the hand and seal of the Magistrate.

Execution to cease on payment of amount leviable.

**100.** In all cases where a warrant of distress has issued against any person and such person pays or tenders to the officer having the execution of the same the sum or sums in the warrant mentioned together with the amount of the

expenses of the distress up to the time of payment or tender the officer shall cease to execute the same.

**101.** In all cases where a Magistrate issues a warrant of distress he may suffer the defendant to go at large or verbally or by a written warrant in that behalf may order him to be kept in safe custody until return has been made to the warrant of distress unless the defendant gives sufficient security by recognisance or otherwise to the satisfaction of the Magistrate for his appearance before him at the time and place appointed for the return of the warrant of distress.

When distress warrant issued Magistrate may suffer defendant to go at large or detain him in prison.

**102.** If at the time and place appointed for the return of any warrant of distress the officer who has execution of the same returns that he could find no goods or chattels whereon to levy the Magistrate may issue his warrant of commitment directed to the same or any other peace officer reciting shortly the conviction the issuing of the distress warrant and the return thereto, and requiring the officer to convey the defendant to prison and there to deliver him to the keeper thereof requiring the keeper to receive the prisoner into such prison and there to imprison him or to imprison him and keep him to hard labour (as the case may be) in the manner and for the time prescribed by section 109, unless and until the sum or sums adjudged to be paid and all costs and charges of the distress and also all costs and charges of the commitment if the Magistrate thinks fit so to order (the amount thereof being ascertained and stated in such commitment) be paid.

Where return is *nulla bona* Magistrate may commit the defendant.

**103.** In all cases in which any person is imprisoned for non-payment of any fine he may pay or cause to be paid to the keeper of the prison in which he is confined the sum or sums in the warrant of commitment mentioned together with the amount of the costs, charges, and expenses therein mentioned and the keeper shall receive the same and shall thereupon discharge the prisoner if he be in his custody for no other matter.

Defendant who pays after commitment to be discharged on payment.

**104.** A Magistrate by whose conviction any sum is adjudged to be paid may do all or any of the following things, namely—

- (a) order imprisonment in the first instance, unless such sum be paid forthwith;
- (b) allow time for the payment of the said sum;

Powers of Magistrate when imposing a fine.

(c) direct payment to be made of the said sum by instalments;

(d) direct that the person liable to pay the said sum shall be at liberty to give to the satisfaction of that Magistrate, or such person as may be specified by him, security with or without a surety or sureties for the payment of the said sum or of any instalment thereof and such security may be given and enforced in manner provided by this Act;

(e) issue a warrant of distress for the levying of the said sums;

(f) order imprisonment in default of sufficient distress or of the payment of any instalment.

**105.** Where a sum is directed to be paid by instalments and default is made in the payment of any one instalment, the same proceedings may be taken as if default had been made in payment forthwith of the full amount of the fine or of such amount as remains unpaid.

On default of payment of any instalment process to issue for the whole.

**106.** A Magistrate directing the payment of a sum or of an instalment of a sum may direct such payment to be made at such time or times, and in such place or places and to such person or persons as may be specified by the Magistrate; and every person to whom any such sum or instalment is paid when not the clerk of the Magistrate, shall as soon as may be account for such sum or instalment to the Magistrate or to his clerk, if he has a clerk, and pay over the same into the Public Treasury or, if the Magistrate shall so direct, to the Magistrate or to his clerk.

Mode of payment by instalments.

**107.** A Magistrate to whom application is made either to issue a warrant of distress or for any endorsement thereon for any sum adjudged to be paid by a conviction or order or to issue a warrant for committing a person to prison for non-payment of a sum of money adjudged to be paid by a conviction, or for default of sufficient distress to satisfy any such sum, may, if he deem it expedient so to do, postpone the issue of such warrant until such time and on such conditions, if any, as to him shall seem just.

Postponement of issue of warrant of distress or commitment.

Obligation to allow time for payment of fines, etc.

**108.** (1) (a) A warrant committing a person to prison in respect of the non-payment of a sum adjudged to be paid by a conviction of a Magistrate shall not be issued forthwith unless the Magistrate is satisfied that such person is possessed of sufficient means to enable him to pay the sum forthwith, or unless, upon being asked by the Magistrate whether he desires that time should be allowed for payment, he does not express any such desire, or fails to satisfy the Magistrate that he has a fixed abode within the Territory, or unless the Magistrate for any other special reason expressly directs that no time shall be allowed.

(b) Where any such person desires to be allowed time for payment the Magistrate in deciding what time shall be allowed shall consider any representation made by him, but the time allowed shall not be less than seven clear days: Provided that if before the expiration of the time allowed the person convicted informs the Magistrate that he prefers immediate committal to awaiting the expiration of the time allowed, the Magistrate may if he thinks fit forthwith issue a warrant committing him to prison.

(c) In all cases where time is not allowed for payment, the reasons of the Magistrate for the immediate committal shall be stated in the warrant of commitment.

(2) Where time has been allowed for the payment of a sum adjudged to be paid by a conviction or order of a Magistrate, the Magistrate may allow further time or he may direct payment by instalments of the sum so adjudged to be paid.

(3) The expression "sum adjudged to be paid by a conviction" includes any costs adjudged to be paid by the conviction of which the amount is ascertained by such conviction.

**109.** The period of imprisonment imposed by a Magistrate under this or any other Act in respect of the non-payment of any sum of money adjudged to be paid by a conviction or in respect of the default of a sufficient distress to satisfy any such sum or in respect of the default of payment of any instalment of such sum shall notwithstanding any enactment to the contrary in any past Act be such period as in his opinion will satisfy the justice of the case, but shall not in any case exceed the maximum fixed by the following scale:—

Scale of imprisonment in default of payment of fine or of sufficient distress.  
10/1974.

Where the amount of the sum or sums of money adjudged to be paid—

The said period shall not exceed—

Does not exceed \$20.00	14 days
Exceeds \$20.00 but does not exceed \$50.00	30 days
Exceeds \$50.00 but does not exceed \$100.00	2 months
Exceeds \$100.00 but does not exceed \$200.00	4 months
Exceeds \$200.00	6 months

and may be either with or without hard labour in the discretion of the Magistrate.

**110.** Where it has become necessary to issue a warrant for committing a person to prison for non-payment of a sum adjudged to be paid by a conviction, or for default of sufficient distress to satisfy any such sum, and it appears to the Magistrate that, either by payment of part of the said sum, whether in the shape of instalments or otherwise, or by the net proceeds of the distress, the amount of the sum so adjudged has been reduced, the Magistrate shall, by his warrant of commitment, revoke the term of imprisonment to which the defendant is liable under such conviction, and order the defendant to be imprisoned for such less period as in his opinion will satisfy the justice of the case.

On part payment term of imprisonment to be reduced.

**111.** Where any person has been summarily convicted and has been sentenced to pay a fine and it shall be shown to the Magistrate that there is any sum of money in the hands of a third person which is due and payable by such third person to the person so convicted as aforesaid it shall be lawful for the Magistrate to order such third person as aforesaid to pay such sum of money or such part thereof as will be sufficient to satisfy such fine as aforesaid to such person or persons as would be by law entitled to receive payment of such fine as aforesaid in such manner and form as a garnishee may be compelled to pay over money in his hands for the satisfaction of a judgment debt under any Act for the time being in force in the Territory in that behalf and such Magistrate shall have the same powers in that behalf as are given to the Court under such Act as aforesaid.

Power of Magistrate to order attachment of debts due to person sentenced to pay a fine.

Where more than one person is ordered to pay a sum equal to the damage done.

**112.** When several persons join in the commission of the same offence and upon conviction thereof each is adjudged to forfeit a sum equivalent to the value of the property or to the amount of the injury done no further sum shall be paid to the party aggrieved than the amount forfeited by one of such offenders only and the corresponding sum forfeited by the other offenders shall be applied in the same manner as other penalties imposed by a Magistrate are directed to be applied.

All convictions to be transmitted to the High Court. 10/1974.

**113.** Every Magistrate before whom any person is summarily convicted shall transmit the conviction to the High Court before the time when an appeal from the conviction could be heard, there to be kept by the proper officer among the records of the Court and if such conviction has been appealed against and a deposit of money made shall return the deposit into the said Court and upon any indictment, information or complaint against any person for a subsequent offence a copy of such conviction certified by the proper officer of the Court or proved to be a true copy shall be sufficient evidence to prove a conviction for the former offence and the conviction shall be presumed to have been unappealed against until the contrary be shown.

#### PART V.

##### SUMMARY JURISDICTION (QUASI CRIMINAL) PROTECTION AND MAINTENANCE OF MARRIED WOMEN AND AFFILIATION PROCEEDINGS

10/1988.

Order relating to separation and maintenance.

**114.** (1) Any married person (in this section hereinafter called "the applicant") whose husband or wife, as the case may be, (in this section hereinafter called "the defendant")—

- (a) has been guilty of adultery; or
- (b) has deserted the applicant; or
- (c) has been convicted summarily of an aggravated assault on the applicant within the meaning of section 41 of the Offences against the Person Act; or
- (d) has been convicted on indictment of an assault upon the applicant; or
- (e) has been guilty of persistent cruelty to the applicant or to the children of the applicant; or

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(f) being under a duty to provide reasonable maintenance for the applicant and the children of the applicant, has wilfully neglected or refused to do so; or

(g) is an habitual drunkard,

may apply to a Magistrate for an order under this Part.

(2) Any married woman whose husband—

- (a) has compelled her to submit to prostitution; or
- (b) while suffering from venereal disease and knowing that he was so suffering, has insisted on having sexual intercourse with her,

may also apply to a Magistrate for an order under this Part.

(3) For the purposes of this section—

(a) where the husband has, in the opinion of the Magistrate, been guilty of such conduct as was likely to result and has resulted in his wife submitting herself to prostitution he shall be deemed to have compelled her so to submit herself;

(b) an habitual drunkard shall be deemed to be a person who by reason of habitual intemperate drinking of intoxicating liquors or habitual taking or using, except on medical advice, of controlled drugs within the meaning of the Drugs (Prevention of Misuse) Act, is at times dangerous to himself or herself or to others or incapable of managing himself or herself on his or her affairs; and

(c) where the applicant is entitled to apply for an order or orders under this section on the ground of the conviction of the defendant upon indictment, the applicant may apply to the Court before which the defendant has been convicted, and that Court shall for the purposes of this section become a Magistrate's Court and have the power without a jury to hear an application and make the order or orders applied for.

(4) The Magistrate to whom any application under this section is made may make an order or orders containing all or any of the provisions following, namely—

(a) that the applicant be no longer bound to cohabit with the defendant (which provision while in force shall have the effect of a decree of judicial separation on the ground of cruelty);

(b) that the legal custody of any children of the marriage while under the age of eighteen years be committed to the applicant;

(c) that the defendant shall pay to the applicant personally, or for the use of the applicant to any officer of the Court or third person on behalf of the applicant, such weekly sum, not less than forty dollars as the Magistrate having regard to the means both of the applicant and the defendant, considers reasonable.

Provided that where the defendant is the wife of the applicant the Magistrate shall not make an order containing the provisions of this paragraph unless he is satisfied that the applicant is not possessed of sufficient means to provide reasonable maintenance for himself or that the applicant is by reason of old age, illness or physical or mental disability unable to provide for his own maintenance;

(d) that the defendant shall pay to the applicant, or to an officer of the Court or third person on behalf of the applicant, a weekly sum not less than twenty-five dollars for the maintenance of each of the children of the marriage until each such child attains the age of eighteen years;

(e) for payment by the applicant or defendant, as the case may be, or both of them, of the costs of the application and any reasonable costs of either of the parties as the Magistrate may think fit.

(5) No order shall be made under paragraph (c) of subsection (4) where it is proved that the applicant has committed an act of adultery.

Provided that the defendant has not condoned, or connived at, or by his or her wilful neglect condoned to such act of adultery.

(6) A Magistrate, acting within the district in which any order under this section has been made, may on the application of the wife or husband, and upon cause being shown upon fresh evidence to the satisfaction of the Magistrate, at any time, alter, vary or discharge any such order and may upon such application from time to time increase or diminish the amount of any weekly payment ordered to be made:

Provided that the amount payable by any such order shall not be diminished below the limits set forth in subsection (4).

(7) If any person on whose application an order has been made under this section, shall voluntarily resume cohabitation with her husband or his wife, as the case may be, or shall commit an act of adultery, such order shall on proof thereof be discharged:

Provided that the Magistrate may, if he thinks fit—

(i) refuse to discharge such order in the case of a wife who has committed adultery if in his opinion such act of adultery as aforesaid was condoned to by the failure of the husband to make such payments as in his opinion he was able to make under the order;

(ii) in the event of the order being discharged, make a new order that the defendant shall pay to the applicant, or to an officer of the Court or third person on behalf of the applicant, a weekly sum not less than twenty-five dollars for the maintenance of each of the children of the marriage until each such child attains the age of eighteen years.

10/1988.

10/1988.

(8) No order made under this section shall be enforceable and no liability shall accrue under any such order while the applicant with respect to whom the order was made resides with the defendant and any such order shall cease to have effect if for a period of three months after it is made such applicant continues to reside with the defendant.

(9) In this section the term "children of the marriage" shall include every child (whether legitimate or illegitimate) whom the applicant or defendant is liable under any law to maintain and who has been living with them as part of the husband's family.

115. (1) All applications under section 114 shall be made in like manner as a complaint.

(2) If in the opinion of the Magistrate the matters in question between the parties or any of them may be more conveniently dealt with by the High Court, he may refuse to make an order under section 114 and in that case no appeal shall lie from his decision:

Provided that the High Court or a Judge thereof may, by order in any proceeding in that Court relating to or comprising

Procedure and enforcement of orders.

10/1974.

10/1988.

the same subject-matter as the application so refused, or any part thereof, direct the Magistrate to re-hear and determine that matter.

(3) The payment of any sum of money directed to be paid by any order made under section 114 may be enforced in the like manner as though such order were a conviction and the provisions of this Act shall apply in all respects as fully as though such order as aforesaid were a conviction.

Enforcement of orders as to custody of children.

**116.** Where an order under section 114 contains a provision committing to the applicant the legal custody of any children of the marriage, a copy of the order may be served on any person in whose actual custody the children may for the time being be, and thereupon if within seven days of such service the person makes default in handing over to the applicant the custody of such children, the Court may, in its discretion order the person so making a default to pay to the applicant a sum (to be enforced as a civil debt recoverable summarily under this Act) not less than twenty-five dollars for every day during which he is in default, or to be imprisoned until he has remedied his default:

10/1988.

Provided that a person shall not for such default, whether it be made in respect of one or more orders, be liable under this section to be imprisoned for a period or periods amounting in the aggregate to more than two months, or to payment of any sums exceeding in the aggregate five hundred dollars.

10/1988.

Interim orders.

**117.** Where on the hearing of any application for a maintenance order the application is adjourned for any period exceeding fourteen days, the Magistrate may order that the defendant do pay to the person in respect of whom the order is sought to be made, or to an officer of the Court or third person on behalf of such person, a weekly sum, not less than twenty-five dollars, which interim order shall be enforced in like manner as if it were a final order of the Court:

10/1988.

Provided that the order directing such payment shall not remain in operation for more than three months after the order was made.

Putative father to be summoned on application of mother of child.  
10/1988.

**118.** Any single woman who may be with child, or who may be delivered of a child, may either before the birth or at any time within twelve months from the birth of such a child, or at any time thereafter upon proof that the man alleged to

be the father of such child has within the twelve months next after the birth of such child paid money for its maintenance or otherwise assisted to provide for its support, or at any time within the twelve months next after the return to the Territory of the man alleged to be the father of such child, upon proof that he ceased to reside in the Territory within twelve months next after the birth of such child, make application to a Magistrate for a summons to be served on the man alleged by her to be the father of the child; and if such application be made before the birth of the child, the woman shall make a deposition upon oath stating who is the father of such child, and such Magistrate shall upon such application being made issue his summons to the person alleged to be the father of such child to appear before a Magistrate and to show cause why he should not be compelled to maintain such child.

Order on putative father for maintenance, education, etc., of child.  
10/1988.

**119.** On the appearance of the person so summoned or on proof that the summons was duly served, the Magistrate shall hear the evidence of such woman and such other evidence as she may produce, and shall also hear any evidence tendered by or on behalf of the person alleged to be the father, and if the evidence of the mother be corroborated in some material particular by other evidence to the satisfaction of the Magistrate, he may adjudge the man to be the putative father of such child; and make an order on him for the payment to the mother of the child or to any person having custody of the child of a sum of money weekly not less than twenty-five dollars a week for the maintenance and education of the child, and further of a sum of money for the expenses incidental to the birth of such child, and of the funeral expenses of the child, provided it has died before the making of such order, and of such costs as may have been incurred in the obtaining of such order, and the said Magistrate by whom any such order for payment shall be made or any other Magistrate sitting in his stead shall have power from time to time to discharge or vary the same on the application of either the putative father or the mother of such child upon proof that the means of the putative father have been altered in amount since the original order or any subsequent order varying it shall have been made.

Enforcement of order on putative father.

**120.** (1) If the application be made before the birth of the child or within two calendar months after the birth of the child, the Magistrate may order the payment of the weekly sum to be made from the birth of the child; and if at any time after the making of such order as aforesaid it be made to appear to

a Magistrate upon oath that any sum payable in pursuance of such order is one month in arrear the Magistrate may proceed to enforce such order in like manner as if such order were a conviction, and the provisions of this Act shall apply in all respects as fully as though such order as aforesaid were a conviction:

Provided that where any weekly sum payable in pursuance of such order is in arrear as aforesaid the Magistrate shall not proceed to enforce such order as provided in this section unless he is satisfied that the defendant is possessed of sufficient means to pay such arrears in whole or in part.

(2) Where in any proceedings for the enforcement of such order the defendant is committed to prison then, unless the Magistrate otherwise directs, no arrears shall accrue under the order during the time that the defendant is in prison.

**121.** No order for the maintenance and education of a child made in pursuance of this Act, shall, except for the purpose of recovering money previously due under such order, be of any force or validity after the child in respect of whom it was made has attained the age of eighteen years, or after the death of such child.

Time for which order on putative father to remain in force. 10/1988.

Forms and procedure.

**122.** The forms to be used and the proceedings to be had under Part V shall, as nearly as may be, be those used and had in the case of a person charged with having committed an offence punishable summarily by a Magistrate by fine or imprisonment.

Service of summonses and notices and orders.

**123.** Every summons, notice or order to be served on any person under Part V may either be served personally or may be served by leaving the same at the last known place of abode of the person to be served; and such service shall be effected not less than six clear days before the day on which such person is required to appear before the Magistrate.

Payment of money under an order for the maintenance and education of a child. 10/1988.

**124.** (1) Except as is otherwise provided by any law and subject to the provisions of this section, all money payable under any order made under section 119 shall be due and payable to the mother of the child in respect of such time and so long as she lives and is of sound mind and is not in prison.

(2) After the death of the mother of such child, or while such mother is of unsound mind or confined in any prison any Magistrate may make an order from time to time appointing

some person who with his own consent shall have the custody of such child; and the Magistrate may revoke the appointment of such person and may appoint another person in his stead. Every person so appointed to have the custody of a child may make application for the benefit of such child in the same manner as the mother of the child could have done.

(3) It shall be lawful for the Magistrate to order any money payable under any such order to be paid to the person appointed by the Governor under the provisions of section 126, and to be applied in such manner as shall be directed by the Magistrate.

Summons to putative father to show cause why order should not issue where a charge of neglect is being heard.

**125.** On the hearing of any charge of wilfully neglecting to provide adequate food, clothing, medical aid or lodging for any child under the age of fourteen years, the Magistrate may direct that any person may be summoned to appear before him to show cause why an order should not be made upon him as father or putative father for the support of such child, and may after hearing any person so summoned, or if such person do not appear, on proof of the service of the summons make such order as he may think fit in the matter, and may enforce the same in like manner as if the order were a conviction and the provisions of this Act shall apply in all respects as fully as though such order were a conviction.

Father of child compellable to support it. 10/1988.

**126.** It shall be lawful for any person whom the Governor may appoint in that behalf to take all steps in and about the compelling of the putative father of any child to contribute to its support which the mother of such child would be entitled to take under this Act.

## PART VI.

### JURISDICTION IN RELATION TO SALVAGE AND WRECK.

Salvage in respect of services rendered in the Territory.

**127.** Whenever any ship or boat is stranded or otherwise in distress on the shore of any sea or tidal water situate within the limits of the Territory and services are rendered by any person—

- (a) in assisting such ship or boat;
- (b) in saving the lives of the persons belonging to such ship or boat;

(c) in saving the cargo or apparel of such ship or boat or any portion thereof;

and whenever any wreck is saved by any person other than a Receiver within the Territory, there shall be payable by the owners of such ship, or boat, cargo, apparel, or wreck, to the person by whom such services or any of them are rendered, or by whom such wreck is saved, a reasonable amount of salvage together with all expenses properly incurred by him in the performance of such services or the saving of such wreck, the amount of such salvage and expenses (which expenses are hereinafter included under the term salvage) to be determined in case of dispute in manner hereinafter mentioned.

Disputes as to salvage how to be settled.

10/1974.

128. Whenever any dispute arises in the Territory between the owners of any such ship, boat, cargo, apparel, or wreck as aforesaid and the salvors as to the amount of salvage, and the parties to the dispute cannot agree as to the settlement thereof by arbitration or otherwise then if the sum claimed does not exceed one thousand dollars such dispute may be referred to the arbitration of any Magistrate resident as follows: (that is to say)—

(a) In case of wreck, resident at or near the place where such wreck is found;

(b) In case of services rendered to any ship or boat, or to the persons, cargo, or apparel belonging thereto, resident at or near the place where such ship or boat is lying, or at or near the first port or place in the Territory into which such ship or boat is brought after the occurrence of the accident by reason whereof the claim to salvage arises;

and every dispute with respect to salvage may be heard and adjudicated upon on the application either of the salvor or of the owner of the property salvaged, or of their respective agents.

Manner in which Magistrate may decide disputes.

129. Whenever in pursuance of this Act any dispute as to the salvage is referred to the arbitration of a Magistrate he may determine the same with power to call to his assistance any person conversant with maritime affairs as assessor, and such Magistrate shall make an award as to the amount of salvage payable within forty-eight hours after such dispute has been referred to him, with power nevertheless for such Magistrate by writing under his hand to extend the time within which he is hereby directed to make his award.

130. Subject to any agreement of the parties to any arbitration, the costs of any arbitration under this Act shall be in the discretion of the Magistrate.

Costs of arbitration.

131. There shall be paid to every assessor who may be so appointed as aforesaid in respect of his services such sum not exceeding fifty dollars, as the Governor in Council may from time to time direct; and all the costs of such arbitration including any such payments as aforesaid, shall be paid by the parties to the dispute in such manner and in such shares and proportions as the Magistrate may direct by his award.

Payment of costs of arbitration.

10/1974.

132. The said Magistrate may call for the production of any documents in the possession or power of either party which they or he may think necessary for determining the question in dispute, and may examine the parties or their witnesses on oath and administer the oaths necessary for that purpose.

Magistrate may call for documents and administer oaths.

133. If any person is aggrieved by the award made by such Magistrate as aforesaid, he may appeal to the Court of Appeal in the manner and form hereinafter provided.

Appeal.

134. Whenever any appeal is made in manner hereinbefore provided, the Magistrate shall transmit to the Registrar of the Court of Appeal a copy on unstamped paper, certified under his hand to be a true copy of the proceedings had before such Magistrate, and of award so made by him, accompanied with his certificate in writing of the gross value of the article respecting which salvage is claimed, and such copy and certificate shall be admitted in the Court as evidence in the cause.

Magistrate to transmit copy of proceedings and certificate of value to Registrar of Court of Appeal.

135. If any dispute arises between the Receiver of Wreck and any Admiral, Vice-Admiral, or other person as to the validity of his title to wreck, or if divers persons claim to be entitled to wreck found at the same place, the matter in dispute may be decided by a Magistrate in the same manner in which disputes as to salvage coming within the jurisdiction of a Magistrate are hereinbefore directed to be determined.

Disputed title to wreck, how to be decided.

136. If any party to such dispute is unwilling to refer the same to a Magistrate, or having so referred the same, is dissatisfied with his decision, he may within three months from the expiration of a year from the date at which the wreck came into the possession of the Receiver or from the date of such decision as aforesaid, as the case may be, take such proceedings

Appeal from decision of Magistrate.

as he may be advised in any Court of law, equity, or Admiralty having jurisdiction in the matter for establishing his title.

## PART VII.

### CIVIL JURISDICTION.

Plaintiff and defendant may give evidence.

**137.** In all civil proceedings the party making the claim is called the plaintiff and the party against whom the claim is made is called the defendant and both the plaintiff and defendant may give evidence on oath.

Magistrate may issue a summons to be served on defendant.

**138.** For the purpose of instituting any civil proceedings the plaintiff may apply to the Magistrate for a summons and the particulars of claim and of the order claimed shall be endorsed on the back thereof and the summons so endorsed shall be filed by the Magistrate and a certified copy thereof issued by him which shall be served on the defendant in the manner prescribed by rules of court for the time being in force relating to the recovery of claims, and all the provisions of the said rules except where they are repugnant to the provisions of this Act shall apply *mutatis mutandis* to all actions or proceedings brought and taken under Part VII so far as the same can be made applicable thereto and are not inconsistent with any of the provisions of this Act.

Procedure.

10/1974.

**139.** Repealed.

Fees to be taken.

**140.** (1) Subject to the provisions of this section and to any rules to be made under this Act the Court fees and bailiff's fees specified in the Second Schedule shall be paid in all civil proceedings.

Second Schedule.

(2) In cases where—

(a) any person seeks to recover compensation for services which by any law in force in the Territory he is compelled to render without prepayment;

(b) any public officer seeks as such to recover any debt or compensation due to the Government of the Territory or to any public institution of the Territory;

(c) the Magistrate is satisfied of the inability of any plaintiff to pay the prescribed fees and that the plaintiff has, *prima facie*, a good ground of claim, no fees shall be demanded from the plaintiff.

(3) The Magistrate shall, on giving judgment for the plaintiff—

(a) in cases of the nature referred to in paragraph (a) of the preceding subsection,

(b) in cases of the nature referred to in paragraph (c) of the preceding subsection,

order the defendant to pay to the plaintiff such fees as would in other cases be chargeable, and such fees, if and when recovered by the plaintiff, shall be paid by the plaintiff into the Treasury for the public uses of the Territory, and if any plaintiff after recovery of such fees shall fail to pay the same into the Treasury as hereinbefore provided within fourteen days of the receipt thereof he shall be liable to be imprisoned for any period not exceeding six months.

**141.** No cause of action arising out of a simple contract or tort which shall exist at any one time amounting in the whole to a sum exceeding one thousand dollars shall be split so as to be made the ground of two or more different summonses, in order to bring such cases within the jurisdiction of the Magistrate and if the Magistrate shall find that the plaintiff in any case has split his cause of action as aforesaid he shall dismiss such summons or summonses but without prejudice to the plaintiff's right to sue on the cause of action in such other manner as he shall think fit:

Splitting of claims and jurisdiction by consent of parties.  
10/1974.  
10/1988.

Provided that—

(a) if the plaintiff is content to recover a sum not exceeding one thousand dollars the Magistrate shall entertain the summons and in case any judgment shall be given in favour of the plaintiff the same shall be a full discharge and satisfaction of the whole cause of action and it shall be so expressed in the body of the judgment;

(b) in common law actions, whatever be the amount of debt or damage claimed, wherein both parties shall agree by memorandum, signed by them, or their respective solicitors, the Magistrate shall have power to try the action; and a judgment delivered pursuant to such hearing shall have the same effect and be enforceable in all respects as a judgment for an amount within the jurisdiction as to amount or coming within the jurisdiction of the Magistrate.

Set-off or  
counter-claim.  
10/1974.  
10/1988.

**142.** In an action arising out of a simple contract or tort or where an order is claimed for the payment of money as a civil debt, the defendant may plead and prove a set-off or may counter-claim against the plaintiff provided such counter-claim is based upon the same contract or tort on which the plaintiff is suing and that the amount claimed whether by way of set-off or counter-claim or the balance thereof does not exceed one thousand dollars.

Costs.

**143.** The costs of all civil proceedings shall be in the discretion of the Magistrate and shall be limited to fees of Court and bailiff's fees:

10/1974.

Provided that the Magistrate may in addition to such fees of Court and bailiff's fees aforesaid allow any reasonable sum or sums not exceeding two hundred dollars in the aggregate by way of compensation for the attendance, loss of time and legal or other expenses of parties and witnesses and all sums so allowed in any civil proceedings shall be recovered as costs therein.

Execution.

**144.** Every judgment or order may be enforced by sale of the goods and chattels of the defendant or by attachment of monies due to him by any third party.

Judgments and  
orders not to be  
enforced by  
imprisonment.

**145.** No judgment or order for the payment of any costs awarded shall be enforced by imprisonment except as hereinafter prescribed.

Judgment  
summons.

**146.** (1) Where any defendant shall make default in the payment of any judgment debt or of any sum ordered to be paid or any instalment or any costs and he either has or has had since the date of the order the means to pay the same, and has refused or neglected or refuses or neglects to pay the same, the Magistrate may commit him to prison without hard labour for any period not exceeding six weeks or until payment of the sum due, and may issue all necessary warrants in that behalf:

Provided that the order be made in open Court and:

Provided also that no imprisonment under this section shall operate as an extinguishment of the debts or grounds of claim or deprive any person of the right to obtain a writ of execution for the satisfaction of the debt.

Proof of the means of the person making default may be given in such manner as the Magistrate may think just, and such person as aforesaid and any witness may be summoned

and examined on oath as other witnesses may be summoned and examined under this Act.

(2) Where a warrant of commitment is issued under subsection (1) it shall be executed by the bailiff.

(3) In any case where, owing to the time and place of arrest of the judgment debtor, it is not practicable or convenient to convey him to the prison to which he is by such warrant committed, the bailiff effecting the arrest shall convey him to the nearest police station in the locality where such arrest was made; and it shall be lawful for the police officer in charge of such station to detain such judgment debtor in some secure place of confinement at such station until such hour, not later than twelve noon of the day following that on which he is arrested, and as soon as may be convenient thereafter the judgment debtor shall be conveyed to prison as directed by the warrant of commitment.

(4) When any person who has been detained at a police station as provided in subsection (3) is thereafter conveyed to the prison to be imprisoned by virtue of such warrant of commitment the bailiff shall endorse on such warrant the day on, and the hour at, which such person was arrested by virtue thereof; and the imprisonment shall be computed from such day and inclusive thereof.

(5) Where a Magistrate either before or after the commencement of this Act makes an order for the payment either in one sum or by instalments of any judgment debt and costs, such order may, on the application either of the judgment debtor or judgment creditor and upon cause being shown upon fresh evidence to the satisfaction of the Magistrate, be varied or altered by him by ordering the amount due and unpaid (if payable in one sum) to be paid by instalments, or if the said amount is already payable in instalments, he may increase or decrease the amount of such instalments.

**147.** Where power is given by any Act to a Magistrate of requiring any person to do or abstain from doing any act or thing other than the payment of money or of requiring any act or thing to be done or left undone other than the payment of money and no mode is prescribed for the enforcing such requisition the Magistrate may exercise such power by an order and may annex thereto any conditions as to time or mode of

Where the doing  
or abstaining  
from the doing  
of any act is  
ordered.

action as to him may seem just and may suspend or rescind such order on such undertaking being given or condition being performed as to him may seem just and may make such arrangements for carrying such power into effect as may to him seem expedient.

Magistrate may order a penalty per diem or imprisonment.

10/1974.

**148.** A person making default in complying with the order of a Magistrate other than for the payment of money for the space of ten days, may if it be not otherwise provided in the Act on which such order is based upon application to a Magistrate and on proof of such default, be ordered to pay a sum not exceeding ten dollars for every day during which he is in default, or to be imprisoned until he has remedied his default, and any sum ordered to be paid as last hereinbefore mentioned shall be recoverable summarily as a civil debt.

Maximum imprisonment and penalty.

10/1974.

**149.** No person shall for non-compliance with the requisition of the Magistrate whether made by one or more orders to do or to abstain from doing any particular act or thing be liable to be imprisoned for a period or periods amounting in the aggregate to more than two months or to the payment of any sums exceeding in the aggregate two hundred dollars.

Bailiffs.

**150.** It shall be lawful for the Governor from time to time to appoint such bailiffs of the Magistrates' Courts as may be necessary for the carrying out of the provisions of this Part, and all bailiffs so appointed shall receive such remuneration as may from time to time be voted by the Legislative Council and every such bailiff shall give such security for the due performance of the duties of his office as the Governor may direct.

Bailiffs to pay all fees to Magistrate or clerk.

**151.** Every bailiff shall forthwith pay over to the Magistrate or the Magistrate's clerk all fees received by him to be paid into the Treasury.

Bailiffs to pay all monies collected by them to Magistrate or clerk.

**152.** Every bailiff who is directed by any Magistrate to collect the amount of any judgment debt or order for the payment of money shall, on receiving the amount of such debt or sum or any part thereof or of any costs or other sums of such money collected by him, forthwith pay over the same to the Magistrate or the clerk of the Magistrate and the Magistrate or the clerk of the Magistrate shall pay the same to the party who is entitled to receive the same.

**153.** When any property of any kind shall be seized or taken in execution under any judgment or order in any suit or proceeding under Part VII, which is claimed by any person not a party to the suit, such claim shall be determined by the Magistrate in a summary way upon a summons to be taken out by such claimant against the party prosecuting the judgment or order.

Interpleader summons.

**154.** Nothing in this or any other Act shall be held to render Part VII applicable to any proceedings in respect of salvage, affiliation proceedings or the maintenance of married women, or to any proceedings in relation to the binding over of persons by recognisance to keep the peace or to be of good behaviour.

Exception in cases of salvage, affiliation proceedings and desertion.

PART VIII.

APPEALS FROM MAGISTRATE TO COURT OF APPEAL.

**155.** (1) Where a Magistrate refuses to make a conviction the complainant may appeal to the Court of Appeal against such decision.

Appeal.

(2) Where a Magistrate makes a conviction the party against whom the conviction is made may appeal to the Court of Appeal against such decision.

(3) There shall be a right of appeal to the Court of Appeal from any judgment or order of a Magistrate.

10/1974.

**156.** Every appeal shall be either by way of motion or special case as hereinafter provided.

Appeal by motion or special case.

**157.** An appeal, whether by way of motion or special case, shall have the effect of suspending the execution of the decision, judgment or order appealed from until the final determination of such appeal.

Appeal operates as a stay.

**158.** (1) Where an appeal is by way of motion the appellant within six weeks after the day on which the Magistrate has given his decision shall serve a notice on the other party and on the Magistrate of his intention to appeal, and the said notice shall also contain the reasons for appeal.

Notice of appeal. 10/1974.

(2) The notice by subsection (1) may set forth all or any of the following reasons, and no other, that is to say—

- (a) that the Court had no jurisdiction in the case:

Provided that it shall not be competent for the Court of Appeal to entertain such reason for appeal, unless objection to the jurisdiction of the Court has been formally taken at some time during the progress of the case and before the pronouncing of the decision; or

(b) that the Court exceeded its jurisdiction in the case; or

(c) that the Magistrate was personally interested in the case; or

(d) that the Magistrate acted corruptly or maliciously in the case; or

(e) that the decision was obtained by fraud; or

(f) that the case has been already heard or tried and decided by, or forms the subject of a hearing or trial pending before, some competent tribunal; or

(g) that legal evidence substantially affecting the merits of the case was rejected by the Court; or

(h) that illegal evidence was admitted by the Court and that there is not sufficient legal evidence to sustain the decision after rejecting such illegal evidence; or

(i) that the decision is unreasonable or cannot be supported having regard to the evidence; or

(j) that the decision was erroneous in point of law; or

(k) that some other specific illegality, not hereinbefore mentioned, and substantially affecting the merits of the case was committed in the course of the proceedings in the case; or

(l) that the judgment or sentence passed was based on a wrong principle or was such that a Magistrate viewing the circumstances reasonably could not properly have so decided; or

(m) that the sentence imposed was unduly severe.

(3) An applicant shall, subject as hereinafter in this subsection appears, set forth in the said notice the particular matter on which he relies or of which he complains, in such manner as to inform the respondent thereof, as, for example, if he relies upon the reason for appeal stated in paragraph (j) of subsection (2), the name of the tribunal shall be stated, and, if a decision is alleged, the approximate date of such decision shall be stated; if he relies upon the reason for appeal stated

in paragraph (j) of subsection (2), the nature of the error shall be stated; and if he relies upon the reason for appeal stated in paragraph (k) of subsection (2), the illegality complained of shall be clearly specified.

(4) Where the reason for appeal given is that the applicant is not guilty, no particulars need be stated.

**159.** Every notice of appeal shall be in writing signed by the appellant or his counsel or solicitor and may be transmitted as a registered letter through the post in the ordinary way and shall be deemed to have been served at the time when it would be delivered in the ordinary course of the post.

Service of notice.

**160.** The appellant shall within seven days after the day on which he served notice of his intention to appeal, enter into a recognisance before a Magistrate with one or more sufficient sureties as the Magistrate may direct conditioned to appear before the Court of Appeal and to prosecute the appeal and to abide the judgment thereon of the Court of Appeal and to pay such costs as may be awarded by the said Court, or if the Magistrate thinks it expedient the appellant may instead of entering into a recognisance give such other security by payment of money into Court or otherwise as the Magistrate deems sufficient, except in cases where a sentence imposed involves the payment of a fine, such recognisance or security shall be in a sum not less than the amount of the fine; and the Magistrate shall without delay transmit to the Registrar of the Court of Appeal all papers relating to such appeal together with a concise memorandum of the reasons for his decision.

Recognisance of security to be taken and appeal papers to be transmitted to the Registrar of the Court of Appeal.  
16/1989.

**161.** Where the appellant is in custody the Magistrate before whom he appears to enter into a recognisance shall on his so doing or on giving such other security as aforesaid, release him from custody.

Appellant to go at large.

**162.** (1) After the hearing and determination of any complaint, the Magistrate may, in his discretion, on the application of either party to such complaint or their solicitor, or of his own motion without such application, state a case on any point of law arising in the case for the opinion of the Court of Appeal. The statement of facts in such case so stated shall, for the purpose of the determination thereof, be conclusive.

Special case.

(2) Where such party (hereinafter called "the appellant") makes application to a Magistrate to state a case the appellant

shall within twenty-eight days after the day on which the Magistrate has given his decision, in the manner and form prescribed by sections 158 and 159, serve a notice of appeal on the other party and on the Magistrate.

(3) The provisions of sections 160 and 161 shall apply in respect of any such appeal.

(4) Nothing herein contained shall be construed to prevent either party in such a case appealing within the time specified in section 158 as to any determination of fact or any question of law not raised in the case stated by the Magistrate; but such appeal shall be in such event independent of the case stated.

(5) The Attorney General may, by notice in writing under his hand, require a Magistrate to state a case on any point of law, and, on receipt of such notice, the Magistrate shall state such case accordingly.

(6) The Court of Appeal may remit any case stated under the provisions of this section to the Magistrate stating the same for further information from such Magistrate.

(7) If on application being duly made to a Magistrate to state a case such Magistrate declines so to do, the appellant may apply to the High Court or to any Judge thereof for an order requiring the case to be stated.

**163.** The Magistrate upon receiving an application, notice or order under the provisions of section 162 or when of his own motion he decides to state a case for the opinion of the Court of Appeal shall draw up the special case, concisely setting forth such facts and documents (if any) as may be necessary to enable the said Court to decide the questions raised in the case, and shall forthwith transmit the same together with a certified copy of the conviction order or judgment appealed from and all documents alluded to in the special case to the Registrar of the Court of Appeal.

**164.** The Registrar of the Court of Appeal shall thereupon set the appeal down for argument on the date fixed by the Court of Appeal for hearing the same and shall cause notice of the filing of such special case to be served on the appellant and respondent respectively and on the application of either party shall supply such applicant with a copy of the

Duty of Magistrate as to special case.

Registrar of Court of Appeal to file special case and set it down for argument.

special case on payment for the same at the rate of four cents per folio of 100 words.

**165.** At the hearing of an appeal on motion it shall not be competent for the appellant to go into, or to give evidence of, any other reasons for appeal than those set forth in his notice of appeal:

Appeal limited to reasons given in notice.

Provided that where, in the opinion of the Court of Appeal, other reasons for appeal than those set forth in the notice of appeal should have been given, or the statement of reasons is defective, the Court of Appeal may in its discretion allow such amendments of the notice of appeal upon such conditions as to service upon the respondent and as to costs as the Court may think fit.

**166.** On an appeal by motion the Court of Appeal may draw inferences of fact from the evidence given before the Magistrate and may decide the appeal with reference both to matters of fact and to matters of law.

Court of Appeal on hearing of appeal on motion to decide on facts as well as law.

**167.** The Court of Appeal may, in any case where it may consider it necessary that evidence should be adduced, either—

Power to the Court of Appeal to take evidence.

(a) order such evidence to be adduced before the said Court on some day to be fixed in that behalf; or

(b) order such evidence to be given by affidavit; or

(c) refer the case back to the Magistrate to take such evidence, and may in such case either direct the Magistrate to adjudicate afresh after taking such evidence and subject to such directions in law, if any, as the Court of Appeal may think fit to give, or direct him, after taking such evidence, to report specific findings of fact for the information of the Court of Appeal; and on any such reference the case shall, so far as may be practicable and necessary, be dealt with as if it were being heard in the first instance.

**168.** (1) On the hearing of an appeal in any civil cause or matter the Court of Appeal shall, if it appears to the said Court that a new trial should be held, have power to set aside the order appealed against and order that a new trial be held.

Power of Court of Appeal as to new trials.

(2) On the hearing of an appeal in any civil cause or matter the following provisions shall apply—

(a) A new trial shall not be ordered on the ground of misdirection, or of the improper admission or rejection of evidence unless in the opinion of the Court of Appeal some substantial wrong or miscarriage has been thereby occasioned.

(b) A new trial may be ordered on any question without interfering with the finding or decision upon any other question; and if it appears to the Court of Appeal that any such wrong or miscarriage as is mentioned in paragraph (a) above affects part only of the matter in controversy, or one or some only of the parties, the Court may order a new trial as to that part only, or as to that party or those parties only, and give final judgment as to the remainder.

(c) A new trial shall not be granted or any judgment reversed by reason of the ruling of any court that the stamp upon any document is insufficient or that the document does not require a stamp.

(3) The Court of Appeal shall, if it allows an appeal against conviction, quash the conviction and direct a judgment and verdict of acquittal to be entered, or if the interests of justice so require, order a new trial.

On appeal by special case Court of Appeal confined to facts and evidence stated therein.

169. On appeal by special case the Court of Appeal shall only entertain such appeal on the ground that the decision of the Magistrate was erroneous in point of law or in excess of jurisdiction and only upon the facts stated and the evidence mentioned in the special case.

Powers of Court of Appeal on hearing appeals.

170. The Court of Appeal may adjourn the hearing of the appeal and may upon the hearing thereof confirm, reverse or modify the decision of the Magistrate or remit the matter with the opinion of the Court thereon to the Magistrate or may make such other order in the matter as the said Court may think just and may by such order exercise any power which the Magistrate might have exercised and such order shall have the same effect and may be enforced in the same manner as if it had been made by the Magistrate:

Provided that the Court of Appeal may, if of opinion that a different sentence should have been passed quash the sentence passed by the Magistrate and pass such other sentence warranted by law (whether more or less severe) in

substitution therefor as the Court of Appeal thinks should have been passed.

171. The Court of Appeal may make such order as to the costs to be paid by either party as the said Court may think just, and in the event of costs being allowed the Court of Appeal shall fix the amount at a sum not exceeding fifty dollars according to the importance of the appeal, or the length of the time occupied by the hearing thereof, and the sum so fixed shall cover all fees of office and all fees of counsel or solicitor: Provided that no Magistrate shall be liable to any costs in respect of any appeal against his decision:

Costs.

Provided further that if on the hearing of a special case the Court of Appeal adjudges such appeal to have been frivolous and vexatious the appellant or the solicitor who made application for the special case shall be liable, if the Court of Appeal shall so think fit, to pay a sum not exceeding seventy-two dollars as costs of the appeal and such costs shall be recoverable as hereinafter provided.

172. Where an appeal is abandoned or withdrawn the Court of Appeal on proof of notice of appeal having been given to the respondent may make an order that the respondent shall receive such costs as the Court of Appeal may allow and such costs shall be recoverable as hereinafter provided.

Where appeal abandoned Court of Appeal may give respondent costs.

173. When an order is made upon either party for costs, such costs shall be payable to the proper officer of the Court to be by him paid over to the party entitled to the same and in the absence of any special direction shall be payable forthwith.

How costs are payable.

174. If the costs on the appeal are not paid within the time ordered by the Court of Appeal the proper officer shall on the application of the party entitled to the same or any person duly authorised on his behalf and on payment of the prescribed fee (if any) grant to such party a certificate that such costs have not been paid and on production thereof to the Magistrate, such Magistrate shall enforce the payment of such costs in the manner prescribed by this Act for the enforcing of the payment of costs awarded on a summary conviction and where a recognisance with sureties has been entered into shall enforce the payment due thereunder in the manner prescribed by this Act.

How costs are recoverable.

Objection to form of information or conviction.

**175.** If, on the hearing of the appeal, any objection is made on account of any defect in a complaint or information, or on account of any omission or mistake in the drawing up of a conviction or order, and if it is shown to the satisfaction of the Court of Appeal, that sufficient grounds were in proof before the Magistrate who made the conviction or order to have authorised the drawing up thereof free from that omission or mistake, the Court may amend the complaint or information, or the conviction or order, and proceed thereafter as if the defect, omission or mistake had not existed.

Defects in proceedings under appeal.

**176.** On an appeal no objection shall be taken or allowed to any proceeding in a Magistrate's Court for any defect or error which might have been amended by that Court, or to any complaint, summons, warrant, or other process to or of that Court, for any alleged defect therein in substance or in form, or for any variance between any complaint or summons and the evidence adduced in support thereof in that Court, or by reason only of the absence of the seal of the Magistrate on any such process:

Provided that if any error, defect, or variance mentioned in this section appears to the Court of Appeal at the hearing of an appeal to be such that the appellant has been thereby deceived or misled, the Court of Appeal may either refer the cause back to the Magistrate with directions to re-hear and determine it, or reverse the decision under appeal, or may make any other order for disposal of the cause which justice requires.

Error or defect in recognisance.

**177.** Where any recognisance or recognisances which shall have been entered into within the time by law required before any Magistrate for the purpose of complying with any such condition of appeal shall appear to the Court of Appeal to have been insufficiently entered into, or to be otherwise defective or invalid, it shall be lawful for such Court, if it shall so think fit, to permit the substitution of a new and sufficient recognisance or new and sufficient recognisances to be entered into before such Court in the place of such insufficient, defective, or invalid recognisance or recognisances, and for that purpose to allow such time, and make such examination, and impose such terms as to payment of costs to the respondent or respondents, as to such Court shall appear just and reasonable; and such substituted recognisance or recognisances shall be as valid and effectual

to all intents and purposes as if the same had been duly entered into at any earlier time as required by section 160.

**178.** (1) Where the decision of a Magistrate is varied or reversed on appeal, the judgment of the Court of Appeal shall be reduced into writing and shall set forth the reasons therefor.

Transmission and publication of judgment.

(2) Within five days after the pronouncement of the judgment the Registrar of the Court of Appeal shall transmit a certified copy thereof to the Magistrate of the Court from which the appeal came.

(3) Any person may, on paying the fee for an office copy of documents, obtain from the Registrar of the Court of Appeal a copy of the judgment.

(4) The Registrar of the Court of Appeal shall without delay cause the judgment to be published in the Gazette.

**179.** (1) After the pronouncement of the judgment of the Court of Appeal and subject to the provisions hereafter in this section contained, the Magistrate of the Court from which the appeal came shall have the same jurisdiction and power to enforce, and shall enforce, any decision which has been affirmed, modified or amended by the Court of Appeal or any judgment pronounced by the said Court, in the same manner in all respects as if that decision or judgment had been pronounced by himself:

Enforcing judgment.

Provided that in any case where an order for the imprisonment of a person is affirmed on appeal, whether with or without modification or amendment, the Court of Appeal may, if it considers it expedient to do so, forthwith commit the person to prison in pursuance and in execution of the order.

(2) The imprisonment of the person (if it has not previously commenced) shall be reckoned to begin from the day on which he is arrested to be taken to the prison wherein he has been ordered to be imprisoned; and if the person has been released from custody on giving the security hereinbefore mentioned, he shall be imprisoned for such further period as, with the time during which he has been already imprisoned, is equal to the period for which he was ordered to be imprisoned as aforesaid.

## PART IX.

## WITNESSES.

Summoning witnesses.

**180.** If it shall be made to appear to any Magistrate by the oath of any credible person that any person is likely to give material evidence in any matter where an information or complaint is laid or made to be inquired into by, tried or heard before such Magistrate and will not voluntarily appear for the purpose of being examined as a witness at the time and place appointed in that behalf such Magistrate shall issue his summons to such person requiring him to be and appear at a time and place therein mentioned to testify to what he knows concerning such matter as aforesaid.

Warrant may issue on non-appearance.

**181.** If any person so summoned as aforesaid shall fail to appear at the time and place appointed in the summons the Magistrate on proof upon oath that such summons has been served personally on such person or left with some person at his last or usual place of abode may unless satisfied that there is some lawful excuse for such failure to appear issue his warrant to bring such person at a time and place therein mentioned before such Magistrate or such other Magistrate as may then be there to testify as aforesaid and such warrant may be executed in any part of the Territory.

When warrant may issue in first instance.

**182.** If the Magistrate be satisfied by evidence upon oath that it is probable that such person will not attend to give evidence unless compelled to do so then instead of issuing such summons as aforesaid the Magistrate may issue his warrant in the first instance.

Witness refusing to be sworn or to answer.

**183.** If any person attending as a witness or so summoned or brought upon a warrant as aforesaid refuses to be examined on oath concerning the premises or refuses to take such oath, or having taken such oath refuses to answer any lawful question put to him without giving just excuse for so doing the Magistrate may by warrant commit such person to prison there to remain and be imprisoned for any period not exceeding ten days unless he in the meantime consents to be examined and to answer concerning the premises.

Prosecutor a competent witness.

**184.** The prosecutor or complainant in any charge or complaint whether having any pecuniary interest in the result or not shall be a competent witness to support such charge or complaint.

**185.** If upon the trial of the person accused it be proved on the oath of any reliable witness that any person whose deposition has been taken is dead, or so ill as to be unable to travel, or is absent from the Territory, and if it be also proved that such deposition was taken in the presence of the accused and that he or his counsel or solicitor had a full opportunity of cross-examining the witness then if the deposition purports to be signed by the Magistrate by or before whom the same purports to have been taken it shall be read as evidence in the prosecution without further proof thereof unless it be proved that such deposition was not in fact signed by the Magistrate purporting to have signed the same.

When depositions may be read at the trial.

**186.** If it is proved upon oath before any Magistrate that any person is dangerously ill and unable to travel, or is about to leave the Territory for a period extending beyond the time when the accused if committed for trial would be tried and that such person is able and willing to give material information as to any offence which such Magistrate is not empowered to try summarily and with which any person has been charged before a Magistrate (whether the preliminary enquiry has or has not been held or is in progress, but not after the accused has been discharged) unless by order of a Judge, the Magistrate may take the deposition of such person at the place where such person is lying sick or if such person is about to leave the Territory as aforesaid at the Magistrate's Court House, in the manner prescribed by this Act, and shall, after taking it, sign it, adding to it by way of heading, a statement of the reason for taking it, and of the day and place on and at which it was taken, and of the names of the persons, if any, present at the taking thereof.

Taking deposition of a witness who is ill or about to leave the Territory.

**187.** Whenever it is intended to take any such deposition as aforesaid, reasonable notice that it is intended so to be taken shall, if the accused is in prison, be served upon him in prison, or if he is on bail, shall be either served upon him or left at his last or most usual place of abode. If the accused is in prison, any Magistrate shall by an order in writing direct the gaoler having the custody of the accused to convey him, or cause him to be conveyed to the place where the deposition is to be taken, for the purpose of being present when the same is taken, and to take him back to prison when it has been taken, but no accused person shall be taken to any such place (other than the Magistrate's Court House) for such a purpose without his consent. The expenses of such

Notice to the prisoner to be present.

conveyance shall be paid out of the funds applicable to the expenses of the prison from which the accused is taken.

Magistrate to deal with the deposition like any other deposition.

**188.** If such deposition relates to an offence, the preliminary enquiry into which has ended, the Magistrate taking it shall send it to the Registrar to be placed with the other depositions taken in the case and if it relates to an offence with which some person has been charged, and as to which a preliminary inquiry is in progress, the Magistrate shall deal with it like any other deposition taken in the matter under preliminary inquiry; but such person as aforesaid so making a deposition as aforesaid shall not be called upon to enter into a recognisance to give evidence at the trial of the accused.

Such deposition to be admissible in evidence.

**189.** Every deposition so taken shall be a deposition taken in the case to which it relates, and shall be admissible in evidence on the same conditions as other depositions:

Provided that it shall be admissible against the accused; although it may have been taken in his absence, and may not have been read over to the witness in his presence, and although neither he nor his counsel or solicitor had an opportunity of cross-examining the witness, if it is proved that the accused having received such notice as aforesaid that such deposition was about to be taken, refused or neglected to be present, or to cause his counsel or solicitor to be present when it was taken, or that it was taken at the Magistrate's Court House:

Provided also that if it is proved that the person whose evidence has been taken as aforesaid has so recovered from his sickness or returned to the Territory as to be able to be present at the High Court before which the accused is tried such deposition so taken as aforesaid shall not be read.

Defendant to have the same privilege as the prosecutor under last section.

**190.** Any person charged with having committed an offence not punishable summarily may on notice to the complainant require that the evidence of any such person as in section 186 mentioned may be taken in like manner, and any deposition so taken shall be dealt with and be admissible in evidence on the same conditions as other depositions and on conditions corresponding to those mentioned in the last preceding section.

## PART X.

### RECOGNISANCES AND SECURITY.

**191.** Any person may by complaint call upon any other person to show cause why he should not be bound over in recognisances to keep the peace or be of good behaviour towards such complainant and the Magistrate may make an order adjudging the person complained against to enter into recognisances and find sureties in that behalf and the complainant and defendant and witnesses may be called and examined and cross-examined and the complainant and defendant shall be subject to all the provisions of this Act relating to summary convictions except so far as is by this Act otherwise provided.

Binding over to keep the peace.

**192.** The Magistrate may order the defendant in default of complying with such order as in the last preceding section mentioned to be imprisoned for a period not exceeding six months.

Defendant in default may be committed.

**193.** Where a person has been committed to prison by a Magistrate as in the last preceding section mentioned such Magistrate may on application made to him inquire into the case of the person so committed and if upon new evidence being produced on proof of a change of circumstances the Magistrate thinks it just so to do he may reduce the amount mentioned in the recognisance or dispense with the sureties or otherwise deal with the case as he shall think just.

Magistrate may vary the order on cause shown.

**194.** Every recognisance shall specify the profession or calling of the person entering into or acknowledging the same together with his Christian and surname and the name of his place of residence and when duly acknowledged shall be subscribed by the Magistrate before whom it is acknowledged and it shall be conditioned—

Form of recognisance.

(a) in the case of an accused person that he will duly appear at the time and place of trial or of adjourned hearing, and not depart the Court without leave;

(b) in the case of a prosecutor or witness that he will duly appear at the time and place of the trial of the accused and then and there prosecute or give evidence or prosecute and give evidence as the case may be against the person accused; and

(c) in the case of recognisances to keep the peace or to be of good behaviour and in any other case in such manner as the magistrate shall direct.

Notice of recognisance.

**195.** A written notice of such recognisance signed by the Magistrate shall at the same time be given to the person bound thereby.

Proof of sufficiency.

**196.** The Magistrate may in his discretion require any person entering into recognisances whether as a surety or otherwise to justify upon oath as to their sufficiency.

Estreating recognisances conditioned for appearance.

**197.** Where a recognisance is conditioned for the appearance of a person before a Magistrate or for his doing some other matter or thing to be done before a Magistrate or in a prosecution in a Magistrate's Court, the Magistrate if such recognisance appears to him to be forfeited may declare the same to be forfeited and enforce payment of the sum due thereunder in the same manner as the payment of a fine may be enforced which has been imposed on summary conviction:

Provided that at any time before the sale of goods under a warrant of distress for the said sum the said Magistrate or any other Magistrate may cancel or mitigate the forfeiture upon the person liable applying and giving security to the satisfaction of the Magistrate for the future performance of the conditions of his recognisance and paying or giving security for the payment of the costs incurred in respect of the forfeiture or upon such other conditions as the Magistrate may think just.

Estreating recognisance conditioned for keeping the peace or doing some act or thing.

**198.** Where a recognisance conditioned to keep the peace or be of good behaviour or not to do or commit some act or thing has been entered into by any person as principal or surety before a Magistrate such Magistrate or any other Magistrate upon proof of the conviction of the person bound as principal by such recognisance of any offence which is in law a breach of the condition of the same may by conviction adjudge such recognisance to be forfeited and adjudge the person bound thereby whether as principal or surety to pay the sums for which they are respectively bound.

Payment of sums forfeited.

**199.** All sums payable in respect of a recognisance declared or adjudged by a Magistrate to be forfeited shall be paid into the Treasury or if the Magistrate shall so direct, to the clerk of such Magistrate or if he has no clerk to the Magistrate himself and shall be paid and applied in the manner

in which fines imposed by a Magistrate in respect of which no special appropriation is made, are payable and applicable.

**200.** A person seeking to put in force a recognisance to keep the peace or to be of good behaviour may by notice in writing require such recognisance to be transmitted to the Registrar to be dealt with as the law provides.

Recognisances may be transmitted to Registrar for estreat.

**201.** A person shall give security under this Act, whether as principal or surety, either by the deposit of money with the Magistrate or his clerk, if any, or by an oral or written acknowledgment of the undertaking, or condition by which and of the sum for which he is bound, in such manner and form as may be for the time being directed by any rule made in pursuance of this Act, and evidence of such security may be provided by entry thereof in the register under this Act of proceedings of a Magistrate or otherwise as may be directed by such rule.

Securities.

**202.** Any sum which may become due in pursuance of a security under this Act from a surety shall be recoverable summarily, in manner directed by this Act with respect to a civil debt or summons by a constable or by the clerk of the Magistrate directing such security to be given, or by some other person authorised for the purpose by that Magistrate or any other Magistrate.

How forfeited security is to be realised.

**203.** A Magistrate may refuse payment of any sum due by a principal in pursuance of a security under this Act which appears to such Magistrate to be forfeited, in the same manner as the payment of a fine may be enforced which has been imposed on summary conviction, if the security was given for a sum adjudged by conviction, and in any other case in like manner as if it were a sum adjudged by a Magistrate to be paid as a civil debt:

Security given by a principal on conviction to be recovered like a fine.

Provided that before a warrant of distress for the sum is issued, such notice of the forfeiture shall be served on the said principal, and in such manner as may be directed for the time being by rules under this Act, and subject thereto by the Magistrate authorising security, or by any Magistrate to whom application is made for the issue of the warrant.

Surety paying under a security may recover the amount from the principal.

204. Any sum paid by a surety on behalf of his principal in respect of a security under this Act, together with all costs, charges and expenses incurred by such surety in respect of such security, shall be deemed a civil debt due to him from the principal, and may be recovered before a Magistrate in manner directed by this Act, with respect to the recovery of a civil debt which is recoverable summarily.

Security to be realised before other steps are taken.

205. Where security is given under this Act for payment of a sum of money, the payment of such sums shall be enforced by means of such security in substitution for other means of enforcing such payment.

Recognisance taken out of Court.

206. When a Magistrate has fixed as respects any recognisance, the amount in which the principal and the sureties (if any) are to be bound, the recognisance notwithstanding anything in this or any other statute need not be entered into before such Magistrate but may, subject to any rules made in pursuance of this Act, be entered into by the parties before any other Magistrate or before any clerk of a Magistrate, or before any officer of police or constable in charge of any police station or where any of the parties is in prison before the keeper of such prison, and where a recognisance has been entered into for the due appearance of the principal at any Magistrate's Court and such person duly appears in accordance with the condition in such recognisance, the bail may be renewed by any constable in the said Court, if the Magistrate be not present, and thereupon all the consequences of law shall ensue, and the provisions of this Act with respect to recognisances taken before a Magistrate shall apply as if the recognisances had been entered into before the said Magistrate as heretofore by law required.

PART XI.

DISTRESS.

What may not be taken.

207. The wearing apparel and bedding of a person and his family, and, to the value of twenty-four dollars the tools and implements of his trade, shall not be taken under a distress issued by a Magistrate.

Warrant how executed.

208. A warrant of distress shall be executed by or under the direction of a constable.

209. Save so far as the person against whom the distress is levied otherwise consents in writing, the distress shall be sold by public auction, and five clear days at the least shall intervene between the making of the distress and the sale, and where written consent is so given as aforesaid the sale may be made in accordance with such consent.

Public auction after five days.

210. Subject as aforesaid the distress shall be sold within the period fixed by the warrant, and if no period is so fixed, then within the period of fourteen days from the date of making of the distress, unless the sum for which the warrant was issued, and also the charges of taking and keeping the said distress, are sooner paid.

Period during which distress to be sold.

211. Subject to any directions to the contrary given by the warrant of distress, where the distress is levied on household goods, the goods shall not, except with the consent in writing of the person against whom the distress is levied, be removed from the house until the day of sale, but so much of the goods shall be impounded as are in the opinion of the person executing the warrant sufficient to satisfy the distress, by affixing to the articles impounded a conspicuous mark, and any person removing any goods so marked, or defacing or removing the said mark, shall on summary conviction be liable to a fine not exceeding one hundred dollars.

Impounding goods levied on.

10/1974

212. Where a person charged with the execution of a warrant of distress, wilfully retains from the produce of any goods sold to satisfy the distress, or otherwise exacts, any greater costs and charges than those to which he is for the time being entitled by law, or makes any improper charge, he shall be liable on summary conviction to a fine not exceeding one hundred dollars.

Penalty for extortion etc.

10/1974

213. A written account of the costs and charges incurred in respect of the execution of any warrant of distress shall be sent by the constable charged with the execution of the warrant so soon as practicable to the Magistrate issuing the warrant, and it shall be lawful for the person upon whose goods the distress was levied within one month after the levy of the distress to inspect such account without fee or reward at any reasonable time to be appointed by the Magistrate, and to take a copy of such account.

Accounts of costs to be sent to Magistrate.

Costs of sale to be deducted from proceeds.

**214.** A constable charged with the execution of a warrant of distress shall cause the distress to be sold, and may deduct out of the amount realised by such sale all costs and charges actually incurred in effecting such sale, and shall render to the owner the overplus, if any, after retaining the amount of the sum for which the warrant was issued and the proper costs and charges of the execution of the warrant.

Warrant not to be executed if amount due and all costs are paid or tendered.

**215.** Where a person pays or tenders to the constable charged with the execution of a warrant of distress the sum mentioned in such warrant, or produces the receipt for the same of the Magistrate or the clerk of the Magistrate issuing the warrant, and also pays the amount of the costs and charges of such distress up to the time of such payment or tender, the constable shall not execute the warrant.

Replevy.

**216.** It shall be lawful for any person, other than the person mentioned in the warrant claiming to be the owner of property levied on within the five clear days in section 209 mentioned, to replevy the same in the manner and form in which goods are replevied which have been distrained upon for non-payment of rent. If within such five days as aforesaid the property levied on is not replevied no person other than the person mentioned in the warrant as aforesaid shall have any right of action against any other person in respect of such property.

## PART XII.

### MISCELLANEOUS.

No objection to be allowed on point of form or variance.

**217.** No objection shall be allowed to any information, complaint, summons or warrant for any alleged defect therein in substance or in form or for any variance between such information, complaint, summons or warrant and the evidence adduced on the part of the informant or complainant at the hearing of such information or complaint.

No objection to be allowed as to variance as to time or place.

**218.** In all cases of information or complaint for offences or acts punishable upon summary conviction any variance between the information or complaint and the evidence adduced in support thereof, as to the time at which such offence or act is alleged to have been committed shall not be deemed material, if it be proved that such information or complaint was in fact laid within the time limited by law for

laying the same, and any variance between the information or complaint and the evidence adduced in support thereto, as to the place in which the offence or act is alleged to have been committed, shall not be deemed material if the offence or act be proved to have been committed within the jurisdiction of the Territory.

**219.** If any such variance or any other variance between the information or complaint and the evidence adduced in support thereof, appears to the Magistrate present and acting at the hearing to be such that the party charged by the information or complaint has been thereby deceived or misled, the Magistrate upon such terms as he may think fit, may adjourn the hearing of the case to some future day, and in the meantime commit the defendant to prison, or to such other custody as the Magistrate thinks fit, or may discharge him upon his entering into a recognisance, with or without surety or sureties at the discretion of the Magistrate, conditioned for his appearance at the time and place to which the hearing is adjourned.

If party charged is deceived by variance, Magistrate may adjourn hearing.

**220.** In any information or complaint or proceeding thereon in which it is necessary to state the ownership of any property belonging to or in possession of partners, joint-tenants, parceners, or tenants in common, it shall be sufficient to name one of such persons and to state the property to belong to the person so named, and another, or others as the case may be; and whenever in any information or complaint or the proceedings thereon it is necessary to mention for any purpose whatsoever any partners, joint-tenants, parceners, or tenants in common, it shall be sufficient to describe them in the manner aforesaid; and whenever in any information or complaint or the proceedings thereon, it is necessary to describe the ownership of any work or building made, maintained, or repaired at the expense of the corporation or inhabitants of any place, or of any materials for the making or repairing the same, they may be therein described as the property of the inhabitants of such place.

Description of the property of partners, etc.

**221.** The description of any offence in the words of the Act, order, by-law, regulation, or other document creating the offence or in similar words shall be sufficient in law.

Description of the offence.

Exception or proviso may be proved by defendant.

**222.** Any exception, exemption, proviso, excuse or qualification whether it does or does not accompany in the same section the description of the offence in the Act, order, by-law, regulation or other document creating the offence may be proved by the defendant but need not be specified or negatived in the information or complaint and if so specified or negatived no proof in relation to the matter so specified or negatived shall be required on the part of the informant or complainant.

Warrant of distress not to be impeached for want of form.

**223.** A warrant of distress shall not be deemed void by reason only of any defect therein, if it be therein alleged that a conviction or order has been made and there is a good and valid conviction or order to sustain the same, and a person acting under a warrant of distress shall not be deemed a trespasser from the beginning by reason of any defect in the warrant, or of any irregularity in the execution of the warrant, but this enactment shall not prejudice the right of any person to satisfaction for any special damage caused by any defect in or irregularity in the execution of a warrant of distress, so however that if amends are tendered before action brought and if the action is brought are paid into Court in the action and if the plaintiff does not recover more than the sum so tendered and paid into Court, the plaintiff shall not be entitled to any costs incurred after such tender, and the defendant shall be entitled to costs to be taxed as between solicitor and client.

Power to sell forfeitures.

**224.** All forfeitures not pecuniary which are in respect of an offence triable by a Magistrate or which may be enforced by a Magistrate may be sold or disposed of in such manner as the Magistrate having cognisance of the case may direct and the proceeds of such sale shall unless otherwise provided be applied in the like manner as if the proceeds were a fine imposed under the Act on which the proceedings for the forfeiture are founded.

Procedure where a person charged with an indictable offence is dealt with summarily.

**225.** Where an indictable offence is under the circumstances in this Act mentioned authorised to be dealt with summarily—

(a) the procedure shall until the Magistrate assumes the power to deal with such offence summarily be the same in all respects as if the offence were to be dealt with throughout as an indictable offence but when and so soon as the Magistrate assumes the power to deal with such offence summarily the procedure shall be the same from

and after that moment as if the offence were an offence punishable summarily and not on indictment and the provisions of this Act shall apply accordingly;

(b) the evidence of any witness taken before the Magistrate assumed such power as aforesaid need not be taken again, but every such witness shall if the defendant so require it be recalled for purposes of cross-examination;

(c) the conviction for any such offence shall be of the same effect as for the conviction for the offence on indictment and the Magistrate may make the like order for the restitution of property as might have been made by the Court before which the person convicted would have been tried if he had been tried on indictment;

(d) where the Magistrate has assumed the power to deal with the case summarily and shall dismiss the charge, he shall, if so required, deliver to the person charged a copy certified under his hand of the order of dismissal, and such dismissal shall be of the same effect as an acquittal on a trial of an indictment for the offence;

(e) the conviction shall contain a statement as to the plea of guilty of the person charged and of his consent to be tried by the Magistrate.

**226.** If at any time during any proceedings before a Magistrate it shall become necessary to adjourn the hearing of the same the Magistrate may from time to time adjourn the case to a certain time and place to be then appointed in the hearing of the parties, or their counsel or solicitors, and if the defendant is in custody he may admit him to bail as in this Act provided, or by his warrant remand him to prison for any time not exceeding eight clear days, and if such remand shall not be for longer than three clear days the Magistrate may verbally order the peace officer in whose custody the defendant may be to keep him in custody and to bring him up for further examination on the day appointed for the adjourned hearing;

Power of Magistrate to adjourn and remand.

Provided that the Magistrate may order the defendant to be brought up to attend such further hearing as aforesaid at any time prior to the expiration of the time for which he was remanded and the officer in whose custody he shall be, shall duly obey such order.

Fees in summary proceedings on information and complaint. 4/1985.

227. The following sums shall be charged and payable upon proceedings taken and had before a Magistrate—

	\$ c
For entering an information or a complaint .....	2.50
For every summons to a defendant .....	2.00
For every summons to a witness .....	2.00
For every warrant of arrest .....	3.00
For every search warrant .....	3.50
For every warrant of distress .....	3.50
For every declaration of proof under section 228 ...	2.00

And it shall be lawful for the Magistrate to order any information or complaint to be entered or any summons or warrant to be issued free of charge if he shall consider it expedient in the interests of justice to do so. And he shall return all fees paid in case any information or complaint for larceny or malicious injury to property shall be proved:

Provided that any preliminary inquiry upon information or complaint of any indictable offence shall be conducted without charge and an information or complaint by any peace officer in the discharge of his public duty shall be conducted without charge:

Provided further that it shall be lawful for the Governor to order that any proceedings taken and had before a Magistrate by any board or public body or by any public official acting in the performance of his duty, shall be so taken and had without the payment of any sums, and upon such order being made all such proceedings shall be taken and had without the payment of any sums.

Proof by declaration of service of process, of handwriting, etc.

228. In a proceeding within the jurisdiction of a Magistrate without prejudice to any other mode of proof, service on a person of any summons, notice, process or document required or authorised to be served, and the handwriting and seal of any Magistrate or other officer or person on any warrant, summons, notice, process or document may be proved by a solemn declaration taken before a Magistrate or before a commissioner appointed to administer oaths or before the Registrar of the High Court; and any declaration purporting to be so taken shall until the contrary is shown be sufficient proof of the statements contained therein, and shall be received in evidence in any Court or legal proceeding without proof of the signature or of the official

character of the person or persons taking or signing the same. The declaration may be in the form provided by a rule under this Act, and if any declaration made under this section is untrue in any material particular, the person wilfully making such false declaration shall be guilty of wilful and corrupt perjury.

229. If any person—

Power to preserve order.

(a) wilfully obstructs by act or threat an officer of the Magistrate's Court in the performance of his duty in Court; or

(b) within or close to the room or place where the Magistrate is sitting, wilfully misbehaves in a violent, threatening or disrespectful manner, to the disturbance of the Magistrate, or to the intimidation of suitors or others resorting to the Court; or

(c) wilfully insults the Magistrate, or any assessor, or any officer of the Court, during his sitting or attendance in Court,

the person so acting shall be liable to be immediately apprehended by order of the Magistrate, and if the Court is then sitting or about to sit to be detained until the rising of the Court, and on inquiry and consideration then and there, and without further trial, to be punished with a fine not exceeding one hundred dollars or in default of payment with imprisonment for not more than fourteen days.

10/1974.

230. If any person resists or obstructs the execution of any summons, warrant or other process issued by a Magistrate, any Magistrate may issue his warrant for the arrest of such person and shall cause such person to be brought before him and may order such person to pay a fine not exceeding one hundred dollars or to be imprisoned for a period not exceeding one month, with or without hard labour.

Power to enforce execution of process.

10/1974.

231. Where any person is punished under either of the last two preceding sections the Magistrate shall make and keep a minute recording the facts of the case and the extent of the punishment and shall forthwith send a copy of such minute to the Governor.

Minute to be recorded.

232. A person punished under section 229 or section 230 shall not be liable to a prosecution or action in respect of the same matter.

No person to be punished twice for the same offence.

Enforcement of orders made under sections 229 and 230.

**233.** An order for imprisonment or an order for the payment of any money penalty made by a Magistrate under section 229 or section 230 may be enforced in the same manner as an order for imprisonment or an order for the payment of a fine upon a conviction and every such order may be reviewed on appeal in the manner provided by this Act for appealing from a conviction as fully as though such order were a conviction.

Disposal of fees, fines, etc.

**234.** All fees, fines, penalties, proceeds of forfeitures and other moneys coming into the hands of a Magistrate or a clerk to a Magistrate shall be forthwith paid by him into the Treasury of the Territory for the public use of the Territory except where otherwise provided by any other Act.

Return of property taken from prisoner.

**235.** Where any property has been taken from a person charged before a Magistrate with any offence punishable either on indictment or on summary conviction, a report shall be made by the police to such Magistrate of the fact of such property having been taken from the person charged and of the particulars of such property, and the Magistrate shall, if of opinion that the property or any portion thereof can be returned consistently with the interests of justice and with the safe custody of the person charged, direct such property or any portion thereof to be returned to the person charged or to such other person as he may direct.

Register of Court of Magistrate.

**236.** (1) Every Magistrate or his clerk (if any) shall keep a register of the minutes or memoranda of all the convictions and orders of such Magistrate, and of such other proceedings as are directed by a rule under this Act to be registered and shall keep the same with such particulars and in such form as may be from time to time directed by a rule under this Act.

(2) Such register, and also any extract from such register certified by the clerk or the Magistrate keeping the same to be a true extract, shall be prima facie evidence of the matters entered therein for the purpose of informing an acting Magistrate as the Magistrate whose convictions, orders, and proceedings are entered in the register; but nothing in this section shall dispense with the legal proof of a previous conviction for an offence when required to be proved against a person charged with another offence.

(3) The register kept by any particular clerk or Magistrate in pursuance of this section may be distinguished by such name or description as may be directed by a rule under this Act.

(4) The entries relating to each minute, memorandum or proceeding shall be either entered or signed by the Magistrate by or before whom the conviction or order or proceeding referred to in the minute or memorandum was made or had.

(5) Every sum paid to the clerk or Magistrate in accordance with this Act or any Act amending this Act and the appropriation of such sum, shall be entered and authenticated in such manner as may be from time to time directed by a rule under this Act.

(6) Every such register shall be open for inspection, without fee or reward, by any Magistrate or by any person authorised in that behalf by a Magistrate or by the Governor.

**237.** (1) The Governor in Council may make rules in relation to the following matters—

Power to make rules.

(a) the giving of security under this Act;

(b) the forms to be used under this Act;

(c) the regulating the form of the account to be rendered by Magistrates or clerks of Magistrates of fines, fees and other sums received by them, and providing for the discontinuance of any existing account rendered unnecessary by the aforesaid account;

(d) the regulating of the procedure on appeals by special case or otherwise under this Act; and

(e) any other matter in relation to which rules are authorised or required to be made under or for the purpose of carrying into effect this Act.

(2) Any rule purporting to be made in pursuance of this section shall be laid before the Legislative Council for consideration and approval as soon as may be after it is made and shall be judicially noticed:

Provided that such rules until so considered and approved shall have the force and effect of law.

As to offences relating to post office and revenue. 10/1974.

**238.** All offences against any provisions in the Acts of the Territory or the Imperial Acts relating to the post office where the penalty prescribed does not exceed three hundred dollars and all offences against any Acts of the Territory or of the Imperial Acts relating to the revenue may be punished summarily by a Magistrate under this Act and this Act shall apply to all such offences.

Application of this Act.

**239.** Where by any past or future Act of the Territory—

(a) any offence is directed or authorised to be prosecuted summarily or "under the Magistrate's Summary Jurisdiction Acts" or any words are used implying that such offence is to be prosecuted summarily; or

(b) where any sum of money is directed or authorised to be recovered as aforesaid; or

(c) where a Magistrate is authorised to order or require a person to do or abstain from doing any act or thing other than the payment of money as aforesaid; or

(d) where any thing is declared capable of being enforced summarily or by summary order; or

(e) where any amount is declared to be recoverable summarily as a civil debt;

then this Act shall apply accordingly and where in such past or future Acts as aforesaid the expression "Magistrate's Summary Jurisdiction Acts" is used, such expression as aforesaid shall mean this Act and any Act amending the same.

FIRST SCHEDULE.

3/1892.

Ss. 45 and 46.

INDICTABLE OFFENCES WHICH CAN BE DEALT WITH SUMMARILY UNDER THIS ACT.

FIRST COLUMN. <i>Adults pleading guilty.</i>	SECOND COLUMN. <i>Adults consenting.</i>
1. Simple larceny where the money or personal property stolen in the opinion of the Magistrate exceeds the amount or value of twenty-four dollars.	1. Offences declared by any Act for the time being in force to be punishable as simple larceny, where the value of the whole of the property alleged to have been stolen, destroyed, injured or otherwise dealt with by the offender does not in the opinion of the Magistrate exceed one hundred dollars.
2. Offences declared by any Act for the time being in force to be punishable as simple larceny.	2. Larceny from or stealing from the person where the value of the whole of the property alleged to have been stolen does not in the opinion of the Magistrate exceed one hundred dollars.
3. Larceny from or stealing from the person.	3. Larceny as a clerk or servant where the value of the whole of the property alleged to have been stolen does not in the opinion of the Magistrate exceed one hundred dollars.
4. Larceny as a clerk or servant.	4. Embezzlement by a clerk or servant where the value of the whole of the property alleged to have been embezzled does not in the opinion of the Magistrate exceed one hundred dollars.
5. The obtaining by false pretences with intent to cheat or defraud money or personal property exceeding in the opinion of the Magistrate the amount or value of twenty-four dollars.	6. Embezzlement by clerk or servant.
6. Embezzlement by clerk or servant.	

INDICTABLE OFFENCES WHICH CAN BE DEALT WITH SUMMARILY UNDER THIS ACT.—*continued.*

FIRST COLUMN. <i>Adults pleading guilty.</i>	SECOND COLUMN. <i>Adults consenting.</i>
<p>7. Receiving money or personal property stolen or obtained by false pretences with intent to cheat or defraud knowing the same to have been so stolen or obtained where such money or personal property in the opinion of the Magistrate exceeds the amount or value of twenty-four dollars, or receiving money or personal property stolen from the person or by a clerk or servant or embezzled, knowing the same to have been so stolen or embezzled.</p> <p>8. Aiding, abetting, counselling or procuring the commission of simple larceny where the money or personal property stolen in the opinion of the Magistrate exceeds the amount or value of twenty-four dollars, or an offence declared by any Act for the time being in force to be punishable as simple larceny or of larceny or stealing from the person, or of larceny as a clerk or servant or the obtaining by false pretences with intent to cheat or defraud money or personal property exceeding in the opinion of the Magistrate the amount or value of twenty-four dollars.</p>	<p>5. Receiving money or personal property embezzled, knowing the same to have been so embezzled, where such money or personal property does not in the opinion of the Magistrate exceed the amount or value of one hundred dollars.</p> <p>6. Aiding, abetting, counselling or procuring the commission of an offence declared by any Act for the time being in force to be punishable as simple larceny or of larceny or stealing from the person or of larceny as a clerk or servant money or personal property where the value of the whole of the property which is the subject of the alleged offence does not in the opinion of the Magistrate exceed one hundred dollars.</p>

INDICTABLE OFFENCES WHICH CAN BE DEALT WITH SUMMARILY UNDER THIS ACT.—*continued.*

FIRST COLUMN. <i>Adults pleading guilty.</i>	SECOND COLUMN. <i>Adults consenting.</i>
<p>9. Attempt to commit simple larceny where the money or personal property stolen in the opinion of the Magistrate exceeds the amount or value of twenty-four dollars, or an offence declared by any Act for the time being in force to be punishable as simple larceny or to commit larceny from or steal from the person or to commit larceny as a clerk or servant, or to obtain by false pretences with intent to cheat or defraud money or personal property exceeding in the opinion of the Magistrate the amount or value of twenty-four dollars.</p>	<p>7. Attempt to commit simple larceny or an offence declared by any Act for the time being in force to be punishable as simple larceny or to commit larceny from to steal from the person or to commit larceny as a clerk or servant, or to obtain by false pretences with intent to cheat or defraud money or personal property where the value of the whole of the property which is the subject of the alleged offence does not in the opinion of the Magistrate exceed one hundred dollars.</p>

SECOND SCHEDULE.

S.R.O. (L.I.) 34/1934.  
4/1985.  
S. 140.

I. COURT FEES

	\$ c.
(a) Entering a Suit including Summons and Copy for Service and Judgment .....	5.00
(b) Hearing Fee .....	1.50
(c) Court Interpreter's Fee .....	5.00
(d) Summons to witness and copy for service .....	1.50
(e) Execution (Fi, fa) .....	1.50
(f) Warrant of distress under Small Trespass Act .....	1.50
(g) Warrant or Committal under Small Trespass Act ....	1.50
(h) Order of Attachment of moneys or Garnishee Summons.....	1.50

<b>1. COURT FEES — <i>continued.</i></b>	\$ c.
(i) Any other Summons, including Copy for Service and Order thereon .....	5.00
(j) Order for a New Trial .....	2.50
(k) Affidavit, each oath .....	1.00
(l) Appointment of Estimators, under Small Tenements Act .....	1.50
 <b>2. BAILIFF'S FEES</b>	 \$ c.
(a) Service of Summons, Notice or other documents required to be served .....	2.00
(b) Where travelling amounts to a greater distance than one mile from the Court House, for every mile or part thereof, in addition to the fee in paragraph (a) .....	1.00
(c) Arrest under Order of Committal on Judgment Summons .....	2.50
(d) For conveying person arrested from place of arrest, for every mile or part of a mile .....	1.00
(e) Seizure of property under Attachment, Possession or execution .....	2.50
(f) Taking Security or Bail and enquiring into sufficiency thereof .....	2.50
(g) Levy fee, for sale including advertisements, catalogues and commissions and delivery of goods on the net proceeds of sale .....	.05 cents in every dollar

**3.** Notwithstanding paragraphs 1 and 2, where an amount claimed exceeds \$100 all fees specified in those paragraphs shall be increased by 100%.

**CHAPTER 45.**

**MAINTENANCE ORDERS (FACILITIES FOR ENFORCEMENT.)**

(25th February, 1921.)

11/1921  
2/1922  
5/1931  
2/1957  
33/1961

**1.** This Act may be cited as the Maintenance Orders (Facilities for Enforcement) Act. Short title.

**2.** In this Act— Interpretation.

“certified copy” in relation to an order of Court means a copy of the order certified by the proper officer of the Court to be a true copy;

“dependants” means such persons as the person against whom a maintenance order has been made, is, according to the law in force in that part of England or Northern Ireland in which the maintenance order was made, liable to maintain;

“maintenance order” means, an order other than an order of affiliation, for the periodical payment of sums of money towards the maintenance of the wife or other dependants of the person against whom the order is made;

“prescribed” means prescribed by rules of Court.

**3.** (1) Where a maintenance order has, whether before or after the passing of this Act, been made against any person by any Court in England or Northern Ireland and a certified copy of the order has been transmitted by the Secretary of State to the Governor, the Governor shall send a copy of the order to the prescribed officer of a Court in the Territory for registration; and on receipt thereof the order shall be registered in the prescribed manner, and shall, from the date of such registration, be of the same force and effect, and, subject to the provisions of this Act, all proceedings may be taken on such order as if it had been an order originally

Enforcement in the Territory of maintenance orders made in England or Northern Ireland.

No. of 2021

**VIRGIN ISLANDS**  
**PUBLIC PROCUREMENT ACT, 2021**  
**ARRANGEMENT OF SECTIONS**

*Section*

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#### **SCHEDULE**

No. of 2021

Public Procurement Act, 2021

Virgin  
Islands

I Assent

Governor  
, 2021

**VIRGIN ISLANDS**

No. of 2021

**A Bill for**

An Act to make provision for the regulation of public procurement providing for the fair, equal and equitable treatment of all tenderers and for other connected matters.

[Gazetted , 2021]

ENACTED by the Legislature of the Virgin Islands as follows:

**PART I  
PRELIMINARY**

Short title and  
commencement.

1. (1) This Act may be cited as the Public Procurement Act, 2021.

(2) This Act shall come into force on such date as the Minister may, by Notice published in the *Gazette*, appoint.

Interpretation.

2. (1) In this Act, unless the context otherwise requires,

“accepted contract amount” means the amount of the contract price at the signing of the contract;

S.I. No. 87 of  
2005

“Central Tenders Board” means the Board established under section 5;

“consultant” means a natural or legal person providing consulting services;

“consulting services” means services which are of an intellectual and advisory nature provided by firms or individuals using their professional skills, study, design and organise specific projects, advise clients, conduct training or transfer knowledge;

“contractor” means the provider of construction of works;

“currency” includes the monetary unit of account;

“direct solicitation” means solicitation addressed directly to one tenderer or a restricted number of tenderers;

“domestic procurement” means procurement limited to tenderers who are nationals of BVI or companies which are registered in BVI pursuant to section 37;

“electronic” means using electronic equipment for the processing (including digital compression) and storage of data which is transmitted, conveyed and received by wire, by radio, by optical means or by other electromagnetic means;

“framework agreement” means an agreement or other arrangement between one or more procuring entities and one or more tenderers which established the terms and conditions under which the tenderer enters into a contract with the procuring entity in the period during which the agreement or arrangement applies;

“goods” means objects of every kind and description including raw materials, products, computer software, software licences and equipment and objects in solid, liquid or gaseous form, and electricity, as well as services incidental to the supply of the goods if the value of those incidental services does not exceed that of the goods themselves;

“local preference” means a margin of preference for the benefit of goods produced in BVI or labour provided by nationals of BVI in accordance with section 40(2);

“Minister” means the Minister responsible for Finance;

“prescribed” means as prescribed by Regulations;

“pre-qualification” means the procedure set out in section 47 to identify, prior to solicitation, tenderers that are qualified;

“pre-qualification documents” means documents issued by the procuring entity under section 47 that set out the terms and conditions of the pre-qualification proceedings;

“pre-selection” means a procedure to identify, prior to solicitation, a limited number of providers of consulting services that best meet the qualification criteria for the procurement concerned;

- “pre-selection documents” means documents issued by the procuring entity that set out the terms and conditions of the pre-selection proceedings;
- “procurement” or “public procurement” means the acquisition of goods, construction works or services by a procuring entity;
- “procurement contract” means a contract concluded between the procuring entity and a supplier or a contractor at the end of the procurement proceedings;
- “Procurement Coordinator” means the public officer appointed as the head of the Procurement Unit;
- “procurement involving classified information” means procurement in which the procuring entity may be authorised to take measures and impose requirements for the protection of classified information;
- “Procurement Appeals Board” means an Appeals Board appointed pursuant to section 27;
- “procuring entity” means any Government Ministry, Department, Unit or Agency, or any subdivision or multiplicity thereof, that engages in procurement;
- “Procurement Unit” means the Procurement Unit of the Ministry of Finance existing prior to the commencement of this Act;
- “publish” includes to publish by electronic means;
- “services” means supply of physical services, or other labour, time or effort which may include a tangible end-product produced or supplied as an incident of that labour, time or effort; it may include “consulting services” where the context permits;
- “solicitation” means an invitation to tender, present submissions or participate in request for proposals proceedings;
- “solicitation document” means a document issued by the procuring entity, including any amendments thereto, that sets out the terms and conditions of the given procurement;
- “State-Owned Enterprise” means any legal or corporate entity over which the State exercises a dominant influence by virtue of its ownership of it, its financial participation therein, or the rules which govern it. Such dominant influence shall be deemed to exist where the State holds the majority of the entity's subscribed capital, controls the majority of the votes attaching to shares issued by the entity, or can appoint more than half of the entity's administrative, management or supervisory body.

“submission” means a tender, a proposal, an offer, a quotation and a bid referred to collectively or generically;

“supplier” means the provider for the supply of goods and/or services;

“tender security” means a security required from tenderers by the procuring entity and provided to the procuring entity to secure the fulfilment of any obligation referred to in and includes such arrangements as bank guarantees, surety bonds, standby letters of credit, cheques for which a bank is primarily liable, cash deposits, promissory notes and bills of exchange and for the avoidance of doubt, the term excludes any security for the performance of the contract;

“tenderer” means, according to the context, any potential party or any party to the procurement proceedings with the procuring entity;

“works” means all works associated with the construction, reconstruction, demolition, repair, maintenance or renovation of a building or structure, or any construction works such as railways, roads, highways, site preparation, excavation, installation of equipment and materials, decoration, as well as physical services incidental to works, if the value of those services does not exceed that of the works themselves; and

“written” or “in writing” means any expression consisting of words or figures which can be read, reproduced and subsequently communicated. It may include information which is transmitted and stored by electronic means.

(2) For the purpose of this Act, direct solicitation does not include solicitation addressed to a limited number of tenderers following pre-qualification or pre-selection proceedings.

**3. (1)** This Act applies to all procuring entities and subject to subsection (2) all State-Owned Enterprises.

Application and Objectives.

(2) Notwithstanding subsection (1), a State-Owned Enterprise may conduct procurement in accordance with its own procurement rules and regulations where those rules and regulations have been determined by the Financial Secretary to be consistent with this Act.

(3) Public procurement covers all procurement except for procurement of the following works, goods and services:

- (a) works, goods and services of a sensitive nature for use in national security or defence;
- (b) services for
  - (i) advertising;

- (ii) cultural events;
- (iii) employment in the Public Sector;
- (iv) financial instruments;
- (v) legal work;
- (vi) medical work or facilities;
- (vii) pension funds;
- (viii) travel and accommodation;
- (c) goods and works
  - (i) artwork;
  - (ii) existing buildings;
  - (iii) international commodities; and
  - (iv) land.

(4) In applying this Act, procuring entities and State-Owned Enterprises shall seek to

- (a) maximise, the economy and efficiency in public procurement;
- (b) foster and encourage participation in public procurement proceedings by tenderers regardless of nationality, thereby promoting international trade;
- (c) promote competition among tenderers for the supply of the subject matter of the public procurement;
- (d) provide for the fair, equal and equitable treatment of all tenderers;
- (e) ensure that BVI tenderers are provided with ample procurement opportunities in order to encourage and support national development;
- (f) promote the integrity of, and fairness and public confidence in, the public procurement process;

- (g) achieve transparency in the procedures relating to public procurement.

**4.** To the extent that this Act conflicts with an obligation of the Virgin Islands under or arising out of any

International obligations of the Virgin Islands relating to procurement.

- (a) treaty or other form of agreement to which it is a party with one or more other States or Territory; or
- (b) agreement entered into by the Virgin Islands with an intergovernmental international financing institution,

the requirements of the treaty or agreement shall prevail, but in all other respects the procurement shall be governed by this Act.

**5. (1)** Subject to any policy direction of the Minister, the Financial Secretary is responsible for the administration of this Act, including implementation of the Government's public procurement policies, particularly with regard to public expenditure.

Organisation of public procurement.

**(2)** There is established by this Act a Central Tenders Board which shall comprise

- (a) the Financial Secretary or his or her representative, who shall be the Chairperson of the Central Tenders Board;
- (b) the Attorney General or his or her representative;
- (c) the Director of Public Works or his or her representative;
- (d) the Permanent Secretary in the Ministry responsible for the subject matter of the particular tender or his or her representative;
- (e) the Permanent Secretary who is, for the time being, a member by virtue of subsection (3) or his or her representative.

**(3)** For the purposes of subsection (2)(e) membership shall be rotated among the Permanent Secretaries, in such order as may be determined by the Minister.

**(4)** The Central Tenders Board is responsible for

- (a) reviewing the legality of the evaluation of tenders and proposals by a procuring entity exceeding the prescribed

threshold amount and making recommendations to Cabinet for the award of such contracts;

- (b) the registration and classification of suppliers, contractors and consultants who participate in the public sector procurement system;
- (c) recommending policy and legislation to the Financial Secretary on public sector procurement procedures;
- (d) promoting and sponsoring the development of procurement professionals;
- (e) adopting standard solicitation documents for any method of procurement and any supplemental documents and templates;
- (f) causing the establishment and maintenance of a Public Procurement website to provide general procurement information and, at such time as is appropriate, a platform for the conduct of electronic procurement and the development appropriate electronic procurement tools;
- (g) reviewing international developments in environmental and sustainable procurement and adopting policies and tools for application in BVI;
- (h) advising the Financial Secretary on the consistency with this Act of the procurement rules and regulations of State-Owned Enterprises; and
- (i) any other functions the Minister may assign.

(5) The Procurement Unit

- (a) is responsible for carrying out the administrative work necessary to support the duties of the Central Tenders Board;
- (b) is the national contact point for public sector procurement;
- (c) is the designated feedback and reporting mechanism for the public sector procurement system;
- (d) advises the Central Tenders Board on the development of policy, legislation, and procedure related to the public sector procurement system;

- (e) carries out procurement in accordance with subsection (9);
- (f) oversees procurement carried out by the Procurement Committee; and
- (g) is responsible for any other functions as may be prescribed.

(6) The Procurement Coordinator shall be the head of the Procurement Unit and secretary to the Central Tenders Board.

(7) Subject to the provisions of the schedule to this Act and to such Regulations as may be prescribed, the Central Tenders Board shall regulate its own proceedings.

Schedule

(8) Subject to subsection (9), a procuring entity shall engage in the procurement of goods, works or services with an estimated value not exceeding the prescribed threshold.

(9) For the procurement of goods, works or services with an estimated value exceeding the prescribed threshold amount, the Procurement Unit shall conduct the procurement on behalf of any Government Ministry, department or any other agency.

(10) Each Government Ministry, department or other agency shall establish a Procurement Committee mandated to

- (a) develop an annual procurement plan for submission to the Procurement Unit;
- (b) act in compliance with relevant policies, guidelines and procedures;
- (c) effect objective evaluation processes with respect to quotations, tenders and requests for proposals;
- (d) facilitate response to contractor inquiries;
- (e) maintain proper records of Committee meetings, including records of the procurement; and
- (f) ensure compliance with reporting obligations.

**PART II**  
**METHODS OF PROCUREMENT AND THEIR CONDITIONS FOR**  
**USE: SOLICITATION AND NOTICES OF PROCUREMENT**

Methods of  
procurement.

6. (1) The procuring entity may conduct procurement of goods, works and services by means of

- (a) open tendering which may be conducted in one or two stages and with or without pre-qualification;
- (b) restricted tendering;
- (c) request for quotations;
- (d) request for proposals without negotiation;
- (e) request for proposals with consecutive negotiations; and
- (f) single source procurement,

subject to such requirements and conditions as may be prescribed for the appropriate use of each method of procurement.

(2) Open tendering may be held in two stages in the following cases:

- (a) when it is not feasible to define fully the technical or contractual aspects of the procurement to elicit competitive tenders; and
- (b) when, because of the complex nature of the goods, works or services to be procured, the contracting entity wishes to consider various technical or contractual solutions, and to discuss with tenderers the relative merits of those variants before deciding on the final technical or contractual specifications.

(3) The procuring entity shall procure consulting services using either the request for proposals without negotiation method or the request for proposals with consecutive negotiations in the prescribed manner.

(4) The procuring entity may procure consulting services from individual consultants based on relevant experience, qualifications and capability to provide the services and selection may be made competitively by comparing those attributes.

(5) In some circumstances, individual consultants may be selected on a single source basis with due justification subject to such requirements and conditions as may be prescribed for the appropriate use of individual consultants.

(6) The procuring entity may engage in such framework agreement procedure as may be prescribed.

**7. (1)** Except as otherwise provided for in section 8, a procuring entity shall conduct procurement by means of open tendering.

General rules applicable to the selection of a procurement method.

(2) A procuring entity may use a method of procurement other than open tendering only in accordance with section 8 and shall select the other method of procurement to accommodate the circumstances of the procurement concerned and shall seek to maximise competition to the extent practicable.

(3) If the procuring entity uses a method of procurement other than open tendering, it shall include in the record required under section 54 a statement of the reasons and circumstances upon which it relied to justify the use of that method.

**8. (1)** The procuring entity may engage in procurement by means of restricted tendering in accordance with section 22 when

Conditions for the use of methods of procurement under Part IV.

- (a) the subject matter of the procurement, by reason of its highly complex or specialised nature, is available only from a limited number of tenderers; or
- (b) the time and cost required to examine and evaluate a large number of tenders would be disproportionate to the value of the subject matter of the procurement.

(2) A procuring entity may engage in procurement by means of a request for quotations in accordance with section 23 for the procurement of routine works and maintenance or readily available goods or services that are not specially produced or provided to the particular description of the procuring entity and for which there is an established market, so long as the estimated value of the procurement contract is less than the prescribed threshold amount.

(3) A procuring entity may engage in single source procurement in accordance with section 24 in the following exceptional circumstances

- (a) where, for reasons of extreme urgency brought about by unforeseeable events not attributable to the procuring entity, the products or services could not be obtained in time by means of open or restricted tendering;

(b) for additional deliveries of goods or services by the original supplier, to whom the contract was awarded under a competitive process, where

(i) a change of supplier would compel the contracting entity to procure equipment or services not meeting requirements of inter-changeability with already existing equipment or services procured under the initial procurement and such separation would cause significant inconvenience or substantial duplication of costs to the contracting entity; or

(ii) where no advantage would be gained by further competition,

except that the total value of contracts awarded for the additional services shall not exceed fifty percent of the amount of the original contract;

(c) the subject matter of, the procurement

(i) is for proprietary goods or services obtainable from only a single source; or

(ii) is available only from a particular tenderer, or a particular tenderer has exclusive rights in respect of the subject matter of the procurement, such that no reasonable alternative or substitute exists, and the use of any other procurement method would therefore not be possible;

(d) the procuring entity determines that the use of any other method of procurement is not appropriate for the protection of the national security of the Virgin Islands;

(e) where there is an emergency and the products or services cannot be obtained by the procuring entity, in time by means of open or restricted tendering; or

(f) for assignments with an estimated value not exceeding \$15,000.

(4) For the purposes of paragraph (e), procurement during an emergency shall, as far as possible, be limited to the period of the emergency.

(5) In this section, emergency includes

- (a) a declared period of public emergency;
- (b) a public health emergency, including a pandemic;
- (c) natural disasters; or
- (d) any other exceptional circumstances which the Cabinet may prescribe.

**9. (1)** The procuring entity may engage in the procurement of consulting services by means of request for proposals without negotiation in accordance with section 25 where the procuring entity needs to consider the financial aspects of proposals separately and only after completion of examination and evaluation of the quality and technical aspects of the proposals.

Conditions for the use of methods of procurement under Part V.

(2) A procuring entity may engage in the procurement of consulting services by means of request for proposals with consecutive negotiations in accordance with section 26 where the procuring entity needs to consider the financial aspects of proposals separately and only after completion of examination and evaluation of the quality and technical aspects of the proposals, and it assesses that consecutive negotiations with consultants are needed in order to ensure that the financial terms and conditions of the procurement contract are acceptable to the procuring entity.

**10. (1)** An invitation to tender in open tendering shall be published in the prescribed manner.

Solicitation in open tendering.

(2) The invitation shall also be published internationally, so as to be widely accessible to international tenderers.

(3) This section shall not apply where the procuring entity engages in pre-qualification proceedings in accordance with section 47.

(4) The procuring entity shall not be required to cause the invitation to be published in accordance with subsection (2) in the case of domestic procurement in accordance with section 37.

**11. (1)** When the procuring entity engages in procurement by means of restricted tendering on the grounds specified

Solicitation in restricted tendering, request for quotations and single source.

- (a) in section 8(1)(a), it shall solicit tenders from all tenderers from which the subject matter of the procurement is available;
- (b) in section 8(1)(b), it

- (i) shall select tenderers from which to solicit tenders in a non-discriminatory manner and in a sufficient number to ensure effective competition; and
- (ii) may in the case of works select such tenderers from among those registered under the Contractors' Registration and Classification System referred to in section 47(1).

(2) Where the procuring entity engages in procurement by means of request for quotations in accordance with section 8(2), it shall request quotations from as many tenderers as practicable, but from at least three.

(3) Where the procuring entity engages in single source procurement in accordance with section 9(2), it shall solicit a proposal or price quotation from a single tenderer.

Solicitation in request for proposals proceedings.

**12. (1)** An invitation to participate in request for proposals proceedings shall be published in accordance with section 10(1) and (2), except where

- (a) the procuring entity engages in direct solicitation under the conditions set out in subsection (2); or
- (b) the procuring entity decides not to cause the invitation to be published in accordance with section 10(2) in the circumstances referred to in section 10(4).

(2) The procuring entity shall include in the record required under section 54 a statement of the reasons and circumstances upon which it relied to justify the use of direct solicitation in request for proposals proceedings.

### **PART III OPEN TENDERING**

Procedures for soliciting tenders.

**13.** The procuring entity shall solicit tenders by causing an invitation to tender to be published in accordance with section 10.

Contents of invitation to tender.

**14.** The invitation to tender shall include the following information:

- (a) the name and address of the procuring entity;
- (b) a summary of the principal requirements; and
- (c) any other relevant information as may be prescribed.

**15. (1)** The procuring entity shall provide the solicitation documents to each tenderer that responds to the invitation to tender in accordance with the procedures and requirements specified therein and if pre-qualification proceedings have been engaged in, the procuring entity shall provide a set of solicitation documents to each tenderer that has been pre-qualified and that pays the price, if any, charged for those documents.

Provision of solicitation documents.

(2) The procuring entity shall set out in the solicitation documents the final time and date by which tenders are to be submitted taking into account the time required for the tenderers to prepare and submit their tenders.

(3) The period between receipt of the solicitation documents and the date for submission of tenders shall be no less than that prescribed and shall be the same for all tenderers.

(4) The price that the procuring entity may charge for the solicitation documents shall reflect only the cost of producing and providing them to tenderers.

**16.** The solicitation documents shall include at least the following information:

Contents of solicitation documents.

- (a) instructions for preparing tenders;
- (b) the technical requirement of the procurement;
- (c) the location and time of completion or delivery;
- (d) the manner, date, place and time for submission of tenders;
- (e) the criteria that will be applied in the ascertainment of the qualifications of tenderers;
- (f) the criteria for evaluation of tenders including any margin of local preference;
- (g) the terms and conditions of the procurement contract; and
- (h) any other relevant information as may be prescribed.

**17. (1)** Tenders shall be presented in the manner, at the place and by the deadline specified in the solicitation documents.

Presentation of tenders.

(2) A tender shall be presented in writing, and

- (a) if in paper form, signed and placed in a sealed envelope; or

- (b) if in any other form, according to the requirements specified by the procuring entity in the solicitation documents, which shall ensure at least a similar degree of authenticity, security, integrity and confidentiality.

(3) The procuring entity shall provide to the tenderer a receipt showing the date and time when its tender was received.

(4) The procuring entity shall preserve the security, integrity and confidentiality of a tender and shall ensure that the content of the tender is examined only after it is opened in accordance with this Act.

(5) A tender received by the procuring entity after the deadline for presenting tenders shall not be opened and shall be returned unopened to the tenderer that presented it.

Period of effectiveness of tenders: modification and withdrawal of tenders.

**18.**(1) Tenders shall be in effect during the period of time specified in the solicitation documents.

(2) Prior to the expiry of the period of effectiveness of tenders, the procuring entity may request tenderers to extend the period for an additional specified period of time and a tenderer may refuse the request without forfeiting its tender security.

(3) Tenderers that agree to an extension of the period of effectiveness of their tenders shall extend or procure an extension of the period of effectiveness of tender securities provided by them or provide new tender securities to cover the extended period of effectiveness of their tenders and a tenderer whose tender security is not extended, or that has not provided a new tender security, is considered to have refused the request to extend the period of effectiveness of its tender.

(4) Unless otherwise stipulated in the solicitation documents, a tenderer may modify or withdraw its tender prior to the deadline for presenting tenders without forfeiting its tender security and the modification or notice of withdrawal is effective if it is received by the procuring entity prior to the deadline for presenting tenders.

Opening tenders.

**19.**(1) Tenders shall be opened at the time specified in the solicitation documents as the deadline for presenting tenders and they shall be opened at the place and in accordance with the manner and procedures specified in the solicitation documents.

(2) All tenderers that have presented tenders, or their representatives, shall be permitted by the procuring entity to attend the opening of tenders.

(3) The name and address of each tenderer whose tender is opened and the tender price shall be announced to those persons present at the opening of tenders, communicated on request to tenderers that have presented tenders but that are not present or represented at the opening of tenders, and included immediately in the record of the procurement proceedings required by section 54.

**20.** (1) Subject to subsection (2), the procuring entity shall regard a tender as responsive if it conforms to all requirements set out in the solicitation documents in accordance with section 16.

Examination and evaluation of tenders.

(2) The procuring entity may regard a tender as responsive even if it contains minor deviations that do not materially alter or depart from the characteristics, terms, conditions and other requirements set out in the solicitation documents or if it contains errors or oversights that can be corrected without touching on the substance of the tender and any such deviations shall be quantified, to the extent possible, and appropriately taken account of in the evaluation of tenders.

(3) The procuring entity shall reject a tender

- (a) if the tenderer that presented the tender is not qualified;
- (b) if the tenderer that presented the tender does not accept a correction of an arithmetical error made pursuant to section 45;
- (c) if the tender is not responsive;
- (d) in the circumstances referred to in section 49 or 50.

(4) The procuring entity shall evaluate the tenders that have not been rejected in order to ascertain the successful tender, as defined in subsection (5), in accordance with the criteria and procedures set out in the solicitation documents and no criterion or procedure shall be used that has not been set out in the solicitation documents.

(5) The successful tender shall be

- (a) where price is the only award criterion, the tender with the lowest tender price; or
- (b) where there are price and other award criteria, the most advantageous tender ascertained on the basis of the criteria and procedures for evaluating tenders specified in the solicitation documents in accordance with section 40.

(6) When tender prices are expressed in two or more currencies, for the purpose of evaluating and comparing tenders, the tender prices of all tenders shall be converted to the currency specified in the solicitation documents according to the prescribed rates set out in those documents.

(7) Where it has engaged in pre-qualification proceedings pursuant to section 49, the procuring entity may require the tenderer presenting the tender that has been found to be the successful tender pursuant to subsection (5) to demonstrate its qualifications again, in accordance with criteria and procedures conforming to section 38 and the criteria and procedures to be used for such further demonstration shall be set out in the solicitation documents and where pre-qualification proceedings have been engaged in, the criteria shall be the same as those used in the pre-qualification proceedings.

(8) If the tenderer presenting the successful tender is requested to demonstrate its qualifications again pursuant to subsection (7) but fails to do so, the procuring entity shall reject that tender and shall select the next successful tender from among those remaining in effect, in accordance with subsection (4), subject to the right of the procuring entity to cancel the procurement in accordance with section 48.

Prohibition of negotiations with tenderers.

**21.** With the exception of the circumstance in which all tenders have been rejected because all submitted prices are substantially higher than the existing budget thereby allowing for the possibility of negotiations with the tenderer which had submitted the lowest price on the scope of the procurement, no price negotiations shall take place between the procuring entity and a tenderer with respect to a tender presented by the tenderer.

**PART IV  
PROCEDURES FOR RESTRICTED TENDERING,  
REQUESTS FOR QUOTATIONS AND SINGLE SOURCE  
PROCUREMENT**

Restricted tendering.

**22.** (1) The procuring entity shall solicit tenders in accordance with section 11(1).

(2) Except for sections 13 to 15, Part III, shall apply to restricted tendering proceedings.

Request for quotations.

**23.** (1) The procuring entity shall request quotations in accordance section 11(2) and each tenderer from which a quotation is requested shall be informed whether any elements other than the charges for the subject matter of the procurement itself, such as any applicable transportation and insurance charges, customs duties and taxes, are to be included in the price.

(2) Each tenderer is permitted to give only one price quotation and is not permitted to change its quotation and no negotiations shall take place between the procuring entity and a tenderer with respect to a quotation presented by the tenderer.

(3) The successful quotation shall be the lowest-priced quotation meeting the needs of the procuring entity as set out in the request for quotations.

**24. (1)** Section 11(3) shall apply to the procedure preceding the solicitation of a proposal or price quotation from a single tenderer. Single source procurement.

(2) The procuring entity shall engage in negotiations with the tenderer from which a proposal or price quotation is solicited unless such negotiations are not feasible in the circumstances of the procurement concerned.

**PART V  
PROCEDURES FOR REQUESTS FOR PROPOSALS WITHOUT  
NEGOTIATION AND REQUESTS FOR PROPOSALS WITH  
CONSECUTIVE NEGOTIATIONS**

**25. (1)** The procuring entity shall solicit proposals by causing an invitation to participate in the request for proposals without negotiation proceedings to be published in accordance with section 12(1), unless an exception provided for in that section applies. Request for proposals without negotiation.

(2) The information which shall be included in the invitation, the contents of the request for proposals and the procedures for evaluating the proposals submitted shall be as prescribed.

**26. (1)** Section 25(1) and (2) shall apply *mutatis mutandis* to procurement conducted by means of request for proposals with consecutive negotiations, except to the extent that those provisions are derogated from in this section. Request for proposals with consecutive negotiations.

(2) Proposals whose technical, quality and performance characteristics meet or exceed the relevant minimum requirements shall be considered to be responsive and the procuring entity shall rank each responsive proposal in accordance with the criteria and procedure for evaluating proposals as set out in the request for proposals and in accordance with the prescribed procedures

**PART VI  
CHALLENGE PROCEEDINGS**

**27. (1)** There is established by this Act, for the purposes of hearing and determining an application for review under sections 30 and 31, a Procurement Appeals Board. Procurement Appeals Board.

(2) The Appeals Board shall comprise three persons, appointed by the Minister one of whom shall be an Attorney-at-Law who is practising or has practised for a period of not less than ten years, and who shall be the Chairperson.

(3) A member of the Appeals Board shall be appointed on such terms and conditions as may be prescribed and the Board shall operate in accordance with such rules of procedure as may be prescribed.

(4) The Minister shall within 7 days of receipt of a request for a review refer the request to the Procurement Appeals Board.

(5) Within 28 days of receiving the referral, the Appeals Board shall hear and determine the application for review.

(6) The Minister may extend the period referred to in subsection (5).

Right to challenge and appeal.

**28.** (1) A tenderer that claims to have suffered or claims that it may suffer loss or injury because of the alleged non-compliance of a decision or action of the procuring entity may challenge the decision or action concerned.

(2) Challenge proceedings may be made by way of an application for reconsideration to the procuring entity under section 30, an application for review by a Procurement Appeals Board or an appeal to the High Court.

(3) A tenderer may appeal any decision taken in challenge proceedings in the High Court.

(4) Notwithstanding subsections (1), (2) and (3), a decision by the procuring entity to reject all tenders, proposals and or offers prior to acceptance is not subject to challenge and review.

(5) Any challenge brought under this section shall be brought no later than ten days after the notification referred to in section 51(2).

Effect of a challenge.

**29.** (1) The procuring entity shall not take any step that would bring into force a procurement contract or framework agreement in the procurement proceedings concerned

(a) where it receives an application for reconsideration within the prescribed time limits;

(b) where it receives notice of an application for review from the Procurement Appeals Board; or

(c) where it receives notice of an appeal from the High Court.

(2) The prohibition referred to in subsection (1) shall lapse upon the expiration of the prescribed period of time, after the decision of the procuring entity, the Procurement Appeals Board or the High Court has been communicated to the applicant or appellant, as the case may be, to the procuring entity, where applicable, and to all other participants in the challenge proceedings.

(3) The procuring entity may at any time request the Procurement Appeals Board or the High Court to authorise it to enter into the procurement contract or framework agreement on the ground that urgent public interest consideration so justify.

(4) The Procurement Appeals Board, upon consideration of such a request, or of its own motion, may authorise the procuring entity to enter into the procurement contract or framework agreement where it is satisfied that urgent public interest considerations so justify.

(5) The decision of the Procurement Appeals Board and the reasons therefor shall be made part of the record of the procurement proceedings, and shall promptly be communicated to the procuring entity, to the applicant, to all other participants in the challenge proceedings and to all other participants in the procurement proceedings.

**30.** (1) A tenderer may apply to the procuring entity for a reconsideration of a decision or an action taken by the procuring entity in the procurement proceedings.

Application for reconsideration before the procuring entity.

(2) An application for reconsideration shall be submitted to the procuring entity, in writing, within the prescribed time period and in accordance with the prescribed procedures.

(3) In taking its decision on an application that it has entertained, the procuring entity may overturn, correct, vary or uphold any decision or action taken in the procurement proceedings to which the application relates.

(4) The decision of the procuring entity shall be issued within the prescribed time period after receipt of the application and the procuring entity shall immediately thereafter communicate the decision to the applicant, to all other participants in the challenge proceedings and to all other participants in the procurement proceedings.

(5) If the procuring entity does not communicate its decision to the applicant in accordance with the requirements of subsections (4) and (6), the applicant is entitled immediately thereafter to commence proceedings with the Procurement Appeals Board and where such proceedings are commenced, the competence of the procuring entity to entertain the application ceases.

(6) All decisions of the procuring entity under this section shall be in writing, shall state the action taken and the reasons therefor, and shall promptly be made part of the record of the procurement proceedings, together with the application received by the procuring entity under this section.

Application for review before the Procurement Appeals Board.

**31.** (1) A tenderer may apply to the Procurement Appeals Board for review of the decision taken by the procuring entity or of the failure of the procuring entity to issue a decision under section 30 within the prescribed time.

(2) An application for review shall be submitted to the Procurement Appeals Board, in writing, within the prescribed time period and in accordance with the prescribed procedures.

(3) The decision of the Procurement Appeals Board shall be issued within the prescribed time period after receipt of the application and the Procurement Appeals Board shall immediately thereafter communicate the decision to the procuring entity, to the applicant, to all other participants in the application for review and to all other participants in the procurement proceedings.

(4) All decisions of the Procurement Appeals Board under this section shall be in writing, shall state the action taken and the reasons therefor and shall promptly be made part of the record of the procurement proceedings, together with the application received by the Procurement Appeals Board.

Rights of participants in challenge proceedings.

**32.** (1) Any tenderer participating in the procurement proceedings to which the application relates, as well as any governmental authority whose interests are or could be affected by the application, shall have the right to participate in challenge proceedings under this Act and a tenderer duly notified of the proceedings that fails to participate in such proceedings is barred from subsequently challenging under sections 30 and 31 the decisions or actions that are the subject matter of the application.

(2) The procuring entity shall have the right to participate in challenge proceedings under section 31.

(3) The participants in challenge proceedings under this Act shall have the right

(a) to be present, represented and accompanied at all hearings during the proceedings;

(b) to be heard;

(c) to present evidence, including witnesses;

(d) to request that any hearing take place in public; and

- (e) to seek access to the record of the challenge proceedings subject to section 33.

**33.** No information shall be disclosed in challenge proceedings and no public hearing under sections 30 and 31 shall take place if doing so would, in the view of the Procurement Appeals Board

Confidentiality in challenge proceedings.

- (a) impair the protection of the national security of the Virgin Islands;
- (b) be contrary to law;
- (c) impede law enforcement;
- (d) prejudice the legitimate commercial interests of the tenderers; or
- (e) impede fair competition.

## **PART VII MISCELLANEOUS PROVISIONS**

**34. (1)** This Act, any regulations made under this Act and other legal texts of general application in connection with procurement covered by this Act, shall be promptly made accessible to the public and systematically maintained as prescribed.

Publication of legal texts.

(2) The Financial Secretary shall make available to the public any judicial decisions and administrative rulings with precedent value in connection with procurement covered by this Act.

**35. (1)** Procuring entities shall publish information regarding planned procurement activities for forthcoming months or years in accordance with the regulations.

Information on possible forthcoming procurement.

(2) Procuring entities may also publish an advance notice of possible future procurement in accordance with the regulations.

(3) Publication under this section does not constitute a solicitation, does not oblige the procuring entity to issue a solicitation and does not confer any rights on tenderers.

**36. (1)** Any document, notification, decision or other information generated in the course of a procurement and communicated as required by this Act or regulations, including in connection with challenge proceedings under Part VI or in the course of a meeting, shall be in writing.

Communications in procurement.

(2) Where such document, notification, decision or other information is provided by electronic means, a record of its content shall for the purpose of the record of procurement proceedings under section 54 be converted into a medium which permits inspection and copying.

(3) Direct solicitation and communication of information between tenderers and a procuring entity may be made other than in writing, on the condition that immediately thereafter confirmation of the communication is given to the recipient of the communication in writing and provided in the record of procurement proceedings under section 54.

(4) The procuring entity, when first soliciting the participation of tenderers in the procurement proceedings, shall specify

- (a) any requirement of form;
- (b) in procurement involving classified information, if the procuring entity considers it necessary, measures and requirements needed to ensure the protection of classified information at the requisite level;
- (c) the means to be used to communicate information by or on behalf of the procuring entity to a tenderer or to any person, or by a tenderer to the procuring entity or other entity acting on its behalf;
- (d) the means to be used to satisfy all requirements under this Act for information to be in writing or for a signature; and
- (e) the means to be used to hold any meeting of tenderers.

(5) The procuring entity may use only those means of communication that are in common use by tenderers in the context of the particular procurement and in any meeting held with tenderers, the procuring entity shall use only those means that ensure in addition that tenderers can fully and contemporaneously participate in the meeting.

(6) The procuring entity shall put in place appropriate measures to secure the authenticity, integrity and confidentiality of the information concerned.

Participation by tenderers.

**37.** (1) Tenderers shall be permitted to participate in procurement proceedings without regard to nationality, except where the procuring entity decides, in view of the low value of the subject matter of the procurement, that only BVI tenderers are likely to be interested in presenting submissions.

(2) Except when authorised or required to do so by regulations or any other enactment, the procuring entity shall establish no other requirement aimed at

limiting the participation of tenderers in procurement proceedings that discriminates against or among tenderers or against categories thereof.

(3) The procuring entity, when first soliciting the participation of tenderers in the procurement proceedings, shall declare whether the participation of tenderers in the procurement proceedings is limited pursuant to this section and on which ground and any such declaration may not later be altered.

(4) A procuring entity that decides to limit the participation of tenderers in procurement proceedings pursuant to this section shall include in the record of the procurement proceedings a statement of the reasons and circumstances on which it relied.

(5) The procuring entity shall make available to any person, upon request, its reasons for limiting the participation of tenderers in the procurement proceedings pursuant to this section.

**38. (1)** This section applies to the ascertainment by the procuring entity of the qualifications of tenderers at any stage of the procurement proceedings.

Qualifications of tenderers.

(2) Tenderers shall meet such criteria as the laws of the Virgin Islands require and the procuring entity considers appropriate and relevant in the circumstances of the particular procurement and must possess the necessary professional, technical, financial and managerial resources and competence required to complete the contract.

(3) Subject to the right of tenderers to protect their intellectual property or trade secrets, the procuring entity may require tenderers participating in procurement proceedings to provide appropriate documentary evidence or other information to satisfy itself that the tenderers are qualified in accordance with the criteria referred to in subsection (2).

(4) Any requirement established pursuant to this section shall be set out in the pre-qualification or pre-selection documents, if any, and in the solicitation documents and shall apply equally to all tenderers.

(5) A procuring entity shall impose no criterion, requirement or procedure with respect to the qualifications of tenderers other than those provided for in this Act or otherwise prescribed.

(6) The procuring entity shall evaluate the qualifications of tenderers in accordance with the qualification criteria and procedures set out in the pre-qualification documents, if any, and in the solicitation documents.

(7) Other than any criterion, requirement or procedure that may be imposed by the procuring entity in accordance with section 37, the procuring entity shall establish no criterion, requirement or procedure with respect to the

qualifications of tenderers that discriminates against or among tenderers or against categories thereof, or that is not objectively justifiable.

(8) Notwithstanding subsection (5), the procuring entity may require the legalisation of documentary evidence provided by the tenderer presenting the successful submission so as to demonstrate its qualifications for the particular procurement and shall not impose any requirements as to the legalisation of the documentary evidence other than those provided for in the laws of the Virgin Islands relating to the legalisation of documents of the type in question.

(9) The procuring entity shall disqualify a tenderer if it finds at any time that the information submitted concerning the qualifications of the tenderer was false or constituted a misrepresentation or was materially inaccurate or materially incomplete.

- (10) Any tenderer participating in the procurement process shall
- (a) not be insolvent, in receivership, bankrupt or being wound up;
  - (b) not have its affairs administered by a court or a judicial officer;
  - (c) not have any of their directors and officers, convicted of any criminal offence related to professional misconduct or making of false statements or misrepresentations with respect to their qualifications to enter into a procurement contract, within a period of two years preceding the commencement of the procurement process, or not otherwise have been disqualified pursuant to debarment proceedings;
  - (d) be in good standing with respect to taxes, duties, social security contributions, national health insurance, company registration, or payments due to the Government;
  - (e) have its business activities suspended; or
  - (f) be subject to any legal proceedings for any of the foregoing reasons.

Rules concerning the procurement requirement.

**39.** (1) The pre-qualification or pre-selection documents, if any, and solicitation documents shall set out a description of the subject matter of the procurement.

- (2) Where practicable, the descriptions shall
- (a) be objective, functional, generic and measurable; and

(b) set out required technical, qualitative and performance characteristics.

(3) The procuring entity shall set out in the solicitation documents

(a) a detailed description of the subject matter of the procurement to be use in the examination of submissions;

(b) the minimum requirements that submissions must meet in order to be considered responsive; and

(c) the manner in which the minimum requirements are to be applied.

(4) Other than any criterion, requirement or procedure that may be imposed by the procuring entity in accordance with section 37, no description of the subject matter of a procurement that may restrict the participation of tenderers in or their access to the procurement proceedings, including any restriction based on nationality, shall be included or used in the pre-qualification or pre-selection documents, if any, or in the solicitation documents.

(5) No requirement or reference is to be made in the technical specifications to a particular make or source, or a particular process which characterises the products or services provided by a specific tenderer or to a trademark or name, patent, design or type, specific original, producer or service provider, unless there is no other practical way of describing the procurement requirements, and words such as “or equivalent” are included in the specifications.

**40.** (1) Except for the criteria set out in subsection (2), the evaluation criteria shall relate to the subject matter of the procurement and may include the following:

Rules concerning evaluation criteria and procedures.

(a) price;

(b) the cost of operating, maintaining and repairing goods or of construction;

(c) the time for delivery of goods, completion of construction or provision of services;

(d) the characteristics of the subject matter of the procurement, such as the functional characteristics of goods or construction and the environmental characteristics of the subject matter;

- (e) the terms of payment and of guarantees in respect of the subject matter of the procurement;
- (f) where relevant in procurement conducted in accordance with sections 25 and 26, the experience, reliability and professional and managerial competence of the tenderer and of the personnel to be involved in providing the subject matter of the procurement.

(2) In addition to the criteria set out in subsection (1), the evaluation criteria may include

- (a) any other prescribed criteria;
- (b) a criteria authorised or required to be taken into account by virtue of any enactment; or
- (b) a margin of preference for the benefit of goods produced in BVI or labour provided by BVI nationals, or any other preference, that is prescribed by regulations or any other enactment and the margin of preference shall be calculated as prescribed.

(3) To the extent practicable, all non-price evaluation criteria shall be objective, quantifiable and expressed in monetary terms.

(4) The procuring entity shall set out in the solicitation documents

- (a) whether the successful submission will be ascertained on the basis of price, or price and other criteria;
- (b) all evaluation criteria established pursuant to this section, including price as modified by any preference;
- (c) the relative weights of all evaluation criteria;
- (d) the manner of application of the criteria in the evaluation procedure.

(5) In evaluating submissions and determining the successful submission, the procuring entity shall use only those criteria and procedures that have been set out in the solicitation documents and shall apply those criteria and procedures in the manner that has been disclosed in those solicitation documents and no criterion or procedure shall be used that has not been set out in accordance with this section.

**41. (1)** A procuring entity shall neither divide its procurement nor use a particular valuation method for estimating the value of procurement so as to limit competition among tenderers or otherwise avoid its obligations under this Act. Rules concerning estimation of the value of procurement.

(2) In estimating the value of procurement, the procuring entity shall include the estimated maximum total value of the procurement contract or of all procurement contracts envisaged under a framework agreement over its entire duration, taking into account all forms of remuneration.

**42. (1)** Pre-qualification or pre-selection documents, if any, and solicitation documents shall be formulated in English. Rules concerning the language of documents.

(2) Applications to pre-qualify or for pre-selection, if any, and submissions may be formulated and presented in the language of the pre-qualification or pre-selection documents, if any, and solicitation documents, respectively, or in any other language permitted by those documents.

**43. (1)** The manner, place and deadline for presenting applications to pre-qualify or for pre-selection shall be set out in the invitation to pre-qualify or for pre-selection and in the pre-qualification or pre-selection documents, as applicable and the manner, place and deadline for presenting submissions shall be set out in the solicitation documents. Rules concerning applications.

(2) Deadlines for presenting applications to pre-qualify or for pre-selection or for presenting submissions shall be expressed as a specific date and time and shall allow sufficient time for tenderers to prepare and present their applications or submissions, taking into account the reasonable needs of the procuring entity.

(3) If the procuring entity issues a clarification or modification of the pre-qualification, pre-selection or solicitation documents, it shall, prior to the applicable deadline for presenting applications to pre-qualify or for pre-selection or for presenting submissions, extend the deadline if necessary or as required under section 44(4) to afford tenderers sufficient time to take the clarification or modification into account in their applications or submissions.

(4) The procuring entity may, at its absolute discretion, prior to a deadline for presenting applications to pre-qualify or for pre-selection or for presenting submissions, extend the applicable deadline if it is not possible for one or more tenderers to present their applications or submissions by the deadline initially stipulated because of any circumstance beyond their control.

(5) Notice of any extension of the deadline shall be given promptly to each tenderer to which the procuring entity provided the pre-qualification, pre-selection or solicitation documents.

Clarifications and modifications of solicitation documents.

**44. (1)** A tenderer may in writing request a clarification of the solicitation documents from the procuring entity and the procuring entity shall respond to any request by a tenderer for clarification of the solicitation documents that is received by the procuring entity within a reasonable time prior to the deadline for presenting submissions.

(2) The procuring entity shall respond in writing within a time period that will enable the tenderer to present its submission in a timely manner and shall, without identifying the source of the request, communicate the clarification to all tenderers to which the procuring entity has provided the solicitation documents.

(3) At any time prior to the deadline for presenting submissions, the procuring entity may for any reason, whether on its own initiative or as a result of a request for clarification by a tenderer, modify the solicitation documents by issuing an addendum and the addendum shall be communicated promptly to all tenderers to which the procuring entity has provided the solicitation documents and shall be binding on those tenderers.

(4) If as a result of a clarification or modification issued in accordance with this section, the information published when first soliciting the participation of tenderers in the procurement proceedings becomes materially inaccurate, the procuring entity shall cause the amended information to be published in the same manner and place in which the original information was published and shall extend the deadline for presentation of submissions as provided for in section 43(3).

(5) If the procuring entity convenes a meeting of tenderers, it shall prepare minutes of the meeting containing the requests submitted at the meeting for clarification of the solicitation documents and its responses to those requests, without identifying the sources of the requests and the minutes shall be provided promptly to all tenderers to which the procuring entity provided the solicitation documents, so as to enable those tenderers to take the minutes into account in preparing their submissions.

Clarification of qualification information and of submissions.

**45. (1)** During evaluation, the procuring entity may ask a tenderer for clarification of its qualification information or of its submission, in order to assist in the ascertainment of qualifications or the examination and evaluation of submissions.

(2) The procuring entity shall correct purely arithmetical errors that are discovered during the examination of submissions and the procuring entity shall give prompt notice of any such correction to the tenderer that presented the submission concerned. The submission of any tenderer that does not accept an accurate correction shall be rejected.

(3) No substantive change to qualification information or to a submission, including changes aimed at making an unqualified tenderer qualified or an unresponsive submission responsive, shall be sought, offered or permitted.

(4) No negotiations shall take place between the procuring entity and a tenderer with respect to qualification information or submissions, nor shall any change in price be made pursuant to a clarification that is sought under this section.

(5) Subsection (4) shall not apply to proposals submitted under sections 25 and 26.

(6) All communications generated under this section shall be included in the record of the procurement proceedings.

**46. (1)** When the procuring entity requires tenderers presenting submissions to provide a tender security the requirement shall apply to all tenderers.

Tender securities.

(2) A contractor or supplier which has been awarded a contract and refuses to sign and execute a contract for which a performance security is required will forfeit its tender security.

(3) The procuring entity shall make no claim to the amount of the tender security and shall promptly return, or procure the return of, the tender security after the earliest of the following events:

- (a) the expiry of the tender security;
- (b) the entry into force of a procurement contract and the provision of a security for the performance of the contract, if such a security is required by the solicitation documents;
- (c) the cancellation of the procurement;
- (d) the withdrawal of a tender submission prior to the deadline for presenting submissions.

**47. (1)** For domestic procurement, the procuring entity may select qualified contractors from the Contractors Registration and Classification System to submit tenders for undertaking certain categories of work without using the pre-qualification procedures specified in subsections (2), (3), (4), (5), (6), (7), (8), (9), (10) and (11) and the selection of contractors from the Contractors Registration and Classification System is determined by the type, cost and complexity of the work to be undertaken and the prescribed procedures for its use.

Contractors' Registration and Pre-qualification proceedings.

(2) The procuring entity may engage in pre-qualification proceedings with a view to identifying, prior to solicitation, tenderers that are qualified and section 38 shall apply to pre-qualification proceedings.

(3) If the procuring entity engages in pre-qualification proceedings, it shall cause an invitation to pre-qualify to be published in the prescribed publication

and unless decided otherwise by the procuring entity in the circumstances referred to in section 10(4), the invitation to pre-qualify shall also be published internationally, so as to be widely accessible to international tenderers.

(4) The invitation to pre-qualify shall include the following information:

- (a) the name and address of the procuring entity;
- (b) a summary of the main terms and conditions of the procurement contract or the framework agreement to be entered into in the procurement proceedings, including
  - (i) the nature, quantity and place of delivery of the goods to be supplied;
  - (ii) the nature and location of the construction to be effected or the nature of the services and the location where they are to be provided;
  - (iii) the desired or required time for the supply of the goods; and
  - (iv) the completion of the construction or the provision of the services; and
- (c) such other information as may be prescribed.

(5) The procuring entity shall provide a set of pre-qualification documents to each tenderer that requests them in accordance with the invitation to pre-qualify and that pays the price, if any, charged for those documents and the price that the procuring entity may charge for the pre-qualification documents shall reflect only the cost of providing them to tenderers.

(6) The pre-qualification documents shall include such information as may be prescribed.

(7) The procuring entity shall respond to any request by a tenderer for clarification of the pre-qualification documents that is received by the procuring entity within a reasonable time prior to the deadline for presenting applications to pre-qualify and the procuring entity shall respond within a time period that will enable the tenderer to present its application to pre-qualify in a timely manner and the response to any request that might reasonably be expected to be of interest to other tenderers shall, without identifying the source of the request, be communicated to all tenderers to which the procuring entity has provided the pre-qualification documents.

(8) The procuring entity shall take a decision with respect to the qualifications of each tenderer presenting an application to pre-qualify. In reaching that decision, the procuring entity shall apply only the criteria and procedures set out in the invitation to pre-qualify and in the pre-qualification documents.

(9) Only tenderers that have been pre-qualified are entitled to participate further in the procurement proceedings.

(10) The procuring entity shall promptly notify each tenderer presenting an application to pre-qualify whether or not it has been pre-qualified. It shall also make available to any person, upon request, the names of all tenderers that have been pre-qualified.

(11) The procuring entity shall upon request promptly communicate to each tenderer that has not been pre-qualified the reasons therefor.

(12) For the purposes of subsection (1), the Financial Secretary on the recommendation of the Central Tenders Board shall maintain a list to be approved by the Minister, of pre-qualified contractors for the procurement of services, including construction works.

**48. (1)** The procuring entity may cancel the procurement at any time prior to the acceptance of the successful submission and, after the successful submission is accepted, under the circumstances referred to in section 51(6) and the procuring entity shall not open any tenders or proposals after taking a decision to cancel the procurement.

Cancellation of the procurement.

(2) The decision of the procuring entity to cancel the procurement and the reasons for the decision shall be included in the record of the procurement proceedings and promptly communicated to any tenderer that presented a submission.

(3) The procuring entity shall promptly publish a notice of the cancellation of the procurement in the same manner and place in which the original information regarding the procurement proceedings was published, and return any tenders or proposals that remain unopened at the time of the decision to the tenderers that presented them.

(4) The procuring entity shall incur no liability, solely by virtue of its invoking subsection (1), towards tenderers that have presented submissions.

**49. (1)** The procuring entity may reject a submission if the procuring entity has determined that the price, in combination with other constituent elements of the submission, is abnormally low in relation to the subject matter of the procurement and raises concerns with the procuring entity as to the ability of the tenderer that presented that submission to perform the procurement contract, provided that the procuring entity has taken the following actions:

Rejection of abnormally low submissions.

- (a) requested in writing from the tenderer details of the submission that give rise to concerns as to the ability of the tenderer to perform the procurement contract; and
- (b) taken account of any information provided by the tenderer following this request and the information included in the submission, but continues, on the basis of all such information, to hold concerns.

(2) The decision of the procuring entity to reject a submission in accordance with this section, the reasons for that decision, and all communications with the tenderer under this section shall be included in the record of the procurement proceedings and the decision of the procuring entity and the reasons therefor shall be promptly communicated to the tenderer concerned.

Exclusion of a tenderer from the procurement proceedings.

**50. (1)** A procuring entity shall exclude a tenderer from the procurement proceedings if it determines that

- (a) during the procurement procedure the tenderer has engaged in corrupt or fraudulent behaviour contrary to any enactment;
- (b) the tenderer has an unfair competitive advantage or a conflict of interest.

(2) Any decision of the procuring entity to exclude a tenderer from the procurement proceedings under this section and the reasons therefor shall be included in the record of the procurement proceedings and promptly communicated to the tenderer concerned.

Acceptance of the successful submission and entry into force of the procurement contract.

**51. (1)** The procuring entity shall accept the successful submission unless

- (a) the tenderer presenting the successful submission is disqualified in accordance with section 38;
- (b) the procurement is cancelled in accordance with section 48(1);
- (c) the submission found successful at the end of evaluation is rejected as abnormally low under section 49; or
- (d) the tenderer presenting the successful submission is excluded from the procurement proceedings on the grounds specified in section 50.

(2) The procuring entity shall promptly notify each tenderer that presented submissions of its decision to accept the successful submission and the notice shall contain, at a minimum, the following information:

- (a) the name and address of the tenderer presenting the successful submission;
- (c) the accepted contract amount or, where the successful submission was ascertained on the basis of price and other criteria, the accepted contract amount and a summary of other characteristics and relative advantages of the successful submission;
- (d) the right to bring challenge procedures under Part IV within ten working days of the notice; and
- (e) any other prescribed information.

(3) Subsection (2) shall not apply to the award of a procurement contract where the accepted contract amount is less than the prescribed threshold or in the event of urgency.

(4) Promptly after the successful submission was ascertained, the procuring entity shall dispatch the letter of acceptance of the successful submission to the tenderer that presented that submission, unless the Procurement Appeals Board or the High Court orders otherwise.

(5) No contract may be signed or concluded before ten working days from receipt of the letter of acceptance.

(6) Where the solicitation documents require the tenderer whose submission has been accepted to sign a written procurement contract conforming to the terms and conditions of the solicitation document, the competent signatory acting on behalf of the procuring entity and the tenderer concerned shall sign the procurement contract within a reasonable period of time after the letter of acceptance is dispatched to the tenderer concerned.

(7) If the tenderer whose submission has been accepted fails to sign any written procurement contract as required or fails to provide any required security for the performance of the contract, the procuring entity may either cancel the procurement or decide to select the next successful submission from among those remaining, in accordance with the criteria and procedures set out in this Act and in the solicitation documents and, in the latter case, this section shall apply *mutatis mutandis* to such submission.

(8) Written notices and letters under this section are dispatched when they are promptly and properly addressed or otherwise directed and transmitted to

the tenderer or conveyed to an appropriate authority for transmission to the tenderer by any reliable means specified in accordance with this Act.

(9) Upon the entry into force of the procurement contract, notice of the procurement contract shall be given promptly to other tenderers, specifying the name and address of the tenderer that has entered into the contract and the accepted contract amount.

Public notice of the award of a procurement contract or framework agreement.

**52.** (1) Upon the entry into force of the procurement contract or conclusion of a framework agreement, the procuring entity shall promptly publish notice of the award of the procurement contract or the framework agreement, specifying the name of the tenderer to which the procurement contract or the framework agreement was awarded and, in the case of procurement contracts, the accepted contract amount.

(2) Subsection (1) shall not apply to awards where the contract price is less than the prescribed threshold amount and the procuring entity shall publish a cumulative notice of such awards from time to time but at least once per year.

(3) The Cabinet shall prescribe the manner of publication of the notices required under this section.

Confidentiality.

**53.** (1) In its communications with tenderers or with any person, the procuring entity shall not disclose any information if non-disclosure of such information is necessary for the protection of the national security of the Virgin Islands or if disclosure of such information would be contrary to law, would impede law enforcement, would prejudice the legitimate commercial interests of the tenderers or would impede fair competition, unless disclosure of that information is ordered by the High Court and, in such case, subject to the conditions of such an order.

(2) Other than when providing or publishing information pursuant to section 51(2) and (8) and to sections 52, 54 and 19, the procuring entity shall treat applications to pre-qualify or for pre-selection and submissions in such a manner as to avoid the disclosure of their contents to competing tenderers or to any other person not authorised to have access to this type of information.

(3) Any discussions, communications, negotiations or dialogue between the procuring entity and a tenderer pursuant to section 26 shall be confidential and unless required by law or ordered by the High Court, no party to any such discussions, communications, negotiations or dialogue shall disclose to any other person any technical, price or other information relating to these discussions, communications, negotiations or dialogue without the consent of the other party.

(4) Subject to the requirements in subsection (1), in procurement involving classified information, the procuring entity may

- (a) impose on tenderers requirements aimed at protecting classified information; and
- (b) demand that tenderers ensure that their sub-contractors comply with requirements aimed at protecting classified information.

**54. (1)** The procuring entity shall maintain a record of the procurement proceedings that includes such information as may be prescribed.

Documentary record of procurement proceedings.

(2) Portions of the record referred to in subsection (1) shall, on request, be made available to any person after the successful submission has been accepted or the procurement has been cancelled.

(3) Subject to subsection (4), or except as disclosed pursuant to section 19, portions of the record referred to in subsection (1) shall, after the decision on acceptance of the successful submission has become known to them, be made available, upon request, to tenderers that presented submissions.

(4) Except when ordered to do so by the High Court, and subject to the conditions of such an order, the procuring entity shall not disclose

- (a) information from the record of the procurement proceedings if its non-disclosure is necessary for the protection of the national security of the Virgin Islands or if its disclosure would be contrary to law, would impede law enforcement, would prejudice the legitimate commercial interests of the tenderers or would impede fair competition;
- (b) information relating to the examination and evaluation of submissions, other than in summary and as may be prescribed.

**55. (1)** All public officers or other persons employed by a procuring entity, members of the Procurement Unit and Central Tenders Board and any other person with the ability to influence any public procurement, including in the

Integrity and code of conduct.

- (a) planning or conduct of public procurement proceedings or contract management;
- (b) making of a decision, approval, determination or recommendation; or
- (c) the preparation of any solicitation document

are subject to the provisions of subsection (2) and to any disciplinary or legal sanctions that may ensue under any enactment.

shall (2) In exercising their duties, the persons identified in subsection (1)

- (a) act diligently, impartially, conscientiously and fairly in accordance with the procedures set out this Act;
- (a) at all times act in the public interest;
- (b) avoid conflicts of interest, whether actual, perceived or potential;
- (c) not commit or abet any corrupt or fraudulent practice, including the solicitation or acceptance of improper inducements; and
- (d) subject to this Act, not disclose any information relating to procurement proceedings and to tenders.

(3) The Financial Secretary shall issue a code of conduct for officers and employees of procuring entities which shall include at least the following:

- (a) measures for the prevention of conflicts of interest in procurement;
- (b) certificates declaring an absence of conflicts of interest to be signed by officers exercising specified roles in the procurement function;
- (c) where appropriate, measures to regulate matters regarding personnel responsible for procurement, such as declarations of interest in
  - (i) particular procurements;
  - (ii) screening procedures; and
  - (iii) training requirements.

(4) The Financial Secretary shall cause the code of conduct and all amendments to the Code to be published and otherwise be made accessible to the public.

Regulations.

**56.** (1) The Cabinet may make regulations not inconsistent with this Act, for giving effect to the provisions of this Act.

- may
- (2) Without limiting the generality of subsection (1), the regulations
- (a) provide for the issuing of directives which govern the public procurement process;
  - (b) provide for recording, filing and preserving all documents relating to the procurement proceedings;
  - (c) provide for the manner of procuring goods and services during a public emergency for the purposes of section 8(3)(e); and
  - (d) prescribing anything that is required to be prescribed by this Act.

Repeals and savings.

**57.** (1) Section 44(1)(b) of the Public Finance Management Act is repealed.

(2) Notwithstanding subsection (1), any Regulations made under the repealed subsection to govern the Central Tenders Board and the procurement process shall, until revoked, continue to be in force to the extent that the Regulations are not inconsistent with this Act.

No. 2 of 2004.

Transitional provisions.

**58.** (1) A tender contract existing at the date of commencement of this Act continues to be administered in terms of and governed by the existing law governing such tender, as if this Act has never been enacted.

(2) An invitation to tender that has been advertised before the date of commencement of this Act, whether the tender advertisement has been closed or not, the tendering shall be dealt with in terms of this Act.

(3) If, at the date of commencement of this Act, a matter relating to public procurement is pending before any court or the Central Tenders Board pursuant to the existing law governing such matter, that matter shall continue to be dealt with and brought to a conclusion as if this Act had not been enacted.

Passed by the House of Assembly this      day of                      , 2021.

Speaker.

Clerk of the House of Assembly.

## SCHEDULE

[Schedule 5(7)]

### OPERATION AND PROCEDURES OF THE CENTRAL TENDERS BOARD

#### **Quorum.**

1. Any three members present at a meeting of the Board shall constitute a quorum of the Board.

#### **Decisions of the Board.**

2. (1) Decisions of the Board shall be by a majority of the members or delegates present and voting, and in the event of an equality of votes, the chairperson has a second or casting vote.

(2) A decision of the majority of the members or designates present and able to vote is a decision of the Board.

#### **Frequency, place, day and time of Board meetings.**

3. (1) The Board shall meet as often as may be necessary to perform its duties and exercise its powers in an expeditious manner.

(2) A meeting of the Board shall be held on the days and at the times that the chairperson may determine.

#### **Notice of Board meeting.**

4. (1) The chairperson shall cause written notice of the place, day, time and agenda of the meeting of the Board to be given to each member, and to each designate, known to the chairperson to be attending the meeting, not less than seventy-two hours before the time scheduled for the holding of the meeting, unless the member or designate waives notice of the meeting in writing.

(2) Notice shall be given to a member or designate by—

- (a) handing a copy of the notice to the member or designate;
- (b) leaving a copy of the notice at the office of the member or designate;
- (c) e-mailing a copy of the notice to the member or designate at the e-mail address of the member or, as the case may be, the designate; or
- (d) any other means approved by resolution of the Board.

**Waiver of notice.**

5. A member or designate may in writing waive notice of a meeting.

**Decision of chairperson.**

6. The decision of the person presiding at a meeting of the Board is final on the following matters

- (a) the agenda for a meeting;
- (b) the conduct of the meeting;

## OBJECTS AND REASONS

This Bill seeks to

- (a) maximise, the economy and efficiency in public procurement;
- (b) foster and encourage participation in public procurement proceedings by tenderers regardless of nationality, thereby promoting international trade;
- (c) promote competition among tenderers for the supply of the subject matter of the public procurement;
- (d) provide for the fair, equal and equitable treatment of all tenderers;
- (e) ensure that BVI tenderers are provided with ample procurement opportunities in order to encourage and support national development;
- (f) promote the integrity of, and fairness and public confidence in, the public procurement process;
- (g) achieve transparency in the procedures relating to public procurement.

The Bill is divided into seven parts.

Part I (clauses 1-5) set out the preliminary provisions.

Part II (clauses 6-12) would provide for the methods of procurement, procurement during an emergency, solicitation and notices of procurement.

Part III (clauses 13-21) would provide for the procedures for processing tenders making opening of tenders and the examination and evaluation of tenders.

Part IV (clauses 22-24) would provide for the procedures regarding restricted tendering.

Part V (clauses 25-26) would provide for the procedures regarding single sources procurement.

Part VI (clauses 27-33) would provide for dealing with challenges and appeals against a decision of a procuring entity.

Part VII (clauses 34-58) would provide for miscellaneous matters including rules concerning the procurement contract, rules concerning evaluation criteria and procedures, rules concerning estimation of the value of procurement, rules concerning the language of documents and rules concerning applications. It would also include transitional provisions.

Minister for Finance.

No. of 2021

**VIRGIN ISLANDS**  
**CONTRACTOR GENERAL ACT, 2021**  
**ARRANGEMENT OF SECTIONS**

Section

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4. Independence of the Contractor General and immunity from suit.
5. Tenure of office and resignation.
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8. Disqualifications for Appointments, etc.
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10. Filling of Vacancy.
11. Remuneration of Contractor General
12. Pensions and Gratuities.
13. Appointment of officers.
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**POWERS AND FUNCTIONS OF THE CONTRACTOR GENERAL**

15. Functions of the Contractor General.
16. Scope of Investigations.
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**SCHEDULE 1**

**SCHEDULE 2**

**SCHEDULE 3**

No. of 2021

Contractor General, Act, 2021

Virgin  
Islands

I Assent

Governor.

, 2021

**VIRGIN ISLANDS**

No. of 2021

An Act to establish the office of the Contractor General and for the monitoring and implementation of government contracts and to provide for matters connected therewith.

[Gazetted , 2021]

ENACTED by the Legislature of the Virgin Islands as follows:

**PART I**

**PRELIMINARY**

1. (1) This Act may be cited as the Contractor General, Act, 2021.

Short title and commencement.

(2) This Act shall come into force on such date as the Minister may, by notice published in the *Gazette*, appoint.

2. In this Act, unless the context otherwise requires,

Interpretation.

“Cabinet” means the Cabinet established under section 47 of the Virgin Islands Constitutional Order, 2007;

U.K. S.I. 2007  
No. 1678

“Constitution” means the Virgin Islands Constitution Order, 2007;

“contractor” includes any person, firm or entity with whom a public body enters into any agreement for the carrying out of any building or other works or for the supply of any goods or services and includes a person who carries out such works or supplies such goods or services for or on behalf of any public body pursuant to a licence, permit or other concession or authority issued or granted to that person by a public body;

“Contractor General” means the Contractor General appointed under section 3 of this Act;

“functions” includes powers and duties;

“government contract” includes any licence, permit or other concession or authority issued by a public body or agreement entered into by a public body for the carrying out of building or other works or for supply of any goods or services;

“House of Assembly” means the House of Assembly established by section 63 of the Constitution;

“Minister” means the Minister responsible for Finance;

“prescribed licence” means any licence, certificate, quota, permit or warrant issued or granted pursuant to any enactment by a public body or an officer thereof;

“principal officer” means,

- (a) in relation to a Ministry, the Permanent Secretary of that Ministry;
- (b) in relation to a Department, the Head of that Department; and
- (c) in relation to any other public body - the Chief Executive Officer, general manager, or other similar officer of that body;

“public body” means,

- (a) a Ministry, department or agency of Government;
- (b) a statutory body or authority; or
- (c) any company registered under the Companies Act, being a company in which the Government or an agency of Government holds not less than fifty-one per centum of the ordinary shares;

“public contract” means a contract awarded by a public body and includes any licence, permit or other concession or authority issued by a public body or agreement entered into by a public body for the carrying out of any building or other works or for the supply of any goods or services;

“public officer” or “public service” has the meaning assigned to it under section 2 of the Virgin Islands Constitutional Order, 2007; and

“Public Services Commission” means the Public Services Commission constituted under section 91 of the Virgin Islands Constitutional Order, 2007.

(2) The references in this Act to a Ministry, department or agency of Government include a reference to the Minister, members or officers of that Ministry, department or agency.

## PART II

### THE CONTRACTOR GENERAL

3. (1) For the purposes of this Act, there is hereby established an office to be known as the office of the Contractor General. The Contractor General.

(2) The Premier acting on the recommendations of the Leader of Opposition may, with the approval of Cabinet appoint on such terms and conditions as he or she thinks fit, a fit and proper person to be the Contractor General.

(3) Notwithstanding anything to the contrary contained in this Act; the office of Contractor General shall not be deemed to be an office in the public service, but shall be a body corporate to which section 21 of the Interpretation Act shall apply.

(4) The Contractor General shall be appointed on the basis of integrity and demonstrated ability in any of the following areas

- (a) accounting;
- (b) auditing;
- (c) financial analysis;
- (d) law;
- (e) management analysis;
- (f) public administration; or
- (g) project management.

4. In the exercise of the powers conferred upon him or her or her by this Act, the Contractor General shall not be subject to the direction or control of any other person or authority in respect of his or her duties as the Contractor General. Independence of Contractor General and immunity from suit.

Tenure of office and resignation.

5. (1) Subject to the provisions of this Act, a person appointed as Contractor General shall hold office for a period of five years and shall, at the expiration of such period, be eligible for reappointment.

(2) The Contractor General may at any time resign his or her office by giving written notice to the Minister and such resignation shall become effective upon receipt by the Minister.

(3) A person appointed as Contractor General shall, subject to the provisions of subsections (4) and (5) of this section, vacate office on attaining the age of sixty-five years.

(4) Subject to the approval of Cabinet, the Minister may permit a Contractor General who attains the age of sixty-five years if he or she is physically fit for service, to continue in office until he or she has attained such later age, not exceeding seventy years, as may be agreed between them.

(5) Notwithstanding that he or she has attained the age at which he or she is required by or under the provisions of this section to vacate his or her office, the Contractor General may continue in office for such period after attaining that age as the Minister, subject to the approval of Cabinet may specify, in order to enable the Contractor General to give his or her decision or do any other thing in relation to any investigation he or she was conducting before he or she attained that age.

(6) Nothing done by the Contractor General shall be invalid by reason only that he or she has attained the age required by this section to vacate his or her office.

Removal from office.

6. (1) The Contractor General may be removed from office only for,
- (a) inability to discharge the functions of his or her office, whether arising from infirmity of body or mind or any other cause;
  - (b) misbehaviour; or
  - (c) trading with a public body without the prior approval of Cabinet,

and shall not be so removed except in accordance with the provisions of this section.

(2) For the purposes of this section, a Contractor General trades with a public body if, while holding office as such, he or she becomes party to, or is a partner in a firm or a director or manager of a company which to his or her knowledge becomes a party to any contract with a public body.

**7.** (1) A public body aggrieved by a decision of the Contractor General in respect of this Act may within fourteen days of the decision file a notice of appeal against the decision to the Appeal Tribunal. Right to appeal.

(2) A notice of Appeal under subsection (1) shall be in writing addressed to the Appeal Tribunal setting out the grounds of appeal and shall be in such form as the Appeal Tribunal may determine.

(3) Upon receipt of a notice of appeal, the Appeal Tribunal shall proceed to hear the appeal on such date and time as the Appeal Tribunal may determine.

(4) In hearing an appeal under subsection (1), the Appeal Tribunal shall

- (a) adopt such rules of procedures as it may determine;
- (b) have regard to the written decision of the Contractor General and any other document that forms part of the record of appeal.

(5) The Appeal Tribunal shall, after hearing an appeal,

- (a) dismiss the appeal;
- (b) allow the appeal; or
- (c) make an order remitting the case to the Contractor General for further hearing with such directions as it may consider fit.

(6) The decision of the Appeal Tribunal on an appeal shall be final.

(7) The provisions of the Schedule 1 shall have effect as to the constitution and operation of the Tribunal and otherwise in relation thereto. Schedule 1

**8.** A person shall not be qualified for appointment to the office of Contractor General if he or she, Disqualifications for appointment.

- (a) is a member of the House of Assembly;

- (b) is an undischarged bankrupt;
- (c) has at any time been convicted of any offence involving dishonesty or moral turpitude;
- (d) is a party to, or partner in a firm, or a director or manager of a company which to his knowledge is a party to any contract with a public body; or
- (e) is found to be of unsound mind.

Restriction on employment.

**9.** A person appointed as Contractor General shall be a full-time officer and shall not be employed in any other capacity during any period in which he or she holds office as Contractor General.

Filling of vacancy.

**10. (1)** Where a vacancy arises in the office of Contractor General, the Minister with the approval of Cabinet, may designate a person to act in that office during such vacancy, until a substantive appointment is made.

(3) Where the Contractor General is ill or absent from the Territory or is for any other reason unable to perform the functions of his or her office, those functions shall, until such time as he or she resumes the functions of his or her office or another person is appointed as the Contractor General, be assumed and performed by such person as may be appointed in writing by the Minister with the approval of Cabinet to act as Contractor General.

Remuneration of Contractor General.

**11. (1)** Subject to subsection (2), the Contractor General shall receive such emoluments and be subject to such other terms and conditions of service as may be determined by Cabinet.

(2) The emoluments and terms and conditions of service of the Contractor General, other than allowances that are not taken into account in computing pension, shall not be altered to his or her disadvantage during the period of his or her appointment or reappointment, as the case may be.

(3) The emoluments for the time being payable to the Contractor General by virtue of this Act shall be charged on and paid out of the monies authorised appropriated for the purpose of the office of the Contractor General under section 27.

Pensions and Gratuities. Schedule 2

**12.** The provisions of Schedule 2 to this Act shall have effect with respect to the pension and other benefits to be paid to or in respect of a person who has held the office of Contractor General.

Appointment of officers etc.

**13. (1)** The Contractor General shall be provided with such staff as the Minister with the approval of Cabinet may appoint and employ for the purposes

of this Act, on such remuneration and on such terms and conditions as may be considered necessary for the efficient functioning and management of the office of the Contractor General and to assist in the proper performance of his or her functions under this Act.

(2) The Minister with the approval of Cabinet or the Public Service Commission, as the case may be, may, subject to such conditions as may be imposed, approve the secondment to the staff of the Contractor General, of any officer in the public service, provided that in relation to any pension, gratuity, allowances and other rights as a public officer, such officer shall be deemed to be in the public service while so employed.

**14. (1)** Every person appointed to the staff of the Contractor General shall, before he or she performs any function assigned to them under or by virtue of this Act, take and subscribe an oath to be administered by the Contractor General, that he or she will faithfully, fully, impartially and to the best of his or her ability discharge the trust and perform the duties devolving upon him or her or her, as specified in the form set out in Schedule 3 to this Act.

Oath of office.

Schedule 3

(2) The Oath referred to in subsection (1) shall be taken before a Magistrate, Additional Magistrate, Registrar of the High Court or a Justice of the Peace.

(3) The Contractor General shall keep a record of all Oaths taken pursuant to this section.

### **PART III**

#### **POWERS AND FUNCTIONS OF CONTRACTOR GENERAL**

**15. (1)** Subject to the provisions of this Act, it shall be the function of a Contractor General,

Functions of Contractor General.

- (a) to monitor the award and the implementation of government contracts with a view to ensuring that,
  - (i) such contracts are awarded impartially and on merit;
  - (ii) the circumstances in which each contract is awarded or, as the case may be, terminated, do not involve any impropriety or irregularity;

- (iii) without prejudice to the functions of any public body in relation to any contract, the implementation of each such contract conforms to the terms thereof;
- (iv) there is no fraud, corruption, mismanagement, waste or abuse in the awarding of contracts by a public body;
- (b) to investigate any such fraud, mismanagement, waste or abuse under paragraph (b)(iv);
- (c) to develop policy guidelines, evaluate programme performance and monitor actions taken by a public body with respect to the award, execution and termination of contracts; and
- (d) to monitor the grant, issue, suspension or revocation of any prescribed licence, with a view to ensuring that the circumstances of such grant, issue, suspension or revocation do not involve impropriety or irregularity and, where appropriate, to examine whether such licence is used in accordance with the terms and conditions thereof.

(2) For the purpose of the discharge of his or her functions under this Act, the Contractor General shall be entitled,

- (a) to be advised of the award and, where applicable, the variation of any public contract by the public body responsible for such contract;
- (b) on the authority of a warrant issued in that behalf by a Magistrate
  - (i) to have access to all books, records, documents, stores or other property belonging to a public body, whether in the possession of any officer of a public body or a contractor or any other person;
  - (ii) to have access to any premises or location where work on a public contract has been, is being or is to be carried out;
  - (iii) to have access to all books, records, documents or other property used in connection with the grant, issue, suspension or revocation of any prescribed

licence whether in the possession of any public officer or any other person;

- (iv) to have access to any premises or location where he or she has reason to believe that any such books, records, documents or other property as are referred to in paragraph (d) above or any property which is the subject of a prescribed licence, may be found;
- (v) to enter any premises occupied by any person in order to make such enquiries or to inspect such document, record or property as he or she considers necessary to any matter being investigated by him or her; and
- (vi) without prejudice to the provisions of sections 18 and 19 of this Act, to retain any such document, record or other property referred to in paragraph (f) above.

(3) For the purpose of subsection (2) of this section, the Contractor General shall have power to require any public body to furnish in such manner and at such times as may be specified by the Contractor General, information with regard to the award of any contract and such other information in relation thereto as the Contractor General considers desirable.

(4) For the purposes of paragraphs subsection (2)(b)(iii) and (iv) of this section, the Contractor General shall have power to require any public officer or any other person to furnish in such manner and at such times as may be specified by the Contractor General, information with regard to the grant, issue, suspension, or revocation of any prescribed licence and such other information in relation thereto as the Contractor General considers desirable.

**16.** The Contractor General shall, where it is necessary and desirable, conduct an investigation into any or all of the following matters, Scope of investigation.

- (a) the selection of contractors;
- (b) tender procedures relating to contracts awarded by public bodies;
- (c) the award of any public contract;
- (d) any allegation of fraud, mismanagement, waste or abuse involving public contracts;

- (e) the implementation of the terms of any public contract;
- (f) the circumstances of and the practices and procedures relating to the grant, issue, use, suspension or revocation of any prescribed licence.

Initiation of investigation

**17. (1)** An investigation pursuant to section 16 of this Act may be undertaken by the Contractor General on his or her own initiative or as a result of representations made to him or her or her, if in his or her opinion such investigation is warranted.

(2) The Contractor General may receive and investigate complaints or information from an employee of a public body concerning the possible existence of an activity constituting a violation of law, rules, or regulations; or mismanagement, gross waste of funds, fraud, corruption or other impropriety relating to the award or termination of any contract; or the grant, issue suspension or revocation of any prescribed licence.

(3) The Contractor General shall not, after receipt of a complaint or information from an employee under subsection (2) of this section, disclose the identity of the employee without the consent of the employee, unless the Contractor General determines that such disclosure is unavoidable during the course of the investigation.

Procedure in respect of investigations.

**18. (1)** The Contractor General may adopt whatever procedure he or she considers appropriate to the circumstances of a particular case and, subject to the provisions of this Act, may obtain information from such persons and in such manner and make such enquiries as he or she thinks fit.

(2) Nothing in this Act shall be construed as requiring the Contractor General to hold any hearing and no person shall be entitled as of right to comment on any allegations or to be heard by the Contractor General.

(3) Regulations made under this Act may prescribe the practice and procedure to be adopted at any hearing.

Evidence.

**19. (1)** Subject to the provisions of subsection (5) of this section and section 20(1) of this Act, the Contractor General may at any time require any officer or member of a public body or any other person who, in his or her opinion, is able to give any assistance in relation to the investigation of any matter pursuant to this Act, to furnish such information and produce any document or thing in connection with such matter as may be in the possession or under the control of that officer, member or other person.

(2) Subject as aforesaid, the Contractor General may summon before him or her or her and examine on oath,

- (a) any person who has made representations to him or her or her; or
- (b) any officer, member or employee of a public body or any other person who, in the opinion of the Contractor General, is able to furnish information relating to the investigation,

and such examination shall be deemed to be a judicial proceeding and the appropriate provisions of the Criminal Code, (relating to perjury and obstruction of public justice) shall apply to all statements made in such proceedings.

(3) For the purpose of an investigation under this Act, the Contractor General shall have the same powers as a Judge of the High Court in respect of the attendance and examination of witnesses and the production of documents.

(4) Subject to the provisions of this Act, any obligation to maintain secrecy or any restriction on the disclosure of information or the production of any document or paper or thing imposed on any person by or under any law shall not apply in relation to the disclosure of information or the production of any document or thing by that person to the Contractor General for the purpose of an investigation; and accordingly, no person shall be liable to prosecution for an offence under any such law by reason only of his or her compliance with a requirement of the Contractor General under this Act.

(5) No person shall, for the purpose of an investigation, be compelled to give any evidence or produce any document or thing which he or she could not be compelled to give or produce in proceedings in any court of law.

**20.** (1) Where the Secretary to the Cabinet at the direction of Cabinet certifies that the giving of any information or the answering of any question or production of any document or thing, would,

Restriction on the disclosure of certain matters.

- (a) involve the disclosure of the deliberations or proceedings of the Cabinet, or any committee thereof, relating to matters of a secret or confidential nature and is likely to be injurious to the public interest;
- (b) prejudice the relations of the Virgin Islands with the Government of any other country or with any international organisation;
- (c) prejudice the detection of indictable offences; or
- (d) prejudice the security or defence of the Virgin Islands,

the Contractor General shall not further require such information or answer to be given or such document or thing to be produced.

(2) Except as provided in subsection (1) of this section, no law which authorises or requires the refusal to answer any question or the withholding of any information or document or thing on the ground that the answering of the question or the disclosure of the information, document or thing would be injurious to the public interest, shall apply in respect of any investigation by or proceedings before the Contractor General.

Procedure after investigation.

**21.** (1) After conducting an investigation under this Act, the Contractor General shall, in writing, inform the principal officer of the public body concerned and the Minister having responsibility therefore, of the result of that investigation and make such recommendations as he or she considers necessary in respect of the matter which was investigated.

(2) Where the Contractor General makes an adverse finding against any person, the Contractor General shall, so far as practicable, inform that person of the substance of the report.

(3) Where the Contractor General has made a recommendation under subsection (1) and within the time specified or a reasonable time thereafter, and he or she is of the opinion that no adequate action has been taken in pursuance of his or her recommendation shall present such findings before Cabinet.

Disciplinary action against officers.

**22.** (1) Subject to subsection (2) where the Contractor General finds, during the course of his or her investigation or on the conclusion thereof, that there is evidence of a breach of duty or misconduct, irregularity, impropriety, breach of trust or criminal offence on the part of an officer or member of a public body, he or she shall refer the matter to the person or persons competent to take such disciplinary or other proceeding as may be appropriate against that officer or member and a report of such matters shall be laid before Cabinet.

(2) In every case where the Contractor General finds that there is evidence of the commission of a criminal offence he or she shall, in addition to taking action as prescribed in subsection (1) of this section, refer the matter to the Director of Public Prosecutions.

Power of Contractor General to investigate notwithstanding Complaints Commissioner. No. 6 of 2003

**23.** (1) Notwithstanding the investigative powers conferred upon the Complaints Commissioner under the Complaints Commissioner Act, 2003 and the powers conferred upon the Auditor General under the Audit Act, 2003, the Contractor General shall have power to investigate any allegation of fraud, corruption, mismanagement, waste, abuse or other impropriety or irregularity in the award, execution or termination of any contract; or in the grant, issue, suspension or revocation of any prescribed licence.

(2) In carrying out his or her investigations, duties and responsibilities under this Act, the Contractor General shall have particular regard to the activities and functions of the Complaints Commissioner with respect to investigations under the Complaints Commissioner Act, 2003 and the Auditor General with respect to investigations under the Audit Act, 2003, with a view to avoiding duplication of functions and ensuring effective coordination and cooperation between his or her office and that of the Complaints Commissioner.

(3) In this section, reference to the

- (a) “Complaints Commissioner” means the Complaints Commissioner appointed under section 110 of the Virgin Islands Constitution Order, 2007; U.K.S.I. 2007 No.1678
- (b) “Auditor General” means the Auditor General appointed under section 109 of the Virgin Islands Constitution Order, 2007.

**24.** The proceedings of the Contractor General shall not be rendered void for want of form. Proceedings of Contractor General not to be void for want of form.

**25. (1)** Except in the case of proceedings for an offence under section 30 (c) of this Act, no proceedings whatsoever shall lie against the Contractor General or any person concerned with the administration of this Act, for anything he or she may do or report or say or for anything done or omitted to be done in good faith in the performance, discharge or purported discharge of any functions, duties or powers conferred or imposed by this Act. Privilege.

(2) Anything said or information supplied or any document or thing produced by any person for the purpose or in the course of any investigation by or proceedings before the Contractor General under this Act, shall be absolutely privileged in the same manner as if the investigation or proceedings were proceedings in a court of law.

(3) For the purposes of the Libel and Defamation any report made by the Contractor General under this Act and any fair and accurate comment thereon shall be deemed to be privileged.

## PART IV

### MISCELLANEOUS

Secrecy of information.

**26. (1)** The Contractor General and every person concerned with the administration of this Act shall regard as secret and confidential all documents, information and things disclosed to them in the execution of any of the provisions of this Act, except that no disclosure,

- (a) made by the Contractor General or any person aforesaid in proceedings for an offence under section 31 of this Act or under the appropriate provisions of the Criminal Code (relating to perjury and obstruction of public justice) by virtue of section 19(2) of this Act; or
- (b) which the Contractor General thinks necessary to make in the discharge of his or her functions or for the purpose of executing any of the provisions of sections 21, 22 and 30 of this Act,

shall be deemed inconsistent with any duty imposed by this subsection.

(2) Neither the Contractor General nor any such person aforesaid shall be called upon to give evidence in respect of, or produce, any document, information, or thing, aforesaid in any proceedings other than proceedings mentioned in subsection (1) of this section.

(3) Nothing in this section shall prevent disclosure by any person of information furnished to him or her pursuant to section 21 of this Act.

Performance of functions of Contractor General by members of staff.

**27. (1)** Without prejudice to the provisions of section 10(2) of this Act, the functions of the Contractor General, except those under sections 21, 22, 29(2) and 29 of this Act, may be performed by any member of his or her staff authorised for that purpose by the Contractor General.

(2) Nothing in subsection (1), shall be construed as affecting the responsibility of the Contractor General for functions performed on his or her behalf pursuant to subsection (1) of this section.

Funding.

**28.** The funds of the office of Contractor General shall consist of,

- (a) sums as may from time to time be appropriated by the House of Assembly for the purposes of the office of Contractor General; and
- (b) all other moneys which may in any manner become payable to or vested in the Contractor General in respect of any matter incidental to his or her functions.

Accounts etc.

**29.** (1) The accounts and financial transactions of the office of Contractor General shall be audited annually by the Auditor General and a statement of accounts so audited shall form part of the annual report referred to in section 30 of this Act.

(2) The Contractor General shall, before a date specified by the Minister,

- (a) submit to the Minister a statement of accounts in a form satisfactory to the Minister and audited in accordance with the provisions of subsection (1) of this section;
- (b) submit to the Minister for approval, estimates of revenue and expenditure for the ensuing financial year.

**30.** (1) The Contractor General may at any time be required by the Cabinet to submit a report thereto in respect of any matter being investigated by him or her. Reports.

(2) The Contractor General shall submit to the Cabinet an annual report relating generally to the execution of his or her functions and may at any time submit a report relating to any particular matter or matters investigated, or being investigated by him or her or her.

(3) Reports under this section shall be submitted to the Minister who shall, as soon as possible, have them laid before the House of Assembly.

(4) The Contractor General may, in the public interest, from time to time publish in such manner as he or she thinks fit, reports relating to such matters as are mentioned in subsection (2) of this section and any case which is the subject of a special report under section 22 of this Act, but no such report shall be published until after it has been laid before the House of Assembly pursuant to subsection (3) of this section.

**31.** Any person who,

Offences.

- (a) wilfully makes any false statement to mislead, or misleads or attempts to mislead the Contractor General or any other person in the execution of his or her functions under this Act; or
- (b) without lawful justification or excuse,
  - (i) obstructs, hinders or resists the Contractor General or any other person in the execution of his or her functions under this Act; or

- (ii) fails to comply with any lawful requirement of the Contractor General or any other person under this Act;
- (c) deals with documents, information or things mentioned in subsection (1) of section 26 of this Act, in a manner inconsistent with his or her duty under that subsection; or
- (d) otherwise than in the course of his or her duty, directly or indirectly, by himself or herself or by any other person, in any manner whatsoever, wilfully influences or attempts to influence the decision of the Contractor General with regard to any complaint made to him or her or to any investigation made by him or her,

commits an offence and shall be liable on summary conviction to a fine not exceeding ten thousand dollars or to imprisonment for a term not exceeding twelve months, or to both such fine and imprisonment.

Remedy under any other provision of law unaffected.

**32.** (1) Nothing in this Act shall be construed as limiting or affecting any remedy or right of appeal or objection given to any person by any other law.

(2) The Contractor General may initiate or continue any investigation and report thereon pursuant to this Act notwithstanding any legal proceedings relating to the subject matter of the investigation.

Power to amend Schedule.

**33.** The Minister may amend the Schedule to this Act by Order published in the *Gazette*.

Regulations.

**34.** (1) Cabinet on the advice of the Contractor General may make regulations to provide for any matter in respect of which it may be necessary or desirable to make regulations for the better carrying into effect of the provisions of this Act, and, without prejudice to the generality of the foregoing, such regulations may provide for,

- (a) any matter required by this Act to be prescribed; and
- (b) the circumstances in which and the manner in which information relating to public contracts shall be furnished to the Contractor General.

(2) All regulations made by Cabinet on the advice of the Contractor General under this section shall be laid before the House of Assembly as soon as may be after the making thereof and shall be subject to negative resolution.

**35.** Before entering upon his or her duties under this Act, the Contractor General shall take and subscribe the oath of allegiance that he or she shall faithfully and impartially exercise the functions of his or her office

Oath of  
allegiance.

(2) The Oath referred to in subsection (1) shall be taken before a Magistrate, Additional Magistrate, Registrar of the High Court or a Justice of the Peace.

## SCHEDULE 1

[Section 7(7)]

### APPEALS TRIBUNAL

Constitution and procedure of appeals tribunal appointment of members.  
Temporary Appointment.

**1.**(1) The Appeals Tribunal shall consist of at least five members appointed by the Cabinet.

**2.** The tribunal shall be presided over by a Chairperson who shall be a retired judge or a senior lawyer of at least twenty years practice as a legal practitioner.

**3.** If the chairperson or other member of the Appeals Tribunal is absent temporarily or unable to act, the Cabinet may appoint another person to act temporarily as chairman or such other member.

Appointment period.

**4.**(1) Subject to the provisions of this Schedule, a member of the Appeals Tribunal shall hold office for such period, not exceeding two years, as may be specified in the instrument of appointment.

(2) Every member of the Appeals Tribunal shall be eligible for reappointment, but no such member shall be appointed for more than six consecutive years.

(3) If any vacancy occurs in the membership of the Appeals Tribunal, the vacancy shall be filled by the making of another such appointment; however, the member so appointed shall, subject to the provisions of this Schedule, hold office for the remainder of the period for which the previous member was appointed.

(4) Cabinet may, at any time, revoke the appointment of the chairperson or any other member if it thinks it expedient so to do.

Resignation.

**5.**(1) Any member of the Appeals Tribunal other than the chairperson may, at any time, resign his or her office by instrument in writing addressed to the Cabinet and transmitted through the chairperson and from the date of the receipt by the Cabinet of such instrument such member shall cease to be a member of the Appeals Tribunal.

(2) The chairperson may, at any time, resign his or her office by instrument in writing addressed to the Cabinet and such resignation shall take effect as from the date of the receipt of such instrument by the Minister.

Publication of membership.

**6.** The names of the members of the Appeals Tribunal as first

constituted and every change in membership thereof shall be published in the *Gazette*.

**7.** All documents made by, and all decisions of the Appeals Tribunal may be signified under the hand of the chairman or any member of the Appeals Tribunal authorised to act in that behalf. Authentication of documents.

**8. (1)** The Appeals Tribunal shall meet at such times as may be necessary or expedient for the transaction of business and such meetings shall be held at such places and times and on such days as the Appeals Tribunal may determine. Procedure.

(2) The chairperson or any other person appointed to act temporarily as chairman shall preside at meetings of the Appeals Tribunal.

(3) Subject to sub-paragraph 1, the decisions of the Appeals Tribunal shall be by a majority of votes of the members and, in addition to an original vote, the chairman shall, having a casting vote in any case in which the voting is equal.

(4) The Appeals Tribunal, with the approval of the Cabinet, may make rules to regulate its own proceedings.

(5) Proper records of all proceedings of the Appeals Tribunal shall be kept.

**9.** There shall be paid to the chairperson and other members or the Appeals Tribunal such remuneration (whether by way of honorarium, salary or fees) and such allowances as the Minister may determine. Remuneration of members.

**10.** No action, suit, prosecution or other proceedings shall be brought or instituted personally against any member of the Appeals Tribunal in respect of an act done bonafide in pursuance or execution or intended execution of the provisions of this Act. Protection of members.

**11.** A member of the Appeal Tribunal who has any direct or indirect personal, professional, business or pecuniary interest in any matter which is the subject of appeal before the Appeal Tribunal shall, as soon as reasonably practicable, Declaration of interest.

(a) declare his interest in writing stating the nature of the interest; and

(b) recuse himself from participating in the hearing of, or discussing any matter relating to, the appeal concerned.

(2) A member of the Appeal Tribunal who fails to declare an interest as required under subsection (1) shall, without prejudice be liable to be removed as a member of the Appeal Board.

**SCHEDULE 2**

[Section 11]

**PENSIONABLE EMOLUMENTS OF CONTRACTOR GENERAL**

**1.** In this Schedule,

Interpretation.

“pensionable emoluments” has the same meaning as in the Pensions Act, Cap. 30;

“the Act” means the Contractor General Act.

**2.(1)** Where a person holding the office of Contractor General retires in pensionable circumstances, he or she shall be paid pension and gratuity in accordance with this Schedule.

Entitlement of pensions and gratuities in respect of service as Contractor General.

(2) For the purposes of this paragraph and paragraph 4 of this Schedule, a person retires in pensionable circumstances if he or she retires,

- (a) on or after the expiration of five years from the date of his or her appointment to the office of Contractor General;
- (b) by reason of ill-health prior to such expiration;
- (c) on his or her attaining the age at which he or she is required by or under the provisions of section 5 of this Act to vacate office.

(3) For the purposes of this Act, a person retires from the office of Contractor General on the ground of ill-health where,

- (a) he or she retires on medical evidence, that he or she is incapable by reason of any infirmity of mind or body of discharging the duties of his or her office, and that such infirmity is likely to be permanent; or
- (b) he or she is removed from office, in accordance with section 6(4) of this Act for inability, arising from infirmity of mind or body, to perform the functions of his or her office.

(4) A person who, pursuant to section 6 of this Act, is removed from the office of Contractor General for misbehaviour or for any cause other than inability arising from infirmity of mind or body or who retired otherwise than in pensionable circumstances may be granted by Cabinet such pension and gratuity as Cabinet thinks fit not exceeding the pension and gratuity to which he or she

would have been entitled had he or she retired in pensionable circumstances from such office and for the purposes of subparagraph (5) of this paragraph, the date of such removal from office or retirement shall be deemed to be the date of retirement in pensionable circumstances.

- (5) Pension payable in accordance with this paragraph shall,
  - (a) be charged on and payable out of the Consolidated Fund; and
  - (b) be paid monthly in arrears with effect, subject to paragraph 4;
  - (c) if this Schedule, from the date of retirement in pensionable circumstances and shall, subject to the provisions of this Act, continue to be paid during the lifetime of the person entitled thereto.

Rate of pension.

**3.** The rate of pension payable pursuant to paragraph 2 of this Schedule to any person shall,

- (a) if the person has retired after completing not less than five years' service as Contractor General or, at any time, on the ground of ill-health, be at an annual rate equivalent to his or her pensionable emoluments at retirement; and
- (b) in any other case, be an annual rate equivalent to the sum of one-half of his or her pensionable emoluments at the date of retirement and one three hundred and sixtieth of such pensionable emoluments in respect of each month of service as Contractor General,

provided that the rate of pension shall not exceed the annual rate of such pensionable emoluments.

Special provision where Contractor General retires before attaining age 65.

**4.** Where in accordance with paragraph 2 of this Schedule, a person retires in pensionable circumstances before he or she has attained the age of sixty-five years,

- (a) the date with effect from which any pension due to him or her or her under this Act shall be payable, shall be the date on which he or she attains that age, but, if he or she elects pursuant to paragraph 5 of this Schedule to take a reduced pension and commuted pension gratuity, nothing in this paragraph shall prevent payment of the commuted pension gratuity at any time prior to the attainment of that age; and

- (b) if he or she dies before attaining that age, and he has not made an election to receive a reduced pension gratuity as aforesaid, he or she shall for the purpose of paragraph 6 of this Schedule be deemed to have died while holding the office of Contractor General.

5. (1) Any person to whom a pension (in this paragraph referred to as “the original pension”) is payable pursuant to paragraph 2 of this Schedule may, at his or her option exercisable at his or her retirement in pensionable circumstances or within such period prior or subsequent to his or her retirement as Cabinet may allow, be paid, in lieu of the original pension, a reduced pension at the rate of three-fourths of the annual rate of the original pension together with a gratuity (in this Act referred to as a “commuted pension gratuity”) equal to twelve and one-half times one quarter of the original pension.

Reducing pension.

(2) The option referred to in subparagraph (1) above shall be irrevocable unless Cabinet on such terms as he or she considers reasonable, otherwise permits.

6. (1) Where a person dies while holding the office of Contractor General there shall be paid to his or her legal personal representatives, a gratuity of an amount equivalent to,

Gratuity on death.

- (a) one year’s pensionable emoluments;
- (b) the commuted pension gratuity for which the person aforesaid had a right to opt pursuant to paragraph 5 of this Schedule on the assumption that he or she retired in pensionable circumstances at the date of his or her death, whichever is the greater.

(2) Where a person dies while in receipt of a pension pursuant to paragraph 2 of this Schedule, there shall be paid to his or her legal personal representatives a gratuity of an amount equivalent to one year’s pensionable emoluments of that person at the date of his or her retirement or removal from office.

7. Where a person holding the office of Contractor General dies as a result of injuries received,

Pension to dependents when a Contractor General dies as a result of injuries received etc.

- (a) in the actual discharge of his or her duties;
- (b) in circumstances in which the injury is not wholly or mainly due to or seriously aggravated by his or her own serious and culpable negligence or misconduct; and

Cap. 161

- (c) on account of circumstances specifically attributable to the nature of his or her duty, while serving in that office, it shall be lawful for Cabinet to grant to the deceased Contractor General's widow, children, parents or other dependents such awards as would have been made under the Pensions Act, if the office of Contractor General were a pensionable office for the purposes of that Act.

Retirement consequent upon injury or disease.

**8.** Where a Contractor General,

- (a) is permanently injured in the actual discharge of his or her duty by some injury specifically attributable to the nature of his or her duty which is not wholly or mainly due to, or seriously aggravated by, his or her own serious and culpable negligence or misconduct;
- (b) contracts a disease to which he or she is exposed specifically by the nature of his or her duty, not being a disease wholly or mainly due to, or seriously aggravated by, his own serious and culpable negligence or misconduct;
- (c) is permanently injured as a result of an accident or damage to an aircraft while travelling by air in pursuance of official instructions and the injury was not wholly or mainly due to, or seriously aggravated by, his or her own serious and culpable negligence or misconduct;
- (d) while proceeding by a route approved by Cabinet to or from the Virgin Islands at the commencement or termination of his or her service therein, or of a period of secondment, duty leave, or leave therefrom, is permanently injured as the result of damage or any act of violence to the vessel, aircraft or vehicle in which he or she is travelling, if Cabinet is satisfied that that damage or act is attributable to circumstances arising out of any war in which Virgin Islands is engaged, then, for the purpose of calculating any pension under this Act, any period of service as the Contractor General shall be deemed to be increased by twenty per centum.

Pension etc., not to be assigned.

**9.** A pension or gratuity payable under this Act shall not be assignable or transferable except for the purpose of satisfying,

- (a) a debt due to the Government;

- (b) an order of the court for the payment of periodical sums of money towards the maintenance of the wife, or former wife or minor children, of the person to whom the pension or gratuity is payable, and shall not be liable to be attached, sequestered or levied upon, for or in respect of any debt due or claim whatever except a debt or claim due to the Government.

**10. (1)** Where a person dies while holding the office of Contractor General or while entitled to a pension under paragraph 2, there shall be paid to his or her widow a pension at an annual rate equivalent to one-fifth of the pensionable emoluments of the person aforesaid at the date of his or her death or, if at that date he or she was entitled to receive a pension under paragraph 2, at the date of his retirement or, as the case may be, removal from office in accordance with this Act.

Pension to widow.

(2) Pension payable to a widow pursuant to subparagraph (1) above shall,

- (a) be charged on and paid out of the Consolidated Fund;
- (b) be paid monthly in arrears with effect from the date of her husband's death and shall, subject to the provisions of this Act, continue to be paid during her lifetime.

(3) In paragraph 7 of this Schedule and subparagraphs (1) and (2) of this paragraph, references to a widow shall, in the case of a female appointed Contractor General, be deemed to include references to a widower and cognate expressions shall be construed accordingly, and similarly, references to a husband shall be deemed to include references to a wife.

**SCHEDULE 3**

[Section 13]

**OATH OF OFFICE OF ASSIST CONTRACTOR GENERAL**

I .....do swear (or solemnly and sincerely affirm and declare) that I will faithfully perform any functions assigned to me under the Contractor General Act, No. of 2021, and I will not, on any account, at any time whatsoever, except in so far as provisions of the Act authorise, directly or indirectly, reveal or make known any information or the nature or contents of any documents communicated to me in the performance of any functions assigned to me by virtue of the Act.

SO HELP ME GOD. (omit if affirming)

Sworn/ Affirmed before me a Magistrate/Additional Magistrate/ Registrar of the High Court/Justice of the Peace\* this , day of ,

\_\_\_\_\_  
Name of person swearing/affirming

\*Delete as appropriate.

Passed by the House of Assembly on this day of , 2021.

Speaker.

Clerk of the House of Assembly.

## OBJECTS AND REASONS

This Bill seeks to establish the office of the Contractor General and for the monitoring and implementation of government contracts and to provide for matters.

The Bill is divided into four parts.

Part I (sections 1-2) would provide for preliminary matters.

Clause 1 sets out the short title and commencement and clause 2 would introduce definition of terms used in the Bill.

Part II (sections 3-13) provides for the establishment of the office of Contractor General.

Clause 3 would provide for the appointment of the Contractor General on the basis of integrity and demonstrated ability in accounting, auditing, financial analysis, law, management analysis, public administration or project management.

Clause 4 would provide for the independence of the Contractor General and immunity from suit. whereby the Contractor General shall not be subject to the direction or control of any other person or authority in respect of his or her duties as the Contractor General.

Clause 5 would provide for tenure of office and resignation of the Contractor General and Contractor General shall hold the office for a period of five years and shall be eligible for reappointment upon expiration.

Clause 6 would provide the removal from office and where the question of removing the Contractor General from his or her office would arise and ought to be investigated, the matter would be referred to a Tribunal.

Clause 7 would provide for a public body who have been aggrieved by a decision of the Contractor General in respect of this Act may within fourteen days of the decision file a notice of appeal against the decision to the Appeal Tribunal.

Clause 8 would provide for the disqualifications for appointment of the Contractor General and clause 8 would provide for the restrictions on employment and the person appointed as Contractor General shall be a full-time officer and shall not be employed in any other capacity during any period in which he or she holds office as Contractor General.

Clause 10 would provide for filling of vacancy in the event that a vacancy arises in the office of Contractor General, Minister with the approval of Cabinet,

designate a person to act in that office during such vacancy, until a substantive appointment is made.

Clauses 11 to 12 would provide for the remuneration, pensions and gratuities of the Contractor General and clause 13 would provide for the appointment of officers on such terms and conditions necessary for the efficient functioning and management of the office of the Contractor General.

Clause 14 would provide for the oaths of office and every person appointed to the staff of the Contractor General shall, before he or she performs any function assigned to them shall take and subscribe an oath to be administered by the Contractor General, taken before a Magistrate, Additional Magistrate, Registrar of the High Court or a Justice of the Peace.

Part III (sections 15-25) provides for the powers and functions of the Contractor General.

Clause 15 would provide for the functions of the Contractor General such as to monitor the award and the implementation of government contracts and to develop policy guidelines, evaluate programme performance and monitor actions taken by a public body with respect to the award, execution and termination of contracts.

Clause 16 would provide for the scope of investigations and clause 17 would state that the Contractor General may receive and investigate complaints or information from an employee of a public body. The Contractor General would not, after receipt of a complaint or information from an employee disclose the identity of the employee without the consent of the employee.

Clauses 18 and 19 would provide for the procedure after investigations and evidence to furnish information and produce any document or thing in connection with the matter under investigation.

Clause 20 would provide for the restriction on disclosure on certain matters, while clause 21 would provide for the procedure after an investigation the Contractor General shall, in writing, inform the principal officer of the public body concerned and the Minister having responsibility therefore, of the result of that investigation and make such recommendations in respect of the matter which was investigated.

Clause 22 would provide for the disciplinary actions against officers in the event that there is evidence of a breach of duty or misconduct, irregularity, impropriety, breach of trust or criminal offence on the part of an officer or member of a public body.

Clause 23 would provide for the powers of the Contractor General to investigate notwithstanding any allegation of fraud, corruption, mismanagement, waste, abuse or other impropriety or irregularity in the award, execution or termination of any contract; or in the grant, issue, suspension or revocation of any prescribed licence notwithstanding Complaints Commissioner.

Clause 24 would provide for the proceedings of the Contractor General not to be rendered void for want of form. Clause 25 would provide for the purposes of the Libel and Defamation any report made by the Contractor-General under this Act and any fair and accurate comment thereon shall be deemed to be privileged.

Part IV (sections 26-35) provides for the miscellaneous provisions.

Clause 26 would concern that every person within the administration of this Act would regard as secret and confidential all documents, information and things disclosed to them in the execution of any of the provisions of this Act.

Clauses 27 and 28 would provide for the performance of the Contractor General by members of staff and funding report relating generally to the execution.

Clauses 29 and 30 would provide for the accounts and financial transactions of the office of Contractor General to be audited annually by the Auditor General and clause 31 would provide for reports and the Contractor General would submit annual reports to the Minister which would be laid before the House of Assembly.

Clauses 32 to 33 would provide for offences, remedy under any other provision of law unaffected and giving the Minister the power to amend the Schedules of this Act by Order published in the *Gazette*.

Clause 34 would provide for Cabinet on the advice of the Contractor General to make regulations to provide for any matter in respect of which it may be necessary or desirable for the better carrying into effect of the provisions of this Act.

Clause 35 would provide for the oath of allegiance and office.

Schedule 1 provides for the appeals of Tribunal.

Schedule 2 would provide for pensionable emoluments of the Contractor General.

Schedule 3 would provide for oath of office to assist the Contractor General.

Premier.

No. of 2020

VIRGIN ISLANDS

APPROPRIATION (2021) ACT, 2020

ARRANGEMENT OF SECTIONS

*Section*

1. Short title and commencement.
2. Appropriation: Recurrent Estimates.
3. Appropriation: Capital Estimates.
4. Sum chargeable to the Consolidated and Debt Service Funds.
5. Sum chargeable to the Development Fund.
6. Payment, how made.  
SCHEDULE 1  
SCHEDULE 2  
SCHEDULE 3

No. of 2020

Appropriation (2021) Act, 2020

Virgin Islands

I Assent

Governor

, 2020

VIRGIN ISLANDS

No. of 2020

A Bill for

An Act to provide for the appropriation of sums of money for and towards defraying the charges and expenses for the services of the Government of the Virgin Islands for the year ending on the thirty-first day of December, 2021.

[Gazetted , 2020]

ENACTED by the Legislature of the Virgin Islands as follows:

Short title and commencement.

1. This Act may be cited as the Appropriation (2021) Act, 2020 and shall be deemed to have come into force on the 1st day of January, 2021.

Appropriation: Recurrent Estimates.

2. There is hereby granted to Her Majesty the Queen, Her heirs and successors, for and towards defraying the several charges and expenses for the recurrent services of the Government of the Virgin Islands for the year ending on the thirty-first day of December, 2021, the sum of three hundred thirty-nine million, six hundred five thousand, nine hundred and eighty-one dollars (\$339,605,981), to be applied and expended for the services and purposes set out in Schedule 1.

Schedule 1

Appropriation: Capital Estimates.

3. There is hereby granted to Her Majesty the Queen, Her heirs and successors, for and towards defraying the several charges and expenses of the Government of the Virgin Islands for the year ending on the thirty-first day of December, 2021, the sum of sixty-two million, five hundred twenty-six thousand, and sixty-five dollars (\$62,526,065)

Schedule 3

to be applied and expended for the services and purposes set out in Schedule 3.

4. The sum of three hundred thirty-nine million, six hundred five thousand, nine hundred and eighty-one dollars (\$339,605,981), which includes the sum of forty-two million, eight hundred ninety-eight thousand, seven hundred dollars (\$42,898,700), in respect of the amounts payable by law as set out in Schedule 2, is declared to be chargeable upon and made payable out of the Consolidated Fund and the Debt Service Fund of the Virgin Islands.

Sum chargeable to the Consolidated and Debt Service Funds.  
Schedule 2

5. The sum of sixty-two million, five hundred twenty-six thousand, and sixty-five dollars (\$62,526,065), in respect of the expenditure authorised under section 3 is hereby declared to be chargeable upon and made payable out of the Development Fund of the Virgin Islands.

Sum chargeable to the Development Fund.

6. The Accountant General is hereby authorised and required to pay upon the authority of a Warrant signed by the Minister during the financial year beginning on the first day of January, 2021 and ending on the thirty-first day of December, 2021, the several sums appropriated by and included in Schedules 1, 2 and 3, out of the Consolidated Fund, the Development Fund, or any combination of these Funds of the Virgin Islands as the Warrant shall direct, without further order or formality.

Payment, how made.  
Schedules 1, 2 and 3

**SCHEDULE 1**

[Section 2]

**RECURRENT EXPENDITURE**

<b>Head</b>	<b>Department</b>	<b>Amount</b>
1011	House of Assembly	5,224,100
1012	Cabinet Office	720,100
1013	Public Prosecutions	1,538,200
1014	Complaints Management	309,600
1015	Registrar of Interests	35,700
1017	Office of the Auditor General	777,100
2108	Office of the Governor	693,100
2109	Deputy Governor's Office	8,294,700
2110	Human Resources	2,453,300
2113	Supreme Court	3,280,200
2114	Civil Registration and Passport Administration	1,065,900
2115	Magistracy	1,041,800
2116	Commercial Court	821,800
2117	Attorney General's Chambers	3,173,500
2118	Police	17,942,900
2220	Premier's Office Policy Planning and Administration	27,001,200
2221	Ship Registration and Marine Safety	2,718,900
2222	Statistical Services	976,300
2225	Town and Country Planning	1,130,500
2226	Trade and Investment Promotions	926,200
2228	International Affairs	266,900
2112	Comprehensive Disaster Management	934,800
2329	Finance Policy Planning and Administration	12,587,800
2330	Customs	4,865,400
2331	Inland Revenue	1,465,000
2332	Internal Audit	774,900
2333	Post Office	1,819,600
2334	Treasury Operations	2,934,700
2335	Information Technology	5,132,700
2371	Miscellaneous	13,090,429
2436	Natural Resources and Labour Policy Planning and Administration	45,730,300
2440	Labour	1,348,700
2470	Land and Seabed Management	1,097,500
2223	Immigration Services	2,907,200

Head	Department	Amount
2543	Education Policy, Planning and Administration	6,218,500
2544	Youth Affairs and Sports	459,400
2545	Education Quality Assurance and Standards	276,900
2546	Pre-primary and Primary Education	10,640,300
2547	Department of Culture	403,000
2548	Secondary Education	13,887,400
2564	Tertiary, Adult and Continuing Education	11,968,000
2550	Library Services	976,900
2437	Agriculture	2,027,300
2652	Health and Social Development Policy Planning and Administration	12,428,600
2653	Aged Care Services	2,256,200
2654	Waste Management	5,193,600
2655	Social Protection	2,508,100
2665	Public Health	2,045,800
2667	Children and Family Support Services	836,900
2668	Disability Services	435,800
2669	Community Services	343,800
2551	Prison	3,946,100
2756	Communications and Works Policy Planning and Administration	2,867,000
2757	Facilities Management	1,732,800
2758	Civil Aviation	63,100
2759	Fire and Rescue Services	2,748,000
2760	Water and Sewerage	28,756,800
2761	Motor Vehicles Licensing	982,000
2762	Public Works	5,739,300
2763	Telephone Services Management	994,900
4100	Pensions and Gratuities	22,822,400
4300	Public Debt	19,076,300
	<b>Subtotal</b>	<b>337,716,229</b>
3000	Contingency Fund	-
15000	Environmental Fund	977,342
13000	Transportation Network Improvement Fund	912,410
	<b>Total</b>	<b>339,605,981</b>

## SCHEDULE 2

[Section 4]

### EXPENDITURE PAYABLE BY LAW

Head of Expenditure		Sum Estimated
4100	Pensions and Gratuities	23,822,400
4300	Public Debt	<u>19,076,300</u>
<b>Total</b>		<b><u>42,898,700</u></b>

### SCHEDULE 3

[Section 3]

#### CAPITAL EXPENDITURE

<b>Head of Expenditure</b>	<b>Amount</b>
321000 Deputy Governor's Office	196,240
322000 Premier	4,750,000
323000 Ministry of Finance	582,500
324000 Ministry of Natural Resources, Labour and Immigration	700,000
325000 Ministry of Education, Culture, Youth Affairs, Fisheries & Agriculture	2,187,202
326000 Ministry of Health and Social Development	840,000
327000 Ministry of Transportation, Works and Utilities	17,077,169
328000 Miscellaneous	4,572,015
421000 Deputy Governor's Office (RDA Projects)	5,970,632
422000 Premier's Office (RDA Projects)	1,150,000
423000 Ministry of Finance (RDA Projects)	285,000
424000 Ministry of Natural Resources, Labour and Immigration (RDA Projects)	2,230,000
425000 Ministry of Education Culture, Youth Affairs, Fisheries & Agriculture (RDA Projects)	3,613,337
426000 Ministry of Health and Social Development (RDA Projects)	782,500
427000 Ministry of Transportation, Works and Utilities (RDA Projects)	7,406,045
<b>Subtotal</b>	<b><u>52,342,640</u></b>

#### CAPITAL ACQUISITIONS

Constitutionally Established Departments	48,812
Deputy Governor's Office	3,044,608
Premier's Office	366,445
Ministry of Finance	2,271,875
Ministry of Natural Resources, Labour and Immigration	2,138,000
Ministry of Education, Culture, Youth Affairs, Fisheries & Agriculture	295,027
Ministry of Health and Social Development	1,266,625
Ministry of Transportation, Works and Utilities	752,033
Subtotal	<b><u>10,183,425</u></b>
<b>Total</b>	<b><u><u>62,526,065</u></u></b>



The purpose of this Bill is to provide for the appropriation of monies for and towards the defraying of charges and expenses for the services of the Government of the Virgin Islands for the period commencing 1st January, 2021 and ending 31st December, 2021.

Minister of Finance

No. of 2021

**VIRGIN ISLANDS**  
**INTEGRITY IN PUBLIC LIFE ACT, 2021**  
**ARRANGEMENT OF SECTIONS**

*Section*

**PART I**  
**PRELIMINARY**

1. Short title and commencement.
2. Interpretation.
3. Application of Act.

**PART II**  
**INTEGRITY COMMISSION**

4. Establishment of Commission.
5. Functions of the Commission.
6. Tenure of, and removal, from office.
7. Disciplinary Tribunal.
8. Resignation of members.
9. Vacancy in membership of Commission.
10. Publication in *Gazette*.
11. Meetings and proceedings of Commission.
12. Secretary of the Commission.
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I Assent

Governor.  
, 2021

VIRGIN ISLANDS

No. of 2021

A Bill for

An Act to make provision for the establishment of an Integrity Commission, to make provision for the promotion and enhancement of ethical conduct of persons in public life, and for other matters connected therewith.

[Gazetted , 2021]

ENACTED by the Legislature of the Virgin Islands as follows:

PART I  
PRELIMINARY

1. (1) This Act may be cited as the Integrity in Public Life Act 2021. Short title and commencement.
- (2) This Act shall come into force on such date as the Minister may, by Notice published in the *Gazette*, appoint.
2. In this Act, unless the context otherwise requires, Interpretation.
- “Commission” means the Integrity Commission established by section 4;
- “Cabinet” means the Cabinet established under section 54 of the Virgin Islands Constitutional Order 2007;
- “Disciplinary Tribunal” means a tribunal appointed pursuant to section 7;
- “functions” includes powers and duties;

“investigative officer” means a person authorised by the Commission to exercise the powers of an investigating officer under this Act;

“Minister” means the Minister to whom responsibility for the subject of this Act is assigned;

“person in public life” means a person referred to in the Schedule 1;

“property” means any land and any interest in land, money, stock, bonds, shares or any other movable, immovable, corporeal or incorporeal things having economic value whether situated in the Virgin Islands or elsewhere and includes any rights, privileges, claims, securities and any interest herein all proceeds thereof;

“public body” includes

- (a) the House of Assembly and Cabinet;
- (b) Ministries and Departments of Government;
- (c) a corporation established by an Act for a public purpose or any subsidiary company of that corporation;
- (d) a bank, corporation or company which the Government owns or in which the Government has controlling interest;
- (e) any board, authority, commission, committee, council, trust or other like body established by or under an enactment;

“public officer” means the holder of any public office and includes any person appointed to act in any such office; and

“public official” means a person who is a member of a public body or a public officer.

Application of Act.

3. This Act applies to all persons in public life.

## PART II INTEGRITY COMMISSION

Establishment of Commission.

- 4.(1) There is established a Commission to be known as the Integrity Commission.

(2) In the performance of its functions under this Act, the Commission shall not be subject to the direction or control of any other person or authority.

(3) The Commission shall comprise of five persons as follows:

- (a) a Chairperson who is a retired judge or an attorney at law of at least 15 years standing, and who has practiced in the Virgin Islands or within the jurisdiction of the Organisation of the Eastern Caribbean States;
- (b) one person selected by the Governor;
- (c) one person nominated by the Premier;
- (d) one person nominated by the Leader of Opposition; and
- (e) one person nominated by Christian Council.

(4) The appointment of the members of the Commission shall be made by the Governor.

(5) The Chairperson shall be appointed by the Governor in agreement with the Premier who shall first consult the Leader of the Opposition;

(6) A person appointed to the Commission shall be a person of high integrity, capable of exercising competence, diligence, sound judgment and impartiality in fulfilling his or her duties pursuant to this Act.

(7) A person shall not be qualified to be appointed as a member of the Commission if that person

- (a) is a person in public life or is otherwise exercising a public function;
- (b) has, at any time during the three years preceding the date of appointment, been a person in public life or otherwise exercised a public function;
- (c) has, at any time during the five years immediately preceding the date of appointment, held office in a political party; or
- (d) would otherwise be disqualified, in accordance with the Constitution, to be a member of the House of Assembly.

- (e) has been convicted of an offence within or outside the Virgin Islands;
- (f) is an undischarged bankrupt or has compounded with his or her creditors;
- (g) is not a Belonger; or
- (h) has been certified by a medical practitioner to be of unsound mind.

Functions of the Commission.

5. (1) The Commission shall

- (a) to receive and investigate complaints regarding any breaches or non-compliance with the provisions of this Act;
- (b) without prejudice to the provisions of any other enactment, conduct an investigation into corruption under this Act referred to it by any person;
- (c) to make recommendations and to advise public bodies of any changes in practices and procedures which, in the opinion of the Commission, will reduce the likelihood or the occurrence of acts of corruption;
- (d) to conduct educational programmes and training relating to the role of the Commission in promoting ethical conduct;
- (e) to perform such other functions or exercise such powers as may be conferred, on it under this Act or any other enactment.

(2) The Commission may appoint such professional or technical advisers to assist the Commission in the performance of its functions.

(3) Persons appointed under subsection (2) may be paid such remuneration as the Commission may approve.

(4) Any remuneration payable pursuant to subsection (3) shall be paid out of the funds of the Commission.

Tenure of, and removal from, office.

6. (1) A member of the Commission shall be appointed by instrument in writing and shall, subject to this Part, hold office for a period not exceeding five years and shall be eligible for re- appointment.

(2) A member shall be removed from office by the Governor if the question of his or her removal from office has been referred to a Disciplinary Tribunal appointed pursuant to section 7 (1) and the Disciplinary Tribunal has recommended to the Governor that he or she ought to be removed for inability or unwillingness to discharge the functions of his or her office or for misbehavior or other good cause.

7. (1) Where the Governor, after consultation with the Premier and the Leader of the Opposition, considers that the question of removing a member of the Commission ought to be investigated, the Governor shall appoint a disciplinary tribunal which shall consist of three persons including, a religious leader, a Judge of the High Court, or an attorney at law of fifteen years standing, and who has practiced in the Virgin Islands or within the jurisdiction of the Organisation of the Eastern Caribbean States.

Disciplinary  
Tribunal.

(2) The Disciplinary Tribunal shall inquire into the matter and report on the facts thereof to the Governor and recommend to him or her whether the member should be removed from office.

(3) The Disciplinary Tribunal appointed under subsection (1) shall give the member an opportunity to show cause why he or she should not be removed from office.

(4) Where the question of removing a member has been referred to a Disciplinary Tribunal under this section, the Governor, after consultation with the Premier and the Leader of the Opposition, may suspend the member from the exercise of the functions of his or her office pending the hearing and determination of the matter.

(5) A suspension may, at any time, be revoked by the Governor and shall in any case cease to have effect if the Disciplinary Tribunal recommends to the Governor that the member should not be removed.

8. (1) A member of the Commission, other than the Chairperson, may at any time resign his or her office by giving one month's notice in writing addressed to the Governor and transmitted through the Chairperson.

Resignation of  
Members.

(2) The Chairperson may, at any time, resign his or her office by giving three months' notice in writing addressed to the Governor.

9. (1) A vacancy in the Commission shall be filled in the same manner as set out in section 4 (3) within thirty days of any such vacancy arising.

Vacancy in  
membership of  
Commission.

(2) A vacancy in the membership of the Commission shall occur

- (a) on the absence of a member from three consecutive meetings of the Commission, unless that absence is approved by the Chairperson in writing;
- (b) at the expiration of five years from the date of the appointment of a member;
- (c) on the death, resignation or revocation of the appointment, of a member;
- (d) if the member is appointed as a public officer; or
- (e) if the member is nominated as a candidate for election as a representative in the House of Assembly or is appointed the Speaker of the House of Assembly.

Publication in the  
*Gazette.*

**10.** The appointment, resignation, revocation, removal, or the death of a member of the Commission shall be published in the *Gazette*.

Meetings and  
Proceedings of  
Commission.

**11. (1)** The Commission shall meet at such times as may be expedient for the Commission to carry out its functions.

(2) A quorum of the Commission shall be three.

(3) At every meeting of the Commission the Chairperson shall preside, and in his or her absence the members present shall nominate one of their members to preside.

(4) The proceedings of the Commission shall not be affected by any vacancy amongst any of its members or by any defect in the appointment of any member.

Secretary to the  
Commission.

**12. (1)** The Commission shall appoint a Secretary to the Commission who shall

- (a) attend meetings of the Commission;
- (b) record the minutes of each meeting in proper form;
- (c) record the testimony of persons summoned to appear before the Commission; and
- (d) generally perform the duties connected with the work of the Commission and as directed by the Commission.

(2) A Secretary appointed pursuant to subsection (1) shall hold office for a period not exceeding four years.

(3) The Commission shall determine and specify the qualifications of the Secretary.

13. (1) Subject to subsection (2), the Commission may, to the extent and on the conditions it considers necessary to carry out its functions, Staff of the Commission.

(a) employ staff, whether full or part time; and

(b) engage on contract professional, technical or other assistance.

(2) The Commission shall ensure that members of its staff or persons appointed to undertake investigations are qualified to do so

(a) by virtue of previous employment; or

(b) after undergoing suitable training.

### PART III INVESTIGATION POWERS OF THE COMMISSION

14. The Commission shall hold such inquiries and conduct such investigations as it considers necessary in relation to any alleged corruption or a breach of any other provisions of this Act. Power of the Commission to hold inquiry.

15. (1) Any person who wishes to allege or make a complaint that a person in public life or any other person exercising a public function is in contravention of this Act may do so in writing to the Commission. Complaints.

(2) The complaint shall specify

(a) the person against whom the complaint is made;

(b) the details of the alleged act committed under this Act; and

(c) such other particulars as may be prescribed.

(3) The complaint may be made in writing to the Commission or orally before a member of staff designated to receive such complaints.

(4) Where a person makes an oral complaint pursuant to subsection (3), the complaint shall be reduced to writing by the person receiving the complaint

and the complainant shall affix his or her signature or mark, as the case may be, to the record.

(5) Where a person wishes to make a complaint of any contravention of this Act against any person exercising a public function but who is not subject to this Act, the Commission may assist the complainant to prepare the complaint and shall forward the complaint to the relevant regulatory or disciplinary body to which the person against whom the complaint is being made, is subject, whether in or out of the Virgin Islands.

(6) Any person who knowingly and mischievously makes or causes to be made a false report to the Commission or misleads the Commission by giving false information or by making false statements or accusations commits an offence and liable on conviction to a fine not exceeding twenty thousand dollars or to imprisonment for a term not exceeding three years or both.

Investigation of  
complaints.

16. (1) The Commission may, for the purposes of investigating complaints, require, by notice in writing, any person to supply information to it or produce a document or thing.

(2) An investigator may, upon production of his or her official Identification Card if so required, enter premises occupied or used by a public authority for the purposes of

- (a) searching for documents kept on the premises;
- (b) inspecting documents or other things kept on the premises;  
and
- (c) taking copies of relevant documents found on the premises.

(3) The public authority concerned shall make available to the investigator any facilities necessary to enable the investigator to exercise his or her powers under subsection (2).

(4) The investigator may seek a warrant for the purpose of entering private premises where the investigator reasonably suspects that it is necessary in furtherance of the investigation.

(5) Upon being granted the warrant pursuant to subsection (4) the investigator may enter the premises for the purposes of

- (a) searching for documents kept on the premises;
- (b) inspecting documents or other things kept on the premises; and

(c) taking copies of documents found on the premises, and subsection (3) shall apply to the owner or occupier of the premises.

17. (1) The Commission shall, in the performance of its functions to investigate complaints, have the power to

Power to summon and examine witnesses.

- (a) summon and examine witnesses;
- (b) administer oaths and affirmations, and receive evidence;
- (c) compelling the production of such books, records, papers and documents as it may consider necessary or proper for any proceeding, investigation or hearing held by it;
- (d) access the Register of Interest, established and maintained pursuant to the Virgin Islands Constitution Order 2007, in such circumstances as may be prescribed;
- (e) require that any document submitted to the Commission be verified by affidavit; and
- (f) request to examine witnesses abroad.

(2) The form for the summons of the attendance of a witness or any other person or the production of documents shall be in the Form set out in Schedule 2.

18.

(1) Where the Commission is satisfied, on the basis of an inquiry conducted pursuant to this Act that

Referral of matters.

- (a) a breach of any provision of this Act has been committed, it shall take such actions as it deems fit; or
- (b) an offence has been committed, it shall
  - (i) forthwith refer the matter to the Director of Public Prosecutions together with a report of its findings; and
  - (ii) forward to the Cabinet a report of its findings.

(2) Where the Commission determines that the subject matter of an inquiry under Act is

(a) under investigation by the police or that a charge has been laid;  
or

(b) the subject matter of any proceedings in a court of law;

the Commission shall hold its own inquiry in abeyance, pending the final disposition of that investigation and the court proceedings.

Non- suspects  
not to object to  
supplying  
information, etc.

**19. (1)** A person, other than a suspect, may not object to supplying information, document or thing pursuant to section 16 (1) on the grounds that it might tend to incriminate him or her.

(2) If objection is made, and such objection does tend to incriminate the person, then neither the fact that the requirement was made nor the statement, document or things supplied may be mentioned or used in any proceedings against that person.

(3) In this section, “suspect” means a person whom the investigator reasonably believes to have committed an offence under this Act, whether or not the person has been charged with that offence.

Obstruction of  
investigation.

**20.** A person in public life or any other person who

(a) obstructs or failed to assist an investigator who is duly authorised to carry out the powers conferred on him or her under section 16; or

(b) gives false or misleading information to the investigator or the Commission;

commits an offence and is liable, on conviction, to a fine not exceeding fifteen thousand dollars or to a term of imprisonment not exceeding two years.

#### **PART IV CONDUCT IN PUBLIC LIFE**

Code of  
Conduct.

**21. (1)** Subject to subsection (2), a person in public life shall observe, abide and conduct himself or herself in accordance with the Code of Conduct set out in Schedule 3, and to such other Code of Conduct as may be prescribed in relation to the conduct of public officials.

(2) Notwithstanding subsection (1), the Governor may prescribe, by regulations, such code of conduct with respect to public officers as the Governor considers fit.

(3) A person in public life shall, within the prescribed period of taking office, sign a copy of the relevant Code of Conduct and the Commission shall keep the signed copy of the said Code of Conduct.

22. (1) A person in public life shall ensure that he or she performs his or her functions and administers the public resources for which he or she is responsible in an effective and efficient manner and shall:

Use of office and conflict of interests.

- (a) be fair and impartial in exercising his or her public duty;
- (b) afford no undue preferential treatment to any group or individual; and
- (c) arrange his or her private interests, whether pecuniary or otherwise, in such a manner as to maintain public confidence and trust in his or her integrity.

(2) A person in public life shall not

- (a) use his or her office for the improper advancement of his or her own or his or her family's personal or financial interests or the interest of any person;
- (b) accept any position or have any commercial or other interest that is in conflicts with his or her office, function and duty or the execution of his or her duties, or that may be perceived as conflict of interest with his or her office, function and duty or the execution of his or her duties;
- (c) use public property or services for activities not related to his or her official work;
- (d) directly or indirectly use his or her office for private gain.

23. A person in public life shall not use information that is gained in the execution of his or her office and which is not available to the general public to further or seek to further his or her private interests.

Insider information.

24. A person in public life shall not use his or her office to seek to influence a decision made by another person or public body to further his or her own private interests.

Influence.

25. (1) A person in public life shall not accept a gift, fee or personal benefit that is connected directly or indirectly with the performance of the duties of his or her office, whether as a reward for any official act done by him or her, or as an inducement for any official act to be done by him or her or otherwise.

Gifts.

- (2) Subsection (1) does not apply to
  - (a) a gift or a personal benefit in such amount as may be prescribed by Regulations;
  - (b) a personal gift received by a person in public life from a relative or friend; or
  - (c) an official gift, received as an incident of the protocol or social obligations that normally accompany the responsibilities of office.

(3) Where a person in public life accepts a gift in the circumstances referred to in subsection (2)(c), the person shall make a report to the Commission and to the Deputy Governor, in the prescribed manner and within such period as may be prescribed.

## PART V CORRUPTION

Provisions of this Part in addition to any other law.

**26.** The provisions of this Part are in addition to and not in derogation of the provisions of the Criminal Code, any other law or the Common law.

Powers of appropriate disciplinary authority preserved.

**27.** This Part shall be without prejudice to the powers conferred upon the appropriate disciplinary authority by the Constitution.

Acts of corruption.

- 28. (1)** A person in public life commits corruption if he or she
- (a) seeks or accepts personal or private benefit for himself or herself or a member of his or her family or person associated with him or her, whether or not the benefit places him or her under an obligation to the person given or offering the benefit;
  - (b) solicits or accepts, whether directly or indirectly, any article or money or other benefit or advantage for himself or herself or another person for doing any act or omitting to do any act in the performance of his or her functions as a public official;
  - (c) offers or gives, directly or indirectly, to a public official any article, money or other benefit or advantage for doing any

act or omitting to do any act in the performance of the public official's duties;

- (d) knowingly or recklessly allows his or her private interest to conflict with his or her public duties or improperly influence his or her conduct in the performance of his or her duties as a public official;
- (e) improperly uses for his or her own benefit or for anyone else, any property belonging to the Government or any statutory body or any government controlled company to which he or she has access as a result of or in the course of, the performance of his or her duties;
- (f) acts as an intermediary, or through another person seeks to obtain a decision from any Ministry or Department of the Government or any statutory body or any government-controlled company, in order that he or she may improperly obtain for himself or herself or for another person any benefit or gain;
- (g) improperly influences in support of any scheme or in furtherance of any contract or proposed contract or other matter in regard to which he or she has an interest;
- (h) offers or gives, directly or indirectly to a government official of another State, any gift or money or other benefit, in connection with any economic or commercial transaction for an act to be performed or omitted to be performed by that person in the performance of his or her public duties;
- (i) uses public funds or resources for private purposes, including party political purposes;
- (j) fails to act impartially, or gives undue preferential treatment to a person or group of persons;
- (k) misuses information acquired in the course of his or her duties;
- (l) acts in a way that allows or might reasonably be thought to allow, a conflict of interest to arise between the public duties and the private interests of the person in public life;
- (m) interferes in, or seeks to influence, otherwise than as part of his or her duty, the appointment, promotion, suspension,

demotion or dismissal of a person in public life or other person;

- (n) induces or encourages another officer to act contrary to the relevant Code of Conduct; or
- (o) instigates, aids, abets or is an accessory after the fact or participates in the commission or attempted commission of corruption in this section.

(2) A person who commits corruption commits an offence and is liable on conviction to a fine not exceeding thirty thousand dollars or to imprisonment for a term not exceeding five years.

## PART VI FINANCIAL PROVISIONS

Funds of the Commission.

**29.** The funds of the Commission shall consist of funds as may, from time to time, be appropriated by the House of Assembly and other moneys as may be lawfully received by or made available to the Commission for the purposes of this Act.

Estimates of the Commission.

**30. (1)** The Commission shall, on or before the 30<sup>th</sup> day of September of each year, submit to the Minister for Finance for his or her approval, its estimates of expenditure in respect of the next financial year.

(2) For the purpose of this part “financial year” means the period January 1<sup>st</sup> to December 31<sup>st</sup> of each year.

Accounts and Audits.

**31.** The Commission shall keep proper accounts of receipts, payments, assets and liabilities, and those accounts shall be audited annually by the Auditor General or such other Auditor appointed by the Auditor General for that purpose.

Annual Reports.

**32. (1)** The Commission shall, in each year and at such time as the Minister shall direct, prepare and forward to the Minister a report of its activities during the previous financial year, including a statement of its accounts audited in accordance with section 31.

(2) A copy of the report together with the Auditor’s report shall be laid before the House of Assembly.

## PART VII MISCELLANEOUS PROVISIONS

33. No prosecution for an offence under this Act, other than an offence committed under section 20, may be instituted after ten years from the date when the person in public life in respect of who the alleged offence was committed, ceased to be a person in public life.

Prosecutions.

34. (1) A member of the Commission and every person performing any function in the service of, or as an employee of, the Commission shall keep confidential, all information relating to the deliberations, proceedings, and the records of the Commission which he or she has acquired in his or her capacity as a Commissioner or an employee of the Commission, except as required for an inquiry in respect of any matter under this Act, or in respect of a written request from a Commissioner of Inquiry, or on the order of a court of competent jurisdiction.

Information not to be communicated to unauthorised persons.

(2) A person who contravenes subsection (1) commits an offence and shall be liable, on summary conviction, to a fine not exceeding ten thousand dollars or to a term of imprisonment not exceeding one year or both.

(3) An authorised person who publishes information which comes to his or her knowledge pursuant to subsection (1) to an unauthorised person commits an offence and is liable, on conviction, to a fine not exceeding ten thousand dollars or to a term of imprisonment not exceeding one year or both.

(4) For the purpose of this section, an unauthorised person is a person other than a person authorised to receive information under this Act or pursuant to a Court order.

35. Members of the Commission and staff of the Commission shall, before assuming the functions of his or her office, take the oath or make the affirmation set out in Schedule 3, to be administered by the Governor.

Oath.

36. A person in public life who is required to attend an inquiry under this Act may be accompanied and represented by a legal practitioner or other representative of his or her choice.

Legal representation.

37. (1) Where a person in public life is a member of the House of Assembly, that person shall, with regard to any matter being debated, or in relation to which he or she intends to ask a question, which is a matter or question in which he or she, his or her spouse or dependent child has a personal interest, disclose that interest to the House of Assembly.

Disclosure of interests in debates and questions.

(2) For the purposes of subsection (1), it is immaterial that the person in public life does not intend to participate in the debate of, or ask a question in relation to, the matter before the House of Assembly.

Protection of witnesses.

**38.** No person summoned as a witness to give evidence before the Commission shall be compelled to incriminate himself or herself and such person shall in respect of any evidence given by him or her before the Commission, be entitled to all the privileges to which a witness giving evidence before the High Court is entitled in respect of evidence given by him or her before such Court.

Immunity from suit.

**39.** No action shall be brought against the Commission, a Commissioner or a person acting under the direction of the Commission for an act done or omitted to be done in the execution of his or her functions under this Act, unless it is shown that he or she acted in bad faith.

Offences and penalties.

**40. (1)** A person who

- (a) fails, without reasonable cause, to attend an inquiry being conducted for the purposes of this Act or knowingly gives any false information in such inquiry; or
- (b) a person who fails, without reasonable cause, to furnish to the Commission such further particulars which he or she is required to furnish in accordance with this Act;
- (c) knowing or having reasonable grounds to believe that information received by him or her is communicated to him or her in contravention of this Act, fails to notify the Commission of that fact; or
- (d) makes any frivolous or vexatious complaint to the Commission,

commits an offence and is liable on summary conviction to a fine not exceeding thirty thousand dollars or to imprisonment for a term not exceeding five years, or both.

(2) A person in public life who misconducts himself or herself or neglects to perform his or her duties to such a degree as to amount to an abuse of public trust in the office holder, commits an offence, and is liable, on conviction, to a fine not exceeding twenty thousand dollars or to imprisonment for a term not exceeding two years.

(3) A person who aids, abets, or facilitates another person in commission of an offence under subsection (1) commits an offence and is liable on conviction, to the same penalty as provided for in subsection (1).

(3) For the purpose of subsection (1)(c), where evidence shows that the person concerned solicited or induced the communication of the information to

him or her, he or she commits an offence whether or not he or she informed the Commission of the receipt of such information.

(4) Where a person is convicted of an offence under section 28, the Court may, in addition to any penalty imposed on him or her for that offence, make an order of forfeiture of any property in possession or control of that person that has been, or which the Court has reasonable grounds to believe was unlawfully acquired and

(a) where property involved is situated in the Virgin Islands declare that it be forfeited to the Government; or

(b) where the property involved is situated outside the Virgin Islands, ordered that an amount equivalent to the value of property, be paid by the person in public life to the Government.

(5) Any property acquired from a person referred to under subsection (4) by a *bona fide* purchaser for value without notice of any offence by that person shall not be liable to forfeiture, but an amount equivalent to the value of the property or the price paid by the purchaser, whichever is the greater shall be paid by the person in public life to the Government.

(6) The payment of all sums due to the Government pursuant to subsection (4) (b) or subsection (5) may be enforced as a debt due to the Government and any proceedings thereon behalf of the Government may be taken.

41. Nothing in this Act shall be applied in such a way as to abrogate the immunities, powers and privileges of the House of Assembly or any member of the House of Assembly.

Preservation of immunities, powers and privileges of the House of Assembly.

42. The Minister may, with the agreement of the Governor, amend the Schedules by Order published in the *Gazette*.

Power to amend Schedules.

43. (1) The Minister may make regulations, not inconsistent with this Act, to give effect to the provisions of this Act.

Regulations.

(2) Regulations made under this Act shall be subject to a negative resolution of the House of Assembly.

## **SCHEDULE 1**

[Section 2]

### **PERSONS IN PUBLIC LIFE**

1. Members of the House of Assembly
2. Members of the board or other governing body of a public body and other officers (by whatever name called)
3. All Public Officers

**SCHEDULE 2**

[Section 17(2)]

**FORMS**

**Form 1**

**INTEGRITY IN PUBLIC LIFE ACT NO. ( of 2021)**

**SUMMONS TO WITNESS BEFORE THE INTEGRITY COMMISSION**

A, B, Complainant

C, D, (name of person in public life alleged to be in breach of this Act or the Code of Conduct)

To: E, G, of

.....  
Whereas a complaint has been made before the Integrity Commission that C, D, (state concisely the substance of the complaint) and it has been made to appear to the Commission that you are likely to give material evidence on behalf of the Complainant/ person in public life in this behalf:

This is to require you to be and appear at .....  
o'clock on the .....Day of ....., 20.... At  
..... before the Commission in the said place, to testify what you know concerning the matter of the complaint.

Dated this .....day of .....20....

\_\_\_\_\_  
Chairperson of Integrity Commission

## **SCHEDULE 3**

[Section 21(1)]

### **CODE OF CONDUCT**

#### **PART I GENERAL PRINCIPLES**

1. A person in public life has the duty to take all necessary action to comply with the provision of this Code.
2. A person in public life should carry out his or her duties in accordance with the law and with lawful instruction and ethical standards which relate to his or her functions.
3. A person in public life should act in a politically neutral manner and should not attempt to frustrate the lawful policies, decisions, or citations of a public authority.
4. A person in public life has the duty to serve loyally.
5. A person in public life shall be honest, impartial, and efficient and shall perform his or her duties to the best of his or her ability with skill, fairness, understanding, having regard only for the public interest and the relevant circumstances of the case.
6. In the performance of his or her duties a person in public life shall not act arbitrarily to the detriment of any person, group or body and shall have regard for the rights, duties and proper interest of all others.
7. A person in public life shall not allow his or her private interest to conflict with his or her public position or function. It shall be the responsibility of the person in public life to avoid such conflicts of interest, whether real, potential, or apparent and where such conflicts are unavoidable, to fully explain the conflict to any person in public life above that person or where the conflict is in relation to a Minister of Government, to the Cabinet, or where the conflict is in relation to an elected representative, to the House of Assembly.
8. A person in public life shall not take advantage of his or her position for his or her private interest.

9. A person in public life shall always conduct himself or herself in such a way that the public's confidence and trust in the integrity, impartiality and effectiveness of the public service are preserved and enhanced.
10. Having due regard for the right of access to officer information, a person in public life shall have a duty to treat appropriately with all necessary confidentiality all information and documents acquired by him or her in the course of, or as a result of, his or her employment.
11. A person in public life who believes that he or she is being required to act in a way which is unlawful, improper, unethical, which involves maladministration, or which is otherwise inconsistent with this Code should report the matter in accordance with the law.

## **PART II CONFLICT OF INTEREST**

12. A conflict of interest arises from a situation in which a person in public life has a private interest which is such as to influence, or appear to influence, the impartial and objective performance of his or her official duties.
13. A person in public life private interest includes any advantage to himself or herself, to his or her family, close relatives, friends and persons or organization with whom he or she has had business or potential relations. It includes any liability whether financial or work relating thereto.
14. Since the person in public life is usually the only person who knows whether he or she is in that situation, he or she has a personal responsibility to:
  - (a) be alert to any actual or potential conflict of interest;
  - (b) take steps to avoid such conflict;
  - (c) disclose to his or her superiors any such conflict as soon as he or she becomes aware of it;
  - (d) comply with any final decision to withdraw from the decision or to divest himself or herself of the advantage causing the conflict.
15. Whenever required to do so, a person in public life should declare whether or not he or she has a conflict of interest.

**PART III  
INCOMPATIBLE OUTSIDE INTERESTS**

16. A person in public life shall not engage in any activity or transaction or acquire any position or function whether paid or unpaid, that is incompatible with or detracts from the proper performance of his or her duties as a person in public life. Where it is not clear whether an activity is compatible, he or she should seek advice from the Commission.
17. A person in public life shall comply with any lawful requirement to declare membership of, or association with, organization that could detract from his or her proper performance of his or her duties as a person in public life.

**PART IV  
POLITICAL OR PUBLIC ACTIVITY**

18. Subject to respect for fundamental and constitutional rights, a person in public life shall ensure that none of his or her political activities or involvement or political or public debates impairs the confidence of the public and his or her employers in his or her ability to perform his or her duties impartially and loyally.
19. In the exercise of his or her duties, a person in public life shall not allow himself or herself to be used or his or her office to be used for partisan political purposes.
20. A person in public life shall comply with any restrictions in political activity lawfully imposed on certain persons in public life by reason for his or her position or the nature of his or her duties.

**PART V  
REACTION TO IMPROPER OFFERS**

21. If a person in public life is offered an undue advantage here she should take the following steps to protect himself or herself
  - (a) refuse the undue advantage;
  - (b) try to identify the person who made the offer;
  - (c) avoid lengthy contracts with the person who made the offer;
  - (d) if the gift cannot be refused or returned to the sender, it should be preserved, but handled as little as possible;

- (e) obtain witnesses if possible, such as colleagues working nearby;
- (f) prepare as soon as possible a written record of the attempt; preferably in an officer notebook;
- (g) report the attempt as soon as possible to the Commission;
- (h) continue to work normally, particularly on the matter in relation to which the undue advantage was offered.

**PART VI**  
**SUSCEPTIBILITY TO INFLUENCE BY OTHERS**

- 22. A person in public life should not allow himself or herself to be put in a position of obligation to return a favour to any person or body; nor should his or her conduct in his or her official capacity or in his or her public life make him or her susceptible to improper influence of others.
- 23. The person in public life should not seek to influence for private purposes any person or body including other person in public life by using his or her official position or by offering them personal advantages.

**PART VII**  
**INFORMATION HELD BY PUBLIC AUTHORITIES**

- 24. Having respect to the framework provided by any law with respect to access to information held by a public authority, a person in public life shall not disclose information in accordance with the rules and requirements applying to the authority by which he or she is employed.
- 25. The person in public life should take appropriate steps to protect the security and confidentiality of information for which he or she is responsible or for which he or she becomes aware.
- 26. The person in public life should not seek access to information which is inappropriate for him or her to have and he should not make improper use of information which he or she may acquire in the course of, or arising from his or her employment.
- 27. Equally, a person in public life has a duty not to withhold official information that should properly be released and a duty not to provide information which he or she knows or has reasonable grounds to believe is false or misleading.
- 28. This Code shall form part of the terms of employment of a person in public life and shall be observed a terms of employment.

**SCHEDULE 4**

[Section 35]

**OATH OR AFFIRMATION OF CONFIDENTIALITY**

I, (name), (office), solemnly swear / affirm\* that in the performance of my duties and functions I shall keep confidential, all information which comes to my knowledge relating to the deliberations, proceedings, and the records of the Commission, and shall not disclose or communicate or use any such information, except as authorised by and in accordance with the law.

So help me God! (omit if affirming)

.....  
(Signature of person swearing / affirming)

Sworn /Affirmed\* before me this        day of        , 20

Governor.

Passed by the House of Assembly on this        day of        , 2021.

Speaker.

Clerk of the House of Assembly.

## OBJECTS AND REASONS

This Bill seeks to establish an Integrity Commission which would assist in achieving the Government's objectives to promote good governance, to enhance ethical conduct of public officials and to strengthen the prevention and detection of corrupt acts by persons in public life.

The Bill consists of seven parts.

Part I (clauses 1 - 3) provides for preliminary matters.

The preliminary provisions would provide for the short title and commencement of the Act, as well as define various terms used throughout the Act. It would also provide for the Act to apply to every person in public life.

Part II (clauses 4 - 13) would provide for the establishment of the Integrity Commission. It would provide for the functions of the Commission and the appointment of the members, their term of appointment and removal from office. This part would also provide for the Governor to remove a member after consultation with the Premier and the Leader of the Opposition and on the recommendation of the Disciplinary Tribunal.

Part III (clauses 14 - 20) would provide for powers of investigation. The Commission would have the power to inquire into complaints that a person in public life may have breached the Act including committing corruption. The Commission would be empowered to enter premises occupied or used by a public authority, and search for documents, inspect documents and take copies of documents. In the performance of its function to inquire into complaints, the Commission would have the power to summons and examine witnesses, administer oaths and affidavits, compel the production of documents etc. Where the Commission that there is a breach of a provision of this Act, the Commission would be required to refer the matter to the DPP and forward a report of its findings to the Governor. This part would also prohibit a person who is not suspected of committing an offence from objecting to the supply of information and documents on the grounds that it might tend to incriminate him or her. It would be an offence to obstruct an investigation under this Act.

Part IV (clauses 21 - 25) would provide for conduct in public life. It would provide for a person in public life to observe the code of conduct specified in Schedule 3 and for the Governor to prescribe a code of conduct with respect to public officers.

This part would also require persons in public life to be fair and impartial, to maintain public confidence in their integrity, to avoid conflicts of interests, to refrain from using their office and information obtained by virtue of their office for private gain, to refuse gifts that are connected with the performance of their duties.

Part V (clauses 26 - 28) would provide for the acts which would constitute Acts of corruption under this Act, including,

- soliciting or accepting, whether directly or indirectly, any article or money or other benefit, or advantage for doing any act or omitting to do any act in the performance of his or her functions as a public official;
- offering directly or indirectly, to a public official any article, money or other benefit or advantage for doing any act or omitting to do any act in the performance of the public official's duties;
- knowingly or recklessly allowing one's private interest to conflict with his or her public duties or improperly influencing his or her conduct in the performance of his or her duties as a public official.

This Part would be in addition to the existing laws and without prejudice to the powers conferred upon a relevant disciplinary authority under the Constitution.

Part VI (clauses 29 - 32) would provide for financial provisions. This part would provide for the funds of the Commission and for proper accounts and other records of all income and expenditure of the Commission to be kept. The Commission would be required to submit to the Minister for Finance an annual report on its activities for each year and a copy of the report together with the Auditor's Report shall be laid before the House of Assembly.

Part VI (clauses 28 - 39) would provide for miscellaneous matters. A member of the House of Assembly would be required to disclose any interest in debates and questions that the Member may have in relation to any matter being debated or any question the Member intends to ask at a sitting of the House of Assembly. It would also provide for protection of witnesses, granting immunity from suit for actions done in good faith in the execution of duties, the forfeiture of property unlawfully acquired by a person in public life and for the making of regulations which would be subject to a negative resolution of the House of Assembly.

Part VII (clauses 33 - 43) would provide for miscellaneous matters. Prosecutions under the Act would be limited to ten years within the occurrence of the offence except for an offence under section 20 which provides for obstruction of an investigation being conducted under the Act. This part also provides for matters to be referred to the Director of Public Prosecutions where the Commission is satisfied that there is a breach of the Act.

Premier

**47° Georgii III, Session 1, cap. XXXVI**

**An Act for the Abolition of the Slave Trade.**

[25th *March* 1807.]

I. 'Whereas the Two Houses of Parliament did, by their Resolutions of the Tenth and Twenty-fourth days of *June* One Thousand eight hundred and six, severally resolve, upon certain Grounds therein mentioned, that they would, with all practicable Expedition, take effectual Measures for the Abolition of the *African* Slave Trade in such Manner, and at such Period as might be deemed advisable, And whereas it is fit upon all and each of the Grounds mentioned in the said Resolutions, that the same should be forthwith abolished and prohibited, and declared to be unlawful';

From May 1, 1807, the Slave trade shall be abolished.

Penalty for trading in or purchasing Slaves, &c. 100*l.* for each Slave.

Be it therefore enacted by the King's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, That from and after the First Day of *May* One thousand eight hundred and seven, the *African* Slave Trade, and all and all manner of dealing and trading in the Purchase, Sale, Barter, or Transfer of Slaves, or of Persons intended to be sold, transferred, used, or dealt with as Slaves, practiced or carried on, in, at, to or from any Part of the Coast or Countries of *Africa*, shall be, and the same is hereby utterly abolished, prohibited, and declared to be unlawful; and also that all and all manner of dealing, either by way of Purchase, Sale, Barter, or Transfer, or by means of any other Contract or Agreement whatever, relating to any Slaves, or to any Persons intended to be used or dealt with as Slaves, for the Purpose of such Slaves or Persons being removed or transported either immediately or by Transshipment at Sea or otherwise, directly or indirectly from *Africa*, or from any Island, Country, Territory, or Place whatever, in the *West Indies*, or in any other part of *America*, not being in the Dominion, Possession, or Occupation of His Majesty, to any other Island, Country, Territory, or Place what ever, is hereby in like Manner utterly abolished, prohibited, and

declared to be unlawful; and if any of His Majesty's Subjects, or any Person or Persons resident within this United Kingdom, or any of the Islands, Colonies, Dominions, or Territories thereto belonging, or in His Majesty's Occupation or Possession, shall from and after the Day aforesaid, by him or themselves, or by his or their Factors or Agents or otherwise howsoever, deal or trade in, purchase, sell, barter, or transfer, or contract or agree for the dealing or trading in, purchasing, selling, bartering, or transferring of any Slave or Slaves, or any Person or Persons intended to be sold, transferred, used, or dealt with as a Slave or Slaves contrary to the Prohibitions of this Act, he or they so offending shall forfeit and pay for every such Offence the Sum of One hundred Pounds of lawful Money of *Great Britain* for each and every Slave so purchased, sold, bartered, or transferred, or contracted or agreed for as aforesaid, the One Moiety thereof to the Use of His Majesty, His Heirs and Successors, and the other Moiety to the Use of any Person who shall inform, sue, and prosecute for the same.

Vessels fitted out in this Kingdom or the Colonies, &c. for carrying on the Slave Trade shall be forfeited.

II. And be it further enacted, that from and after the said First Day of *May* One thousand eight hundred and seven, it shall be unlawful for any of His Majesty's Subjects, or any Person or Persons resident within this United Kingdom, or any of the Islands, Colonies, Dominions, or Territories thereto belonging, or in His Majesty's Possession or Occupation, to fit out, man, or navigate, or to procure to be fitted out, manned, or navigated, or to be concerned in the fitting out, manning, or navigating, or in the procuring to be fitted out, manned, or navigated, any Ship or Vessel for the Purpose of assisting in, or being employed in the carrying on of the *African* Slave Trade, or in any other the Dealing, Trading, or Concerns hereby prohibited and declared to be unlawful, and every Ship or Vessel which shall, from and after the Day aforesaid, be fitted out, manned, navigated, used, or employed by any such Subject or Subjects, Person or Persons, or on his or their Account, or by his or their Assistance or Procurement for any of the Purposes aforesaid, and by this Act prohibited, together with all her Boats, Guns, Tackle, Apparel, and Furniture, shall become forfeited,

and may and shall be seized and prosecuted as herein-after is mentioned and provided.

Persons prohibited from carrying as Slaves Inhabitants of Africa, the West Indies, or America, from one Place to another, or being concerned in receiving them &c.

Vessels employed in such Removal, &c. to be forfeited, as also the Property in the Slaves.

Owners, &c. so employed to forfeit 100/. for each Slave.

III. And be it further enacted, That from and after the said First Day of *May*, One thousand eight hundred and seven, it shall be unlawful for any of His Majesty's Subjects, or any Person or persons, resident in this United Kingdom, or in any of the Colonies, Territories, or Dominions thereunto belonging or in His Majesty's Possession or Occupation, to carry away or remove, or knowingly and willfully to procure, aid, or assist in the carrying away or removing, as Slaves, or for the purpose of being sold, transferred, used, or dealt with as Slaves, any of the Subjects or Inhabitants of *Africa*, or any Island, Country, Territory, or Place in the *West Indies*, or any part of *America* whatsoever, not being in the Dominion, Possession, or Occupation of his Majesty, either immediately or by Transshipment at Sea or otherwise, directly or indirectly from *Africa* or from any such Island, Country, territory, or Place as aforesaid, to any other Island, Country, Territory, or Place whatever, and that it shall also be unlawful for any of His Majesty's Subjects, or any Person or Persons resident in this United Kingdom, or in any of the Colonies, Territories, or Dominions thereunto belonging, or in His Majesty's Possession or Occupation, knowingly and willfully to receive, detain, or confine on board, or to be aiding, assisting, or concerned in the receiving, detaining, or confining on board of any Ship or Vessel whatever, any such Subject or Inhabitant as aforesaid, for the Purpose of his or her being so carried away or removed as aforesaid, or of his or her being sold, transferred used, or dealt with as a Slave, in any Place or Country whatever; and if any Subject or Inhabitant, Subjects or Inhabitants of *Africa*, or of any Island, Country, Territory, or Place in the *West Indies* or *America*, not being in the Dominion, Possession, or Occupation of His Majesty, shall from and after the Day aforesaid, be so unlawfully carried away or removed, detained, confined, transshipped, or received on board of any Ship or Vessel belonging in the Whole or in Part to, or employed by any Subject of His Majesty, or Person residing in His Majesty's Dominions or Colonies, or any Territory

belonging to or in the Occupation of His Majesty, for any of the unlawful Purposes aforesaid, contrary to the Force and Effect, true Intent and Meaning of the Prohibitions in this Act contained, every such Ship or Vessel in which any such Person or Persons shall be so unlawfully carried away or removed, detained, confined, transshipped, or received on board for any of the said unlawful Purposes, together with all her Boats, Guns, Tackle, Apparel, and Furniture, shall be forfeited, and all Property or pretended Property in any Slaves or Natives of *Africa* so unlawfully carried away or removed, detained, confined, transshipped or received on board, shall also be forfeited, and the same respectively shall and may be seized and prosecuted as herein-after is mentioned and provided; and every Subject of His Majesty, or Person resident within this *United Kingdom*, or any of the Islands, Colonies, Dominions, or Territories thereto belonging, or in His Majesty's Possession or Occupation who shall, as Owner, Part Owner, Freighter or Shipper, Factor or Agent, Captain, Mate, Supercargo, or Surgeon, so unlawfully carry away or remove, detain, confine, transship, or receive on board, or be aiding or assisting in the carrying away, removing, detaining, confining, transshipping, or receiving on board, for any of the unlawful Purposes aforesaid, any such Subject or Inhabitant of *Africa*, or of any Island, Country, Territory, or Place, not being in the Dominion, Possession, or Occupation of His Majesty, shall forfeit and pay for each and every Slave or Person so unlawful carried away, removed, detained, confined, transshipped, or received on board, the Sum of One hundred Pounds of lawful Money of *Great Britain*, One Moiety thereof to the Use of His Majesty, and the other Moiety to the Use of any Person who shall inform, sue, and prosecute for the same.

Subjects of Africa, &c. unlawfully carried away and imported into any British Colony, &c. as Slaves, shall be forfeited to His Majesty.

IV. And be it further enacted, That if any Subject or Inhabitant, Subjects or Inhabitants of *Africa*, or of any Island, Country, Territory, or Place, not being in the Dominion, Possession, or Occupation of His Majesty, who shall, at any Time from and after the Day aforesaid, have been unlawfully carried away or removed from *Africa*, or from any Island, Country, Territory, or

Place, in the *West Indies* or *America*, not being in the Dominion, Possession, or Occupation of His Majesty, contrary to any of the Prohibitions or Provisions in this Act contained, shall be imported or brought into any Island, Colony, Plantation, or Territory, in the Dominion, Possession, or Occupation of His Majesty, and there sold or disposed of as a Slave or Slaves, or placed, detained, or kept in a State of Slavery, such Subject or Inhabitant, Subjects or Inhabitants, so unlawfully carried away, or removed and imported, shall and may be seized and prosecuted, as forfeited to His Majesty, by such Person or Persons, in such Courts, and in such Manner and Form, as any Goods or Merchandize unlawfully imported into the same Island, Colony, Plantation, or Territory, may now be seized and prosecuted therein, by virtue of any Act or Acts of Parliament now in force for regulating the Navigation and Trade of his Majesty's Colonies and Plantations, and shall and may, after his or their Condemnation, be disposed of in Manner herein-after mentioned and provided.

Insurances on Transactions concerning the Slave Trade not lawful. Penalty 100/. and treble the Amount of the Premium.

V. And be it further enacted, That from and after the said First Day of *May* One Thousand eight hundred and seven, all Insurances whatsoever to be effected upon or in respect to any of the trading, dealing, carrying, removing, transshipping, or other Transactions by this Act prohibited, shall be also prohibited and declared to be unlawful; and if any of His Majesty's Subject's, or any Person or Persons resident within this United Kingdom, or within any of the Islands, Colonies, Dominions, or Territories thereunto belonging, or in His Majesty's Possession or Occupation, shall knowingly and willfully subscribe, effect, or make, or cause or procure to be subscribed, effected, or made, any such unlawful Insurances or Insurance, he or they shall forfeit and pay for every such Offence the Sum of One hundred Pounds for every such Insurance, and also Treble the Amount paid or agreed to be paid as the Premium of any such Insurance, the One Moiety thereof to the Use of His Majesty, His Heirs and Successors, and the other Moiety to the Use of any Person who shall inform, sue, and prosecute for the same.

Act shall not affect the trading in Slaves, exported from Africa in Vessels cleared out from Great Britain on or before May 1, 1807, and landed in the West Indies by March 1, 1808, &c.

VI. Provided always, That nothing herein contained shall extend, or be deemed or construed to extend, to prohibit or render unlawful the dealing or trading in the Purchase, Sale, Barter, or Transfer, or the carrying away or removing for the Purpose of being sold, transferred, used, or dealt with as Slaves, or the detaining or confining for the Purpose of being so carried away or removed, of any Slaves which shall be exported, carried, or removed from *Africa*, in any Ship or Vessel which, on or before the said First Day of *May* One thousand eight hundred and seven, shall have been lawfully cleared out from *Great Britain* according to the Law now in force for regulating the carrying of Slaves from *Africa*, or to prohibit or render unlawful the manning or navigating any such Ship or Vessel, or to make void any Insurance thereon, so as the Slaves to be carried therein shall be finally landed in the *West Indies* on or before the First Day of *March* One thousand eight hundred and eight, unless prevented by Capture, the Loss of the Vessel, by the Appearance of an Enemy upon the Coast, or other unavoidable Necessity, the Proof whereof shall lie upon the Party charged; any Thing herein-before contained to the contrary notwithstanding.

Slaves taken as Prize of War, or seized as Forfeitures, shall be condemned as prize, or forfeited to the King, for the Purpose of putting an End to their Slavery, and may be enlisted &c.

VII. 'And whereas it may happen, That during the present or future Wars, Ships or Vessels may be seized or detained as Prize, on board whereof Slaves or Natives of *Africa*, carried and detained as Slaves, being the Property of His Majesty's Enemies, or otherwise liable to Condemnation as Prize of War, may be taken or found, and it is necessary to direct in what manner such Slaves or Natives of *Africa* shall be hereafter treated and disposed of: And whereas it is also necessary to direct and provide for the Treatment and Disposal of any Slaves or Natives of *Africa* carried, removed, treated or dealt with as Slaves, who shall be unlawfully carried away or removed contrary to the Prohibitions aforesaid, or any of them, and shall be afterwards found on board any Ship or Vessel liable to Seizure under this Act, or any other Act of Parliament made for restraining or prohibiting the *African* Slave Trade, or shall be elsewhere lawfully seized as forfeited under this or any

other such Act of Parliament as aforesaid; and it is expedient to encourage the Captors, Seizors, and Prosecutors thereof;' Be it therefore further enacted, That all Slaves and all Natives of *Africa*, treated, dealt with, carried, kept, or detained as Slaves which shall at any Time from and after the said First Day of *May* next be seized or taken as Prize of War, or liable to Forfeiture, under this or any other Act of Parliament made for restraining or prohibiting the *African* Slave Trade, shall and may, for the Purposes only of Seizure, Prosecution, and Condemnation as Prize or as Forfeitures, be considered, treated, taken, and adjudged as Slaves and Property in the same manner as Negro Slaves have been heretofore considered, treated, taken, and adjudged, when seized as Prize of War, or as forfeited for any Offence against the Laws of Trade and Navigation respectively, but the same shall be condemned as Prize of War, or as forfeited to the sole Use of His Majesty, His Heirs and Successors, for the Purpose only of divesting and bearing all other Property, Right, Title, or Interest whatever, which before existed, or might afterwards be set up or claimed in or to such Slaves or Natives of *Africa* so seized, prosecuted, and condemned; and the same nevertheless shall in no case be liable to be sold, disposed of, treated or dealt with as Slaves, by or on the Part of His Majesty, His Heirs or Successors, or by or on the Part of any Person or Persons claiming or to claim from, by, or under His Majesty, His Heirs and Successors, or under or by force of any such Sentence or Condemnation: Provided always, that it shall be lawful for His Majesty, His Heirs and Successors, and such Officers, Civil or Military, as shall, by any general or special Order of the King in Council, be from Time to Time appointed and empowered to receive, protect, and provide for such Natives of *Africa* as shall be so condemned, either to enter and enlist the same, or any of them, into His Majesty's Land or Sea Service, as Soldiers, Seamen, or Marines, or to bind the same, or any of them, whether of full Age or not, as Apprentices, for any Term not exceeding Fourteen Years, to such Person or Persons, in such Place or Places, and upon such Terms and Conditions, and subject to such Regulations, as

to His Majesty shall seem meet, and shall by any general of special Order of His Majesty in Council be in that Behalf directed and appointed; and any Indenture of Apprenticeship duly made and executed, by any Person or Person to be for the Purpose appointed by any such Order in Council, for any Term not exceeding Fourteen Years, shall be of the same Force and Effect as if the party thereby bound as an Apprentice had himself or herself, when of full Age upon good Consideration, duly executed the same; and every such Native of *Africa* who shall be so enlisted or entered as aforesaid into any of His Majesty's Land or Sea Forces as a Soldier, Seaman, or Marine, shall be considered, treated, and dealt with in all Respects as if he had voluntarily so enlisted or entered himself.

Certain Bounties shall be paid for such Slaves to the Captors as Head Money is paid under 45 G.3. c.72. § 5.

VIII. Provided also, and be it further enacted, That where any Slaves or Natives of *Africa*, taken as Prize of War by any of His Majesty's Ships of War, or Privateers duly commissioned, shall be finally condemned as such to His Majesty's Use as aforesaid, there shall be paid to the Captors thereof by the Treasurer of His Majesty's Navy, in like Manner as the Bounty called Head Money is now paid by virtue of an Act of Parliament, made in the Forty-fifth Year of His Majesty's Reign, intituled, *An Act for the Encouragement of Seamen, and for the better and more effectually manning His Majesty's Navy during the present War*, such Bounty as His Majesty, His Heirs and Successors, shall have directed by any Order in Council, so as the same shall not exceed the Sum of Forty Pounds lawful Money of *Great Britain* for every Man, or Thirty Pounds of like Money for every Woman, or Ten Pounds of like Money for every Child or Person not above Fourteen Years old, that shall be so taken and condemned, and shall be delivered over in good Health to the proper Officer or Officers, Civil or Military, so appointed as aforesaid to receive, protect, and provide for the same; which Bounties shall be divided amongst the Officers, Seamen, Marines, and Soldiers on Board His Majesty's Ships of War, or hired armed Ships, in Manner, Form, and Proportion, as by His Majesty's Proclamation for granting the Distribution of Prizes already issued, or to be issued for the Purpose is or shall

be directed and appointed, and amongst the Owners, Officers, and Seamen of any private Ship or Vessel of War, in such Manner and Proportion as, by an Agreement in Writing that they shall have entered into for that Purpose, shall be directed.

Certificates to entitle to Bounty.

IX. Provided always, and be it further enacted, That in order to entitle the Captors to receive the said Bounty Money, the Numbers of Men, Women, and Children, so taken, condemned, and delivered over, shall be proved to the Commissioners of His Majesty's Navy, by producing, instead of the Oaths and Certificates prescribed by the said Act as to Head Money, a Copy, duly certified, of the Sentence or Decree of Condemnation, whereby the Numbers of Men, Women, and Children, so taken and condemned, shall appear to have been distinctly proved; and also, by producing a Certificate under the Hand of the said Officer or Officers, Military or Civil, so appointed as aforesaid, and to whom the same shall have been delivered, acknowledging that he or they hath or have received the same, to be disposed of according to His Majesty's Instructions and Regulations as aforesaid.

Claim to Bounty shall be determined by the Judge of Admiralty.

X. Provided also, and be it further enacted, That in any Cases in which Doubts shall arise whether the party or parties claiming such Bounty Money is or are entitled thereto, the same shall be summarily determined by the Judge of the High Court of Admiralty, or by the Judge of any Court of Admiralty in which the Prize shall have been adjudged, subject nevertheless to an Appeal to the Lord Commissioners of Appeals in Prize Causes.

On Condemnation of Forfeitures of Slaves for Offences against this Act, these shall be paid to the Prosecutor  
13/. for a Man, 10/. for a Woman,  
and 3/. for a Child &c.

XI. Provided also, and be it further enacted, That on the Condemnation to the Use of his Majesty, His Heirs and Successors, in Manner aforesaid, of any Slaves or Natives of *Africa*, seized and prosecuted as forfeited for any Offence against this Act, or any other Act of Parliament made for the restraining or prohibiting the *African* Slave Trade (except in the Case of Seizures made at Sea by the Commanders or Officers of His Majesty's Ships or Vessels or War) there shall be paid to and to the Use of the Person who shall have sued, informed, and prosecuted the same to Condemnation, the Sums of Thirteen Pounds lawful Money aforesaid for every Man, of Ten

Pounds like Money for every Woman, and of Three Pounds like Money for every Child or person under the Age of Fourteen Years, that shall be so condemned and delivered over in good Health to the said Civil or Military Officer so to be appointed to receive, protect, and provide for the same, and also the like Sums to and to the Use of the Governor or Commander in Chief of any Colony or Plantation wherein such Seizure shall have been made; but in Cases of any such Seizures made at Sea by the Commanders or Officers of His Majesty's Ships or Vessels of War, for Forfeiture under this Act, or any other Act of Parliament made for the restraining or prohibiting the *African* Slave Trade, there shall be paid to the Commander or Officer who shall so seize, inform, and prosecute for every man so condemned and delivered over, the Sum of Twenty Pounds like Money, for every Woman the Sum of Fifteen Pounds like Money, and for every Child or person under the Age of Fourteen Years the Sum of Five Pounds like Money, subject nevertheless to such Distribution of the said Bounties or Rewards for the said Seizures made at Sea as His Majesty, His Heirs and Successors, shall think fit to order and direct by any other Order of Council made for that Purpose; for all which Payments so to be made as Bounties or Rewards upon Seizures and Prosecutions for Offences against this Act, or any other Act of Parliament made for restraining the *African* Slave Trade, the Officer or Officers, Civil or Military, so to be appointed as aforesaid to receive, protect, and provide for such Slaves or Natives of *Africa* so to be condemned and delivered over, shall, after the Condemnation and Receipt thereof as aforesaid, grant Certificates in favour of the Governor and Party seizing, informing, and prosecuting as aforesaid respectively, or the latter alone (as the Case may be) addressed to the Lords Commissioners of his Majesty's Treasury; who, upon the Production to them of any such Certificate, and of an authentic Copy, duly certified, of the Sentence of Condemnation of the said Slaves or *Africans* to His Majesty's Use as aforesaid, and also of a Receipt under the Hand of such Officer or Officers so appointed as aforesaid, specifying that such Slaves or *Africans* have by him or

them been received in good Health as aforesaid, shall direct Payment to be made from and out of the Consolidated Fund of *Great Britain* of the Amount of the Monies specified in such Certificate, to the lawful Holders of the same, or the Persons entitled to the Benefit thereof respectively.

Counterfeiting Certificates Felony  
without Clergy.

XII. And be it further enacted, That if any Person shall willfully and fraudulently forge or counterfeit any such Certificate, Copy of Sentence of Condemnation, or Receipt as aforesaid, or any Part thereof, or shall knowingly and willfully utter or publish the same, knowing it to be forged or counterfeited, with Intent to defraud His Majesty, His Heirs and Successors, or any other Person or Persons whatever, the Party so offending shall, on Conviction, suffer Death as in Cases of Felony, without Benefit of Clergy.

Recovery and Application of  
Penalties and Forfeitures.

4 G.3. c.15.

XIII. And be it further enacted, That the several Pecuniary Penalties or Forfeitures imposed and inflicted by this Act, shall and may be sued for, prosecuted, and recovered in any Court of Record in *Great Britain*, or in any Court of Record or Vice Admiralty in any Part of His Majesty's Dominions wherein the Offence was committed, or where the Offender may be found after the Commission of such Offence; and that in all Cases of Seizure of any Ships, Vessels, Slaves or pretended Slaves, Goods or Effects, for any Forfeiture under this Act, the same shall and may respectively be sued for; prosecuted and recovered in any Court of Record in *Great Britain* or in any Court of Record or Vice Admiralty in any Part of His Majesty's Dominions in or nearest to which such Seizures may be made, or to which such Ships or Vessels, Slaves or pretended Slaves, Goods or Effects (if seized at Sea or without the Limits of any *British* Jurisdiction) may most conveniently be carried for Trial, and all the said Penalties and Forfeitures, whether pecuniary or specific (unless where it is expressly otherwise provided for by this Act) shall go and belong to such Person and Persons in such Shares and Proportions, and shall and may be sued for and prosecuted, tried, recovered, distributed, and applied in such and the like Manner and by the same Ways and Means, and subject to the same

Rules and Directions, as any Penalties or Forfeitures incurred in *Great Britain*, and in the *British Colonies* or Plantations in *America* respectively, by force of any Act of Parliament relating to the Trade and Revenues of the said *British Colonies* or Plantations in *America*, now go and belong to, and may now be sued for, prosecuted, tried, recovered, distributed and applied respectively in *Great Britain* or in the said Colonies or Plantations respectively, under and by virtue of a certain Act of Parliament made in the Fourth Year of His present Majesty, intituled: *An Act for granting certain Duties in the British Colonies and Plantations in America, for continuing, amending, and making perpetual an Act passed in the Sixth Year of the Reign of His late Majesty, King George the Second, intituled: 'an Act for the better securing and encouraging the Trade of His Majesty's Sugar Colonies in America; for applying the Produce of such Duties to arise by virtue of the said Act towards defraying the Expences of defending, protecting, and securing the said Colonies and Plantations; for explaining an Act made in the Twenty-fifth Year of the Reign of King Charles the Second, intituled: "An Act for the Encouragement of the Greenland and Eastland Trades, and for the better securing the Plantation trade, and for altering and disallowing several Drawbacks on Exports from this Kingdom, and more effectively preventing the clandestine Conveyance of Goods to and from the said Colonies and Plantations, and improving and securing the Trade between the same and Great Britain."*

Seizures may be made by Officers of Customs or Excise, or Navy.

XIV. And be it further enacted, That all Ships and Vessels, Slaves or Natives of *Africa*, carried, conveyed, or dealt with as Slaves, and all other Goods and Effects that shall or may become forfeited for any Offence committed against this Act, shall and may be seized by any Officer of His Majesty's Customs or Excise, or by the Commanders or Officers of any of His Majesty's Ships or Vessels of War, who, in making and prosecuting any such Seizures, shall have the Benefit of all the Provisions made by the said Act of the Fourth Year of His present Majesty, or any other Act of Parliament made for the Protection of Officers seizing and prosecuting for any

<p>Offences triable as if committed in Middlesex.</p>	<p>Offence against the said Act, or any other Act of Parliament relating to the Trade and Revenues of the <i>British Colonies</i> or Plantations in <i>America</i>.</p> <p>XV. And be it further enacted, That all Offences committed against this Act may be inquired of, tried, determined, and dealt with as Misdemeanors, as if the same had been respectively committed within the Body of the County of <i>Middlesex</i>.</p>
<p>His Majesty may make Regulations for Disposal of Negroes after their Apprenticeship.</p>	<p>XVI. Provided also, and be it further enacted, That it shall and may be lawful for his Majesty in Council, from Time to Time to make such Orders and Regulations for the future Disposal and Support of such Negroes as shall have been bound Apprentices under this Act, after the term of their Apprenticeship shall have expired, as to His Majesty shall seem meet, and as may prevent such Negroes from becoming at any Time chargeable upon the Island in which they shall have been so bound Apprentices as aforesaid.</p>
<p>Negroes enlisted as Soldiers not entitled to Pensions, &amp;c.</p>	<p>XVII. Provided always, and be it further enacted, That none of the Provisions of any Act as to enlisting for any limited Period of Service, or as to any Rules or Regulations for the granting any Pensions or Allowances to any Soldiers discharged after certain Periods of Service, shall extend, or be deemed or construed in any Manner to extend, to any Negroes so enlisting and serving in any of His Majesty's Forces.</p>
<p>General Issue. Treble Costs.</p>	<p>XVIII. And be it further enacted, That if any Action or Suit shall be commenced either in <i>Great Britain</i> or elsewhere, against any Person or Persons for any Thing done in pursuance of this Act, the Defendant or Defendants in such Action or Suit may plead the General Issue, and give this Act and the Special Matter in Evidence at any Trial to be had thereupon, and that the same was done in pursuance and by the Authority of this Act; and if it shall appear so to have been done, the Jury shall find for the Defendant or Defendants; and if the Plaintiff shall be nonsuited or discontinue his Action after the Defendant or Defendants shall have appeared, or if Judgement shall be given upon any Verdict or Demurrer against the Plaintiff, the Defendant or Defendants shall recover Treble</p>

Costs and have the like Remedy for the same, as Defendants have in other Cases by Law.

**3° & 4° Gulielmi IV, cap. LXXIII**

**An Act for the Abolition of Slavery throughout the *British Colonies*; for promoting the Industry of the manumitted Slaves; and for compensating the Persons hitherto entitled to the Services of such Slaves.**

[28th August 1833.]

'WHEREAS divers Persons are holden in Slavery within divers of His Majesty's Colonies, and it is just and expedient that all such Persons should be manumitted and set free, and that a reasonable Compensation should be made to the Persons hitherto entitled to the Services of such Slaves for the Loss which they will incur by being deprived of their Right to such Services: And whereas it is also expedient that Provision should be made for promoting the Industry and securing the good Conduct of the Persons so to be manumitted, for a limited Period after such their Manumission: And whereas it is necessary that the Laws now in force in the said several Colonies should forthwith be adapted to the new State and Relations of Society therein which will follow upon such general Manumission as aforesaid of the said Slaves; and that, in order to afford the necessary Time for such Adaptation of the said Laws, a short Interval should elapse before such Manumission should take effect;'

All Persons who on the 1st August 1834 shall have been registered as Slaves, and shall appear on the Registry to be Six Years old or upwards, shall from that Day become apprenticed Labourers.

Be it therefore enacted by the King's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, That from and after the first Day of *August* One thousand eight hundred and thirty-four all Persons who in conformity with the Laws now in force in the said Colonies respectively shall on or before the first Day of *August* One thousand eight hundred and thirty-four have been

duly registered as Slaves in any such Colony, and who on the said first Day of *August* One thousand eight hundred and thirty-four shall be actually within any such Colony, and who shall by such Registries appear to be on the said first Day of *August* One thousand eight hundred and thirty-four of the full Age of Six Years or upwards, shall by force and virtue of this Act, and without the previous Execution of any Indenture of Apprenticeship, or other Deed or Instrument for that Purpose, become and be apprenticed Labourers; provided that, for the Purposes aforesaid, every Slave engaged in his ordinary Occupation on the Seas shall be deemed and taken to be within the Colony to which such Slave shall belong.

Who entitled to Services of the Slave as an apprenticed Labourer.

II. And be it further enacted, That during the Continuance of the Apprenticeship of any such apprenticed Labourer such Person or Persons shall be entitled to the Services of such apprenticed Labourer as would for the Time being have been entitled to his or her Services as a Slave if this Act had not been made.

All Slaves brought into the United Kingdom with Consent of Possessors, free.

III. Provided also, and be it further enacted, That all Slaves who may at any Time previous to the passing of this Act have been brought with the Consent of their Possessors, and all apprenticed Labourers who may hereafter with the like Consent be brought, into any part of the United Kingdom of *Great Britain* and *Ireland*, shall from and after the passing of this Act be absolutely and entirely free to all Intents and Purposes whatsoever.

Apprenticed Labourers to be divided into Three Classes, viz. praedial attached, praedial unattached, and non-praedial.

IV. 'And whereas it is expedient that all such apprenticed Labourers should, for the Purposes herein-after mentioned, be divided into Three distinct Classes, the First of such Classes consisting of praedial apprenticed Labourers attached to the Soil, and comprising all Persons who in their State of Slavery were usually employed in Agriculture, or in

Proviso.

the Manufacture of Colonial Produce or otherwise, upon Lands belonging to their Owners; the Second of such Classes consisting of praedial apprenticed Labourers not attached to the Soil, and comprising all Persons who in their State of Slavery were usually employed in Agriculture, or in the Manufacture of Colonial Produce or otherwise, upon Lands not belonging to their Owners; and the Third of such Classes consisting of non praedial apprenticed Labourers and comprising all apprenticed Labourers not included within either of the Two preceding Classes:' be it therefore enacted, That such Division as aforesaid of the said apprenticed Labourers into such Classes as aforesaid shall be carried into effect in such Manner and Form and subject to such Rules and Regulations as shall for that Purpose be established under such Authority, and in and by such Acts of Assembly, Ordinances, or Orders in Council, as herein after mentioned: Provided always, that no Person of the Age of Twelve Years and upwards shall by or by virtue of any such Act of Assembly, Ordinance, or Order in Council be included in either of the said Two Classes of praedial apprenticed Labourers unless such Person shall for Twelve Calendar Months at the least next before the passing of this present Act have been habitually employed in Agriculture or in the Manufacture of Colonial Produce.

Apprenticeship of the praedial Labourers not to continue beyond 1st August 1840.

V. And be it further enacted, That no Person who by virtue of this Act, or of any such Act of Assembly, Ordinance, or Order in Council as aforesaid, shall become a praedial apprenticed Labourer, whether attached or not attached to the Soil, shall continue in such Apprenticeship beyond the first Day of *August* One thousand eight hundred and forty; and that during such his or her Apprenticeship no such praedial apprenticed Labourer, whether

attached or not attached to the Soil, shall be bound or liable, by virtue of such Apprenticeship, to perform any Labour in the Service of his or her Employer or Employers for more than forty-five Hours in the whole in any One Week.

of the non-*praedial* Labourers not beyond 1st August 1838.

VI. And be it further enacted, That no Person who by virtue of this Act or of any such Act of Assembly, Ordinance, or Order in Council as aforesaid, shall become a non-*praedial* apprenticed Labourer, shall continue in such Apprenticeship beyond the first Day of August One thousand eight hundred and thirty-eight.

Before the Apprenticeship is expired, the Labourer may be discharged by the voluntary Act of his Employer. In case of the voluntary Discharge of aged or infirm apprenticed Labourers, the Employer to continue liable for their Support.

VII. And be it further enacted, That if before any such Apprenticeship shall have expired the Person or Persons entitled for and during the Remainder of any such Term to the Services of such apprenticed Labourer shall be desirous to discharge him or her from such Apprenticeship, it shall be lawful for such Person or Persons so to do by any Deed or Instrument to be by him, her, or them for that Purpose made and executed; which Deed or Instrument shall be in such Form, and shall be executed and recorded in such Manner and with such Solemnities, as shall for that Purpose be prescribed under such Authority, and in and by such Acts of Assembly, Ordinances, or Orders in Council, as herein-after mentioned: Provided nevertheless, that if any Person so discharged from any such Apprenticeship by any such voluntary Act as aforesaid shall at that Time be of the Age of Fifty Years or upwards, or shall be then labouring under any such Disease or mental or bodily Infirmary as may render him or her incapable of earning his or her Subsistence, then and in every such Case the Person or Persons so discharging any such apprenticed Labourer as aforesaid shall continue and be liable to provide for the Support and Maintenance of such

Apprenticed Labourer may purchase his Discharge against the Will of his Employer, on an Appraisement. How Appraisement and involuntary Discharge to be effected.

Apprenticed Labourers not removable from the Colony. Praedial apprenticed Labourers not removable from the Plantation except by Consent of Two Special Justices. Consent not to be given till the Justices have ascertained that the Removal will not separate the Members of Families. How Consent to be given and recorded.

apprenticed Labourer during the remaining Term of such original Apprenticeship, as fully as is such apprenticed Labourer had not been discharged therefrom.

VIII. And be it further enacted, That it shall be lawful for any such apprenticed Labourer to purchase his or her Discharge from such Apprenticeship, even without the Consent, or in opposition, if necessary, to the Will of the Person or Persons entitled to his or her Services, upon payment to such Person or Persons of the appraised Value of such Services; which Appraisement shall be effected, and which Purchase Money shall be paid and applied, and which Discharge shall be given and executed, in such Manner and Form, and upon, under, and subject to such Conditions, as shall be prescribed under such Authority, and by such Acts of Assembly Ordinances, or Orders in Council, as are herein-after mentioned.

IX. And be it further enacted, That no apprenticed Labourer shall be subject or liable to be removed from the Colony to which he or she may belong; and that no praedial apprenticed Labourer who may in Manner aforesaid become attached to the Soil shall be subject or liable to perform any Labour in the Service of his or her Employer or Employers except upon or in or about the Works and Business of the Plantations or Estates to which such praedial apprenticed Labourer shall have been attached or on which he or she shall have been usually employed on or previously to the said first Day of *August* One thousand eight hundred and thirty-four: Provided nevertheless, that, with the Consent in Writing of any Two or more Justices of the Peace holding such Special Commission as herein-after mentioned, it shall be lawful for the Person or Persons entitled to the Services of any such attached praedial apprenticed Labourer or Labourers to

transfer his or their Services to any other Estate or Plantation within the same Colony to such Person or Persons belonging; which written Consent shall in no Case be given, or be of any Validity, unless any such Justices of the Peace shall first have ascertained that such Transfer would not have the Effect of separating any such attached praedial apprenticed Labourer from his or her Wife or Husband, Parent or Child, or from any Person or Persons reputed to bear any such Relation to him or her, and that such Transfer would not probably be injurious to the Health or Welfare of such attached praedial apprenticed Labourer; and such written Consent to any such Removal shall be expressed in such Terms, and shall be in each Case given, attested, and recorded in such Manner, as shall for that Purpose be prescribed under such Authority, and by such Acts of Assembly, Ordinances, and Orders in Council, as herein-after mentioned.

Right to the Services of apprenticed; Labourers to be transferable Property. Labourer not to be separated from Wife, &c.

X. And be it further enacted and declared, That the Right or Interest of any Employer or Employers to and in the Services of any such apprenticed Labourers as aforesaid shall pass and be transferable by Bargain and Sale, Contract, Deed, Conveyance, Will, or Descent, according to such Rules and in such Manner as shall for that Purpose be provided by any such Acts of Assembly, Ordinances, or Orders in Council as herein-after mentioned; provided that no such apprenticed Labourer shall, by virtue of any such Bargain and Sale, Contract, Deed, Conveyance, Will, or Descent, be subject or liable to be separated from his or her Wife or Husband, Parent or Child, or from any Person or Persons reputed to bear any such Relation to him or her.

Employer to supply the Labourer with such Food, &c. as the Law at present requires in case of Slaves. Where the praedial Labourer shall be maintained by the Cultivation of Provision

XI. And be it further enacted, That during the Continuance of any such Apprenticeship as aforesaid the Person

Grounds, a proper Quantity of Ground with leisure Time to be set apart by the Employer. How the Extent and Locality of the Provision Grounds and the Quantity of Time are to be regulated.

or Persons for the Time being entitled to the Services of every such apprenticed Labourer shall be and is and are hereby required to supply him or her with such Food, Clothing, Lodging, Medicine, Medical Attendance, and such other Maintenance and Allowances as by any Law now in force in the Colony to which such apprenticed Labourer may belong an Owner is required to supply to and for any Slave being of the same Age and Sex as such apprenticed Labourer shall be; and in Cases in which the Food of any such praedial apprenticed Labourer shall be supplied, not by the Delivery to him or her of Provisions, but by the Cultivation by such praedial apprenticed Labourer of Ground set apart for the Growth of Provisions, the Person or Persons entitled to his or her Services shall and is or are hereby required to provide such praedial apprenticed Labourer with Ground adequate, both in Quantity and Quality, for his or her Support, and within a reasonable distance of his or her usual Place of Abode, and to allow to such praedial apprenticed Labourer, from and out of the annual Time during which he or she may be required to labour, after the Rate of forty-five Hours *per* Week as aforesaid, in the Service of such his or her Employer or Employers, such a Portion of Time as shall be adequate for the proper Cultivation of such Ground, and for the raising and securing the Crops thereon grown; the actual extent of which Ground and the Distance thereof from the Place of Residence of the praedial apprenticed Labourer for whose Use it may be so allotted, and the length of Time to be deducted for the Cultivation of the said Ground from the said annual Time, shall and may, in each of the Colonies aforesaid, be regulated under such Authorities, and by such Acts of Assembly, Ordinances, or Orders in Council as herein after mentioned.

Subject to the Obligations imposed hereby, all Slaves in the British Colonies emancipated from the 1st August 1834; from which Time slavery shall be abolished throughout the British Dominions.

XII. And be it further enacted, That, subject to the Obligations imposed by this Act, or to be imposed by any such Act of General Assembly, Ordinance, or Order in Council as herein-after mentioned, upon such apprenticed Labourers as aforesaid, all and every the Persons who on the said first Day of *August* One thousand eight hundred and thirty-four shall be holden in Slavery within any such *British* Colony as aforesaid shall upon and from and after the said first Day of *August* One thousand eight hundred and thirty-four become and be to all Intents and Purposes free and discharged of and from all Manner of Slavery, and shall be absolutely and for ever manumitted; and that the Children thereafter to be born to any such Persons, and the Offspring of such Children shall in like Manner be free from their Birth; and that from, and after the said first Day of *August* One thousand eight hundred and thirty-four Slavery shall be and is hereby utterly and for ever abolished and declared unlawful throughout the *British* Colonies, Plantations, and Possessions Abroad.

Children below the Age of Six on 1st August 1834, or born after that Time to any Female Apprentice, if destitute, may be bound out by any Special Magistrate as an Apprentice to the Person entitled to the Services of the Mother; but at the Date of such Indentures the Apprentice must be under Twelve Years of Age.

Indentures to continue in force until the Child has completed his or her Twenty-first Year and no longer.

XIII. 'And whereas it may happen that Children who have not attained the Age of Six Years on the said first Day of *August* One thousand eight hundred and thirty-four, or that Children who after that Day may be born to any female apprenticed Labourers, may not be properly supported by their Parents, and that no other Person may be disposed voluntarily to undertake the Support of such Children; and it is necessary that Provision should be made for the Maintenance of such Children in any such Contingency;' be it therefore enacted, That if any Child who on the said first Day of *August* One thousand eight hundred and thirty-four had not completed his or her Sixth Year, or if any Child to which any female apprenticed Labourer may give birth on

or after the said first Day of *August* One thousand eight hundred and thirty-four, shall be brought before any Justice of the Peace holding any such Special Commission as herein-after mentioned, and if it shall be made to appear to the Satisfaction of such Justice that any such Child is unprovided with an adequate Maintenance, and that such Child hath not completed his or her Age of Twelve Years, it shall be lawful for such Justice, and he is hereby required on behalf of any such Child to execute an Indenture of apprenticeship, thereby binding such Child as an apprenticed Labourer to the Person or Persons entitled to the Services of the Mother of such Child, or who had been last entitled to the Services of such Mother; but in case it shall be made to appear to any such Justice that such Person or Persons aforesaid is or are unable or unfit to enter into such Indenture, and properly to perform the Conditions thereof, then it shall be lawful for such Justice and he is hereby required by such Indenture to bind any such Child to any other Person or Persons to be by him for that Purpose approved, and who may be willing and able properly to perform such Conditions; and it shall by every such Indenture of Apprenticeship be declared whether such Child shall thenceforward belong to the Class of attached praedial apprenticed Labourers, or to the Class of unattached praedial apprenticed Labourers, or to the Class of non-paedial apprenticed Labourers; and the Term of such Apprenticeship of any such Child shall by such Indenture be limited and made to continue in force until such Child shall have completed his or her Twenty-first Year, and no longer; and every Child so apprenticed as aforesaid by the Order of any such Justice of the Peace as aforesaid shall during his or her Apprenticeship be subject to all such and the same Rules and Regulations

His Majesty, or any Governor by His Authority, may appoint Justices of the Peace by Special Commission to give effect to this Act and to all Colonial Laws to be made in pursuance of this Act; and no other Qualification necessary. Such Justices may also be included in the General Commission of the Peace.

respecting the Work or Labour to be by them done or performed, and respecting the Food and other Supplies to be to him or her furnished, as any other such apprenticed Labourers as aforesaid: Provided always that the said Indenture of Apprenticeship shall contain sufficient Words of Obligation upon the Employer to allow reasonable Time and Opportunity for the Education and Religious Instruction of such Child.

XIV. 'And for ensuring the effectual Superintendence of the said apprenticed Labourers, and the Execution of this Act,' be it enacted, That it shall and may be lawful for His Majesty to issue, or to authorize the Governor of any such Colony as aforesaid, in the Name and on the Behalf of His Majesty, to issue under the Public Seal of any such Colony, One or more Special Commission or Commissions to any One or more Person or Persons, constituting him or them a Justice or Justices of the Peace for the whole of any such Colony, or for any Parish, Precinct, Quarter, or other District within the same, for the special Purpose of giving effect to this present Act, and to any Laws which may, in manner herein-after mentioned, be made for giving more complete Effect to the same; and every Person to or in favour of whom any such Commission may be issued shall by force and virtue thereof, and without any other Qualification, be entitled and competent to act as a Justice of the Peace within the Limits prescribed by such his Commission for such special Purposes aforesaid, but for no other Purposes: Provided nevertheless, that nothing herein contained shall prevent or be construed to prevent any Person commissioned as a Justice of the Peace for such special Purpose as aforesaid from being included in the General Commission of the Peace for any such Colony, or for any Parish, Precinct, Quarter or other District thereof, in case

His Majesty may grant Salaries to Special Justices.

Lists of such Persons to be laid before Parliament.

Recital of various Regulations necessary for giving Effect to this Act.

it shall seem fit to His Majesty, or to the Governor of any such Colony acting by His Majesty's Authority, to address both such Special Commission and such General Commission as aforesaid in any Case to the same Person or Persons.

XV. And be it further enacted, That His Majesty shall be and he is hereby authorized to grant to any Person or Persons, not exceeding One hundred in the whole, holding any such Special Commission or Commissions as aforesaid, and so from Time to Time as Vacancies may occur, Salaries at and after a Rate not exceeding in any Case the Sum of Three hundred Pounds Sterling *per Annum*, which Salary shall be payable so long only as any such Justice of the Peace shall retain any such Special Commission, and shall be actually resident in such Colony, and engaged in the Discharge of the Duties of such his Office; provided that no Person receiving or entitled to receive any Half Pay, Pension, or Allowance for or in respect of any past Services in His Majesty's Naval or Land Forces shall, by the Acceptance of any such Special Commission or Salary as aforesaid, forfeit or become incapable of receiving or lose his Right to receive such Half Pay, Pension, or Allowance, or any Part thereof, any Law, Statute, or Usage to the contrary in anywise notwithstanding: Provided also, that there be annually laid before both Houses of Parliament a List of the Names of all Persons to whom any such Salary shall be so granted, specifying the Date of every such Commission, and the Amount of the Salary assigned to every such Justice of the Peace.

XVI. 'And whereas it is necessary that various Rules and Regulations should be framed and established for ascertaining, with reference to each apprenticed Labourer within the said Colonies respectively, whether he or she belongs to the Class of attached praedial

apprenticed Labourers, or to the Class of unattached apprenticed Labourers, or to the Class of non-praedial apprenticed Labourers, and for determining the Manner and Form in which and the Solemnities with which the voluntary Discharge of any apprenticed Labourer from such his or her Apprenticeship may be effected, and for prescribing the Form and Manner in which and the Solemnities with which the Purchase by any such apprenticed Labourer or his or her Discharge from such Apprenticeship without, or in opposition, if necessary, to, the Consent of the Person or Persons entitled to his or her Services, shall be effected, and how the necessary Appraisalment of the future Value of such Services shall be made, and how and to whom the Amount of such Appraisalment shall in each Case be paid and applied, and in what Manner and Form and by whom the Discharge from any such Apprenticeship shall thereupon be given, executed, and recorded; and it is also necessary, for the Preservation of Peace throughout the said Colonies, that proper Regulations should be framed and established for the Maintenance of Order and good Discipline amongst the said apprenticed Labourers, and for ensuring the punctual Discharge of the Services due by them to their respective Employers, and for the Prevention and Punishment of Indolence, or the Neglect or improper Performance of Work by any such apprenticed Labourer, and for enforcing the due Performance by any such apprenticed Labourer of any Contract into which he or she may voluntarily enter for any hired Service during the Time in which he or she may not be bound to labour for his or her Employer, and for the Prevention and Punishment of Insolence and Insubordination on the Part of any such apprenticed Labourers towards their Employers, and for the Prevention or Punishment of Vagrancy

or of any Conduct on the Part of any such apprenticed Labourers injuring or tending to the Injury of the Property of any such Employer, and for, the Suppression and Punishment of any Riot or combined Resistance of the Laws on the Part of any such apprenticed Labourers, and for preventing the Escape of any such apprenticed Labourers, during their Term of Apprenticeship, from the Colonies to which they may respectively belong: And whereas, it will also be necessary for the Protection of such apprenticed Labourers as aforesaid that various Regulations should be framed and established in the said respective Colonies for securing Punctuality and Method in the Supply to them of such Food, Clothing, Lodging, Medicines, Medical Attendance, and such other Maintenance and Allowances as they are herein-before declared entitled to receive, and for regulating the Amount and Quality of all such Articles in Cases where the Laws at present existing in any such Colony may not in the Case of Slaves have made any Regulation or any adequate Regulation for that Purpose; and it is also necessary that proper Rules should be established for the Prevention and Punishment of any Frauds which might be practiced, or of any Omissions or Neglects which might occur, respecting the Quantity or the Quality of the Supplies so to be furnished, or respecting the Periods for the Delivery of the same: And whereas it is necessary, in those Cases in which the Food of any such praedial apprenticed Labourers as aforesaid may either wholly or in part be raised by themselves by the Cultivation of Ground to be set apart and allotted for that Purpose, that proper Regulations should be made and established as to the Extent of such Grounds, and as to the Distance at which such Grounds may be so allotted from the ordinary Place of

Abode of such praedial apprenticed Labourers, and respecting the Deductions to be made from the Cultivation of such Grounds, from the annual Time during which such praedial apprenticed Labourers are herein-before declared liable to labour: And whereas it may also be necessary, by such Regulations as aforesaid, to secure to the said praedial apprenticed Labourers the Enjoyment for their own Benefit of that Portion of their Time during which they are not hereby required to labour in the Service of their respective Employers, and for securing exactness in the Computation of the Time during which such praedial apprenticed Labourers are hereby required to labour in the Service of such their respective Employers; and it is also necessary that Provision should be made for preventing the Imposition of Task-work on any such apprenticed Labourer without his or her free Consent to undertake the same; but it may be necessary by such Regulations in certain Cases to require and provide for the Acquiescence of the Minority of the praedial apprenticed Labourers attached to any Plantation or Estate in the Distribution and Apportionment amongst the whole Body of such Labourers of any Task-work which the Majority of such Body shall be willing and desirous collectively to undertake; and it is also necessary that Regulations should be made respecting any voluntary Contracts into which any apprenticed Labourers may enter with their respective Employers or with any other Person for hired Service for any future Period, and for limiting the greatest Period of Time to which such voluntary Contract may extend, and for enforcing the punctual and effectual Performance of such voluntary Contracts on the Part both of such apprenticed Labourers and of the Person or Persons engaging for their Employment and Hire; and it is also

necessary that Regulations should be made for the Prevention or Punishment of any Cruelty, Injustice, or other Wrong or Injury which may be done to or inflicted upon any such apprenticed Labourers by the Persons entitled to their Services; and it is also necessary that proper Regulations should be made respecting the Manner and Form in which such Indentures of Apprenticeship as aforesaid shall be made on behalf of such Children as aforesaid, and respecting the registering and Preservation of all such Indentures: And whereas it is also necessary that Provision should be made for ensuring Promptitude and Dispatch, and for preventing all unnecessary Expence, in the Discharge by the Justices of the Peace holding such Special Commissions as aforesaid of the jurisdiction and Authorities thereby committed to them, and for enabling such Justices to decide in a summary Way such Questions as may be brought before them in that Capacity, and for the Division of the said respective Colonies into Districts for the Purposes of such Jurisdiction, and for the frequent and punctual Visitation by such Justices of the Peace of the apprenticed Labourers within such their respective Districts; and it is also necessary that Regulaitons should be made for indemnifying and protecting such Justices of the Peace in the upright Execution and Discharge of their Duties: And whereas such Regulations as aforesaid could not without great Inconvenience be made except by the respective Governors, Councils, and Assemblies, or other local Legislatures of the said respective Colonies, or by His Majesty, with the Advice of His Privy Council, in reference to those Colonies to which the Legislative Authority of His Majesty in Council extends;'

This Act not to prevent the Enactment, by Colonial Assemblies or by His Majesty in Council, of the Laws necessary for establishing

be it therefore enacted and declared, That nothing in this Act contained

such Regulations. Provisions repugnant to this Act contained in any such Colonial Law void.

extends or shall be construed to extend to prevent the Enactment by the respective Governors, Councils, and Assemblies, or by such other local Legislatures as aforesaid, or by His Majesty, with the Advice of His Privy Council, of any such Acts of General Assembly, or Ordinances, or Orders in Council as may be requisite for making and establishing such several Rules and Regulations as aforesaid, or any of them, or for carrying the same or any of them into full and complete Effect: Provided nevertheless, that it shall not be lawful for any such Governor, Council, and Assembly, or for any such local Legislature, or for His Majesty in Council, by any such Acts of Assembly, Ordinances, or Orders in Council as aforesaid, to make or establish any Enactment, Regulation, Provision, Rule, or Order which shall be in anywise repugnant or contradictory to this present Act or any Part thereof, but that every such Enactment, Regulation, Provision, Rule, or Order shall be and is hereby declared to be absolutely null and void and of no effect.

Such Colonial Acts may not authorize the whipping or other Punishment of the Labourer by the Employer's Authority.

XVII. Provided also, and be it further enacted, That it shall not be lawful for any such Governor, Council, and Assembly, or other Colonial Legislature, or for His Majesty in Council, by any such Act, Ordinance, or Order in Council, to authorize any Person or Persons entitled to the Services of any such apprenticed Labourer, or any other Person or Persons other than such Justices of the Peace holding such Special Commissions as aforesaid, to punish any such apprenticed Labourer for any Offence by him or her committed or alleged to have been committed by the whipping, beating, or Imprisonment of his or her Person, or by any other personal or other Correction or Punishment whatsoever, or by any Addition to the Hours of Labour herein-before limited; nor to

authorize any Court, Judge, or Justice of the Peace to punish any such apprenticed Labourer, being a Female, for any Offence by her committed, by whipping or beating her Person; and that every Enactment, Regulation, Provision, Rule, or Order for any such Purpose in any such Act, Ordinance, or Order in Council contained shall be and is hereby declared to be absolutely null and void and of no effect: Provided always, that nothing in this Act contained doth or shall extend to exempt any apprenticed Labourer in any of the said Colonies from the Operation of any Law or Police Regulation which is or shall be in force therein for the Prevention or Punishment of any Offence, such Law or Police Regulation being in force against and applicable to all other Persons of free Condition.

Colonial Acts or Orders in Council not to authorize any Justices, except those having Special Commissions, to act in execution thereof.

XVIII. Provided also, and be it further enacted, That it shall not be lawful for any such Governor, Council, and Assembly, or for any such local Legislature, or for His Majesty in Council, by any such Acts of General Assembly, Ordinances, or Orders in Council as aforesaid, to authorize any Magistrate or Justice of the Peace, other than and except the Justices of the Peace holding such Special Commissions as aforesaid, to take cognizance of any Offence committed or alleged to have been committed by any such apprenticed Labourer, or by his or her Employer, in such their Relation to each other, or of the Breach, Violation, or Neglect of any of the Obligations owed by them to each other, or of any Question, Matter or Thing incident to or arising out of the Relations subsisting between such apprenticed Labourers and the Persons respectively entitled to their Services; and every Enactment, Regulation, Provision, Rule, or Order in any such Acts, Ordinances, and Orders in Council to the contrary contained

Justices having Special Commissions to exercise exclusive Jurisdiction between apprenticed Labourers and their Employers. Jurisdiction of Supreme Courts preserved.

shall be and is hereby declared to be null and void and of no effect.

XIX. And it is hereby further declared and enacted, That the several Justices of the Peace having Special Commissions as aforesaid shall, within the respective Colonies to which they shall be respectively appointed, have, exercise, and enjoy a sole and exclusive Jurisdiction over, and shall solely and exclusively take cognizance of, all such Offences or alleged Offences as last aforesaid, and of every such Breach, Violation, or Neglect of any of the aforesaid Obligations, and of every such Question, Matter, or Thing as aforesaid, any Law, Custom, or Usage in any of the said Colonies to the contrary in anywise notwithstanding: Provided nevertheless, that nothing herein contained shall extend, or be construed to extend to abrogate or take away the Powers by Law vested in the Supreme Courts of Record, or the Superior Courts of Civil and Criminal Justice in any of the said respective Colonies.

Apprenticed Labourers not to be subjected to a Prolongation or Renewal of their Apprenticeship, nor to more than 15 Hours extra Labour in any Week for their Employers Benefit.

XX. Provided also, and be it further enacted, That no apprenticed Labourer shall, by any such Act of Assembly, Ordinance, or Order in Council as aforesaid, be declared or rendered liable for and in respect of any Offence by him or her committed, or for any Cause or upon any Ground or Pretext whatsoever, except as hereafter is mentioned, to any Prolongation of his or her Term of Apprenticeship, or to any new or additional Apprenticeship, or to any such additional Labour as shall impose upon any such apprenticed Labourer the Obligation of working in the Service or for the Benefit of the Person or Persons entitled to his or her Services for more than Fifteen extra Hours in the whole in any One Week, but every such Enactment, Regulation, Provision, Rule, or Order shall be and is hereby declared null and void and of no effect: Provided nevertheless, that any

such Act of Assembly, Ordinance, or Order in Council as aforesaid may contain Provisions for compelling any such apprenticed Labourer who shall, during his or her Apprenticeship, wilfully absent himself or herself from the Service of his or her Employer, either to serve his or her Employer after the Expiration of his or her Apprenticeship for so long a Time as he or she shall have so absented himself or herself from such Service, or to make Satisfaction to his or her Employer for the Loss sustained by such Absence, (except so far as he or she shall have made Satisfaction for such Absence, either out of such extra Hours as aforesaid, or otherwise,) but nevertheless so that such extra Service or Compensation shall not be compellable after the Expiration of Seven Years next after the Termination of the Apprenticeship of such Apprentice.

Apprenticed Labourers riot to be compelled to work on Sundays, nor prevented from attending Religious Worship on Sundays.

XXI. Provided always, and be it hereby further enacted, That neither under the Provisions of this Act, nor under the Obligations imposed by this Act, or to be imposed by any Act of any General Assembly, Ordinance, or Order in Council, shall any apprenticed Labourer be compelled or compellable to labour on *Sundays*, except in Works of Necessity or in Domestic Services, or in the Protection of Property, or in tending of Cattle, nor shall any apprenticed Labourer be liable to be hindered or prevented from attending anywhere on *Sundays* for Religious Worship, at his or her free Will or Pleasure, but shall be at full Liberty so to do without any Let, Denial, or Interruption whatsoever.

Nothing herein to interfere with any Colonial Laws, by which apprenticed Labourers may be exempted from or disqualified for certain Military or Civil Services and Franchises.

XXII. 'And whereas it may be expedient that Persons in the Condition of apprenticed Labourers should, during the Continuance of such their Apprenticeship be exempted from the Performance of certain Civil and Military Services, and be disqualified from

holding certain Civil and Military Offices, and from the Enjoyment of certain Political Franchises, within the said Colonies, and be exempted from being arrested or imprisoned for Debt;' be it therefore enacted, That nothing in this Act contained extends or shall be construed to extend to interfere with or prevent the Enactment by the respective Governors, Councils, and Assemblies, or by such other local Legislature as aforesaid of any such Colonies, or by His Majesty in Council in reference to such of the said Colonies as are subject to the Legislative Authority of His Majesty in Council, of any Acts, Ordinances, or Orders in Council for exempting any such apprenticed Labourers as aforesaid, during the Continuance of such their Apprenticeship, from any such Civil or Military Service as aforesaid, or for disqualifying them or any of them during the Continuance of any such Apprenticeships from the Enjoyment or Discharge of any such Political Franchise as aforesaid, or for exempting them during the Continuance of such Apprenticeships from being arrested or imprisoned for Debt.

Acts passed by local Legislatures with similar but improved Enactments to this Act to supersede this Act on being confirmed by His Majesty in Council.

XXIII. 'And whereas it would be desirable that such of the Provisions of this Act as relate to the internal Concerns of the said respective Colonies should be enacted in such respective Colonies so far as may be possible by the Authority of the several local Legislatures of such Colonies respectively;' be it therefore enacted, That in case the Governor, Council, and Assembly of any One or more of His Majesty's Colonies aforesaid shall, by any Act or Acts of General Assembly for that Purpose made, substitute for the several Enactments herein-before contained, or any of them, any Enactments accomplishing the several Objects in such herein-before contained Enactments respectively contemplated

as fully and to the like Effect, but in a Manner and Form better adapted to the local Circumstances of any such Colonies or Colony, and in case His Majesty shall by any Order or Orders to be by Him made, by the Advice of His Privy Council, confirm and allow any such Act or Acts of Assembly, and shall in and by any such Order or Orders in Council recite and set forth at length the several Provisions and Enactments of this present Act for which such other Enactments as aforesaid shall have been substituted by any such Act or Acts of General Assembly, then and in such Case so much and such Parts of this present Act as shall be so recited and set forth at length in any such Order or Orders of His Majesty in Council shall be suspended and cease to be of any Force or Effect in any such Colony from and after the Arrival and Proclamation therein of any such Order or Orders of His Majesty in Council, and shall continue to be so suspended so long as any such substituted Enactments shall continue in force and unrepealed, and no longer.

The Treasury may raise Loans, not exceeding  
20 Millions.

XXIV. 'And whereas, towards compensating the Persons at present entitled to the Services of the Slaves to be manumitted and set free by virtue of this Act for the Loss of such Services, His Majesty's most dutiful and loyal Subjects the Commons of *Great Britain* and *Ireland* in Parliament assembled have resolved to give and grant to His Majesty the Sum of Twenty Millions Pounds Sterling;' be it enacted, That the Lords Commissioners of His Majesty's Treasury of the United Kingdom of *Great Britain* and *Ireland* may raise such Sum or Sums of Money as shall be required from Time to Time under the Provisions of this Act, and may grant as the Consideration for such Sum or Sums of Money Redeemable Perpetual Annuities or Annuities for Terms of Years (which said Annuities reflectively

shall be transferable and payable at the Bank of *England*), upon such Terms and Conditions and under such Regulations as to the Time or Times of paying the said Sums of Money agreed to be raised as may be determined upon by the said Commissioners of the Treasury, not exceeding in the whole the Sum of Twenty Millions Pounds Sterling: Provided nevertheless, that the Rate of Interest at which the said Sums of Money shall be from Time to Time raised shall be regulated and governed by the Price of the respective Redeemable Perpetual Annuities or Annuities for Terms of Years on the Day preceding (or on the nearest preceding Day if it shall so happen that there shall be no Price of such said Annuities respectively on the Day immediately preceding) the Day of giving Notice for raising such Sum or Sums of Money, and that the Rate of Interest to be allowed to the Contributors for such Sum or Sums of Money shall in no Case exceed Five Shillings *per Centum per Annum* above the current Rate of Interest produced by the Market Price of any such Redeemable Perpetual Annuities or Annuities for Terms of Years existing at the Time, and in which such Contracts shall be made.

Treasury to give Notice of their Intention to raise the same.

No Contract for raising same to be entered into but during sitting of Parliament.

XXV. Provided always, and be it further enacted, That before raising any such Sum or Sums by Redeemable Perpetual Annuities or Annuities for Terms of Years (unless the same shall be subscribed or contributed as herein-after mentioned by the Commissioners for the Reduction of the National Debt,) the said Commissioners of the Treasury are hereby required to give public Notice of the Intention to raise such Sum, or such Part thereof as shall not be subscribed or contributed as aforesaid, through the Governor and Deputy Governor of the Bank of *England*, of their Desire to receive Biddings for any such Annuities, which

said Biddings and the Mode of raising such Annuities shall be conducted in such and the like Manner as has usually been practiced with respect to the raising of Money by way of Annuities for the Service of the Public: Provided also, that no Contract or Agreement for raising any Sum or Sums by Annuities as aforesaid shall be entered into except during the sitting of Parliament, and when the same shall have been entered into all Proceedings, Tenders, and Contracts respecting the same shall be forthwith laid before Parliament.

Annuities to be granted for such Loans to be of the same Description as some now existing.

XXVI. And be it further enacted, That whatever Redeemable Annuities or Annuities for any Term of Years which shall be created from Time to Time by the Sums of Money raised by virtue of this Act (which said Redeemable Annuities and Annuities for Terms of Years so created shall be of the like Description of some Redeemable Annuities or Annuities for Terms of Years existing at the Time of raising such Sum or Sums of Money,) shall be deemed and taken to be Redeemable Annuities or Annuities for Terms of Years of the like Description then existing, in which such Sum or Sums shall be agreed to be raised.

Annuities created by this Act to form Part of and be subject to same Regulations as like Annuities now existing.

XXVII. And be it further enacted, That all the several Redeemable Annuities and Annuities for Terms of Years which shall be created from Time to Time by virtue of this Act shall be deemed and taken to be and shall be added to and form Part of the like Redeemable Annuities or Annuities for Terms of Years in which such Sums of Money shall be raised, and shall be subject to all the Clauses, Conditions, Provisions, Directions, Regulations, and Periods of Payment as fully and effectually to all Intents and Purposes, except as altered and varied by virtue of this Act, as if the said Clauses, Conditions, Provisions, Directions, Regulations, and Periods of

Commissioners for Reduction of National Debt  
may subscribe towards raising Sum wanted for  
this Act,  
9 G.4 c.92.  
10 G.4. c.56.

Payment were severally repeated and re-enacted in this Act.

XXVIII. And be it enacted, That the Commissioners for the Reduction of the National Debt may subscribe and contribute from Time to Time towards the raising any Sum or Sums of Money to be raised under the Provisions of this Act any Part of the Monies which shall be at any Time Handing in their Names in the Books of the Governor and Company of the Bank of *England* under and by virtue of an Act passed in the Ninth Year of the Reign of King *George* the Fourth, intituled *An Act to consolidate and amend the Laws relating to Savings Banks*, and of another Act passed in the Tenth Year of the Reign of King *George* the Fourth, intituled *An Act to consolidate and amend the Laws relating to Friendly Societies*, and also to sell and dispose of the Bank Annuities and Exchequer Bills, or any Part thereof, which may be now standing or may hereafter stand in their Names in the Books of the said Bank in pursuance of the said respective Acts, and with the Proceeds thereof may subscribe and contribute such Monies from Time to Time, or any Part thereof, towards the raising the Sums of Money which may be required from Time to Time under the Provisions of this Act.

Monies raised to be paid to an Account at the Bank, called the West India Compensation Account.

XXIX. And be it enacted, That all Sums of Money which shall be raised from Time to Time by virtue of this Act shall be paid into the Bank of *England* to the Account of the Commissioners for the Reduction of the National Debt, under the Title of "*The West India Compensation Account*," and the Cashiers of the Bank of *England* are hereby required to receive all such Sums of Money, and to place the same from Time to Time to the said Account.

he Cashiers of the Bank to give Receipts for Subscriptions which may be assigned.

Subscriptions paid in part, and not completed, forfeited.

XXX. And be it enacted, That the Cashier or Cashiers of the Governor and Company of the Bank of *England*, who shall have received or shall receive any

Part of any Contribution towards any Sum or Sums of Money raised or to be raised under the Provisions of this Act, shall give a Receipt or Receipts in Writing to every such Contributor for all such Sums; and that the said Receipts so to be given shall be assignable at any Time for and during such Period as shall and may be determined upon by the said Commissioners of the Treasury; and the said Receipts shall be in such Form and Words and under such Regulations as shall be approved by the said Commissioners of His Majesty's Treasury: Provided always, that in Case any such Contributors who have already deposited with or shall hereafter pay to the said Cashier or Cashiers any Sum or Sums of Money, at the Time and in the Manner specified in the Proposals of the several Loans, in part of the Sum or Sums so by them respectively subscribed, or their respective Executors, Administrators, Successors, or Assigns, shall not advance and pay so the said Cashier or Cashiers the Residue of the Sum or Sums so subscribed at the Times and in the Manner stated in the Proposals, then and in every such Case so much of the respective Sum or Sums so subscribed as shall have been actually paid in part thereof to the said Cashier or Cashiers shall be forfeited for the Benefit of the Public, and all Right and Title to the said Redeemable Annuities or Annuities for Terms of Years in respect thereof shall be extinguished; any thing in this Act contained to the contrary thereof in anywise notwithstanding.

Interest and Charges of the Twenty Millions charged upon Consolidated Fund.

XXXI. And be it further enacted, That all the said Annuities, Interest, Dividends, and Charges for Management which shall become payable in respect of the said Sum of Twenty Millions, or any Part thereof, shall be charged and chargeable upon and the same is hereby charged upon and made payable out of the Consolidated Fund of The

United Kingdom of *Great Britain* and *Ireland*.

Money for paying Annuities to be issued by Exchequer to Cashier of the Bank.

XXXII. And be it further enacted, That so much Money shall from Time to Time be set apart and issued at the Receipt of the Exchequer in *England* out of the Consolidated Fund of the United Kingdom of *Great Britain* and *Ireland* to the said Cashier or Cashiers of the Governor and Company of the Bank of *England* as shall be sufficient to satisfy and pay the respective Annuities to be created in respect of the said Sum of Twenty Millions, or any Part thereof, together with the Charges attending the same.

Commissioners to be appointed for distributing the Compensation provided by this Act.

XXXIII. 'And for the Distribution of the said Compensation Fund and the Apportionment thereof amongst the several Persons who may prefer Claims thereon,' be it enacted, That it shall and may be lawful for His Majesty from Time to Time, by a Commission under the Great Seal of the United Kingdom, to constitute and appoint such Persons, not being less than Five, as to His Majesty shall seem meet, to be Commissioners of Arbitration for inquiring into and deciding upon the Claims to Compensation, which may be preferred to them under this Act.

Commissioners to be sworn.

XXXIV. And be it further enacted, That the said Commissioners to be appointed by virtue of this Act shall each of them, previously to his entering upon the Execution of such Commission, take an Oath before the Chancellor of the Exchequer or the Master of the Rolls for the Time being, which Oath they are hereby respectively authorized to administer, the Tenor thereof shall be as follows; (that is to say,)

Form of Oath.

'I, A B. do swear, That according to the best of my Judgment I will faithfully and impartially execute the several Powers and Trusts vested in me by an Act, ' intituled [*here set forth the Title of this Act*].

Meetings of the Commissioners, and  
Appointment of the subordinate Officers.

Officers to be sworn.

XXXV. And be it further enacted, That the said Commissioners may meet and sit from Time to Time in such Place or Places as they shall find it most convenient, with or without Adjournment, and with the Consent and Approbation of the Commissioners of the Treasury for the Time being, or any Three of them, in Writing; and shall and may employ a Secretary, and Clerks, Messengers, and Officers, and shall and may allow such Secretary, Clerks, Messengers, and Officers, with the like Consent and Approbation, reasonable Salaries, and shall and may employ a Solicitor, and allow to such Solicitor a reasonable Salary or Reward, and shall and may give and administer to such Solicitor or Solicitors, Secretary, Clerks, and Officers respectively an Oath for their faithful Demeanor in all Things relating to the due Performance of the Trusts reposed in them by the said Commissioners, and in all other Things touching the Premises; and the said Commissioners shall and may from Time, to Time, at their Discretion, dismiss and discharge such Solicitor or Solicitors, Secretary, Clerks, Messengers, and other Officers, and appoint others in their Place; and the said Solicitor or Solicitors, Secretary, Clerks, and other Officers are hereby required faithfully to execute and perform the said Trusts in them severally and respectively reposed, without taking any thing for such Service other than such Salaries or Rewards as the said Commissioners, with such Approbation as aforesaid shall direct or appoint in manner aforesaid.

Any Three Commissioners to be a Quorum.

XXXVI. And be it further enacted, That all Acts, Matters, and Things which the said Commissioners for the Execution of this Act are by this Act authorized so to do or execute may be done and executed by any Three or more of such Commissioners.

Remuneration of the Commissioners.

XXXVII. And be it further enacted, That no Remuneration shall be given for and in respect of the Execution of the said Commission to such of the said Commissioners as shall be Members of either House of Parliament, nor to any Number exceeding Three of the said Commissioners.

Appointment of auxiliary Commissioners in the Colonies.

Colonial Commissioners to be sworn.

XXXVIII. 'And whereas it may be necessary that Assistant Commissioners should be appointed to act in aid of and under the Directions of the Commissioners appointed by this Act in the said several Colonies;' be it therefore enacted, That the Governor and the Attorney General or other chief Law Adviser of the Government of the said Colonies respectively shall, with any Two or more resident Inhabitants for each of such Colonies, to be nominated during Pleasure by the Governor thereof, be Commissioners for the Colony to which they respectively belong, to assist in aid of the Commissioners under this Act in all such Cases and in relation to all Matters and Things which shall be referred to them by the said Commissioners, and for all such Purposes shall have and use and exercise all the Powers and Authorities of the said Commissioners; and such Assistant Commissioners shall take an Oath, to be administered to the Governor by the Chief Justice or any Judge of the said Colonies respectively, and to the other Assistant Commissioners by the Governor thereof, that they will well and truly and impartially execute the Powers and Authorities given to them as such Assistant Commissioners in the several Matters and Things which shall be referred or submitted to them under the Provisions of this Act; and the said Assistant Commissioners shall, in all Matters which shall be referred to them by the Commissioners, transmit to the said Commissioners a full Statement of the several Matters which shall have

been given in Evidence before them, and true Copies of such written Evidence as shall have been received by them, and thereupon the said Commissioners shall proceed to adjudicate upon the same, and upon such other Evidence, if any, as may be laid before them.

Issue of Money for Payment of the Expence of the Commission.

XXXIX. And be it further enacted, That the Lords Commissioners of the Treasury, or any Three or more of them, or the Lord High Treasurer for the Time being, shall be and they are hereby respectively authorized and required to issue and cause to be advanced all such Sums of Money to such Person or Persons, in such Manner, and in such Proportion as the said Commissioners appointed by this Act shall, by Writing under their Hands, from Time to Time require, out of the said Sum of Twenty Millions, which Sums so to be issued and advanced shall be employed for the Payment of Allowances, and in defraying all other necessary Charges and Expences, in or about the Execution of the said Commission, without other Account than that before the Lords Commissioners of His Majesty's Treasury; and which Money so to be issued shall not be subject to any Tax, Duty, Rate, or Assessment whatsoever imposed by Authority of Parliament; but that an Account of the said Charges and Expences shall be laid before both Houses of Parliament within Two Months after the Commencement of the then next ensuing Session of Parliament.

Commissioners may compel the Attendance and Examination of Witnesses.

XL. And he it further enacted, That the said Commissioners shall be and are hereby authorised, by a Summons under their Hands, or under the Hands of any Three of them to require the Attendance before them, by a Time to be in such Summons for that Purpose limited, of any Person or Persons competent, or whom such Commissioners may have Reason to

believe to be competent, to give Evidence upon any Question depending before them; and if any Person upon whom any such Summons shall be served by the actual Delivery thereof to him or her, or by the leaving thereof at his or her usual Place of Abode, shall, without reasonable Cause to be allowed by such Commissioners, fail to appear before them at the Time and Place in such Summons for that Purpose mentioned, or so appearing shall refuse to be sworn or to make his or her solemn Affirmation, as the Case may be, or having been so sworn or having made such Affirmation shall not make answer to any such Questions as may by the said Commissioners be proposed to him or her touching any Matter or Thing depending before them, or shall refuse or fail to produce and exhibit to the said Commissioners any such Papers and Documents relating to any Question, Matter, or Thing depending before such Commissioners as shall by them be called for or required, every such Person shall, for such his Default, Refusal, or Neglect as aforesaid, incur and become liable to all such Fines and Penalties, Prosecutions, Civil Suits, or Actions as any Person may by Law incur or become liable to for Default of Appearance or for refusing to be sworn or to give Evidence upon any Issue joined in any Action depending in His Majesty's Court of King's Bench; and the said Commissioners shall have all such and the same Powers, Jurisdiction, and Authority for imposing and causing to be levied and recovered any such Fines and Penalties as aforesaid as are by Law vested in any of the Judges of the said Court for imposing or causing to be levied and recovered any Fines or Penalties incurred by any Person failing to appear as a Witness or refusing to be sworn and to give Evidence in the Trial of any Action before any such Judges or Judge.

Commissioners authorized to take Examinations on Oath or Affirmation.

XLI. And be it further enacted, That the said Commissioners may examine upon Oath or Affirmation (which Oath or Affirmation they or any One or Two of them are and is hereby authorized to administer) all Persons who shall appear before them to be examined as Witnesses touching any Matters or Things which may be depending, or touching any Questions which may arise, in the Execution of the Powers vested in the said Commissioners by this Act, and may also receive any Affidavits or Depositions in Writing, upon Oath or Affirmation, touching such Matters or Things as aforesaid, which shall be made before any Justice of the Peace of any County or Shire, or any Magistrate of any Borough or Town Corporations, in *Great Britain or Ireland*, where or near which the Person making such Affidavit or Deposition shall reside, or before any Chief Justice or any other Judge of any of the Courts of Record or any Supreme Courts of Judicature in any of the said Colonies respectively, and certified and transmitted to the said Commissioners under the Hand and Seal of such Justice or Magistrate, Chief Justice or Judge (and which Oath or Affirmation every such Justice or Magistrate shall be and is hereby authorized and empowered to administer); provided that in every such Affidavit or Deposition there shall be expressed the Addition of the Party making such Affirmation or Deposition, and the particular Place of his or her Abode.

Penalties for swearing falsely before the Commissioners.

XLII. And be it further enacted, That if any Person or Persons upon Examination on Oath or Affirmation before the said Commissioners respectively, or if any Person or Persons making any such Affirmation or Deposition as before mentioned, shall wilfully and corruptly give false Evidence, or shall in such Affirmation, Affidavit or Deposition wilfully or

Exemption from Postage of Letters on the  
Business of the Commission.

corruptly swear, affirm, or allege any Matter or Thing which shall be false or untrue, every such Person or Persons so offending, and being thereof duly convicted, shall be and is and are hereby declared to be subject and liable to the Pains and Penalties of Persons convicted of wilful and corrupt Perjury by any Law in force at the Time of such Perjury being committed.

XLIII. And be it further enacted, That the said Commissioners shall and may receive and send by the General Post, from and to Places within the United Kingdom, all Letters and Packets relating solely and exclusively to the Execution of this Act free from the Duty of Postage, provided that such Letters and Packets as shall be sent to the said Commissioners be directed to the "Commissioners of Compensation," at their Office in *London*, and that all such Letters and Packets as shall be sent by the said Commissioners shall be in Covers, with the Words "Compensation Office, pursuant to Act of Parliament passed in the Third and Fourth Years of the Reign of His Majesty King *William* the Fourth," printed on the same, and be signed on the Outside thereof, under such Words, with the Name of such Person as the said Commissioners, with the Consent of the Lords Commissioners of the Treasury or any Three or more of them, shall authorize and appoint, in his own Handwriting (such Name to be from Time to Time transmitted to the Secretaries of the General Post Office in *London* and *Dublin*), and be sealed with the Seal of the said Commissioners, and under such other Regulations and Restrictions as the said Lords Commissioners, of any Three or more of them, shall think proper and direct; and the Person so to be authorized is hereby strictly forbidden so to subscribe or seal any Letter or Packet whatever except such only concerning which he shall receive the special Direction of his

superior Officer, or which he shall himself know to relate solely and exclusively to the Execution of this Act; and if the Person so to be authorised, or any other Person, shall send, or cause or permit to be sent, under any such Cover, any Letter, Paper, or Writing, or any Enclosure, other than what shall relate to the Execution of this Act, every Person so offending shall forfeit and pay the Sum of One hundred Pounds, and be dismissed from his Office; one Moiety of the said Penalty to the Use of His Majesty, His Heirs and Successors, and the other Moiety to the Use of the Person who shall inform or sue for the same, to be sued for and recovered in any of His Majesty's Courts of Record at *Westminster* for Offences committed in *England*, and in any of His Majesty's Courts of Record in *Dublin* for Offences committed in *Ireland*, and before the Sheriff or Stewartry Court of the Shire or Stewartry within which the Party offending shall reside or the Offence shall be committed for Offences committed in *Scotland*.

No Part of the Compensation to be applicable to any Colony unless His Majesty by Order in Council shall have first declared that adequate Provision has been made by the Legislature thereof. Such Orders to be published, and laid before Parliament.

XLIV. And be it further enacted, That no Part of the said Sum of Twenty Millions of Pounds Sterling shall be applied or shall be applicable to the Purposes aforesaid, for the Benefit of any Person now entitled to the Services of any Slave in any of the Colonies aforesaid, unless an Order shall have been first made by His Majesty, with the Advice of His Privy Council, declaring that adequate and satisfactory Provision hath been made by Law in such Colony for giving effect to this present Act by such further and supplementary Enactments as aforesaid, nor unless a Copy of such Order in Council, duly certified by One of the Clerks in Ordinary of His Majesty's Privy Council, shall by the Lord President of the Council have been transmitted to the Lords Commissioners of His Majesty's Treasury or to the Lord High Treasurer

for the Time being for their or his Guidance or Information; and every such Order shall be published Three several Times in the London Gazette, and shall be laid before both Houses of Parliament within Six Weeks next after the Date thereof if Parliament shall be then in Session, and if not within Six Weeks from the then next ensuing Session of Parliament.

The Commissioners to apportion the Compensation Fund into Nineteen Shares, being One Share for each Colony; In making such Apportionment, Regard to be had to the Number of registered Slaves, &c.

59 G.3. c.120.

XLV. And be it further enacted, That the said Commissioners shall proceed to apportion the said Sum into Nineteen different Shares, which shall be respectively assigned to the several *British Colonies or Possessions* hereinafter mentioned: (that is to say,) the *Bermuda Islands, the Bahama Islands, Jamaica, Honduras, the Virgin Islands, Antigua, Montserrat, Nevis, Saint Christopher's, Dominica, Barbadoes, Grenada, Saint Vincent's, Tobago, Saint Lucia, Trinidad, British Guinea, the Cape of Good Hope, and Mauritius*; and in making such Apportionment of the said funds between the said several Colonies the said Commissioners shall and are hereby required to have regard to the Number of Slaves belonging to or settled in each of such Colonies as the same may appear and are stated according to the latest Returns made in the Office of the Registrar of Slaves in *England*, appointed in pursuance and under the Authority of an Act passed in the fifty-ninth Year of His late Majesty King *George the Third*, intituled *An Act for establishing a Registry of Colonial Slaves in Great Britain, and for making further Provision with respect to the Removal of Slaves from British Colonies*; and the said Commissioners shall and they are hereby further required, in making such Apportionment as aforesaid, to have regard to the Prices for which, on an Average of Eight Years ending on the Thirty-first Day of *December* One thousand eight hundred and thirty, Slaves have been sold in

each of the Colonies aforesaid respectively, excluding from Consideration any such Sales in which they shall have sufficient Reason to suppose that such Slaves were sold or purchased under any Reservation, or subject to any express or tacit Condition affecting the Price thereof; and the said Commissioners shall then proceed to ascertain in reference to each Colony, what Amount of Sterling Money will represent the average Value of a Slave therein for the said Period of Eight Years; and the total Number of the Slaves in each Colony being multiplied into the Amount of Sterling Money so representing such average Value as aforesaid of a Slave therein, the Product of such Multiplication shall be ascertained for each such Colony separately; and the said Twenty Millions of Pounds Sterling shall then be assigned to and apportioned amongst the said several Colonies rateably and in proportion to the Product so ascertained for each respectively.

No Compensation to be allowed for Persons illegally held in Slavery.

XLVI. And be it further enacted, That in case it shall appear to the said Commissioners that any Persons in respect of whom Claims for Compensation under the Provisions of this Act shall have been made have been registered and held in Slavery in any of the said Colonies in this Act mentioned contrary to Law, then and in every such Case the said Commissioners shall deduct from the Sum to be appropriated as Compensation to the Proprietors in such Colony such Sums as shall correspond with the estimated Value and Number of the said Persons so illegally registered and held in Slavery; and all such Sum or Sums which may be deducted as herein-before provided shall be applied towards defraying the general Expences of the Commission to be hereby appointed: Provided always that for the Purpose of ascertaining in what Cases

such Deductions shall be made, every Question which shall arise in any such Colony respecting the servile Condition of any Persons therein registered as Slaves shall be inquired of and determined by the Commissioners to be appointed under this Act according to such Rules of legal Presumption and Evidence as are or shall be established by any Law in force or which shall be in force in any such Colony.

Commissioners to institute Inquiries to ascertain the Facts to be taken into account in effecting the Apportionment of the Compensation Fund between the Proprietors in each Colony.

Having made the Inquiries, Commissioners to frame general Rules for the equitable Distribution of the Fund assigned to each Colony. Such Rules to be laid before His Majesty in Council.

XLVII. 'And whereas it is necessary that Provision should be made for the Apportionment amongst the Proprietors of the Slaves to be manumitted by virtue of this Act, in each of the said Colonies respectively, of that Part of the said Compensation Fund which shall be so assigned as aforesaid to each of the respective Colonies: And whereas the necessary Rules for that Purpose cannot be properly or safely established until after full Inquiry shall have been made into the several Circumstances which ought to be taken into consideration in making such Apportionment;' be it therefore enacted, That it shall be the Duty of the said Commissioners, and they are hereby authorized and required, to institute a full and exact Inquiry into all the Circumstances connected with each of the said several Colonies which in the Judgment of the said Commissioners ought, in Justice and Equity, to regulate or affect the Apportionment within the same of that Part of the said general Compensation Fund which shall in manner aforesaid be assigned to each of the said Colonies respectively; and especially such Commissioners shall have regard to the relative Value of praedial Slaves and of unattached Slaves in every such Colony; and such Commissioners shall distinguish such Slaves, whether praedial or unattached, into as many distinct Classes as, regard being had to the Circumstances of each Colony, shall appear just; and such Commissioners

shall, with all practicable Precision, ascertain and fix the average Value of a Slave in each of the Classes into which the Slaves in any such Colony shall be so divided; and the said Commissioners shall also proceed to inquire and consider of the Principles according to which the Compensation to be allotted in respect to any Slave or Body of Slaves ought, according to the Rules of Law and Equity, to be distributed amongst Persons who, as Owners or Creditors, Legatees or Annuitants, may have any joint or common Interest in any such Slave or Slaves, or may be entitled to or interested in such Slave or Slaves, either in Possession, Remainder, Reversion, or Expectancy; and the said Commissioners shall also proceed to inquire and consider of the Principles upon which and the Manner in which Provision might be most effectually made for the Protection of any Interest in any such Compensation Money which may belong to or be vested in any married Women, Infants, Lunatics, or Persons of insane or unsound Mind, or Persons beyond the Seas, or labouring under any other legal or natural Disability or Incapacity, and according to what Rules, and in what Manner, and under what Authority Trustees should, when necessary, be appointed for the safe Custody, for the Benefit of any Person or Persons, of any such Compensation Fund or of any Part thereof, and for regulating the Duties of such Trustees, and providing them with a fair and reasonable Indemnity; and the said Commissioners shall also inquire and consider upon what Principles, according to the established Rules of Law and Equity in similar Cases, the Succession to such Funds should be regulated upon the Death of any Person entitled thereto who may die intestate; and the said Commissioners shall and they are also authorized and required to consider of any other

Question which it may be necessary to investigate in order to establish just and equitable Rules for the Apportionment of such Compensation Money amongst the Persons seized of, or entitled to, or having any Mortgage, Charge, Incumbrance, Judgment, or Lien upon, or any Claim to, or Right or Interest in, any Slave or Slaves so to be manumitted as aforesaid, at the Time of such their Manumission; and having made all such Inquiries, and having taken all such Matters and Things as aforesaid into their Consideration, the said Commissioners shall and are hereby required to proceed to draw up and frame all such general Rules, regard being had to the Laws and Usages in force in each Colony respectively, as to them may seem best adapted in each Colony respectively for securing the just and equitable Distribution of the said Funds amongst or for the Benefit of such several Persons as aforesaid., and for the Protection of such Funds, and for the Appointment and Indemnification of such Trustees as aforesaid; and such general Rules when so framed, and when agreed upon by the said Commissioners, shall by them be subscribed with their respective Hands and Seals, and transmitted to the Lord President of His Majesty's Council, to be by him laid before His Majesty in Council; and so from Time to Time as often as any further general Rules should be so framed and agreed to for the Purposes aforesaid or any of them.

Rules to be published in the London Gazette, with a Notice that Appeals will be received against their Establishment.

XLVIII. And be it further enacted, That the General Rules to be transmitted as aforesaid to the said Lord President shall be forthwith published in the *London Gazette* on Three several Occasions at least, together with a Notice that all Persons interested in or affected by any such general Rules may, by a Time to be in such Notice limited, appeal against any such Rules

to His Majesty in Council; and it shall be lawful for the Lords and others of His Majesty's Privy Council, or for any Three or more of them, by any further Notice or Notices to be for that Purpose published in the *London Gazette*, to enlarge, as to them may seem meet, the Time for receiving any such Appeals.

His Majesty in Council may hear such Appeals, and thereupon confirm or disallow any general Rule so appealed against.

XLIX. And be it further enacted, That if within the Time so to be limited for receiving such Appeals any Person or Persons shall prefer any Petition of Appeal to His Majesty in Council against any such general Rule so published as aforesaid in the *London Gazette*, it shall be lawful for His Majesty in Council, or for any Committee of Privy Council, to hear such Appeal, and to cause Notice thereof to be served upon the said Commissioners, who shall thereupon undertake the Defence of such Appeal; and upon hearing any such Appeal it shall be lawful for His Majesty in Council to confirm and annul or to rescind and disallow any such General Rule as aforesaid, or thereupon to alter, amend, or vary any such Rule in such Manner as to His Majesty may seem just, or to remit the same to the said Commissioners for further Consideration and Revision.

In Absence of Appeal, His Majesty in Council may confirm, rescind, or amend such Rules.

L. And be it further enacted, That at the Expiration of the Time limited for receiving such Appeals as aforesaid it shall be lawful for His Majesty in Council to confirm and allow, or to rescind and disallow, in the whole or in part, or to amend, alter, or vary, any such general Rule or Rules, though not so appealed against, as to His Majesty may seem just, or to remit such Rules to the said Commissioners for further Consideration and Revision.

Rules when confirmed by His Majesty shall be recited in the confirmatory Order in Council, and inrolled in Chancery.

LI. And be it further enacted, That when and so often as any such general Rule or Rules as aforesaid shall by His Majesty in Council have been confirmed and allowed, an Order shall be made by

His Majesty in Council, reciting at length any such Rule or Rules, with any Alterations or Amendments which may have been therein made as aforesaid; and a Copy of every such Order in Council shall be duly certified by the Lord President of His Majesty's Council for the Time being to the Lord High Chancellor or Keeper of the Great Seal, or to the Master of the Rolls, for the Time being, and shall be duly inrolled among the Records of the High Court of Chancery, and shall there remain and be of Record.

Rules so inrolled may be revoked or amended.

LII. And be it further enacted, That it shall be lawful, by any Rules so to be framed, published, confirmed, allowed, and inrolled as aforesaid, to revoke, amend, alter, and again renew, as Occasion may require, and as may be thought just, any former or preceding Rule or Rules.

Rules when confirmed and inrolled shall be of the same Validity as if enacted by Parliament.

LIII. And be it further enacted, That every such general Rule as aforesaid, when so inrolled as aforesaid, shall be of the same Validity, Force, Virtue, and Effect as if the same had been made and enacted by His Majesty, by and with the Advice and Consent of Parliament: Provided nevertheless, that no such Rule shall be in anywise repugnant to or at variance with this Act or any Part thereof, or with the Laws and Usages in force in the several Colonies respectively to which such Rules may relate, so far as any such Laws or Usages may not be repugnant to or at variance with the Provisions of this Act.

Rules so inrolled shall be observed by the Commissioners in making their Awards.

LIV. And be it further enacted, That the said general Rules, when so framed, confirmed, allowed, and inrolled as aforesaid, shall be observed and followed by the said Commissioners, and shall be binding upon them in the further Execution of the said Commission, and in the Exercise of the Powers and Authorities hereby committed to them, and shall in all

Persons Interested in any Slaves manumitted by this Act may prefer Claims before the Commissioners, who are to make Rules for the Conduct of all Proceedings, under the Commission.

Cases be taken, observed, and followed as the Rules for the Decision of and Adjudication upon all Claims which may be preferred to them by any Person or Persons having or claiming to have any Interest in the said Compensation Fund or in any Part thereof.

LV. And be it further enacted, That any Person having or claiming to have had any Right, Title, or Interest in or to, or any Mortgage, Judgment, Charge, Incumbrance, or other Lien upon, any Slave or Slaves so to be manumitted as aforesaid, at the Time of such their Manumission, shall and may prefer such Claims before the said Commissioners; and for ensuring Method, Regularity, and Dispatch in the Mode of preferring and of proceeding upon such Claims, the said Commissioners shall and are hereby authorized by general Rules, to be framed and published, confirmed, allowed, and inrolled as aforesaid, to prescribe the Form and Manner of Proceeding to be observed by any Claimant or Claimants preferring any such Claims, and to authorize the Assistant Commissioners so to be appointed in the said several Colonies to receive and report upon the same or any of them in such Manner and Form and under such Regulations as to the Commissioners so to be appointed by His Majesty as aforesaid shall seem meet, and to prescribe the Manner, the Time or Times, the Place or Places, and the Form or Forms in which Notices of such Claims shall be published for general Information, or especially communicated to or served upon any Person or Persons interested therein or affected thereby, and to prescribe the Form and Manner of Proceeding to be observed upon the Prosecution of such Claims, or in making any Opposition to the same, and to make all such Regulations as to them may seem best adapted for promoting Method, Economy, and Dispatch in the

Investigation of such Claims, and respecting the Evidence to be taken and admitted for or against the same, and respecting the Manner and Form of adjudicating thereupon, and otherwise however respecting the Method, Form, and Manner of Proceeding to be observed either by them the said Assistant Commissioners, or by the Parties to any Proceedings before them, their Agents or Witnesses, and which Rules shall from Time to Time be liable to be amended, altered, varied, or renewed as Occasion may require, in such Manner as is herein-before directed.

Commissioners to adjudicate on all Claims preferred to them. Appeal may be made against Adjudication.

His Majesty in Council may make Rules for the Regulation, of such Appeals.

In adverse Claims, any Claimant interested in the Adjudication may undertake its Defence.

LVI. And be it further enacted, That the said Commissioners shall proceed, in the Manner to be prescribed by any such general Rules as last aforesaid, to inquire into and adjudicate upon any such Claims as may be so preferred to them, and shall upon each such Claim make their Adjudication and Award in such Manner and Form as shall be prescribed by any such last-mentioned general Rules; and if any Person interested in or affected by any such Adjudication or Award shall be dissatisfied therewith, it shall be lawful for such Person to appeal therefrom to His Majesty in Council, and Notice of any such Appeal shall be served upon the said Commissioners, who shall thereupon undertake the Defence thereof; and it shall be competent to His Majesty in Council to make and establish all such Rules and Regulations as to His Majesty shall seem meet respecting the Time and Manner of preferring and proceeding upon such Appeals, and respecting the Course to be observed in defending the same, which Rules shall be so framed as to promote as far as may be consistent with Justice, all practicable Economy and Dispatch in the proceeding upon the Decision thereof; and in Cases in which any Two or more Persons shall have

preferred before the said Commissioners adverse or opposing Claims, and in which any or either of such Persons shall be interested to sustain the Adjudications or Award of such Commissioners thereupon, then and in every such Case it shall be lawful for any Person or Persons so interested, to undertake the Defence of any such Appeal in lieu and instead of the said Commissioners.

His Majesty in Council may confirm or disallow, or alter or remit Adjudication appealed against.

LVII. And be it further enacted, That it shall be lawful for His Majesty in Council, upon hearing any such Appeal as aforesaid, either to confirm and allow or to reverse or to amend or alter any such Adjudication or Award as to His Majesty in Council shall seem fit, or to remit any such Adjudication and Award to the said Commissioners for further Consideration and Revision, or for the Admission of further Evidence; but it shall not be lawful for His Majesty in Council, upon the hearing of any such Appeal, to admit any new Evidence which was not admitted by or tendered to the said Commissioners before the making of such their Adjudication and Award.

Failing any Appeal, the Award of the Commissioners final.

LVIII. And be it further enacted, That the several Adjudications and Awards of the said Commissioners, unless duly appealed from within the respective Times to be limited by His Majesty in Council for that Purpose, shall be final and conclusive and binding upon all Persons interested therein or affected thereby; and that the Decisions of His Majesty in Council upon any such Appeal shall in like Manner be final, binding, and conclusive.

Treasury may order Issues of Money for Payment of Saleries &c.

LIX. And be it further enacted, That the Lord High Treasurer or the Commissioners of His Majesty's Treasury, or any Three or more of them, for the Time being, may order and direct to be issued and paid out of the said Sum of Twenty Millions of Pounds Sterling any Sum or Sums of

Money for the Payment of Salaries to Commissioners, Officers, Clerks, and other Persons acting in relation to such Compensation in the Execution of this Act, and for discharging such incidental Expences as shall necessarily attend the same, in such Manner as the Lord High Treasurer, or Commissioners of the Treasury, or any Three or more of them, shall from Time to Time think fit and reasonable; and an Account of such Expence shall be annually laid before Parliament.

Manner in which Sums awarded by Commissioners are to be paid.

LX. And be it enacted, That a Certificate containing a List of the Names and Designation of the several Persons in whose favour any Sum or Sums of Money shall be awarded from Time to Time under the Provisions of this Act by the Commissioners, as herein-before mentioned, shall be signed by Three or more of the said Commissioners, who shall forthwith transmit the same to His Majesty's Principal Secretary of State then having Charge of the Affairs of the said Colonies, for his Approbation and Signature, who shall, when he shall have signed the same, transmit it to the Commissioners of His Majesty's Treasury; and the said Commissioners of the Treasury, or any Three of such Commissioners, shall thereupon, by Warrant under their Hands, authorize the Commissioners for the Reduction of the National Debt to pay the said Sums, out of the Monies standing upon their Account in the Books of the said Bank under the Title of "*The West India Compensation Account*," to the Persons named in such Certificate; and the said Commissioners for the Reduction of the National Debt, or the Comptroller General or Assistant Comptroller General acting under the said Commissioners, are hereby required to pay all such Sums of Money to the Persons named therein under such Forms and Regulations as the said Commissioners for the Reduction of the

National Debt shall think sit to adopt for that Purpose.

13&14 C.2. c.1.  
17 C.2. c.2.  
22 C.2. c.1.  
1&2 W&M. c.18.  
10 Ann, c.2.

52 G.3. c.155. extended to Colonies in which any of recited Acts are in force.

Special Justices to have same Power in Colonies as Justices under 52 G.3. c.155.

LXI. 'And whereas in some of the Colonies aforesaid a certain Statute, made in the Thirteenth and Fourteenth Years of King *Charles* the Second, intituled *An Act for preventing the Mischiefs and Dangers that may arise by certain Persons called Quakers and others refusing to take lawful Oaths*; and a certain other Statute made in the Seventeenth Year of King *Charles* the Second, intituled *An Act for restraining Nonconformists from inhabiting in Corporations*; and a certain other Statute, made in the Twenty-second Year of King *Charles* the Second, intituled *An Act to prevent and suppress seditious Conventicles*; and a certain other Statute, made in the First and Second Year of King *William* and Queen *Mary*, intituled *An Act for exempting Their Majesties Protestant Subjects dissenting from the Church of England from the Penalties of certain Laws*; and a certain other Statute, made in the Tenth Year of Queen *Anne*, intituled *An Act for preferring the Protestant Religion by better securing the Church of England as by Law established; and for confirming the Toleration granted to Protestant Dissenters by an Act intituled 'An Act for exempting Their Majesties Protestant Subjects dissenting from the Church of England from the Penalties of certain Laws,' and for supplying the Defects thereof; and for the further securing the Protestant Succession by requiring the Practicers of the Law in North Briton to take the Oaths and subscribe the Declaration therein mentioned*; or some or one of those Statutes, or some Parts thereof or of some of them, have and hath been adopted, and are or is in force;' be it further enacted, That in such of the Colonies aforesaid in which the said several Statutes or any of them, or any Parts thereof or any of them, have or

hath been adopted, and are or is in force, a certain Statute made in the Fifty-second Year of His late Majesty King *George* the Third, intituled *An Act to repeal certain Acts and amend other Acts relating to Religious Worship and Assemblies, and Persons teaching or preaching therein*, shall be and is hereby declared to be in force as fully and effectually as is such Colonies had been expressly named and enumerated for that Purpose in such last-recited Statute: Provided nevertheless, that in the said several Colonies to which the said Act of His late Majesty King *George* the Third is so extended and declared applicable as aforesaid any Two or more Justices of the Peace holding any such Special Commission as aforesaid shall have, exercise, and enjoy all and every the Jurisdiction, Powers, and Authorities whatsoever which by force and virtue of the said Act are within the Realm of *England* had, exercised, and enjoyed by the several Justices of the Peace, and by the General and Quarter Sessions therein mentioned.

His Majesty in Council may make all necessary Laws for giving effect to this Act in the Settlement of Honduras.

LXII. 'And whereas in the Settlements in the Occupation of His Majesty and of His Majesty's Subjects in *Honduras*, no Law is in force for the Registration of Slaves, and Doubts might be entertained respecting the Authority of His Majesty, with the Advice of His Privy Council, to make Laws binding on His Majesty's Subjects therein;' be it therefore declared and enacted That it is and shall be lawful for His Majesty, by any Order or Orders to be by Him for that Purpose made with the Advice of His Privy Council, to establish a Registry of Slaves for the Purposes of this Act within the Settlement; and all Laws made by His Majesty for the Government of His said Subjects shall, for the Purposes of this Act, be as valid and effectual as any Laws made by His Majesty in Council for the Government of any Colonies subject to the

Legislative Authority of His Majesty in Council are or can be.

The Word Governor defined.

LXIII. And be it further enacted, That within the Meaning and for the Purposes of this Act every Person who for the Time being shall be in the lawful Administration of the Government of any of the said Colonies shall be taken to be the Governor thereof.

Act not to extend to East Indies, &c,

LXIV. And be it further enacted, That nothing in this Act contained doth or shall extend to any of the Territories in the Possession of the *East India* Company, or to the Island of *Ceylon*, or to the Island of *Saint Helena*.

When Act to come into operation at the Cape of Good Hope and Mauritius.

LXV. And be it further enacted, That in the Colonies of the *Cape of Good Hope* and *Mauritius* the several Parts of this Act shall take effect and come into operation, or shall cease to operate and to be in force, as the Case may be, at Periods more remote than the respective Periods herein-before for such Purposes limited by the following Intervals of Time: *videlicet*, by Four Calendar Months in the Colony of the *Cape of Good Hope*, and by Six Calendar Months in the Colony of the *Mauritius*.

Islands, dependent upon Colonies deemed Part of such.

LXVI. And be it further enacted and declared, That within the Meaning and for the Purposes of this Act all Islands and Territories dependent upon any of the Colonies aforesaid, and constituting Parts of the same Colonial Government, shall respectively be taken to be Parts of such respective Colonies.

# West Indies Act, 1962

10 & 11 ELIZ. 2 CH. 19

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## ARRANGEMENT OF SECTIONS

### Section

1. Power of Her Majesty to provide for secession of colonies from, and dissolution of, the West Indies.
2. Power of Her Majesty to provide for interim performance of functions heretofore performed by Federal authorities for benefit of federated colonies.
3. Compensation scheme for officers of Federal public service.
4. Power of Her Majesty to establish common courts for West Indian colonies.
5. Power of Her Majesty to provide for government of certain West Indian colonies.
6. Power of Her Majesty to establish new forms of government in place of the West Indies.
7. Supplementary provisions as to Orders in Council.
8. Grants for benefit of certain West Indian colonies.
9. Expenses.
10. Short title, interpretation and repeals.

SCHEDULE—Enactments repealed.



## CHAPTER 19

An Act to enable provision to be made for the cesser of the inclusion of colonies in the federation established under the British Caribbean Federation Act, 1956, and for the dissolution of that federation and for matters consequential on the happening of either of those events; to enable provision to be made for the establishment of common courts and other authorities for, and fresh provision to be made for the government of, certain West Indian colonies; to enable provision to be made for the establishment of new forms of government for combinations of such colonies; and for purposes connected with the matters aforesaid.

[18th April, 1962]

**B**E it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

1.—(1) Her Majesty may—

- (a) by Order in Council provide for a colony's ceasing to be included in the Federation established by virtue of section one of the British Caribbean Federation Act, 1956, by the name of the West Indies (in this Act referred to as "the Federation");
- (b) by Order in Council dissolve the Federation and, with it, the authorities established by virtue of sub-paragraph (i) of paragraph (a) of subsection (1) of that section (in this Act referred to as the "Federal authorities").

Power of Her Majesty to provide for secession of colonies from, and dissolution of, the West Indies.  
4 & 5 Eliz. 2. c. 63.

(2) An Order in Council under paragraph (a) of the foregoing subsection may as respects the colony for the cesser of inclusion

of which in the Federation provision is made by the Order, and an Order in Council under paragraph (b) of that subsection may as respects each colony included in the Federation immediately before the dissolution thereof,—

- (a) determine, or provide for the determination of, the laws which, after the cesser or, as the case may be, the dissolution, are (subject to any amendment or repeal by the legislature of the colony or other competent authority) to remain valid as respects the colony notwithstanding the cesser or, as the case may be, the dissolution;
- (b) adapt or modify, or empower any such authority as may be specified in the Order to adapt or modify, to such extent as Her Majesty in Council or that authority, as the case may be, thinks necessary or expedient in view of the cesser or, as the case may be, the dissolution, any laws having effect in the colony and any other laws relating or referring to the colony or the Federation.

Power of Her Majesty to provide for interim performance of functions heretofore performed by Federal authorities for benefit of federated colonies.

2.—(1) With a view to securing that, notwithstanding the exclusion of colonies from, or the dissolution of, the Federation, the performance of functions performed by the Federal authorities for the benefit of the colonies which at the passing of this Act are included in the Federation is maintained pending the making, apart from this section, of arrangements in that behalf of a permanent nature, Her Majesty may by Order in Council provide for the establishment of an authority to be charged, or authorities to be severally charged, with the duty of performing for the benefit of those colonies, or of such of them as may be specified in the Order, any such functions (being functions which at the passing of this Act are, for the benefit of all or any of those colonies, performed by any of the Federal authorities) as may be specified in the Order, and such other (if any) functions as may be so specified.

(2) An Order in Council under this section may—

- (a) empower an authority established by the Order to make, for such purposes as may be specified in the Order, laws for the colonies for whose benefit it is to perform functions;
- (b) make provision, or enable provision to be made, for persons holding office in the public service of the Federation to become officers of such an authority;
- (c) vest in such an authority such of the assets and liabilities as may be specified in the Order of the government of the Federation or of any body which, for the purpose of performing functions on behalf of, or in accordance with directions given by, that government, is established by a law made by the legislature of the Federation;

(d) provide for the making to such an authority by the governments of the colonies for whose benefit the authority is to perform any functions of contributions towards defraying expenses incurred by the authority in performing those functions.

3.—(1) Her Majesty may by Order in Council make such provision as appears to Her necessary or expedient—

Compensation scheme for officers of Federal public service.

(a) for securing that the payment of a pension, gratuity, allowance or other like benefit to a person in respect of service of his, or that of another's, in the public service of the Federation is not prejudiced by reason of a colony's ceasing to be included in the Federation or of the dissolution of the Federation;

(b) for securing the making of payments to or in respect of persons who, at the passing of this Act, are serving in that public service and, by reason of the happening of either of the events aforesaid, lose office or, by reason of being transferred to some other service, become in a worse position in respect of the conditions of their service as compared with the conditions of service formerly obtaining with respect to them;

(c) for securing the payment to or in respect of such persons as are mentioned in the last foregoing paragraph who are transferred as therein mentioned (whether or not they become in a worse position as so mentioned) of sums in respect of disturbance suffered by them in consequence of being so transferred.

(2) An Order in Council under this section may provide for the raising of the moneys necessary to make payments falling to be made under the Order by either or both of the following means, namely,—

(a) the appropriation of assets of the government of the Federation;

(b) the making of contributions by all or any of the governments of the colonies included in the Federation at the passing of this Act.

4.—(1) Her Majesty may by Order in Council provide—

Power of Her Majesty to establish common courts for West Indian colonies.

(a) for the establishment, in place of the Federal Supreme Court of the Federation, of a court constituted in such manner as may be specified in the Order and having such jurisdiction to hear and determine appeals from, and to determine questions of law reserved by judges of, the courts of the relevant colonies as may be determined by or under the Order;

(b) confer, or provide for conferring, on the court established by the Order, jurisdiction to hear and determine appeals

from, and to determine questions of law reserved by judges of, the courts of such other colonies as may be specified in the Order;

- (c) confer upon the legislature of a colony from whose courts criminal appeals lie to the court established by the Order power to make, with extra-territorial operation, laws providing for the conveyance of prisoners to and from the place where that court is sitting.

(2) Her Majesty may, by Order in Council, provide for the establishment for the relevant colonies or for any two or more of them of courts additional to that whose establishment is authorised by the foregoing subsection, being courts constituted in such manner and having such jurisdiction (whether civil or criminal, original or appellate) as may be determined by or under the Order.

(3) An Order in Council under this section may provide for the expenses of maintaining a court established by the Order to be defrayed by the governments of the colonies for which it is established.

(4) In this section—

(a) “relevant colonies” means, for the purposes of subsection (1), the colonies from whose courts appeals lie at the passing of this Act to the Federal Supreme Court of the Federation and, for the purposes of subsection (2), the colonies aforesaid with the exception of British Guiana;

(b) “appeals” include appeals by way of cases stated.

(5) The Windward Islands and Leeward Islands (Courts) Order in Council, 1959, and the Windward Islands and Leeward Islands (Courts) (Amendment) Order in Council, 1960, shall have effect as if made under subsection (2) of this section.

(6) The Court of Appeal established by the West Indian Court of Appeal Act, 1919, is hereby dissolved.

5.—(1) Her Majesty may by Order in Council make such provision as appears to Her Majesty to be expedient for the government of any of the colonies to which this section applies, and for that purpose may provide for the establishment for the colony of such authorities as She thinks expedient and may empower such of them as may be specified in the Order to make laws either generally for the peace, order and good government of the colony or for such limited purposes as may be so specified subject, however, to the reservation to Herself of power to make laws for the colony for such (if any) purposes as may be so specified.

Power of Her Majesty to provide for government of certain West Indian colonies.

(2) The power conferred by the foregoing subsection shall include power to provide for the establishment of an authority to be charged, or authorities to be severally charged, with the duty of performing for the benefit of the said colonies, or for a combination of any two or more of them, such functions as may be specified in the Order, and for the expenses of an authority so charged to be defrayed by the governments of the colonies for whose benefit it is to perform functions.

In this subsection "authority" does not include a legislature or court.

(3) Subsection (1) of this section shall, as regards the Cayman Islands and the Turks and Caicos Islands, have effect—

(a) as if the reference to authorities specified in the Order included a reference to the legislature of Jamaica;

(b) as if there were included amongst the matters for which Her Majesty in Council is thereby authorised to make provision—

(i) the conferring, or the making of provision for conferring, on any court of Jamaica original or other jurisdiction over matters arising in any of the said Islands; and

(ii) the conferring of powers and the imposition of duties on other authorities of Jamaica.

(4) An Order in Council under this section with respect to a colony may vary or revoke any enactment or Letters Patent relating to the government of the colony and any Order in Council or other instrument so relating which has effect otherwise than by virtue of this section.

(5) Any Order in Council under the Jamaica Act, 1866, the Saint Vincent and Grenada Constitution Act, 1876, the Trinidad and Tobago Act, 1887, the Dominica Act, 1938, section three of the Leeward Islands Act, 1956, or section two of the Cayman Islands and Turks and Caicos Islands Act, 1958 (except the Orders in Council mentioned in subsection (5) of the last foregoing section, so far as subsisting by virtue of any of those enactments) shall, in so far as it is in force at the passing of this Act and could be made under this section, have effect as if so made, and so shall the Windward Islands and Leeward Islands (Police Service Commission) Order in Council, 1959.

(6) The colonies to which this section applies are those included at the passing of this Act in the Federation, and the Virgin Islands.

Power of Her Majesty to establish new forms of government in place of the West Indies.

6.—(1) Her Majesty may by Order in Council make provision for the federation of, or the establishment of any other new form of government for, all or any of the colonies to which the last foregoing section applies.

(2) An Order in Council under this section making provision for the federation of colonies may include provision for any purpose for which, by virtue of the provisions of subsections (1) and (2) of section one of the British Caribbean Federation Act, 1956 (except paragraphs (d) and (e) of subsection (2)) provision might have been included in an Order in Council under that section had those provisions referred to the colonies which are federated by the first-mentioned Order instead of those specified in the Schedule to that Act.

(3) An Order in Council under this section, other than one falling within the last foregoing subsection, may include provision for any purpose for which, by virtue of sub-paragraphs (i) and (ii) of paragraph (a) of subsection (1) of the said section one and paragraphs (b) and (c) of that subsection, provision might have been included in an Order in Council under that section had those provisions referred—

(a) to the colonies to which the first-mentioned Order in Council relates instead of those specified in the Schedule to that Act; and

(b) to the form of government established by that Order instead of to the federation,

and had the qualification “Federal” been omitted.

Supplementary provisions as to Orders in Council.

7.—(1) An Order in Council under any provision of this Act may make or provide for the making of such incidental, consequential or transitional provisions as may appear to Her Majesty in Council to be necessary or expedient.

(2) Any power conferred by this Act to make an Order in Council shall be construed as including power to vary or revoke the Order in Council by a subsequent Order in Council.

(3) Subject to the following subsection, a statutory instrument containing an Order in Council under this Act which adapts or modifies any Act shall be subject to annulment in pursuance of a resolution of either House of Parliament, and a statutory instrument containing an Order in Council under this Act which does not adapt or modify any Act shall be laid before Parliament after being made.

(4) The last foregoing subsection shall not apply to an instrument containing an Order in Council under section six of this Act making provision for the federation of, or the establishment of any other new form of government for, any colonies, but

no recommendation shall be made to Her Majesty in Council to make an Order under the said section six making such provision unless a draft of the Order has been laid before Parliament and approved by resolution of each House of Parliament.

**8. The Secretary of State may—**

Grants for benefit of certain West Indian colonies.

- (a) from time to time make, to the government of any colony to which section five of this Act applies, being a government whose resources are, in his opinion, insufficient to enable it to defray its administrative expenses, grants of such amounts as he may, with the approval of the Treasury, determine;
- (b) from time to time make, to any federal government established by virtue of section six of this Act for any colonies, grants of such amounts as he may, with the like approval, determine, for the purpose of enabling that government to make grants to the governments of any of the colonies for which it is established whose resources are, in its opinion, insufficient to enable them to defray their administrative expenses;
- (c) from time to time make, to a government of any other form established as aforesaid for any colonies, being one whose resources are, in his opinion, insufficient to enable it to defray its administrative expenses, grants of such amounts as he may, with the like approval, determine.

**9. The expenses incurred under the last foregoing section by the Secretary of State shall be defrayed out of moneys provided by Parliament, and any increase attributable to an Order in Council under this Act in sums payable under any other enactment out of moneys so provided or out of the Consolidated Fund of the United Kingdom shall be paid out of moneys so provided or out of that Fund, as the case may be.** Expenses.

**10.—(1) This Act may be cited as the West Indies Act, 1962.**

Short title, interpretation and repeals.

(2) Any reference in this Act to a colony shall be construed as including a reference to the dependencies (if any) thereof.

(3) The enactments mentioned in the first and second columns of the Schedule to this Act are hereby repealed to the extent respectively specified in relation thereto in the third column of that Schedule, but this repeal shall not be taken to dissolve the union of Tobago with Trinidad or to affect the status, as a separate colony, of any other colony.

Section 10.

## SCHEDULE

## ENACTMENTS REPEALED

Session and Chapter	Short Title	Extent of Repeal
29 & 30 Vict. c. 12.	The Jamaica Act, 1866 ...	The whole Act.
39 & 40 Vict. c. 47.	The Saint Vincent and Grenada Constitution Act, 1876.	The whole Act.
50 & 51 Vict. c. 44.	The Trinidad and Tobago Act, 1887.	The whole Act.
9 & 10 Geo. 5. c. 47.	The West Indian Court of Appeal Act, 1919.	The whole Act.
1 & 2 Geo. 6. c. 10.	The Dominica Act, 1938	The whole Act.
4 & 5 Eliz. 2. c. 23.	The Leeward Islands Act, 1956.	Sections one, three, four and five and the Schedule.
6 & 7 Eliz. 2. c. 13.	The Cayman Islands and Turks and Caicos Islands Act, 1958.	The whole Act.

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# British Overseas Territories Act 2002

## CHAPTER 8

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# British Overseas Territories Act 2002

## 2002 CHAPTER 8

An Act to make provision about the name “British overseas territories” and British citizenship so far as relating to the British overseas territories. [26th February 2002]

**B**E IT ENACTED by the Queen’s most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

### *Change of names*

#### **1 British overseas territories**

- (1) As the territories mentioned in Schedule 6 to the British Nationality Act 1981 (c. 61) are now known as “British overseas territories”—
  - (a) in section 50(1) of that Act (definitions), at the appropriate place insert—

““British overseas territory” means a territory mentioned in Schedule 6;”,
  - (b) for “dependent territory” (or “dependent territories”), wherever occurring in that Act, substitute “British overseas territory” (or “British overseas territories”), and
  - (c) in the heading to that Schedule, for “British Dependent Territories” substitute “British Overseas Territories”.
- (2) In any other enactment passed or made before the commencement of this section (including an enactment comprised in subordinate legislation), any reference to a dependent territory within the meaning of the British Nationality Act 1981 shall be read as a reference to a British overseas territory.
- (3) In the Interpretation Act 1978 (c. 30), at the appropriate place in Schedule 1 (list of definitions) insert—

““British overseas territory” has the same meaning as in the British Nationality Act 1981;”.

## 2 British overseas territories citizenship

- (1) Pursuant to section 1, British Dependent Territories citizenship is renamed “British overseas territories citizenship”; and a person having that citizenship is a “British overseas territories citizen”.
- (2) Accordingly, in the British Nationality Act 1981 (c. 61) –
  - (a) for “British Dependent Territories citizenship”, wherever occurring, substitute “British overseas territories citizenship”, and
  - (b) for “British Dependent Territories citizen” (or “British Dependent Territories citizens”), wherever occurring, substitute “British overseas territories citizen” (or “British overseas territories citizens”).
- (3) In any other enactment passed or made before the commencement of this section (including an enactment comprised in subordinate legislation), any reference to British Dependent Territories citizenship, or a British Dependent Territories citizen, shall be read as a reference to British overseas territories citizenship, or a British overseas territories citizen.

### *British citizenship*

## 3 Conferral on British overseas territories citizens

- (1) Any person who, immediately before the commencement of this section, is a British overseas territories citizen shall, on the commencement of this section, become a British citizen.
- (2) Subsection (1) does not apply to a person who is a British overseas territories citizen by virtue only of a connection with the Sovereign Base Areas of Akrotiri and Dhekelia.
- (3) A person who is a British citizen by virtue of this section is a British citizen by descent for the purposes of the British Nationality Act 1981 if, and only if –
  - (a) he was a British overseas territories citizen by descent immediately before the commencement of this section, and
  - (b) if at that time he was a British citizen as well as a British overseas territories citizen, he was a British citizen by descent.

## 4 Acquisition by British overseas territories citizens by registration

After section 4 of the British Nationality Act 1981 insert –

### “4A Acquisition by registration: further provision for British overseas territories citizens

- (1) If an application is made to register as a British citizen a person who is a British overseas territories citizen, the Secretary of State may if he thinks fit cause the person to be so registered.
- (2) Subsection (1) does not apply in the case of a British overseas territories citizen who –
  - (a) is such a citizen by virtue only of a connection with the Sovereign Base Areas of Akrotiri and Dhekelia; or
  - (b) has ceased to be a British citizen as a result of a declaration of renunciation.”

## 5 Acquisition by reference to the British overseas territories

Schedule 1 (which makes provision about the acquisition of British citizenship by reference to the British overseas territories) has effect.

### *Supplementary*

## 6 The Illois: citizenship

- (1) A person shall become a British citizen on the commencement of this section if—
  - (a) he was born on or after 26 April 1969 and before 1 January 1983,
  - (b) he was born to a woman who at the time was a citizen of the United Kingdom and Colonies by virtue of her birth in the British Indian Ocean Territory, and
  - (c) immediately before the commencement of this section he was neither a British citizen nor a British overseas territories citizen.
- (2) A person who is a British citizen by virtue of subsection (1) is a British citizen by descent for the purposes of the British Nationality Act 1981 (c. 61).
- (3) A person shall become a British overseas territories citizen on the commencement of this section if—
  - (a) subsection (1)(a) and (b) apply in relation to him, and
  - (b) immediately before the commencement of this section he was not a British overseas territories citizen.
- (4) A person who is a British overseas territories citizen by virtue of subsection (3) is such a citizen by descent for the purposes of the British Nationality Act 1981.

## 7 Repeals

The enactments mentioned in Schedule 2 (which include some which are spent or effectively superseded) are repealed to the extent specified there.

## 8 Short title, commencement and extent

- (1) This Act may be cited as the British Overseas Territories Act 2002.
- (2) The following provisions of this Act are to come into force on such day as the Secretary of State may by order made by statutory instrument appoint—
  - (a) sections 3 to 5 and Schedule 1,
  - (b) section 6, and
  - (c) section 7 and Schedule 2, so far as relating to the British Nationality (Falkland Islands) Act 1983 (c. 6).
- (3) An order under subsection (2) may—
  - (a) appoint different days for different purposes, and
  - (b) include such transitional provision as the Secretary of State considers expedient.
- (4) This Act extends to—
  - (a) the United Kingdom,
  - (b) the Channel Islands and the Isle of Man, and

(c) the British overseas territories.

## SCHEDULES

### SCHEDULE 1

Section 5

#### BRITISH CITIZENSHIP AND THE BRITISH OVERSEAS TERRITORIES

##### *Birth or adoption*

- 1 (1) Section 1 of the British Nationality Act 1981 (c. 61) (acquisition of British citizenship by birth or adoption) is amended as follows.
- (2) In subsection (1) (entitlement of person born in the United Kingdom whose parent is a British citizen or settled in the United Kingdom) –
  - (a) after “born in the United Kingdom after commencement” insert “, or in a qualifying territory on or after the appointed day,”, and
  - (b) in paragraph (b), after “settled in the United Kingdom” insert “or that territory”.
- (3) In subsection (2) (presumption in relation to infants found abandoned in the United Kingdom) –
  - (a) after the first “United Kingdom”, insert “, or on or after the appointed day is found abandoned in a qualifying territory,”,
  - (b) in paragraph (a), after “commencement” insert “or in that territory on or after the appointed day”, and
  - (c) in paragraph (b), after “United Kingdom”, insert “or that territory”.
- (4) In subsection (5) (as inserted by the Adoption (Intercountry Aspects) Act 1999 (c. 18)) (entitlement of a person adopted pursuant to the order of a court in the United Kingdom), after “United Kingdom” insert “or, on or after the appointed day, any court in a qualifying territory”.
- (5) In relation to any time after the commencement of this Schedule but before the coming into force of section 7 of the Adoption (Intercountry Aspects) Act 1999, in subsection (5) (entitlement pursuant to adoption order made by court in the United Kingdom), for “he” substitute “or where on or after the appointed day such an order is made by any court in a qualifying territory, the minor”.

##### *Descent*

- 2 (1) Section 2 of that Act (acquisition by descent) is amended as follows; but nothing in this paragraph affects the operation of that section in relation to persons born before the commencement of this Schedule.
- (2) In subsection (1) (birth outside the United Kingdom) –
  - (a) after the first “outside the United Kingdom” insert “and the qualifying territories”,

- (b) in paragraph (b), after “outside the United Kingdom” insert “and the qualifying territories” and after “in the United Kingdom” insert “or a qualifying territory”, and
  - (c) in paragraph (c), after “outside the United Kingdom” insert “and the qualifying territories”.
- (3) In subsection (2)(a) (Crown service under the government of the United Kingdom), after “United Kingdom” insert “or of a qualifying territory”.
- (4) In subsection (3) (services associated with the government of the United Kingdom)–
- (a) after the first “United Kingdom” insert “and the qualifying territories”, and
  - (b) after the second “United Kingdom” insert “or in a qualifying territory”.

#### *Registration of minors*

- 3 (1) Section 3 of that Act (acquisition by registration: minors) is amended as follows; but nothing in this paragraph affects the operation of that section in relation to persons born before the commencement of this Schedule.
- (2) In subsection (2) (registration of persons born outside United Kingdom), after “outside the United Kingdom” insert “and the qualifying territories”.
- (3) In subsection (3)(c) (requirements in case of infants)–
- (a) in sub-paragraph (i), after “United Kingdom” insert “or a qualifying territory”, and
  - (b) in sub-paragraph (ii), after “United Kingdom” insert “and the qualifying territories”.
- (4) In subsection (5) (requirements in case of minors)–
- (a) after “outside the United Kingdom” insert “and the qualifying territories”, and
  - (b) in paragraph (b), after “in the United Kingdom” insert “or a qualifying territory” and after “from the United Kingdom” insert “and the qualifying territories”.

#### *Commonwealth citizens*

- 4 In section 37(1)(a) of that Act (meaning of “Commonwealth citizen”), after “1983” insert “or the British Overseas Territories Act 2002”.

#### *Interpretation*

- 5 (1) Section 50 of that Act (interpretation) is amended as follows.
- (2) In subsection (1) (list of defined terms), insert at the appropriate places–
- ““appointed day” means the day appointed by the Secretary of State under section 8 of the British Overseas Territories Act 2002 for the commencement of Schedule 1 to that Act;”, and
- ““qualifying territory” means a British overseas territory other than the Sovereign Base Areas of Akrotiri and Dhekelia;”.
- (3) In subsection (7) (birth aboard ships and aircraft) for the words from “The preceding provisions” to the end substitute –

“(7A) For the purposes of this Act a person born outside a qualifying territory aboard a ship or aircraft—

(a) shall be deemed to have been born in that territory if—

(i) at the time of the birth his father or mother was a British citizen or a British overseas territories citizen; or

(ii) he would, but for this subsection, have been born stateless,

and (in either case) at the time of the birth the ship or aircraft was registered in that territory or was an unregistered ship or aircraft of the government of that territory; but

(b) subject to paragraph (a), is to be regarded as born outside that territory, whoever was the owner of the ship or aircraft at the time, and irrespective of whether or where it was then registered.

(7B) For the purposes of this Act a person born outside a British overseas territory, other than a qualifying territory, aboard a ship or aircraft—

(a) shall be deemed to have been born in that territory if—

(i) at the time of the birth his father or mother was a British overseas territories citizen; or

(ii) he would, but for this subsection, have been born stateless,

and (in either case) at the time of the birth the ship or aircraft was registered in that territory or was an unregistered ship or aircraft of the government of that territory; but

(b) subject to paragraph (a), is to be regarded as born outside that territory, whoever was the owner of the ship or aircraft at the time, and irrespective of whether or where it was then registered.”

6 In section 51(3)(a)(ii) of that Act (“citizen of the United Kingdom and colonies”), after “1983” insert “or the British Overseas Territories Act 2002”.

## SCHEDULE 2

Section 7

### REPEALS

<i>Short title and chapter</i>	<i>Extent of repeal</i>
British Nationality Act 1981 (c. 61)	In section 43(1)(b), “which is for the time being a colony”. In section 50(1), the definition of “dependent territory”.
British Nationality (Falkland Islands) Act 1983 (c. 6)	Sections 1(2) to (5) and 2.



# Constitutional Reform and Governance Act 2010

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    - Part 3 – Transitional provision relating to the Civil Service Commission
    - Part 4 – Other transitional provision
  - Schedule 3 – Parliamentary Standards Act 2009: substituted Schedule 2

- Schedule 4 – Parliamentary Standards Act 2009: new Schedule 4
- Schedule 5 – Parliamentary standards: consequential amendments
  - Part 1 – Amendments of the Parliamentary Standards Act 2009
  - Part 2 – Amendments of other Acts
- Schedule 6 – Parliamentary and other pensions
  - Part 1 – Parliamentary and other pensions
  - Part 2 – Provision which may be included in schemes
  - Part 3 – Amendments, transitional provision etc
- Schedule 7 – Amendments of Freedom of Information Act 2000



# Constitutional Reform and Governance Act 2010

## 2010 CHAPTER 25

An Act to make provision relating to the civil service of the State; to make provision in relation to section 3 of the Act of Settlement; to make provision relating to the ratification of treaties; to make provision relating to the counting of votes in parliamentary elections; to amend the Parliamentary Standards Act 2009 and the European Parliament (Pay and Pensions) Act 1979 and to make provision relating to pensions for members of the House of Commons, Ministers and other office holders; to make provision for treating members of the House of Commons and members of the House of Lords as resident, ordinarily resident and domiciled in the United Kingdom for taxation purposes; to amend the Government Resources and Accounts Act 2000 and to make corresponding provision in relation to Wales; to amend the Public Records Act 1958 and the Freedom of Information Act 2000. [8th April 2010]

**B**E IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

### PART 1

#### THE CIVIL SERVICE

#### CHAPTER 1

#### STATUTORY BASIS FOR MANAGEMENT OF THE CIVIL SERVICE

#### *Application*

#### **1 Application of Chapter**

- (1) Subject to subsections (2) and (3), this Chapter applies to the civil service of the State.

- (2) This Chapter does not apply to the following parts of the civil service of the State –
- (a) the Secret Intelligence Service;
  - (b) the Security Service;
  - (c) the Government Communications Headquarters;
  - (d) the Northern Ireland Civil Service;
  - (e) the Northern Ireland Court Service.
- (3) Further, this Chapter –
- (a) does not apply in relation to the making, outside the United Kingdom, of selections of persons who are not members of the civil service of the State for appointment to that service for the purpose only of duties to be carried out wholly outside the United Kingdom;
  - (b) does not apply in relation to the appointment of a person to the civil service of the State who was selected for the appointment as mentioned in paragraph (a);
  - (c) does not apply to the civil service of the State so far as it consists of persons –
    - (i) who were appointed to the civil service of the State as mentioned in paragraph (b), and
    - (ii) all of whose duties are carried out wholly outside the United Kingdom.
- (4) In this Chapter references to the civil service –
- (a) are to the civil service of the State excluding the parts mentioned in subsections (2) and (3)(c);
  - (b) are to be read subject to subsection (3)(a) and (b);
- and references to civil servants are to be read accordingly.

#### *Civil Service Commission*

### **2 Establishment of the Civil Service Commission**

- (1) There is to be a body corporate called the Civil Service Commission (“the Commission”).
- (2) Schedule 1 (which is about the Commission) has effect.
- (3) The Commission has the role in relation to selections for appointments to the civil service set out in sections 11 to 14.
- (4) See also –
  - (a) section 9 (which sets out the Commission’s role in dealing with conduct that conflicts with civil service codes of conduct);
  - (b) section 17 (under which the Commission may be given additional functions).

#### *Power to manage the civil service*

### **3 Management of the civil service**

- (1) The Minister for the Civil Service has the power to manage the civil service (excluding the diplomatic service).

- (2) The Secretary of State has the power to manage the diplomatic service.
- (3) The powers in subsections (1) and (2) include (among other things) power to make appointments.
- (4) But they do not cover national security vetting (and, accordingly, subsections (1) and (2) do not affect any power relating to national security vetting).
- (5) The agreement of the Minister for the Civil Service is required for any exercise of the power in subsection (2) in relation to –
  - (a) remuneration of civil servants (including compensation payable on leaving the civil service), or
  - (b) the conditions on which a civil servant may retire.
- (6) In exercising his power to manage the civil service, the Minister for the Civil Service shall have regard to the need to ensure that civil servants who advise Ministers are aware of the constitutional significance of Parliament and of the conventions governing the relationship between Parliament and Her Majesty's Government.

#### **4 Other statutory management powers**

- (1) All statutory management powers in effect when section 3 comes into force continue to have effect.
- (2) But those and all other statutory management powers are exercisable subject to section 3.
- (3) “Statutory management power” means a power in relation to the management of any part of the civil service conferred by an Act (whenever passed) or an instrument under an Act (whenever made).
- (4) “Act” includes –
  - (a) an Act of the Scottish Parliament;
  - (b) an Act or Measure of the National Assembly for Wales;but excludes this Part of this Act.
- (5) Subsection (2) does not apply to a statutory management power conferred by the Superannuation Act 1965 or the Superannuation Act 1972 or an instrument under any of those Acts.

#### *Codes of conduct*

#### **5 Civil service code**

- (1) The Minister for the Civil Service must publish a code of conduct for the civil service (excluding the diplomatic service).
- (2) For this purpose, the Minister may publish separate codes of conduct covering civil servants who serve the Scottish Executive or the Welsh Assembly Government.
- (3) Before publishing a code (or any revision of a code) under subsection (2), the Minister must consult the First Minister for Scotland or the First Minister for Wales (as the case may be).

- (4) In this Chapter “civil service code” means a code of conduct published under this section as it is in force for the time being.
- (5) The Minister for the Civil Service must lay any civil service code before Parliament.
- (6) The First Minister for Scotland must lay before the Scottish Parliament any civil service code under subsection (2) that covers civil servants who serve the Scottish Executive.
- (7) The First Minister for Wales must lay before the National Assembly for Wales any civil service code under subsection (2) that covers civil servants who serve the Welsh Assembly Government.
- (8) A civil service code forms part of the terms and conditions of service of any civil servant covered by the code.

#### **6. Diplomatic service code**

- (1) The Secretary of State must publish a code of conduct for the diplomatic service.
- (2) In this Chapter “diplomatic service code” means the code of conduct published under this section as it is in force for the time being.
- (3) The Secretary of State must lay the diplomatic service code before Parliament.
- (4) The diplomatic service code forms part of the terms and conditions of service of any civil servant covered by the code.

#### **7. Minimum requirements for civil service and diplomatic service codes**

- (1) This section sets out the provision that must be included in a civil service code or the diplomatic service code in relation to the civil servants covered by the code.  
(The code may include other provision as well.)
- (2) The code must require civil servants who serve an administration mentioned in subsection (3) to carry out their duties for the assistance of the administration as it is duly constituted for the time being, whatever its political complexion.
- (3) The administrations are—
  - (a) Her Majesty’s Government in the United Kingdom;
  - (b) the Scottish Executive;
  - (c) the Welsh Assembly Government.
- (4) The code must require civil servants to carry out their duties—
  - (a) with integrity and honesty, and
  - (b) with objectivity and impartiality.
- (5) But the code need not require special advisers (see section 15) to carry out their duties with objectivity or impartiality.

## 8 Special advisers code

- (1) The Minister for the Civil Service must publish a code of conduct for special advisers (see section 15).
- (2) For this purpose, the Minister may publish separate codes of conduct covering special advisers who serve the Scottish Executive or the Welsh Assembly Government.
- (3) Before publishing a code (or any revision of a code) under subsection (2), the Minister must consult the First Minister for Scotland or the First Minister for Wales (as the case may be).
- (4) In this Chapter “special advisers code” means a code of conduct published under this section as it is in force for the time being.
- (5) Subject to subsection (6), a special advisers code must provide that a special adviser may not—
  - (a) authorise the expenditure of public funds;
  - (b) exercise any power in relation to the management of any part of the civil service of the State;
  - (c) otherwise exercise any power conferred by or under this or any other Act or any power under Her Majesty’s prerogative.
- (6) A special advisers code may permit a special adviser to exercise any power within subsection (5)(b) in relation to another special adviser.
- (7) In subsection (5)(c) “Act” includes—
  - (a) an Act of the Scottish Parliament;
  - (b) an Act or Measure of the National Assembly for Wales;
  - (c) Northern Ireland legislation.
- (8) The Minister for the Civil Service must lay any special advisers code before Parliament.
- (9) The First Minister for Scotland must lay before the Scottish Parliament any special advisers code under subsection (2) that covers special advisers who serve the Scottish Executive.
- (10) The First Minister for Wales must lay before the National Assembly for Wales any special advisers code under subsection (2) that covers special advisers who serve the Welsh Assembly Government.
- (11) A special advisers code forms part of the terms and conditions of service of any special adviser covered by the code.

## 9 Conduct that conflicts with a code of conduct: complaints by civil servants

- (1) This section applies in relation to any civil service code and the diplomatic service code; and “code” is to be read accordingly.
- (2) Subsection (3) applies if a civil servant (“P”) covered by a code has reason to believe—
  - (a) that P is being, or has been, required to act in a way that conflicts with the code, or
  - (b) that another civil servant covered by the code is acting, or has acted, in a way that conflicts with the code.

- (3) P may complain to the Commission about the matter.
- (4) A code may include provision about the steps that must be taken by a civil servant before making a complaint (and P must take the steps accordingly).
- (5) The Commission—
  - (a) must determine procedures for the making of complaints and for the investigation and consideration of complaints by the Commission;
  - (b) after considering a complaint, may make recommendations about how the matter should be resolved.
- (6) For the purposes of the investigation or consideration of a complaint, the following must provide the Commission with any information it reasonably requires—
  - (a) civil service management authorities;
  - (b) the complainant;
  - (c) any civil servant whose conduct is covered by the complaint.
- (7) The revision of a code does not affect the application of this section in relation to anything occurring before the revision.

### *Appointment*

#### **10 Selections for appointments to the civil service**

- (1) This section applies to the selection of persons who are not civil servants for appointment to the civil service.
- (2) A person's selection must be on merit on the basis of fair and open competition.
- (3) The following selections are excepted from this requirement—
  - (a) a person's selection for an appointment to the diplomatic service either as head of mission or in connection with the person's appointment (or selection for appointment) as Governor of an overseas territory;
  - (b) selection for an appointment as special adviser (see section 15);
  - (c) a selection excepted by the recruitment principles (see sections 11 and 12(1)(b)).
- (4) In determining for the purposes of subsection (1) whether or not a person is a civil servant, ignore any appointment for which the person was selected in reliance on subsection (3).
- (5) But, in relation to persons selected in reliance on subsection (3)(c), the recruitment principles may disapply subsection (4) in specified cases.

#### **11 Recruitment principles**

- (1) The Commission must publish a set of principles to be applied for the purposes of the requirement in section 10(2).
- (2) Before publishing the set of principles (or any revision of it), the Commission must consult the Minister for the Civil Service.
- (3) In this Chapter "recruitment principles" means the set of principles published under this section as it is in force for the time being.

- (4) Civil service management authorities must comply with the recruitment principles.

## 12 Approvals for selections and exceptions

- (1) The recruitment principles may include provision –
- (a) requiring the Commission's approval to be obtained for a selection which is subject to the requirement in section 10(2);
  - (b) excepting a selection from that requirement for the purposes of section 10(3)(c).
- (2) The Commission may participate in the process for a selection for which its approval is required by provision within subsection (1)(a).
- (3) It is up to the Commission to decide how it will participate.
- (4) Provision within subsection (1)(b) may be included only if the Commission is satisfied –
- (a) that the provision is justified by the needs of the civil service, or
  - (b) that the provision is needed to enable the civil service to participate in a government employment initiative that major employers in the United Kingdom (or a part of the United Kingdom) have been asked to participate in.
- (5) Provision within subsection (1)(a) or (b) may be made in any way, including (for example) by reference to –
- (a) particular appointments or descriptions of appointments;
  - (b) the circumstances in which a selection is made;
  - (c) the circumstances of the person to be selected;
  - (d) the purpose of the requirement to obtain approval or the purpose of the exception.
- (6) Provision within subsection (1)(b) may also (for example) –
- (a) deal with the way in which selections made in reliance on section 10(3)(c) are to be made;
  - (b) specify terms and conditions that must be included in the terms and conditions of an appointment resulting from a selection made in reliance on section 10(3)(c).
- (7) Provision within subsection (1)(a) or (b) may confer discretions on the Commission or civil service management authorities.

## 13 Complaints about competitions

- (1) Subsection (2) applies if a person has reason to believe that a selection for an appointment has been made in contravention of the requirement in section 10(2).
- (2) The person may complain to the Commission about the matter.
- (3) The Commission –
- (a) may determine steps that must be taken by a person before making a complaint (and those steps must be taken accordingly);
  - (b) must determine procedures for the making of complaints and for the investigation and consideration of complaints by the Commission;

- (c) after considering a complaint, may make recommendations about how the matter should be resolved.
- (4) For the purposes of the investigation or consideration of a complaint, the following must provide the Commission with any information it reasonably requires—
  - (a) civil service management authorities;
  - (b) the complainant.

#### 14 Monitoring by the Commission

- (1) The Commission must carry out whatever reviews of recruitment policies and practices it thinks are necessary to establish—
  - (a) that the principle of selection on merit on the basis of fair and open competition is being upheld in accordance with the requirement in section 10(2) and the recruitment principles, and
  - (b) that the requirement in section 10(2) and the recruitment principles are not being undermined in any way (apart from non-compliance).
- (2) For this purpose, civil service management authorities must provide the Commission with any information it reasonably requires.

#### *Special advisers*

#### 15 Definition of “special adviser”

- (1) In this Chapter “special adviser” means a person (“P”) who holds a position in the civil service serving an administration mentioned below and whose appointment to that position meets the applicable requirements set out below.

##### *Her Majesty’s Government in the United Kingdom*

The requirements are—

- (a) P is appointed to assist a Minister of the Crown after being selected for the appointment by that Minister personally;
- (b) the appointment is approved by the Prime Minister;
- (c) the terms and conditions of the appointment (apart from those by virtue of section 8(11)) are approved by the Minister for the Civil Service;
- (d) those terms and conditions provide for the appointment to end not later than—
  - (i) when the person who selected P ceases to hold the ministerial office in relation to which P was appointed to assist that person, or
  - (ii) if earlier, the end of the day after the day of the poll at the first parliamentary general election following the appointment.

##### *Scottish Executive*

The requirements are—

- (a) P is appointed to assist the Scottish Ministers (or one or more of the ministers mentioned in section 44(1)(a) and (b) of the Scotland Act 1998) after being selected for the appointment by the First Minister for Scotland personally;

- (b) the terms and conditions of the appointment (apart from those by virtue of section 8(11)) are approved by the Minister for the Civil Service;
- (c) those terms and conditions provide for the appointment to end not later than when the person who selected P ceases to hold office as First Minister.

The reference above to the Scottish Ministers excludes the Lord Advocate and the Solicitor General for Scotland.

*Welsh Assembly Government*

The requirements are—

- (a) P is appointed to assist the Welsh Ministers (or one or more of the ministers mentioned in section 45(1)(a) and (b) of the Government of Wales Act 2006) after being selected for the appointment by the First Minister for Wales personally;
  - (b) the terms and conditions of the appointment (apart from those by virtue of section 8(11)) are approved by the Minister for the Civil Service;
  - (c) those terms and conditions provide for the appointment to end not later than when the person who selected P ceases to hold office as First Minister.
- (2) In subsection (1), in relation to an appointment for which the selection is made personally by a person designated under section 45(4) of the Scotland Act 1998 or section 46(5) of the Government of Wales Act 2006, the reference to the person who selected P ceasing to hold office as First Minister for Scotland or Wales (as the case may be) is to be read as a reference to the designated person ceasing to be able to exercise the functions of the First Minister by virtue of the designation.

**16 Annual reports about special advisers**

- (1) The Minister for the Civil Service must—
  - (a) prepare an annual report about special advisers serving Her Majesty's Government in the United Kingdom, and
  - (b) lay the report before Parliament.
- (2) The First Minister for Scotland must—
  - (a) prepare an annual report about special advisers serving the Scottish Executive, and
  - (b) lay the report before the Scottish Parliament.
- (3) The First Minister for Wales must—
  - (a) prepare an annual report about special advisers serving the Welsh Assembly Government, and
  - (b) lay the report before the National Assembly for Wales.
- (4) A report under this section must contain information about the number and cost of the special advisers.

*Additional functions of the Commission*

**17 Agreements for the Commission to carry out additional functions**

- (1) The Minister for the Civil Service and the Commission may agree that the Commission is to carry out functions in relation to the civil service in addition to those given to it under the other provisions of this Chapter.
- (2) The Commission is to carry out those additional functions accordingly.
- (3) For the purposes of any additional function, civil service management authorities must provide the Commission with any information it reasonably requires.

*Final provisions*

**18 Definitions etc**

- (1) In this Chapter –
  - “civil servant” is read as stated in section 1(4);
  - “civil service” is read as stated in section 1(4);
  - “civil service code” is defined in section 5(4);
  - “civil service management authority” means any person involved in the management of any part of the civil service;
  - “the Commission” is defined in section 2(1);
  - “diplomatic service” means Her Majesty’s diplomatic service;
  - “diplomatic service code” is defined in section 6(2);
  - “function” includes power or duty;
  - “information” means information recorded in any form;
  - “recruitment principles” is defined in section 11(3);
  - “special adviser” is defined in section 15;
  - “special advisers code” is defined in section 8(4).
- (2) Subsection (3) applies for the purposes of sections 9(6), 13(4), 14(2) and 17(3).
- (3) No person may be required to provide information which the person could not be compelled to provide in civil proceedings before the High Court or the Court of Session.

**CHAPTER 2**

CONSEQUENTIAL AND TRANSITIONAL PROVISION

**19 Consequential amendments and transitional provision**

Schedule 2 (which contains amendments consequential on this Part and transitional provision) has effect.

## PART 2

### RATIFICATION OF TREATIES

#### 20 Treaties to be laid before Parliament before ratification

- (1) Subject to what follows, a treaty is not to be ratified unless—
  - (a) a Minister of the Crown has laid before Parliament a copy of the treaty,
  - (b) the treaty has been published in a way that a Minister of the Crown thinks appropriate, and
  - (c) period A has expired without either House having resolved, within period A, that the treaty should not be ratified.
- (2) Period A is the period of 21 sitting days beginning with the first sitting day after the date on which the requirement in subsection (1)(a) is met.
- (3) Subsections (4) to (6) apply if the House of Commons resolved as mentioned in subsection (1)(c) (whether or not the House of Lords also did so).
- (4) The treaty may be ratified if—
  - (a) a Minister of the Crown has laid before Parliament a statement indicating that the Minister is of the opinion that the treaty should nevertheless be ratified and explaining why, and
  - (b) period B has expired without the House of Commons having resolved, within period B, that the treaty should not be ratified.
- (5) Period B is the period of 21 sitting days beginning with the first sitting day after the date on which the requirement in subsection (4)(a) is met.
- (6) A statement may be laid under subsection (4)(a) in relation to the treaty on more than one occasion.
- (7) Subsection (8) applies if—
  - (a) the House of Lords resolved as mentioned in subsection (1)(c), but
  - (b) the House of Commons did not.
- (8) The treaty may be ratified if a Minister of the Crown has laid before Parliament a statement indicating that the Minister is of the opinion that the treaty should nevertheless be ratified and explaining why.
- (9) “Sitting day” means a day on which both Houses of Parliament sit.

#### 21 Extension of 21 sitting day period

- (1) A Minister of the Crown may, in relation to a treaty, extend the period mentioned in section 20(1)(c) by 21 sitting days or less.
- (2) The Minister does that by laying before Parliament a statement—
  - (a) indicating that the period is to be extended, and
  - (b) setting out the length of the extension.
- (3) The statement must be laid before the period would have expired without the extension.
- (4) The Minister must publish the statement in a way the Minister thinks appropriate.

- (5) The period may be extended more than once.

## 22 Section 20 not to apply in exceptional cases

- (1) Section 20 does not apply to a treaty if a Minister of the Crown is of the opinion that, exceptionally, the treaty should be ratified without the requirements of that section having been met.
- (2) But a treaty may not be ratified by virtue of subsection (1) after either House has resolved, as mentioned in section 20(1)(c), that the treaty should not be ratified.
- (3) If a Minister determines that a treaty is to be ratified by virtue of subsection (1), the Minister must, either before or as soon as practicable after the treaty is ratified—
- lay before Parliament a copy of the treaty,
  - arrange for the treaty to be published in a way that the Minister thinks appropriate, and
  - lay before Parliament a statement indicating that the Minister is of the opinion mentioned in subsection (1) and explaining why.

## 23 Section 20 not to apply to certain descriptions of treaties

- (1) Section 20 does not apply to—
- a treaty covered by section 12 of the European Parliamentary Elections Act 2002 (treaty providing for increase in European Parliament's powers not to be ratified unless approved by Act of Parliament);
  - a treaty covered by section 5 of the European Union (Amendment) Act 2008 (treaty amending founding Treaties not to be ratified unless approved by Act of Parliament).
- (2) Section 20 does not apply to a treaty in relation to which an Order in Council may be made under one or more of the following—
- section 158 of the Inheritance Tax Act 1984 (double taxation conventions);
  - section 2 of the Taxation (International and Other Provisions) Act 2010 (double taxation arrangements);
  - section 173 of the Finance Act 2006 (international tax enforcement arrangements).
- (3) Section 20 does not apply to a treaty concluded (under authority given by the government of the United Kingdom) by the government of a British overseas territory, of any of the Channel Islands or of the Isle of Man.
- (4) Section 20 does not apply to a treaty a copy of which is presented to Parliament by command of Her Majesty before that section comes into force.

## 24 Explanatory memoranda

In laying a treaty before Parliament under this Part, a Minister shall accompany the treaty with an explanatory memorandum explaining the provisions of the treaty, the reasons for Her Majesty's Government seeking ratification of the treaty, and such other matters as the Minister considers appropriate.

## 25 Meaning of “treaty” and “ratification”

- (1) In this Part “treaty” means a written agreement—
  - (a) between States or between States and international organisations, and
  - (b) binding under international law.
- (2) But “treaty” does not include a regulation, rule, measure, decision or similar instrument made under a treaty (other than one that amends or replaces the treaty (in whole or in part)).
- (3) In this Part a reference to ratification of a treaty is a reference to an act of a kind specified in subsection (4) which establishes as a matter of international law the United Kingdom’s consent to be bound by the treaty.
- (4) The acts are—
  - (a) deposit or delivery of an instrument of ratification, accession, approval or acceptance;
  - (b) deposit or delivery of a notification of completion of domestic procedures.

## PART 3

### PARLIAMENTARY STANDARDS ETC

#### *Amendments of the Parliamentary Standards Act 2009*

## 26 Compliance Officer

- (1) For section 3(3) and (4) of the Parliamentary Standards Act 2009 (Commissioner for Parliamentary Investigations) substitute—
  - “(3) There is to be an officer known as the Compliance Officer for the Independent Parliamentary Standards Authority (“the Compliance Officer”).
  - (4) Schedule 2 (which makes provision about the Compliance Officer) has effect.”
- (2) For Schedule 2 to that Act substitute the Schedule set out in Schedule 3.

## 27 Membership of Speaker’s Committee

- (1) Schedule 3 to the Parliamentary Standards Act 2009 (Speaker’s Committee for the Independent Parliamentary Standards Authority) is amended as follows.
- (2) In paragraph 1—
  - (a) omit “and” at the end of sub-paragraph (c), and
  - (b) after sub-paragraph (d) insert “, and
  - (e) three lay persons appointed by resolution of the House of Commons.”
- (3) For the heading of paragraph 2 substitute “Appointed members”.

## (4) After paragraph 2 insert—

*“Lay members*

- 2A (1) In paragraph 1(e) “lay person” means a person who is not, and has never been, a member of either House of Parliament.
- (2) A motion for a resolution under paragraph 1(e) may be made only with the agreement of the Speaker of the House of Commons.
- (3) The person the subject of the motion must have been selected by the Speaker on merit on the basis of fair and open competition.
- (4) An appointment under paragraph 1(e) is to be for a fixed term not exceeding five years.
- (5) A person who has been appointed under paragraph 1(e) may not be appointed under paragraph 1(e) again.
- (6) A person appointed under paragraph 1(e) ceases to be a member of the Committee if the person becomes a member of either House of Parliament.
- (7) A person appointed under paragraph 1(e) may resign from the Committee by giving notice to the Committee.
- (8) The Speaker of the House of Commons may require the IPSA to pay to members of the Committee appointed under paragraph 1(e) such remuneration and allowances as the Speaker may determine.
- (9) The IPSA must make the payment accordingly.”

## 28 Transparency etc

- (1) The Parliamentary Standards Act 2009 is amended as follows.
- (2) After section 3 insert—

**“3A General duties of the IPSA**

- (1) In carrying out its functions the IPSA must have regard to the principle that it should act in a way which is efficient, cost-effective and transparent.
- (2) In carrying out its functions the IPSA must have regard to the principle that members of the House of Commons should be supported in efficiently, cost-effectively and transparently carrying out their Parliamentary functions.”
- (3) In section 5 (MPs’ allowances scheme) after subsection (5) insert—
- “(5A) When the scheme (or revision) is laid, the IPSA must publish in a way it considers appropriate—
- (a) the scheme (or revision), and
- (b) a statement of its reasons for adopting that scheme (or making that revision).”
- (4) In section 6 (dealing with claims under the MPs’ allowances scheme) after

subsection (7) insert –

- “(8) The IPSA must publish such information as it considers appropriate in respect of –
- (a) each claim made under or by virtue of this section, and
  - (b) each payment of an allowance by the IPSA under or by virtue of this section.
- (9) The IPSA must publish the information at times it considers appropriate and in a way it considers appropriate.
- (10) The IPSA must determine procedures to be followed by the IPSA in relation to publication of the information, and in doing so must consult –
- (a) the Speaker of the House of Commons,
  - (b) the Leader of the House of Commons,
  - (c) the House of Commons Committee on Standards and Privileges,
  - (d) the Compliance Officer, and
  - (e) any other person the IPSA considers appropriate.”

## 29 MPs' salaries

- (1) For section 4 of the Parliamentary Standards Act 2009 (MPs' salaries) substitute –

### “4 MPs' salaries

- (1) Members of the House of Commons are to receive a salary for the relevant period.
- (2) The salaries are to be paid by the IPSA.
- (3) Salaries are to be paid on a monthly basis in arrears.
- (4) The amounts of the salaries are to be determined by the IPSA (see section 4A).
- (5) “Relevant period”, in relation to a person who is a member of the House of Commons, means the period beginning with the day after the day of the poll for the parliamentary election at which the member was elected and ending with –
  - (a) if the person is a member immediately before Parliament is dissolved, the day of the poll for the parliamentary general election which follows the dissolution;
  - (b) otherwise, the day on which the person ceases to be a member.
- (6) No payment of salary is to be made to a member before the member has made and subscribed the oath required by the Parliamentary Oaths Act 1866 (or the corresponding affirmation).
- (7) The duty of the IPSA to pay a salary to a member is subject to anything done in relation to the member in the exercise of the disciplinary powers of the House of Commons.

### 4A Determination of MPs' salaries

- (1) This section is about determinations under section 4(4).

- (2) A determination may provide for higher salaries to be payable to members while holding an office or position specified for the purposes of this subsection in a resolution of the House of Commons.
  - (3) A determination by virtue of subsection (2) may make different provision for different offices or positions or different classes of member (and may include exceptions).
  - (4) A determination may include a formula or other mechanism for adjusting salaries from time to time.
  - (5) A determination (other than the first determination) may have retrospective effect.
  - (6) The IPSA must review the current determination (and make a new determination as appropriate) –
    - (a) in the first year of each Parliament;
    - (b) at any other time it considers appropriate.
  - (7) In reviewing a determination (and before making the first determination) the IPSA must consult –
    - (a) the Review Body on Senior Salaries,
    - (b) persons appearing to the IPSA to represent persons likely to be affected by the determination or the review,
    - (c) the Minister for the Civil Service,
    - (d) the Treasury, and
    - (e) any other person the IPSA considers appropriate.
  - (8) After making a determination, the IPSA must publish in a way it considers appropriate –
    - (a) the determination, and
    - (b) a statement of how it arrived at the determination.
  - (9) If the IPSA reviews the current determination but decides not to make a new determination, it must publish in a way it considers appropriate a statement of how it arrived at that decision.
  - (10) The IPSA may delegate to the Review Body on Senior Salaries its function of reviewing a determination (but not its function of deciding whether or not to make a new determination).”
- (2) The first determination under section 4(4) of the Parliamentary Standards Act 2009 does not have to come into effect before 1 April 2012; and section 4A(6)(a) of that Act does not apply in relation to a Parliament that begins before that date.
  - (3) Until the first determination under section 4(4) of that Act comes into effect, the amounts of the salaries payable by the Independent Parliamentary Standards Authority under section 4 of that Act are to be determined in accordance with the relevant resolutions of the House of Commons.

### 30 MPs' allowances scheme

In section 5 of the Parliamentary Standards Act 2009 (MPs' allowances scheme)

after subsection (8) insert—

“(8A) Any duty of the IPSA to pay an allowance to a member is subject to anything done in relation to the member in the exercise of the disciplinary powers of the House of Commons.”

### 31 Allowances claims

- (1) Section 6 of the Parliamentary Standards Act 2009 (dealing with claims under the MPs’ allowances scheme) is amended as follows.
- (2) Omit subsections (4) and (5).
- (3) In subsection (6) for paragraph (b) substitute—
  - “(b) provision for deducting amounts within subsection (6A) from allowances payable under the scheme or salaries payable under section 4;
  - (c) provision about how such deductions, and deductions under paragraph 5 or 12 of Schedule 4, are to be made.”
- (4) After subsection (6) insert—

“(6A) This subsection applies to amounts which a member (under section 9(8) or otherwise) has agreed to repay, in respect of amounts paid to the member under the MPs’ allowances scheme that should not have been allowed.”
- (5) After section 6 of that Act insert—

#### “6A Review of IPSA’s determination

- (1) This section applies if—
  - (a) the IPSA determines under section 6(3) that a claim is to be refused or that only part of the amount claimed is to be allowed, and
  - (b) the member (after asking the IPSA to reconsider the determination and giving it a reasonable opportunity to do so) asks the Compliance Officer to review the determination (or any altered determination resulting from the IPSA’s reconsideration).
- (2) The Compliance Officer must—
  - (a) consider whether the determination (or the altered determination) is the determination that should have been made, and
  - (b) in light of that consideration, decide whether or not to confirm or alter it.
- (3) The Compliance Officer must give the IPSA a statement of any decision under subsection (2)(b), and may include a statement of the Compliance Officer’s findings about the way in which the IPSA has dealt with the claim.
- (4) The IPSA must make any payments or adjustments necessary to give effect to the Compliance Officer’s decision; but it must not do so until—
  - (a) it is no longer possible for there to be a relevant appeal, and
  - (b) all relevant appeals have been withdrawn or determined.

- (5) A relevant appeal is –
- (a) an appeal under subsection (6) brought before the end of the period mentioned in subsection (7), or
  - (b) a further appeal in relation to the Compliance Officer’s decision which –
    - (i) is brought before the end of the usual period for bringing such an appeal, and
    - (ii) is an appeal against the determination of an appeal which was itself a relevant appeal.
- (6) The member may appeal to the First-tier Tribunal against a decision of the Compliance Officer under subsection (2)(b).
- (7) The appeal must be brought before the end of the period of 28 days beginning with the day on which notice of the decision is sent to the member (unless the Tribunal directs that it may be brought after the end of that period).
- (8) The appeal is by way of a rehearing.
- (9) On an appeal under subsection (6) the Tribunal may –
- (a) allow the appeal in whole or in part, or
  - (b) dismiss the appeal.
- (10) If the Tribunal allows the appeal (in whole or in part) it may –
- (a) order the IPSA to make any payments or adjustments necessary to give effect to that decision;
  - (b) make any other order it thinks fit.
- (11) If the Tribunal dismisses the appeal it may make any other order it thinks fit.
- (12) The Compliance Officer must notify the IPSA of the Tribunal’s decision (and the result of any further appeal).”
- (6) In section 7 of that Act (information and guidance about taxation) –
- (a) before subsection (1) insert –
 

“(A1) The IPSA must –

    - (a) prepare guidance for members of the House of Commons about making claims under the MPs’ allowances scheme;
    - (b) review the guidance regularly and revise it as appropriate;
    - (c) publish the guidance in a way the IPSA considers appropriate;
    - (d) provide to any member on request such further advice about making claims as the IPSA considers appropriate.”, and
  - (b) in the heading omit “about taxation”.

### 32 MPs’ code of conduct relating to financial interests

Omit section 8 of the Parliamentary Standards Act 2009 (MPs’ code of conduct relating to financial interests) and the italic heading before it.

### 33 Investigations

For section 9 of the Parliamentary Standards Act 2009 (investigations) substitute—

#### “9 Investigations

- (1) The Compliance Officer may conduct an investigation if the Compliance Officer has reason to believe that a member of the House of Commons may have been paid an amount under the MPs’ allowances scheme that should not have been allowed.
- (2) An investigation may be conducted—
  - (a) on the Compliance Officer’s own initiative,
  - (b) at the request of the IPSA,
  - (c) at the request of the member, or
  - (d) in response to a complaint by an individual.
- (3) For the purposes of the investigation the member and the IPSA—
  - (a) must provide the Compliance Officer with any information (including documents) the Compliance Officer reasonably requires, and
  - (b) must do so within such period as the Compliance Officer reasonably requires.
- (4) The Compliance Officer must, after giving the member and the IPSA an opportunity to make representations to the Compliance Officer, prepare a statement of the Compliance Officer’s provisional findings.
- (5) The Compliance Officer must, after giving the member and the IPSA an opportunity to make representations to the Compliance Officer about the provisional findings, prepare a statement of the Compliance Officer’s findings (subject to subsection (7)).
- (6) Provisional findings under subsection (4) and findings under subsection (5) may include—
  - (a) a finding that the member failed to comply with subsection (3),
  - (b) findings about the role of the IPSA in the matters under investigation, including findings that the member’s being paid an amount under the MPs’ allowances scheme that should not have been allowed was wholly or partly the IPSA’s fault.
- (7) If subsection (8) applies, the Compliance Officer need not make a finding under subsection (5) as to whether the member was paid an amount under the MPs’ allowances scheme that should not have been allowed.
- (8) This subsection applies if—
  - (a) the member accepts a provisional finding that the member was paid an amount under the MPs’ allowances scheme that should not have been allowed,
  - (b) such other conditions as may be specified by the IPSA are, in the Compliance Officer’s view, met in relation to the case, and
  - (c) the member agrees to repay to the IPSA, in such manner and within such period as the Compliance Officer considers reasonable, such amount as the Compliance Officer considers reasonable (and makes the repayment accordingly).

- (9) Before specifying conditions under subsection (8)(b) the IPSA must consult the persons listed in section 9A(6).
- (10) References in this section (and section 9A) to a member of the House of Commons include a former member of that House.

#### 9A Procedures etc

- (1) The IPSA must determine procedures to be followed by the Compliance Officer in relation to investigations under section 9.
- (2) The procedures must in particular include provision about—
  - (a) complaints under section 9(2)(d),
  - (b) representations under section 9(4),
  - (c) representations under section 9(5), and
  - (d) the circumstances in which the Compliance Officer must publish the documents listed in subsection (4).
- (3) Provision under subsection (2)(b) must include provision giving the member who is the subject of the investigation—
  - (a) an opportunity to be heard in person, and
  - (b) an opportunity, where the Compliance Officer considers it appropriate, to call and examine witnesses.
- (4) The documents referred to in subsection (2)(d) are—
  - (a) statements of provisional findings under section 9(4),
  - (b) statements of findings under section 9(5), and
  - (c) agreements under section 9(8).
- (5) The IPSA must also determine procedures to be followed by the Compliance Officer as to the circumstances in which the Compliance Officer must publish—
  - (a) statements under section 6A(3), and
  - (b) penalty notices under paragraph 6 of Schedule 4.
- (6) Procedures under this section must be fair, and before determining procedures the IPSA must consult—
  - (a) the Speaker of the House of Commons,
  - (b) the Leader of the House of Commons,
  - (c) the House of Commons Committee on Standards and Privileges,
  - (d) the Compliance Officer, and
  - (e) any other person the IPSA considers appropriate.”

#### 34 Enforcement

- (1) After section 9A of the Parliamentary Standards Act 2009 insert—

##### “9B Enforcement

- (1) Schedule 4 (which makes provision about the enforcement powers of the Compliance Officer) has effect.
- (2) The Compliance Officer may provide to the Parliamentary Commissioner for Standards any information connected with an investigation under section 9 or action taken under Schedule 4 which

the Compliance Officer considers may be relevant to the work of the Parliamentary Commissioner for Standards.”

- (2) After Schedule 3 to that Act insert the Schedule set out in Schedule 4.

### 35 Relationships with other bodies etc

After section 10 of the Parliamentary Standards Act 2009 insert—

#### “10A Relationships with other bodies etc

- (1) The IPSA and the Compliance Officer must prepare a joint statement setting out how the IPSA and the Compliance Officer will work with the following—
- (a) the Parliamentary Commissioner for Standards,
  - (b) the Director of Public Prosecutions,
  - (c) the Commissioner of Police of the Metropolis, and
  - (d) any other person the IPSA and the Compliance Officer consider appropriate.
- (2) Before preparing the statement the IPSA and the Compliance Officer must consult the persons listed in subsection (1).
- (3) Nothing in sections 9 to 9B (or Schedule 4) affects the disciplinary powers of the House of Commons.
- (4) The powers conferred by sections 9 to 9B (and Schedule 4) may be exercised in relation to the conduct of a member of the House of Commons even if—
- (a) the member is or has been the subject of criminal proceedings in relation to that conduct (whether or not convicted of an offence);
  - (b) the House of Commons is exercising or has exercised any of its disciplinary powers in relation to that conduct.
- (5) References in subsection (4) to a member of the House of Commons include a former member of that House.”

### 36 Further functions of the IPSA and Commissioner

Omit section 11 of the Parliamentary Standards Act 2009 (further functions of the IPSA and Commissioner).

### 37 Expiry of provisions of the Parliamentary Standards Act 2009

Omit section 15 of the Parliamentary Standards Act 2009 (expiry of provisions of the Act).

### 38 Consequential amendments

Schedule 5 (which makes consequential amendments relating to sections 26 to 37) has effect.

*Other provision***39 Resettlement grants for MEPs**

- (1) The European Parliament (Pay and Pensions) Act 1979 is amended as follows.
- (2) In section 3 (resettlement grants for persons ceasing to be MEPs) for subsections (1) to (3) substitute—
  - “(1) The IPSA may make a scheme providing for allowances to be payable to persons to whom this section applies, in connection with their ceasing to be Representatives.
  - (2) It may do so only if a scheme under section 5 of the Parliamentary Standards Act 2009 (MPs’ allowances scheme) makes provision for allowances to be payable in connection with persons ceasing to be Members on a dissolution of Parliament.
  - (3) A scheme under this section must make provision which is as nearly equivalent to the provision made by the scheme under section 5 of that Act as the IPSA considers practicable.
  - (3A) The IPSA must send to the Speaker of the House of Commons for laying before both Houses of Parliament—
    - (a) any scheme made by it under this section, and
    - (b) a statement of the reasons for making the scheme.
  - (3B) When the scheme and the statement of reasons have been laid, the IPSA must publish them in a way it considers appropriate.
  - (3C) This section applies to a person who is a Representative immediately before the end of a five-year period, and either—
    - (a) does not stand for election to the European Parliament at the general election of representatives to the European Parliament held in that period, or
    - (b) does so stand at that election (whether for the same or a different electoral region) and is not elected.
  - (3D) A scheme made by the IPSA under this section may amend or revoke any previous scheme made by the IPSA under this section.”
- (3) Omit section 3A (power to amend section 3).
- (4) In section 7(1)(b) (expenses and receipts) for “grant” substitute “allowance”.

**40 Parliamentary and other pensions**

Schedule 6 (which makes provision about pensions for members of the House of Commons, ministers and other office holders) has effect.

**PART 4****TAX STATUS OF MPs AND MEMBERS OF THE HOUSE OF LORDS****41 Tax status of MPs and members of the House of Lords**

- (1) Subsection (2) applies if a person is for any part of a tax year—

- (a) a member of the House of Commons, or
  - (b) a member of the House of Lords.
- (2) The person is to be treated for the purposes of the taxes listed in subsection (3) as resident, ordinarily resident and domiciled in the United Kingdom for the whole of that tax year.
- (3) The taxes are—
  - (a) income tax,
  - (b) capital gains tax, and
  - (c) inheritance tax.
- (4) For the purposes of this section a person—
  - (a) becomes a member of the House of Commons when (having been elected to that House) the person makes and subscribes the oath required by the Parliamentary Oaths Act 1866 (or the corresponding affirmation), and
  - (b) ceases to be a member of that House when—
    - (i) the Parliament to which the person was elected is dissolved, or
    - (ii) the person's seat is otherwise vacated.
- (5) For the purposes of this section and section 42 a person is a member of the House of Lords if the person is entitled to receive writs of summons to attend that House.
- (6) In relation to a member of the House of Lords, in subsection (1) the reference to any part of a tax year excludes any part of the year during which—
  - (a) section 137(3) of the Constitutional Reform Act 2005 applies to the member, or
  - (b) the member is entitled to receive writs of summons to attend the House of Lords by virtue of being an archbishop or bishop.
- (7) This section applies in relation to the tax year 2010-11 and subsequent tax years.
- (8) But in applying this section to the tax year 2010-11—
  - (a) if the Parliament in which this Act is passed is dissolved in that tax year, ignore a person's membership of the House of Commons in that Parliament, and
  - (b) in any event, ignore a person's membership of the House of Lords at any time before the end of the period of 3 months beginning with the day on which section 42 comes into force.
- (9) In this section, in relation to inheritance tax—
  - (a) "tax year" means a year beginning on 6 April and ending on the following 5 April, and
  - (b) "the tax year 2010-11" means the tax year beginning on 6 April 2010.
- (10) In determining for the purposes of this section and section 42 whether a person is entitled to receive writs of summons to attend the House of Lords, ignore—
  - (a) section 2 of the Forfeiture Act 1870;
  - (b) sections 426A and 427 of the Insolvency Act 1986.

#### 42 Tax status of members of the House of Lords: transitional provision

- (1) This section applies if, before the end of the period of 3 months beginning with the day on which this section comes into force, a member of the House of Lords (“M”) gives written notice to the Clerk of the Parliaments that M does not want section 41 to apply to M.
- (2) M shall not be a member of the House of Lords at any time after the notice is given and accordingly –
  - (a) M shall not be entitled to receive writs of summons to attend the House, and
  - (b) any writ of summons previously issued to M has no further effect.
- (3) If M is a person excepted from section 1 of the House of Lords Act 1999 by virtue of section 2 of that Act –
  - (a) M shall no longer be excepted from section 1 of the 1999 Act, and
  - (b) if M counted towards the limit under section 2(2) of the 1999 Act, that limit is reduced by one.
- (4) But section 3(1)(b) of the 1999 Act does not apply in relation to M before the end of the period of three years beginning with the date on which the notice is given.
- (5) If M is not such a person, M ceases to be disqualified by virtue of M’s peerage (or dignity) for –
  - (a) voting at elections to the House of Commons, or
  - (b) being, or being elected as, a member of that House.
- (6) But subsection (5)(b) does not apply before the end of the period of three years beginning with the date on which the notice is given.
- (7) In relation to M, any reference in section 1(3) or (4)(b) of the Representation of the People Act 1985 to a register of parliamentary electors is to be read as including –
  - (a) any register of local government electors in Great Britain, and
  - (b) any register of local electors in Northern Ireland,
 which was required to be published on any date before the notice is given.
- (8) If, after the notice is given, a peerage is conferred on M or M succeeds to a peerage, subsection (2) above does not stop M being entitled to receive writs of summons to attend the House of Lords by virtue of that peerage.  
 If subsection (3)(a) has applied to M, it does not stop M becoming excepted from section 1 of the House of Lords Act 1999 again by filling a vacancy under section 2 of that Act after the notice is given.
- (9) If, after the notice is given, M becomes the person who is to hold the office of Earl Marshal or perform the office of Lord Great Chamberlain, subsection (2) above does not stop M being entitled to receive writs of summons to attend the House of Lords by virtue of the peerage that led to M becoming the person who is to hold or perform the office in question.
- (10) A person to whom regulation 4 of the European Parliament (House of Lords Disqualification) Regulations 2008 (S.I. 2008/1647) applies is to be treated as a member of the House of Lords for the purposes of this section.

**PART 5**

TRANSPARENCY OF GOVERNMENT FINANCIAL REPORTING TO PARLIAMENT

**43 Inclusion in departmental estimates of resources used by designated bodies**

- (1) The Government Resources and Accounts Act 2000 is amended as follows.
- (2) After section 4 insert—

*“Departmental estimates*

**4A Inclusion in departmental estimates of resources used by designated bodies**

- (1) An estimate for a government department for approval by the House of Commons in respect of a financial year must be prepared in accordance with directions issued by the Treasury.
- (2) The Treasury may direct that the estimate is to include information relating to resources expected to be used by any body that is a designated body in relation to the department.
- (3) For the purposes of this section a body is a “designated” body in relation to a government department if—
  - (a) it is designated in relation to the department by an order made by the Treasury, or
  - (b) it falls within a description of body designated in relation to the department by such an order.
- (4) A body, or a description of body, may be designated in relation to a government department for a particular financial year or generally.
- (5) Subsections (6) and (7) apply if the Treasury—
  - (a) expect the use of resources by a body in a financial year to involve payments out of a devolved Consolidated Fund to or for the benefit of the body, but
  - (b) do not expect the use of resources by the body in the year to involve payments out of the Consolidated Fund of the United Kingdom to or for the benefit of the body.
- (6) If an order is in force under which the body would (but for this subsection) be a designated body for the year in relation to a government department—
  - (a) the Treasury must notify the department that the conditions in subsection (5) are met in the case of the body for the year, and
  - (b) the body is to be treated as if it were not designated for the year in relation to the department.
- (7) If no such order is in force, the Treasury may not make one.
- (8) Before designating a body, or a description of body, the Treasury must, where they think it appropriate, consult—
  - (a) the Scottish Ministers,
  - (b) the Department of Finance and Personnel for Northern Ireland, or

- (c) the Welsh Ministers.
- (9) In determining for any purpose whether a body has a particular relationship with a government department (for example, whether it is controlled by, or otherwise dependent on, the department), the following must be disregarded –
  - (a) the fact that an estimate for the department in respect of a financial year includes information relating to the body, and
  - (b) the fact that the department’s resource accounts for a financial year prepared under section 5 include information relating to the body.
- (10) An order under subsection (3) is to be made by statutory instrument.
- (11) A statutory instrument containing an order under that subsection is subject to annulment in pursuance of a resolution of either House of Parliament.
- (12) In this section “a devolved Consolidated Fund” means –
  - (a) the Scottish Consolidated Fund,
  - (b) the Consolidated Fund of Northern Ireland, or
  - (c) the Welsh Consolidated Fund.”
- (3) In section 5(1) (resource accounts: preparation), for paragraphs (a) and (b) substitute –
  - “(a) resources acquired, held or disposed of during the year by –
    - (i) the department, or
    - (ii) any body that is a designated body under section 4A in relation to the department for the year, and
  - (b) the use of resources during the year by the department or any such body.”
- (4) In section 6(1) (resource accounts: scrutiny by the Comptroller and Auditor General), for paragraph (d) substitute –
  - “(d) that –
    - (i) the financial transactions of the department, and
    - (ii) the financial transactions of any body that is a designated body under section 4A in relation to the department for the year in question,
 are in accordance with any relevant authority.”

#### 44 Corresponding provision in relation to Wales

- (1) Part 5 of the Government of Wales Act 2006 (finance) is amended as follows.
- (2) After section 126 insert –
  - “126A Inclusion in Budget motions of resources used by designated bodies**
  - (1) A Budget motion for a financial year may include information relating to resources expected to be used by any body that is a designated body in relation to a relevant person.
  - (2) For the purposes of this section a body is a “designated” body in relation to a relevant person if –

- (a) it is designated in relation to the relevant person by an order made by the Welsh Ministers, or
    - (b) it falls within a description of body designated in relation to the relevant person by such an order.
  - (3) A body, or a description of body, may be designated in relation to a relevant person for a particular financial year or generally.
  - (4) If the Welsh Ministers expect the use of resources by a body in a financial year to involve payments out of a relevant Consolidated Fund to or for the benefit of the body, they may not make an order under which the body would be a designated body for the year unless the Treasury have consented to the making of the order.
  - (5) “A relevant Consolidated Fund” means—
    - (a) the Consolidated Fund of the United Kingdom,
    - (b) the Scottish Consolidated Fund, or
    - (c) the Consolidated Fund of Northern Ireland.
  - (6) The Welsh Ministers must, where they think it appropriate, consult the Treasury before designating a body or a description of body:
  - (7) In determining for any purpose whether a body has a particular relationship with a relevant person (for example, whether it is controlled by, or otherwise dependent on, the person), the following must be disregarded—
    - (a) the fact that the provisions of a Budget motion relating to the relevant person in respect of a financial year include information relating to the body, and
    - (b) the fact that the relevant person’s accounts for a financial year prepared under this or any other Act include information relating to the body.
  - (8) An order under subsection (2) is to be made by statutory instrument.
  - (9) A statutory instrument containing an order under that subsection is subject to annulment in pursuance of a resolution of the National Assembly for Wales.
  - (10) But subsection (9) does not apply if a draft of the statutory instrument containing the order has been laid before, and approved by a resolution of, the National Assembly for Wales.”
- (3) Schedule 8 (Auditor General for Wales) is amended as follows.
  - (4) In paragraph 13 (accounts of Auditor General), after sub-paragraph (1) insert—

“(1A) The directions which the Treasury may give under sub-paragraph (1) include directions to prepare accounts relating to financial affairs and transactions of persons other than the Auditor General.”
  - (5) In paragraph 15 (audit of accounts of Auditor General)—
    - (a) in sub-paragraph (5)(b)—
      - (i) for “the Auditor General”, in the first place, substitute “a relevant person”; and
      - (ii) for “the Auditor General”, in the second place, substitute “the relevant person”; and

- (b) after sub-paragraph (5) insert—
- “(5A) In sub-paragraph (5)(b) “relevant person” means—
- (a) the Auditor General, or
- (b) any person to whose financial affairs and transactions the accounts are to relate by virtue of paragraph 13(1A).”
- (6) In paragraph 17(8) (access of Auditor General to documents), after paragraph (b) insert—
- “(ba) in a case within that paragraph relating to any accounts which the Public Services Ombudsman for Wales is directed to prepare under paragraph 16 of Schedule 1 to the Public Services Ombudsman (Wales) Act 2005, the Ombudsman and any person to whose financial affairs and transactions the accounts are to relate by virtue of sub-paragraph (1A) of that paragraph.”
- (7) In paragraph 16 of Schedule 1 to the Public Services Ombudsman (Wales) Act 2005 (accounts), after sub-paragraph (1) insert—
- “(1A) The directions which the Treasury may give under sub-paragraph (1)(b) include directions to prepare accounts relating to financial affairs and transactions of persons other than the Ombudsman.”

## PART 6

### PUBLIC RECORDS AND FREEDOM OF INFORMATION

#### 45 Transfer of records to Public Record Office

- (1) In section 3 of the Public Records Act 1958 (selection and preservation of public records)—
- (a) in subsection (4) (transfer to Public Record Office or to other appointed place of deposit of public records selected for permanent preservation), for “thirty years” substitute “20 years”, and
- (b) after that subsection insert—
- “(4A) Until the end of the period of 10 years beginning with the commencement of section 45 of the Constitutional Reform and Governance Act 2010, subsection (4) has effect subject to any order made under subsection (2) of that section.”
- (2) The Lord Chancellor may by order make transitional, transitory or saving provision in connection with the coming into force of subsection (1)(a).
- (3) An order under subsection (2) may in particular—
- (a) provide for the time within which any records are to be transferred to the Public Record Office or other place of deposit referred to in section 3(4) of the Public Records Act 1958, and
- (b) make different provision in relation to records of different descriptions.
- (4) An order under this section is to be made by statutory instrument.
- (5) A statutory instrument containing an order under this section is subject to annulment in pursuance of a resolution of either House of Parliament.

#### 46 Freedom of information

- (1) Schedule 7 (which makes amendments of the Freedom of Information Act 2000) has effect.
- (2) The Secretary of State may by order make transitional, transitory or saving provision in connection with the coming into force of paragraph 4 of Schedule 7 (which reduces from 30 years to 20 years the period at the end of which a record becomes a historical record for the purposes of Part 6 of the Freedom of Information Act 2000).
- (3) An order under subsection (2) may in particular –
  - (a) make provision about the time when any records are to become historical records for the purposes of Part 6 of the Freedom of Information Act 2000, and
  - (b) make different provision in relation to records of different descriptions.
- (4) An order under subsection (2) is to be made by statutory instrument.
- (5) A statutory instrument containing an order under subsection (2) is subject to annulment in pursuance of a resolution of either House of Parliament.

### PART 7

#### MISCELLANEOUS AND FINAL PROVISIONS

#### 47 Section 3 of the Act of Settlement

- (1) For the avoidance of doubt, the repeal in section 18(7) of the Electoral Administration Act 2006 of the entry in Schedule 7 to the British Nationality Act 1981 (entry which modified certain disqualifications imposed by section 3 of the Act of Settlement) applied only so far as the modification made by that entry related to –
  - (a) membership of the House of Commons, or
  - (b) anything from which a person is disqualified by virtue of a disqualification from membership of that House.
- (2) Section 3 of the Act of Settlement has effect accordingly, and has done so since the coming into force of section 18 of the Electoral Administration Act 2006.

#### 48 Parliamentary elections: counting of votes

- (1) Schedule 1 to the Representation of the People Act 1983 (parliamentary elections rules) is amended as follows.
- (2) In rule 44 (attendance at counting of votes) after paragraph (5) insert –

“(6) In making arrangements under this rule, the returning officer shall have regard to the duty imposed on him by rule 45(3A) below.”
- (3) In rule 45 (the count) –
  - (a) after paragraph (3) insert –

“(3A) The returning officer shall take reasonable steps to begin counting the votes given on the ballot papers as soon as practicable within the period of four hours starting with the close of the poll.”;

(b) after paragraph (7) insert—

“(8) The Electoral Commission shall issue guidance to returning officers on the duty imposed by paragraph (3A) above.”

(4) After rule 53 insert—

*“Counting of votes: statement by returning officer*

53ZA(1) In a contested election, if the counting of the votes given on the ballot papers did not begin within the period specified in rule 45(3A) above, the returning officer shall before the expiry of the period of 30 days starting with the day on which the poll closed—

- (a) prepare and publish a statement giving the information specified in paragraph (2) below, and
- (b) deliver it to the Electoral Commission.

(2) The statement must—

- (a) specify the time at which the counting of the votes given on the ballot papers began,
- (b) describe the steps taken under rule 45(3A) above, and
- (c) explain why the counting of the votes given on the ballot papers did not start within the period specified in rule 45(3A) above.

(3) Where a statement is delivered to the Electoral Commission under paragraph (1)(b) above, the Commission shall specify in any election report they produce that a statement has been delivered to them under that paragraph in respect of the constituency to which the statement relates.

(4) In paragraph (3) above “election report” means a report under section 5(1) or (2A) of the Political Parties, Elections and Referendums Act 2000 in relation to the parliamentary election in question.”

#### 49 Meaning of “Minister of the Crown”

In this Act “Minister of the Crown” has the same meaning as in the Ministers of the Crown Act 1975.

#### 50 Financial provision

There is to be paid out of money provided by Parliament—

- (a) any expenditure incurred by a Minister of the Crown by virtue of this Act;
- (b) any increase attributable to this Act in the sums payable by virtue of any other Act out of money so provided.

#### 51 Power to make consequential provision

- (1) A Minister of the Crown, or two or more Ministers of the Crown acting jointly, may by order make such provision as the Minister or Ministers consider appropriate in consequence of any provision of this Act.
- (2) An order under subsection (1) may—

- (a) amend, repeal or revoke any existing statutory provision;
  - (b) include supplementary, incidental, transitional, transitory or saving provision.
- (3) “Existing statutory provision” means –
- (a) a provision of an Act passed on or before the last day of the Session in which this Act is passed;
  - (b) a provision of subordinate legislation (as defined in section 21(1) of the Interpretation Act 1978) made on or before that day.
- (4) An order under subsection (1) is to be made by statutory instrument.
- (5) A statutory instrument containing an order under subsection (1) which amends or repeals a provision of an Act may not be made unless a draft of the instrument has been laid before and approved by a resolution of each House of Parliament.
- (6) A statutory instrument containing an order under subsection (1) which does not amend or repeal a provision of an Act is subject to annulment in pursuance of a resolution of either House of Parliament.

**52 Extent, commencement, transitional provision and short title**

- (1) An amendment or repeal contained in this Act has the same extent as the Act or instrument or relevant part of the Act or instrument to which the amendment or repeal relates (ignoring extent by virtue of an Order in Council).
- (2) This Act comes into force on such day as a Minister of the Crown, or two or more Ministers of the Crown acting jointly, may by order appoint; and different days may be appointed for different purposes.
- (3) Subsection (2) does not apply to the following provisions of this Act (which accordingly come into force on the day this Act is passed) –
- (a) section 41;
  - (b) section 42;
  - (c) the provisions of this Part.
- (4) A Minister of the Crown, or two or more Ministers of the Crown acting jointly, may by order make transitional, transitory or saving provision in connection with the coming into force of any provision of this Act.
- (5) An order under subsection (2) or (4) is to be made by statutory instrument.
- (6) This Act may be cited as the Constitutional Reform and Governance Act 2010.

## SCHEDULES

## SCHEDULE 1

Section 2

## THE CIVIL SERVICE COMMISSION

## PART 1

## THE COMMISSIONERS

*Membership of the Commission*

- 1 (1) The Commission is to consist of at least seven members.
- (2) One of those is to be the First Civil Service Commissioner appointed under paragraph 2.
- (3) The others are to be Civil Service Commissioners appointed under paragraph 3.

*Appointment of First Civil Service Commissioner*

- 2 (1) This paragraph is about the appointment of the First Civil Service Commissioner (“First Commissioner”).
- (2) The First Commissioner is appointed by Her Majesty on the recommendation of the Minister for the Civil Service.
- (3) A person’s selection for recommendation must be on merit on the basis of fair and open competition.
- (4) Before selecting a person, the Minister must consult—
  - (a) the First Ministers for Scotland and Wales, and
  - (b) the relevant opposition leaders (see sub-paragraph (8)).
- (5) The terms on which the First Commissioner holds office are determined by the Minister for the Civil Service.
- (6) The period of the appointment is to be no more than five years.
- (7) A person cannot be appointed as First Commissioner more than once.
- (8) The relevant opposition leaders are the registered leaders of the registered parties in opposition to Her Majesty’s Government in the United Kingdom which had the highest and second highest national vote at the previous parliamentary general election.
- (9) In sub-paragraph (8)–

“registered leader”, in relation to a party, means the person registered as that party’s leader in accordance with section 24 of the Political Parties, Elections and Referendums Act 2000;

“registered party” means a party registered in a register of political parties maintained by the Electoral Commission in accordance with section 23 of that Act.

*Appointment of Civil Service Commissioners*

- 3 (1) This paragraph is about the appointment of Civil Service Commissioners (“Commissioners”).
- (2) A Commissioner is appointed by Her Majesty on the recommendation of the Minister for the Civil Service.
- (3) A person’s selection for recommendation must be on merit on the basis of fair and open competition.
- (4) A person must not be selected without the agreement of the First Commissioner.
- (5) The terms on which a Commissioner holds office are determined by the Minister.
- (6) The period of the appointment is to be no more than five years.
- (7) The Minister must not make a determination under sub-paragraph (5) without the agreement of the First Commissioner.
- (8) A person cannot be appointed as a Commissioner more than once.
- (9) A person cannot be a Commissioner and the First Commissioner at the same time.
- (10) But, if the office of First Commissioner is vacant, the Minister may authorise a Commissioner to carry out the functions of First Commissioner until the vacancy is filled.
- (11) Sub-paragraphs (12) and (13) apply in relation to the appointment as Commissioner of a person holding another public office (including an office under the Crown) if the Minister and the First Commissioner are both satisfied that the functions of the other public office are concerned with matters similar to matters with which the Commission’s functions are concerned.
- (12) The Minister and the First Commissioner may agree to disapply sub-paragraph (3) or (6).
- (13) The terms determined under sub-paragraph (5) may –
- (a) provide for the person to cease to hold office as Commissioner if the person ceases to hold the other public office;
  - (b) restrict the functions that the person may carry out as Commissioner.

*Payment of remuneration and allowances etc*

- 4 (1) The terms mentioned in paragraph 2(5) or 3(5) may provide for the Commission –
- (a) to pay remuneration and allowances to the person appointed;

- (b) to make provision for a pension in relation to that person.
- (2) The Commission must make the payments or provision accordingly.

*Resignation or removal from office*

- 5 (1) This paragraph is about resignation or removal from the office of First Commissioner or Commissioner.
- (2) A person may resign from office by giving written notice to the Minister for the Civil Service.
- (3) Her Majesty may, on the recommendation of the Minister, remove a person from office if a condition in sub-paragraph (4) is met.
- (4) The conditions are that—
- (a) the person is absent from three successive meetings of the Commission without the Commission's approval;
  - (b) the person is convicted of an offence (see sub-paragraph (5));
  - (c) the person becomes bankrupt (see sub-paragraph (6));
  - (d) the person is unfit or unable to carry out the functions of the office.
- (5) For the purpose of determining if a person is convicted of an offence—
- (a) it does not matter where the person is convicted;
  - (b) an act punishable under the law of a territory outside the United Kingdom constitutes an offence for the purposes of this paragraph (however it is described in that law).
- (6) A person becomes bankrupt if—
- (a) in England and Wales or Northern Ireland, a bankruptcy order is made in relation to the person, or
  - (b) in Scotland, the person's estate is sequestrated.

*Compensation for loss of office of First Commissioner or Commissioner*

- 6 The Minister for the Civil Service may direct the Commission to pay compensation if—
- (a) a person ceases to hold office as First Commissioner or Commissioner, and
  - (b) the Minister is satisfied that, because of the circumstances in which the person ceased to hold office, compensation should be paid to the person.

PART 2

THE COMMISSION

*Status of the Commission and its property*

- 7 (1) The Commission (including its members and employees) is not to be regarded—
- (a) as the servant or agent of the Crown, or
  - (b) as enjoying any status, immunity or privilege of the Crown.

- (2) The Commission's property is not to be regarded as property of, or held on behalf of, the Crown.

#### *Powers*

- 8 (1) The Commission may do anything calculated to facilitate, or incidental or conducive to, the carrying out of any of its functions.
- (2) But the Commission may not borrow money except with the agreement of the Minister for the Civil Service.
- (3) Nothing in this Schedule which specifies powers of the Commission limits the generality of sub-paragraph (1).

#### *Committees*

- 9 (1) The Commission may establish committees.
- (2) A committee of the Commission may establish sub-committees.
- (3) Members of a committee or sub-committee may include persons who are not members of the Commission.

#### *Procedure and proceedings*

- 10 (1) The Commission may regulate its own procedure, and the procedure of its committees and sub-committees, including quorum.
- (2) The validity of proceedings of the Commission or a committee or sub-committee is not affected by—
  - (a) a vacancy among the members, or
  - (b) a defect in the appointment of a member.

#### *Staff*

- 11 The Commission may employ staff.

#### *Pensions*

- 12 (1) Employment by the Commission is included among the kinds of employment to which a scheme under section 1 of the Superannuation Act 1972 may apply.
- (2) The offices of First Commissioner and Commissioner are included among the offices to which such a scheme may apply.
- (3) Accordingly, in Schedule 1 to the Superannuation Act 1972 (kinds of employment to which a scheme under section 1 of that Act may apply)—
  - (a) at the end of the list of "Royal Commissions and other Commissions" insert "Civil Service Commission",
  - (b) in the list of "Offices" insert, at the appropriate place, "Civil Service Commissioner", and
  - (c) in that list the reference to the First Civil Service Commissioner is to be read as a reference to the office of the First Civil Service Commissioner established by this Schedule.

- (4) The Commission must pay the Minister for the Civil Service the sums determined by the Minister in relation to any increase attributable to this paragraph in the sums payable out of money provided by Parliament under the Superannuation Act 1972.
- (5) The payments must be made at the times directed by the Minister.

*Arrangements for assistance*

- 13 (1) The Commission may make arrangements with other persons for the provision of assistance to the Commission.
- (2) In particular, arrangements may be made with the Minister for the Civil Service for civil servants to provide assistance.
- (3) Arrangements may provide for the making of payments by the Commission.

*Delegation*

- 14 (1) The Commission may delegate functions to—
  - (a) any of its members;
  - (b) any of its committees;
  - (c) any of its employees;
  - (d) a person with whom arrangements are made under paragraph 13 or a person (including a civil servant) assisting the Commission under such arrangements.
- (2) A committee may delegate functions (including functions delegated to it) to a sub-committee.

*Financial provisions*

- 15 (1) The Minister for the Civil Service must pay to the Commission the sums determined by the Minister as appropriate for, or in connection with, the carrying out of the Commission's functions.
- (2) When making a payment, the Minister may impose conditions—
  - (a) about how some or all of the money is to be used;
  - (b) requiring the Commission to follow specified procedures in relation to its costs and expenditure.
- (3) Before making a determination under sub-paragraph (1) or imposing a condition under sub-paragraph (2), the Minister must consult the Commission.

*Accounts*

- 16 (1) The Commission must keep proper accounts and proper records in relation to them.
- (2) The Commission must prepare a statement of accounts for each financial year (see paragraph 18).
- (3) The statement must give a true and fair view of—
  - (a) the state of the Commission's affairs at the end of the financial year, and

- (b) the Commission's income and expenditure and cash flows in the financial year.
- (4) The statement must be in compliance with any directions given by the Minister for the Civil Service with the Treasury's approval as to—
  - (a) the information to be contained in the statement,
  - (b) the manner in which the information is to be presented, or
  - (c) the methods and principles according to which the statement is to be prepared.
- (5) The Commission must send the statement to the Minister at such time as the Minister may direct.
- (6) The Minister must then send the statement to the Comptroller and Auditor General.
- (7) The Comptroller and Auditor General must—
  - (a) examine, certify and report on the statement, and
  - (b) lay copies of the statement and the report before Parliament (unless it has been arranged for the Minister to do so).

#### Reports

- 17 (1) The Commission—
- (a) must, as soon as practicable after the end of each financial year (see paragraph 18), prepare a report about the carrying out of its functions during the year, and
  - (b) may, in exceptional cases, prepare a report at any other time about any matter relating to the carrying out of its functions.
- (2) As soon as practicable after preparing a report under sub-paragraph (1), the Commission must give a copy of the report to the Minister for the Civil Service and to the First Ministers for Scotland and Wales.
- (3) The Commission must then publish the report in the way the Commission thinks appropriate.
- (4) The Minister for the Civil Service must lay a copy of the report before Parliament (unless it has been arranged for the Comptroller and Auditor General to do so).
- (5) The First Minister for Scotland must lay a copy of the report before the Scottish Parliament.
- (6) The First Minister for Wales must lay a copy of the report before the National Assembly for Wales.

#### Meaning of "financial year"

- 18 For the purposes of paragraphs 16 and 17, each of the following is a "financial year"—
- (a) the period which begins when section 2 of this Act comes into force and ends with the following 31 March;
  - (b) each successive period of 12 months.

*Documentary evidence*

- 19 (1) The application of the Commission's seal is to be authenticated by the signature of any of the following—
- (a) a member of the Commission;
  - (b) if the Commission's staff includes a chief executive, the chief executive;
  - (c) any person authorised (whether generally or specifically) for the purpose by anyone within paragraph (a) or (b).
- (2) A document purporting to be duly executed under the Commission's seal or signed on its behalf—
- (a) is to be received in evidence, and
  - (b) is to be taken to be executed or signed in that way, unless the contrary is proved.
- (3) This paragraph does not extend to Scotland.

SCHEDULE 2

Section 19

CONSEQUENTIAL AMENDMENTS AND TRANSITIONAL PROVISION RELATING TO PART 1

PART 1

CONSEQUENTIAL AMENDMENTS TO ACTS OF PARLIAMENT

*Parliamentary Commissioner Act 1967 (c. 13)*

- 1 In Schedule 2, in the note about the Cabinet Office, omit “and Head of the Home Civil Service”.

*Superannuation Act 1972 (c. 11)*

- 2 In section 2(10) for “home civil service or the diplomatic service” substitute “civil service of the State”.

*House of Commons Disqualification Act 1975 (c. 24)*

- 3 In Schedule 1—
- (a) in Part 2, at the appropriate place, insert “The Civil Service Commission”;
  - (b) in Part 3 omit “Civil Service Commissioner”.

*Northern Ireland Assembly Disqualification Act 1975 (c. 25)*

- 4 In Part 2 of Schedule 1, at the appropriate place, insert “The Civil Service Commission”.

*House of Commons (Administration) Act 1978 (c. 36)*

- 5 (1) Amend section 2 as follows.

- (2) In subsections (2) and (3) for “Home Civil Service” (wherever appearing) substitute “statutory home civil service”.
- (3) After subsection (4) insert—
  - “(5) “The statutory home civil service” means the civil service (excluding Her Majesty’s diplomatic service) within the meaning of Chapter 1 of Part 1 of the Constitutional Reform and Governance Act 2010 (see section 1(4) of that Act).”

*Civil Service (Management Functions) Act 1992 (c. 61)*

- 6 (1) Amend section 1 as follows.
  - (2) For subsections (1) and (2) substitute—
    - “(1) This section applies to the functions conferred on the Minister for the Civil Service by section 3 of the Constitutional Reform and Governance Act 2010 (management of the civil service, excluding the diplomatic service).
    - (2) The Minister for the Civil Service may, to such extent and subject to such conditions as the Minister thinks fit, delegate a function to which this section applies to any other servant of the Crown.”
  - (3) Omit subsection (5).
  - (4) For the italic cross-heading before section 1 substitute “*Civil service (excluding the diplomatic service)*”.
- 7 In section 2(1)(a) for “Her Majesty’s Home Civil Service” substitute “the civil service (excluding the diplomatic service) within the meaning of Chapter 1 of Part 1 of the Constitutional Reform and Governance Act 2010”.

*Government of Wales Act 1998 (c. 38)*

- 8 In paragraph 3(1) and (2) of Schedule 6 for “Her Majesty’s Home Civil Service” substitute “the civil service of the State”.

*Scotland Act 1998 (c. 46)*

- 9 (1) Amend section 51 as follows.
  - (2) In subsection (2) for “Home Civil Service” substitute “civil service of the State”.
  - (3) For subsection (3) substitute—
    - “(3) See Part 1 of the Constitutional Reform and Governance Act 2010 (in particular, sections 3 and 4) for provision affecting—
      - (a) subsection (1), and
      - (b) any other enactment about the appointment of persons mentioned in subsection (2).”
  - (4) For subsection (4) substitute—
    - “(4) See also section 1 of the Civil Service (Management Functions) Act 1992 under which functions conferred on the Minister for the Civil

Service by section 3 of the Constitutional Reform and Governance Act 2010 may be delegated to the Scottish Ministers etc.”

- (5) Omit subsection (9).

*Social Security Contributions (Transfer of Functions, etc.) Act 1999 (c. 2)*

- 10 (1) Amend section 24 as follows.
- (2) In subsection (3)(c)(iii) for “Her Majesty’s Home Civil Service” substitute “the statutory home civil service”.
- (3) After subsection (7) insert –
- “(8) In this section “the statutory home civil service” means the civil service (excluding Her Majesty’s diplomatic service) within the meaning of Chapter 1 of Part 1 of the Constitutional Reform and Governance Act 2010 (see section 1(4) of that Act).”

*Regulation of Investigatory Powers Act 2000 (c. 23)*

- 11 (1) Amend section 81 as follows.
- (2) In subsection (7) for “home civil service or diplomatic service” substitute “statutory civil service (or any part of it)”.
- (3) After subsection (7) insert –
- “(8) In subsection (7) “the statutory civil service” means –
- (a) the civil service within the meaning of Chapter 1 of Part 1 of the Constitutional Reform and Governance Act 2010 (see section 1(4) of that Act), but
- (b) also includes the Government Communications Headquarters.”

*Freedom of Information Act 2000 (c. 36)*

- 12 In Part 6 of Schedule 1 for “The Civil Service Commissioners” substitute “The Civil Service Commission”.

*Tax Credits Act 2002 (c. 21)*

- 13 (1) Amend section 52 as follows.
- (2) In subsection (7) for “Her Majesty’s Home Civil Service” substitute “the statutory home civil service”.
- (3) After subsection (7) insert –
- “(8) In subsection (7) “the statutory home civil service” means the civil service (excluding Her Majesty’s diplomatic service) within the meaning of Chapter 1 of Part 1 of the Constitutional Reform and Governance Act 2010 (see section 1(4) of that Act).”

*Extradition Act 2003 (c. 41)*

- 14 (1) Amend section 101 as follows.

- (2) In subsection (5) for “home civil service or diplomatic service” substitute “statutory civil service (or any part of it)”.
- (3) After subsection (5) insert—
  - “(6) In subsection (5) “the statutory civil service” means the civil service within the meaning of Chapter 1 of Part 1 of the Constitutional Reform and Governance Act 2010 (see section 1(4) of that Act).”

*Government of Wales Act 2006 (c. 32)*

- 15
- (1) Amend section 52 as follows.
  - (2) In subsections (2) and (9) for “Home Civil Service” substitute “civil service of the State”.
  - (3) For subsection (3) substitute—
    - “(3) See Part 1 of the Constitutional Reform and Governance Act 2010 (in particular, sections 3 and 4) for provision affecting—
      - (a) subsection (1), and
      - (b) any other enactment about the appointment of persons as members of the staff of the Welsh Assembly Government.”
  - (4) For subsection (4) substitute—
    - “(4) See also section 1 of the Civil Service (Management Functions) Act 1992 under which functions conferred on the Minister for the Civil Service by section 3 of the Constitutional Reform and Governance Act 2010 may be delegated to the Welsh Ministers etc.”
  - (5) Omit subsection (10).

*Police and Justice Act 2006 (c. 48)*

- 16
- In paragraph 7(4)(c) of Schedule 1 for “Her Majesty’s Home Civil Service” substitute “the civil service (excluding Her Majesty’s diplomatic service) within the meaning of Chapter 1 of Part 1 of the Constitutional Reform and Governance Act 2010 (see section 1(4) of that Act)”.

*Parliament (Joint Departments) Act 2007 (c. 16)*

- 17
- (1) Amend section 3 as follows.
  - (2) In subsection (2) for “Home Civil Service” (wherever appearing) substitute “statutory home civil service”.
  - (3) After subsection (3) insert—
    - “(4) “The statutory home civil service” means the civil service (excluding Her Majesty’s diplomatic service) within the meaning of Chapter 1 of Part 1 of the Constitutional Reform and Governance Act 2010 (see section 1(4) of that Act).”

*Crossrail Act 2008 (c. 18)*

- 18
- (1) Amend Schedule 12 as follows.

- (2) In paragraphs 13(3) and 16(2)(a) and (b) for “Her Majesty’s Home Civil Service” substitute “any part of the statutory home civil service”.
- (3) In paragraph 20(2), after the definition of “enactment”, insert –  
 ““the statutory home civil service” means the civil service (excluding Her Majesty’s diplomatic service) within the meaning of Chapter 1 of Part 1 of the Constitutional Reform and Governance Act 2010 (see section 1(4) of that Act);”.

## PART 2

### CONSEQUENTIAL AMENDMENTS TO OTHER LEGISLATION

#### *Civil Service Orders in Council*

- 19 The following are revoked –
- (a) the Civil Service Order in Council 1995;
  - (b) the Civil Service (Amendment) Order in Council 1995;
  - (c) the Civil Service (Amendment) Order in Council 1996;
  - (d) the Civil Service (Amendment) Order in Council 1997;
  - (e) the Civil Service (Amendment) Order in Council 1998;
  - (f) the Civil Service (Amendment) Order in Council 1999;
  - (g) the Civil Service (Amendment) Order in Council 2000;
  - (h) the Civil Service (Amendment) Order in Council 2001;
  - (i) the Civil Service (Amendment) Order in Council 2002;
  - (j) the Civil Service (Amendment) Order in Council 2004;
  - (k) the Civil Service (Amendment) Order in Council 2005;
  - (l) the Civil Service (Amendment) Order in Council 2007;
  - (m) the Civil Service (Amendment) (No. 2) Order in Council 2007;
  - (n) the Civil Service (Amendment) (No. 3) Order in Council 2007;
  - (o) the Civil Service (Amendment) Order in Council 2008;
  - (p) the Civil Service (Amendment) (No. 2) Order in Council 2008.

#### *Diplomatic Service Orders in Council*

- 20 The following are revoked –
- (a) the Diplomatic Service Order in Council 1991;
  - (b) the Diplomatic Service (Amendment) Order in Council 1994;
  - (c) the Diplomatic Service (Amendment) (No. 2) Order in Council 1994;
  - (d) the Diplomatic Service (Amendment) Order in Council 1995;
  - (e) the Diplomatic Service (Amendment) Order in Council 2004;
  - (f) the Diplomatic Service (Amendment) Order in Council 2009.

#### *Servants of the Crown (Parliamentary, European Assembly and Northern Ireland Assembly Candidature) Order 1987*

- 21 This is revoked.

#### *Revenue and Customs (Complaints and Misconduct) Regulations 2005 (S.I. 2005/3311)*

- 22 (1) Amend Schedule 1 as follows.

- (2) For “Head of the Home Civil Service” (wherever appearing) substitute “designated permanent secretary”.
- (3) After paragraph 12(2)(d) insert—  
“(da) after the definition of “the Deputy Chairman” insert—  
““the designated permanent secretary” means the permanent secretary in the civil service of the State designated by the Minister for the Civil Service for the purposes of this Part;”.
- 23 In Schedules 3 and 4 for “Head of the Home Civil Service” (wherever appearing) substitute “designated permanent secretary”.

*Charities and Trustee Investment (Scotland) Act 2005 (Consequential Provisions and Modifications) Order 2006 (S.I. 2006/242)*

- 24 In article 2(2) for “Home Civil Service” substitute “civil service of the State”.

PART 3

TRANSITIONAL PROVISION RELATING TO THE CIVIL SERVICE COMMISSION

*Definitions*

- 25 (1) This paragraph applies for the purposes of this Part of this Schedule.
- (2) A person is a “member of the old commission” if the person is one of Her Majesty’s Civil Service Commissioners for the purposes of the 1995 Order or the 1991 Order.
- (3) References to “the old commission” are to be read accordingly.
- (4) A person is “head of the old commission” if the person is the First Civil Service Commissioner in relation to the old commission.
- (5) “Commission” has the same meaning as in Chapter 1 of this Part of this Act.
- (6) “First Commissioner” and “Commissioner” have the same meanings as in Schedule 1 to this Act.
- (7) “The 1995 Order” and “the 1991 Order” mean, respectively, the Civil Service Order in Council 1995 and the Diplomatic Service Order in Council 1991.

*Head of the old commission to become First Commissioner*

- 26 (1) The person who is head of the old commission immediately before section 2 of this Act comes into force becomes the First Commissioner on that section coming into force.
- (2) Sub-paragraphs (3) and (4) below apply instead of paragraph 2(5) and (6) of Schedule 1 to this Act.
- (3) The person holds office as the First Commissioner for a period equal to the remaining part of the period for which the person was appointed as head of the old commission.
- (4) The other terms on which the person holds office as the First Commissioner are—

- (a) the same terms as those on which the person held office as head of the old commission, or
  - (b) if the person agrees, the terms determined by the Minister for the Civil Service.
- (5) If those terms provide for the payment of remuneration or allowances or make provision for a pension, the Commission must make the payments or provision accordingly.
- (6) The person's becoming First Commissioner as a result of this paragraph is not an appointment for the purposes of paragraph 2(7) of Schedule 1 to this Act.

*Restriction on period of office if First Commissioner is former head of the old commission*

- 27 (1) This paragraph applies if the person who is the First Commissioner is a former head of the old commission.
- (2) The period for which the person is to hold office (apart from this sub-paragraph) is reduced so far as necessary to ensure compliance with the five year rule.
- (3) The five year rule is that the total of the following must not exceed five years—
- (a) the period or periods for which the person holds office as the First Commissioner, and
  - (b) the period or periods for which the person is head of the old commission.

*Members of the old commission to become Commissioners*

- 28 (1) The persons who are members of the old commission immediately before section 2 comes into force become Commissioners on that section coming into force.
- (2) Sub-paragraph (1) does not apply to the person who is the head of the old commission.
- (3) Sub-paragraphs (4) and (5) below apply instead of paragraph 3(5) and (6) of Schedule 1 to this Act.
- (4) A person holds office as Commissioner for a period equal to the remaining part of the period for which the person was appointed as a member of the old commission.
- (5) The other terms on which the person holds office as Commissioner are—
- (a) the same terms as those on which the person held office as a member of the old commission, or
  - (b) if the person agrees, the terms determined by the Minister for the Civil Service.
- (6) If those terms provide for the payment of remuneration or allowances or make provision for a pension, the Commission must make the payments or provision accordingly.
- (7) The person's becoming Commissioner as a result of this paragraph is not an appointment for the purposes of paragraph 3(8) of Schedule 1 to this Act.

*Restriction on period of office for former member of old commission*

- 29 (1) This paragraph applies if a person who is a Commissioner is a former member of the old commission.
- (2) The period for which the person is to hold office (apart from this sub-paragraph) is reduced so far as necessary to ensure compliance with the five year rule.
- (3) The five year rule is that the total of the following must not exceed five years—
- (a) the period or periods for which the person holds office as Commissioner, and
  - (b) the period or periods for which the person is a member of the old commission.
- (4) Sub-paragraph (3)(a) and (b) does not include any period for which the person is also Her Majesty's Commissioner for Public Appointments.
- (5) Sub-paragraph (3)(b) does not include any period for which the person is also head of the old commission.

*Audits of recruitment policies and practices*

- 30 (1) This paragraph applies in relation to an audit under article 4(3) of the 1995 Order or the 1991 Order that is started, but not completed, before the coming into force of section 2 of this Act.
- (2) So far as the audit is within the Commission's function under section 14 of this Act, the Commission may continue and complete the audit.

*Requirements to publish recruitment information*

- 31 Any requirement under article 4(4) of the 1995 Order or the 1991 Order imposed before the coming into force of section 2 of this Act must be complied with notwithstanding the revocation of the Order by Part 2 of this Schedule.

*Appeals by civil servants*

- 32 (1) This paragraph applies in relation to an appeal under article 4(5) of the 1995 Order or the 1991 Order that is made, but not determined, before the coming into force of section 2 of this Act.
- (2) The Commission may continue with and determine the appeal and paragraphs (a) to (c) of article 4(5) of the 1995 Order or the 1991 Order (as the case may be) continue to apply accordingly.
- (3) For this purpose it does not matter if Chapter 1 of this Part of this Act does not apply to the appellant or any party mentioned in article 4(5)(b) of the 1995 Order or the 1991 Order (as the case may be).
- 33 (1) This paragraph applies in relation to a matter occurring before the coming into force of section 2 of this Act which could have been made the subject of an appeal under article 4(5) of the 1995 Order or the 1991 Order immediately before the coming into force of that section.

- (2) The Commission may hear and determine an appeal in relation to the matter and article 4(5) of the 1995 Order or the 1991 Order (as the case may be) is to apply accordingly.
- (3) For this purpose it does not matter if Chapter 1 of this Part of this Act does not apply to the appellant or any party mentioned in article 4(5)(b) of the 1995 Order or the 1991 Order (as the case may be).

*First annual report*

- 34 (1) This paragraph applies to the first report that the Commission is required to prepare under paragraph 17(1)(a) of Schedule 1 to this Act.
- (2) The report must, for the relevant period, include the information required by—
  - (a) article 8(1)(a) to (c) of the 1995 Order;
  - (b) article 4A(1)(a) to (c) of the 1991 Order.
- (3) For this purpose it does not matter if any of that information relates to a part of the civil service of the State to which Chapter 1 of this Part of this Act does not apply.
- (4) “The relevant period” means the period—
  - (a) beginning with—
    - (i) for the purposes of sub-paragraph (2)(a), the end of the period covered by the last report published under article 8(1) of the 1995 Order;
    - (ii) for the purposes of sub-paragraph (2)(b), the end of the period covered by the last report published under article 4A(1) of the 1991 Order;
  - (b) ending when section 2 of this Act comes into force.

*Transfer of property, rights and liabilities*

- 35 (1) The Minister for the Civil Service may make a scheme—
  - (a) specifying property, rights and liabilities of the Crown (or held on behalf of the Crown) that are relevant to the old commission’s functions, and
  - (b) transferring the specified property, rights and liabilities to the Commission;
 and the transfer has effect in accordance with the terms of the scheme.
- (2) The scheme may operate in relation to property, rights and liabilities—
  - (a) whether or not they would otherwise be capable of being transferred,
  - (b) without any instrument or other formality being required, and
  - (c) irrespective of any kind of requirement for consent that would otherwise apply.
- (3) The scheme may include supplementary, incidental, transitional, transitory or saving provision, including (in particular) provision—
  - (a) for the continuing effect of things done by, on behalf of or in relation to the Crown (or a person acting on behalf of the Crown);

- (b) for the continuation of things (including legal proceedings) in the process of being done by, on behalf of or in relation to the Crown (or a person acting on behalf of the Crown);
- (c) for references to the Crown or a person who acts on behalf of the Crown in any agreement (whether written or not) or instrument or other document to be treated as or as including references to the Commission;
- (d) for shared ownership, use or access.

*Information previously held by old commission*

- 36 (1) The Minister for the Civil Service must make arrangements for the Commission to be provided with any information—
- (a) which was held by (or on behalf of) the old commission for the purposes of the old commission's functions, and
  - (b) which the Commission reasonably requires for the purposes of its functions.
- (2) For the purposes of the Data Protection Act 1998 and the Freedom of Information Act 2000, any requests made to the old commission relating to information provided to the Commission under sub-paragraph (1) are to be dealt with by the Commission (so far as they were not dealt with by the old commission).

*Preparatory work*

- 37 (1) During the preparatory period the old commission may carry out, in the name and on behalf of the Commission, any functions given to the Commission by Schedule 1 to this Act.
- (2) "The preparatory period" is the period that—
- (a) starts when this Act is passed, and
  - (b) ends when section 2 of this Act comes into force.

PART 4

OTHER TRANSITIONAL PROVISION

*Application of section 16(1) of the Interpretation Act 1978*

- 38 (1) In this Part of this Schedule "old management functions" means functions that cease to be exercisable on the coming into force of section 3 of this Act.
- (2) Section 16(1) of the Interpretation Act 1978 applies in relation to an old management function ceasing to be exercisable as if—
- (a) the function had been conferred by an Act, and
  - (b) that Act were repealed by section 3 of this Act.
- (3) So far as not covered by sub-paragraph (2), section 16(1) of the 1978 Act applies in relation to the revocation of an Order in Council by Part 2 of this Schedule as if it were the repeal of an Act.

*Power to manage the civil service*

- 39 (1) Anything done under old management functions by—

- (a) a Minister of the Crown, or  
 (b) any other servant of the Crown under a delegation under section 1 of the Civil Service (Management Functions) Act 1992,  
 is treated as done under subsection (1) or (2) of section 3 of this Act (as the case may be) so far as necessary or appropriate for continuing its effect after the coming into force of section 3.
- (2) Civil servants who, immediately before section 3 comes into force, held their positions in the civil service under or subject to old management functions, continue to hold their positions but under or subject to subsection (1) or (2) of that section (as the case may be).
- (3) The powers in subsections (1) and (2) of section 3 may (in particular) be used to deal with transitional matters.
- (4) Section 1 of this Act applies for the purposes of this paragraph as it applies for the purposes of Chapter 1 of this Part of this Act.
- 40 (1) So far as—
- (a) an Order in Council revoked by Part 2 of this Schedule was not made under old management functions, or  
 (b) a relevant transferred function is not an old management function, the subject matter of the Order or function reverts to Her Majesty and may be dealt with (including delegated) by Her accordingly.
- (2) Civil servants who, immediately before this paragraph comes into force, held their positions in the civil service of the State under or subject to—
- (a) an Order in Council revoked by Part 2 of this Schedule so far as it was not made under old management functions, or  
 (b) a relevant transferred function so far as it is not an old management function,  
 continue to hold their positions but on the basis mentioned in sub-paragraph (1).
- (3) “Relevant transferred function” means a function which—
- (a) has been delegated by Her Majesty in relation to the management of the civil service of the State (excluding the Northern Ireland Civil Service), and  
 (b) has been the subject of a transfer of functions Order (as that term was defined in section 1(5) of the Civil Service (Management Functions) Act 1992 before its repeal by Part 1 of this Schedule).

*Selection on merit etc*

- 41 (1) In determining for the purposes of section 10(1) of this Act whether or not a person is a civil servant, ignore any appointment for which the person was selected in reliance on an exception made by the old commission (within the meaning of Part 3 of this Schedule) from a requirement for selection for the appointment to be on merit on the basis of fair and open competition.
- (2) But the recruitment principles (within the meaning of Chapter 1 of this Part of this Act) may disapply sub-paragraph (1) in specified cases.
- 42 For the purpose of determining whether a selection for an appointment complies with the requirement in section 10(2) of this Act in a case in which the selection process began before section 10(2) comes into force, account

must be taken of anything done under or in relation to the selection process before section 10(2) comes into force.

*Special advisers*

- 43 (1) This paragraph applies to a person who, immediately before the coming into force of this paragraph, holds a position in the civil service of the State for which the person was selected for appointment in reliance on article 3(2), (4) or (5) of the Civil Service Order in Council 1995.
- (2) For the purposes of Chapter 1 of this Part of this Act the person is treated as a special adviser so long as the person remains in that position on the same terms and conditions.

SCHEDULE 3

Section 26

PARLIAMENTARY STANDARDS ACT 2009: SUBSTITUTED SCHEDULE 2

“SCHEDULE 2

Section 3

COMPLIANCE OFFICER

*Appointment of Compliance Officer*

- 1 (1) The Compliance Officer is to be appointed by the IPSA.
- (2) The person to be appointed must be selected by the IPSA on merit on the basis of fair and open competition.

*Terms and conditions: general*

- 2 (1) Subject to the provisions of this Schedule, the Compliance Officer holds office in accordance with the terms and conditions of the Compliance Officer's appointment.
- (2) Those terms and conditions are to be determined by the IPSA.

*Term of office*

- 3 (1) The Compliance Officer is to be appointed for a fixed term not exceeding five years.
- (2) A person who has been appointed as the Compliance Officer may not be appointed again.

*Resignation and removal from office*

- 4 (1) A person may resign from the office of Compliance Officer by giving written notice to the IPSA.
- (2) The IPSA may remove a person from the office of Compliance Officer if the person—
- (a) is convicted of an offence (see sub-paragraph (3)),
  - (b) becomes bankrupt (see sub-paragraph (4)), or

- (c) is unfit or unable to carry out the functions of the office.
- (3) For the purposes of determining if the person is convicted of an offence—
  - (a) it does not matter where the person is convicted, and
  - (b) an act punishable under the law of a territory outside the United Kingdom constitutes an offence for the purposes of this paragraph (however it is described in that law).
- (4) A person becomes bankrupt if—
  - (a) in England and Wales or Northern Ireland, a bankruptcy order is made in relation to the person, or
  - (b) in Scotland, the person's estate is sequestrated.

#### *Remuneration*

- 5 (1) The terms and conditions on which a person is appointed as the Compliance Officer may provide for the IPSA—
  - (a) to pay remuneration and allowances to the person;
  - (b) to make provision for a pension in relation to that person.
- (2) The IPSA must make the payment or provision accordingly.

#### *Status*

- 6 (1) The Compliance Officer is not to be regarded—
  - (a) as the servant or agent of the Crown, or
  - (b) as enjoying any status, immunity or privilege of the Crown.
- (2) The Compliance Officer's property is not to be regarded as property of, or property held on behalf of, the Crown.

#### *Funding*

- 7 (1) The IPSA must provide the Compliance Officer with adequate resources for the Compliance Officer's functions.
- (2) In particular, the IPSA is responsible for providing staff to assist in the carrying out of those functions.

#### *Annual report*

- 8 (1) As soon as practicable after the end of each financial year, the Compliance Officer must—
  - (a) prepare a report about the performance of the Compliance Officer's functions during that financial year, and
  - (b) send the report to the IPSA.
- (2) The IPSA must send the report to the Speaker of the House of Commons, who must lay it before each House of Parliament.
- (3) When the Speaker lays the report, the Compliance Officer must publish it in such manner as the Compliance Officer considers appropriate.
- (4) "Financial year" means—
  - (a) the period beginning with the day on which a Compliance Officer is first appointed and ending with the next following 31 March, and

- (b) each successive period of 12 months.

*Vacancy in office of Compliance Officer*

- 9 (1) This paragraph applies if the office of Compliance Officer is vacant.
- (2) The IPSA may authorise a member of the IPSA's staff provided under paragraph 7(2) to carry out the functions of the Compliance Officer during the vacancy.
- (3) In relation to a vacancy of more than six months, the functions of the Compliance Officer may not be carried out by virtue of sub-paragraph (2) after the first six months.

*Disqualification*

- 10 (1) In Part 3 of Schedule 1 to the House of Commons Disqualification Act 1975 (other disqualifying offices) at the appropriate place insert—  
“Compliance Officer for the Independent Parliamentary Standards Authority.”
- (2) In Part 3 of Schedule 1 to the Northern Ireland Assembly Disqualification Act 1975 (other disqualifying offices) at the appropriate place insert—  
“Compliance Officer for the Independent Parliamentary Standards Authority.”

*Freedom of information*

- 11 In Part 6 of Schedule 1 to the Freedom of Information Act 2000 (other public bodies and offices which are public authorities) at the appropriate place insert—  
“Compliance Officer for the Independent Parliamentary Standards Authority.”

*Public records*

- 12 In Schedule 1 to the Public Records Act 1958 (definition of public records) at the appropriate place in Part 2 of the Table at the end of paragraph 3 insert—  
“Compliance Officer for the Independent Parliamentary Standards Authority.””

## SCHEDULE 4

Section 34

## PARLIAMENTARY STANDARDS ACT 2009: NEW SCHEDULE 4

## “SCHEDULE 4

Section 9B

## ENFORCEMENT

## PART 1

## RECOVERY OF OVERPAYMENTS

*Power to give repayment direction*

- 1 (1) This paragraph applies where the Compliance Officer—
  - (a) has conducted an investigation in respect of a member of the House of Commons under section 9, and
  - (b) has made findings under section 9(5) that the member was paid an amount under the MPs’ allowances scheme (the “overpayment”) that—
    - (i) should not have been allowed, and
    - (ii) has not been repaid.
- (2) The Compliance Officer—
  - (a) if sub-paragraph (3) applies, may give the member a direction under this paragraph (a “repayment direction”), and
  - (b) otherwise, must give the member a repayment direction.
- (3) This sub-paragraph applies if the Compliance Officer has made findings under section 9(5) that the member’s being paid an amount under the MPs’ allowances scheme that should not have been allowed was wholly or partly the IPSA’s fault.
- (4) A repayment direction must require the member to pay to the IPSA—
  - (a) if sub-paragraph (3) applies, such amount (not exceeding the amount of the overpayment) as the Compliance Officer considers reasonable, and
  - (b) otherwise, the amount of the overpayment.
- (5) The repayment direction must specify the period (the “repayment period”) before the end of which that amount is to be paid.
- (6) A repayment direction may also require the member to do one or both of the following before the end of the repayment period—
  - (a) pay to the IPSA interest on the amount mentioned in sub-paragraph (4), at the rate and in relation to the period specified in the direction;
  - (b) pay to the IPSA an amount reasonably representing the costs incurred by the IPSA in relation to the overpayment, including the costs of the Compliance Officer in conducting the investigation.
- (7) The Compliance Officer must send a copy of the repayment direction to the IPSA.

- (8) References in this Part of this Schedule to a member of the House of Commons include a former member of that House.
- (9) In this Schedule “overpayment”, “repayment direction” and “repayment period” have the meaning given by this paragraph (but in relation to the repayment period, see further paragraph 4(3)).

*Guidance etc*

- 2 (1) The IPSA must prepare guidance about the circumstances in which the Compliance Officer should include in a repayment direction a requirement under paragraph 1(6)(a) or (b).
- (2) The guidance must include guidance about whether the Compliance Officer should include such a requirement if paragraph 1(3) applies.
- (3) The amount mentioned in paragraph 1(6)(b) is to be calculated by the Compliance Officer in accordance with a scheme prepared by the IPSA for that purpose.
- (4) Before preparing guidance under sub-paragraph (1) or a scheme under sub-paragraph (3) the IPSA must consult the persons listed in section 9A(6).

*Appeal against repayment direction*

- 3 (1) A member who has been given a repayment direction under paragraph 1 may appeal to the First-tier Tribunal against –
  - (a) the Compliance Officer’s findings under section 9(5);
  - (b) if paragraph 1(3) applies, the Compliance Officer’s decision to give the member a repayment direction;
  - (c) if paragraph 1(3) applies, the amount the member is required to repay because of paragraph 1(4)(a);
  - (d) a requirement contained in the repayment direction because of paragraph 1(6).
- (2) An appeal under this paragraph must be brought before the end of the period of 28 days beginning with the day on which the repayment direction is sent to the member (unless the Tribunal directs that it may be brought after the end of that period).
- (3) An appeal under this paragraph is by way of a rehearing.
- (4) On an appeal under this paragraph the Tribunal may –
  - (a) allow the appeal in whole or in part, or
  - (b) dismiss the appeal.
- (5) If the Tribunal allows the appeal (in whole or in part) it may –
  - (a) revoke the repayment direction;
  - (b) revoke or vary any requirement contained in the repayment direction;
  - (c) make any other order it thinks fit.
- (6) If the Tribunal dismisses the appeal it may make any other order it thinks fit.

- (7) The Compliance Officer must notify the IPSA of the Tribunal's decision (and the result of any further appeal).

*Extension of repayment period*

- 4 (1) The member may at any time before the end of the repayment period make an application to the Compliance Officer for the Compliance Officer to extend (or further extend) the repayment period.
- (2) The Compliance Officer must notify the IPSA of any decision by the Compliance Officer to extend (or further extend) the repayment period.
- (3) If the Compliance Officer extends (or further extends) the repayment period, references in this Schedule to the repayment period are to that period as extended (or further extended) by the Compliance Officer.
- (4) The member may appeal to the First-tier Tribunal against the Compliance Officer's decision on an application under this paragraph.
- (5) An appeal under this paragraph must be brought before the end of the period of 28 days beginning with the day on which notice of the decision is sent to the member (unless the Tribunal directs that it may be brought after the end of that period).
- (6) The appeal is by way of a rehearing.
- (7) The Tribunal may –
- (a) allow the appeal in whole or in part, or
  - (b) dismiss the appeal.
- (8) If the Tribunal allows the appeal (in whole or in part) it may –
- (a) revoke or vary the Compliance Officer's decision;
  - (b) make any other order it thinks fit.
- (9) If the Tribunal dismisses the appeal it may make any other order it thinks fit.
- (10) The Compliance Officer must notify the IPSA of the Tribunal's decision (and the result of any further appeal).

*Enforcement of repayment direction*

- 5 (1) This paragraph applies to any amount which a member is required by a repayment direction to pay to the IPSA, but only when –
- (a) it is no longer possible for there to be a relevant appeal, and
  - (b) all relevant appeals have been withdrawn or determined.
- (2) A relevant appeal is –
- (a) an appeal under paragraph 3 brought before the end of the period mentioned in paragraph 3(2), or
  - (b) a further appeal in relation to the repayment direction which –

- (i) is brought before the end of the usual period for bringing such an appeal, and
  - (ii) is an appeal against the determination of an appeal which was itself a relevant appeal.
- (3) The IPSA may recover the amount by making deductions from—
- (a) any salary payable to the member under section 4;
  - (b) any allowances payable to the member under the MPs' allowances scheme.
- (4) In England and Wales and Northern Ireland the amount is recoverable, if a county court so orders on the application of the Compliance Officer, as if it were payable under an order of that court.
- (5) In Scotland the amount is recoverable as if the repayment direction were an extract registered decree arbitral bearing a warrant for execution issued by the sheriff court of any sheriffdom in Scotland.

## PART 2

### PENALTIES

#### *Power to impose penalties*

- 6
- (1) If sub-paragraph (3) or (4) applies to a member of the House of Commons, the Compliance Officer may by notice (a “penalty notice”) impose a penalty on the member.
  - (2) A “penalty” means a sum of money payable by the member to the IPSA.
  - (3) This sub-paragraph applies if the Compliance Officer has made a finding under section 9(5) that the member has without reasonable excuse failed to comply with a requirement under section 9(3) (provision of information to Compliance Officer).
  - (4) This sub-paragraph applies if the Compliance Officer is satisfied that the member has without reasonable excuse failed to comply with any requirement contained in a repayment direction.
  - (5) The Compliance Officer must send a copy of the penalty notice to the IPSA.
  - (6) References in this Part of this Schedule to a member of the House of Commons include a former member of that House.
  - (7) In this Schedule “penalty notice” and “penalty” have the meanings given by this paragraph.

#### *Amount of penalty*

- 7
- (1) The penalty notice must state the amount of the penalty.
  - (2) The amount of the penalty must not exceed £1,000.

- (3) The amount in sub-paragraph (2) may be increased (or further increased) by an order made by a Minister of the Crown.
- (4) An order under sub-paragraph (3) is to be made by statutory instrument.
- (5) A statutory instrument containing an order under sub-paragraph (3) may not be made unless a draft of the instrument has been laid before and approved by a resolution of the House of Commons.

*Information to be contained in notice*

- 8 (1) The penalty notice must (as well as stating the amount of the penalty) include information as to—
  - (a) the reasons for imposing the penalty,
  - (b) the period before the end of which the penalty is to be paid,
  - (c) how the penalty may be paid,
  - (d) the procedure and time limit for appealing,
  - (e) the effect of paragraph 12, and
  - (f) any other matter specified by the IPSA.
- (2) Before specifying a matter the IPSA must consult the persons listed in section 9A(6).

*Guidance etc*

- 9 (1) The IPSA must prepare guidance about—
  - (a) the circumstances in which the Compliance Officer should impose a penalty under paragraph 6, and
  - (b) how the Compliance Officer should determine the amount of the penalty.
- (2) Before preparing the guidance the IPSA must consult the persons listed in section 9A(6).

*Review of penalty*

- 10 (1) The Compliance Officer may at any time review a decision to impose a penalty on a member under paragraph 6.
- (2) Following the review the Compliance Officer may cancel the penalty or reduce the amount of the penalty.
- (3) If the Compliance Office does either of those things, the Compliance Officer must notify the IPSA.
- (4) If the penalty (or part of the penalty) has already been paid the IPSA must repay the member accordingly.

*Appeal against penalty*

- 11 (1) A member on whom a penalty has been imposed under paragraph 6 may appeal to the First-tier Tribunal.
- (2) An appeal under this paragraph must be brought before the end of the period of 28 days beginning with the day on which the

penalty notice is sent to the member (unless the Tribunal directs that it may be brought after the end of that period).

- (3) The appeal is by way of a rehearing.
- (4) On an appeal under this paragraph the Tribunal may –
  - (a) allow the appeal and cancel the penalty,
  - (b) allow the appeal and reduce the penalty, or
  - (c) dismiss the appeal.
- (5) The Compliance Officer must notify the IPSA of the Tribunal's decision (and the result of any further appeal).

*Enforcement of penalty*

- 12 (1) This paragraph applies to the amount of a penalty imposed on a member under paragraph 6, but only when –
  - (a) it is no longer possible for there to be a relevant appeal, and
  - (b) all relevant appeals have been withdrawn or determined.
- (2) A relevant appeal is –
  - (a) an appeal under paragraph 11 brought before the end of the period mentioned in paragraph 11(2), or
  - (b) a further appeal in relation to the penalty notice which –
    - (i) is brought before the end of the usual period for bringing such an appeal, and
    - (ii) is an appeal against the determination of an appeal which was itself a relevant appeal.
- (3) The IPSA may recover the amount by making deductions from –
  - (a) any salary payable to the member under section 4;
  - (b) any allowances payable to the member under the MPs' allowances scheme.
- (4) In England and Wales and Northern Ireland the amount is recoverable, if a county court so orders on the application of the Compliance Officer, as if it were payable under an order of that court.
- (5) In Scotland the amount is recoverable as if the penalty notice were an extract registered decree arbitral bearing a warrant for execution issued by the sheriff court of any sheriffdom in Scotland.

*Payment of penalty into Consolidated Fund*

- 13 The IPSA must pay into the Consolidated Fund –
  - (a) the amount of any penalty paid to the IPSA, and
  - (b) where the IPSA makes a deduction under paragraph 12(3), an amount corresponding to the amount of the deduction.”

SCHEDULE 5

Section 38

PARLIAMENTARY STANDARDS: CONSEQUENTIAL AMENDMENTS

PART 1

AMENDMENTS OF THE PARLIAMENTARY STANDARDS ACT 2009

- 1 The Parliamentary Standards Act 2009 is amended as follows.
- 2 In section 2(2) (effect of Act on House of Lords) –
  - (a) omit paragraph (a), and
  - (b) in paragraph (c) for “paragraphs 4(2) and 8(1)” substitute “paragraph 8(2)”.
- 3 In section 5(8) (allowances) for the words from “and” to the end substitute “and in relation to any such allowances, references in this Act to a member of the House of Commons include a former member of that House.”
- 4 (1) Section 12 (interpretation) is amended as follows.
  - (2) In subsection (1) –
    - (a) for ““the Commissioner”” substitute ““the Compliance Officer””, and
    - (b) omit the definition of “the MPs’ code of conduct relating to financial interests”.
  - (3) In subsection (2) –
    - (a) after “committee” (in each place) insert “or officer”, and
    - (b) in paragraph (a) for “its” substitute “the”.
- 5 (1) Section 13 (transitional provision) is amended as follows.
  - (2) Omit subsection (2)(b) and (c).
  - (3) In subsection (4) and (6)(c) for “Commissioner” substitute “Compliance Officer”.
- 6 In section 14 (commencement) omit subsection (2)(d).
- 7 (1) Schedule 1 (the IPSA) is amended as follows.
  - (2) Omit paragraph 10 and the heading above it.
  - (3) In paragraph 18(1) –
    - (a) for paragraph (a) substitute –
      - “(a) section 4 (MPs’ salaries), so far as relating to the payment (but not the determination) of salaries,”
    - (b) in paragraph (c), after “claims” insert “(except as mentioned in sub-paragraph (2) below)”, and
    - (c) omit the words following paragraph (c).
  - (4) In paragraph 18(2) –
    - (a) before paragraph (a) insert –
      - “(za) sections 4 and 4A (MPs’ salaries) (except as mentioned in sub-paragraph (1) above),”

- (b) after paragraph (a) insert—
    - “(aa) section 6(10) (determining procedures for publication of allowances claims),”
  - (c) omit paragraph (b) (and the “and” following it), and
  - (d) for paragraph (c) substitute—
    - “(c) section 9(8)(b) and (9) (determining conditions),
    - (d) section 9A (determining procedures for investigations etc),
    - (e) paragraphs 1, 2(2), 4(2) and 9(2) of Schedule 2 (appointment and removal of Compliance Officer etc), and
    - (f) paragraphs 2, 8 and 9 of Schedule 4 (scheme, guidance etc for Compliance Officer).”
- (5) In paragraph 22(8) for “Any repayments” substitute “Any payments received by the IPSA as a result of a repayment direction under Schedule 4, and any repayments otherwise”.

## PART 2

### AMENDMENTS OF OTHER ACTS

#### *European Parliament (Pay and Pensions) Act 1979 (c. 50)*

- 8 (1) In section 1(2) (salaries of MEPs) for paragraphs (a) and (b) substitute “the same as that of the salary payable for that period, under section 4 of the Parliamentary Standards Act 2009, to a Member who does not hold an office or position specified in a resolution of the House of Commons for the purposes of section 4A(2) of that Act (higher salaries for holders of specified offices or positions).”
- (2) Omit section 5 (salary to be used for calculating pension benefits).
- (3) In section 8(1) (interpretation) omit the definition of ““a Member’s ordinary salary” and “a Member’s pensionable salary””.

#### *Parliamentary and other Pensions Act 1987 (c. 45)*

- 9 In section 5(2) (interpretation) for the words from “such resolutions” to the end substitute—
  - “(a) section 4 of the Parliamentary Standards Act 2009, or
  - (b) in relation to a time before that section was in force, the resolutions of the House of Commons then in force relating to the remuneration of its members.”

#### *Ministerial and other Pensions and Salaries Act 1991 (c. 5)*

- 10 In section 4 (grants to persons ceasing to hold ministerial and other offices)—
  - (a) omit subsection (3),
  - (b) after that subsection insert—
    - “(3A) The annual amount of the salary paid to a person in respect of the office of Chairman of Ways and Means or Deputy Chairman of Ways and Means is the difference between—

- (a) the annual amount of the salary payable under section 4 of the Parliamentary Standards Act 2009 to a person holding that office, and
- (b) the annual amount of the salary payable under that section to a member of the House of Commons who does not hold an office or position specified in a resolution of that House for the purposes of section 4A(2) of that Act (higher salaries for holders of specified offices or positions).”, and
- (c) omit subsection (7).

*Scotland Act 1998 (c. 46)*

- 11 (1) Section 82 (limits on salaries of MSPs) is amended as follows.
- (2) In subsection (1)–
- (a) before paragraph (a) insert–
    - “(za) under section 4 of the Parliamentary Standards Act 2009 (salaries of members of the House of Commons),”, and
  - (b) in paragraph (a) for “either House of Parliament” substitute “the House of Lords”.
- (3) In subsection (2)(b) for “(1)(a)” substitute “(1)(za), (a)”.

*Government of Wales Act 2006 (c. 32)*

- 12 (1) Section 21 (limits on salaries of Assembly members) is amended as follows.
- (2) In subsection (1)–
- (a) before paragraph (a) insert–
    - “(za) under section 4 of the Parliamentary Standards Act 2009 (salaries of members of the House of Commons),”, and
  - (b) in paragraph (a) for “either House of Parliament” substitute “the House of Lords”.
- (3) In subsection (2)(b) for “(1)(a)” substitute “(1)(za), (a)”.

SCHEDULE 6

Section 40

PARLIAMENTARY AND OTHER PENSIONS

PART 1

PARLIAMENTARY AND OTHER PENSIONS

**The Parliamentary Contributory Pension Fund etc**

*Continuance of Fund*

- 1 There is to continue to be a fund known as the Parliamentary Contributory Pension Fund (“the Fund”).

*Number and composition of trustees*

- 2 (1) The following are to be the trustees of the Fund –
  - (a) one person appointed by the IPSA after consulting the Minister for the Civil Service and the persons who are already trustees of the Fund,
  - (b) one person appointed by the Minister for the Civil Service after consulting the IPSA and the persons who are already trustees of the Fund, and
  - (c) 8 persons nominated and selected in accordance with arrangements under paragraph 3 (“member-nominated trustees”).
- (2) Paragraphs 49 and 50 make transitional provision about the trustees of the Fund.

*Member-nominated trustees*

- 3 (1) The trustees of the Fund must make arrangements for the nomination and selection of member-nominated trustees.
- (2) The arrangements must provide for the member-nominated trustees to be –
  - (a) nominated as the result of a process in which all the members of a scheme under paragraph 12 and all the members of a scheme under paragraph 16 are eligible to participate, and
  - (b) selected as the result of a process in which some or all of those persons are eligible to participate.
- (3) The arrangements must –
  - (a) include provision for the nomination and selection process to take place within a reasonable period of any vacancy arising,
  - (b) include provision, where a vacancy is not filled because insufficient nominations are received, for the nomination and selection process to be repeated at reasonable intervals until the vacancy is filled, and
  - (c) include provision that, where the IPSA or the Minister for the Civil Service so requires, a person who is not a member of a scheme under paragraph 12 and is not a member of a scheme under paragraph 16 must have the approval of the IPSA or the Minister for the Civil Service to qualify for selection as a member-nominated trustee.
- (4) The arrangements may include provision that where the number of nominations received is equal to or less than the number of vacancies, the nominees are to be treated as selected (subject to sub-paragraph (3)(c)).

*Remuneration*

- 4 (1) The IPSA may, with the consent of the Treasury, provide for remuneration and allowances to be payable to the trustees of the Fund.
- (2) Any such remuneration and allowances are to be paid from the assets of the Fund.

*Resignation and removal of trustees*

- 5 (1) A person appointed as a trustee of the Fund by the IPSA under paragraph 2(1)(a) –

- (a) may resign by giving written notice to the IPSA, and
  - (b) may be removed by the IPSA after consulting the Minister for the Civil Service and all the other trustees of the Fund.
- (2) A person appointed as a trustee of the Fund by the Minister for the Civil Service under paragraph 2(1)(b) –
- (a) may resign by giving written notice to the Minister for the Civil Service, and
  - (b) may be removed by the Minister for the Civil Service after consulting the IPSA and all the other trustees of the Fund.
- (3) A person who is a member-nominated trustee –
- (a) may resign by giving written notice to the other trustees of the Fund, and
  - (b) may be removed by all the other trustees of the Fund acting together.

#### *Proceedings*

- 6 (1) Subject to any provisions contained in a scheme under paragraph 8 because of paragraph 8(1)(d), the trustees of the Fund may determine their own procedure.
- (2) The validity of any proceedings of the trustees of the Fund is not affected by –
- (a) a vacancy among the trustees, or
  - (b) a defect in the appointment of a trustee.

#### *Powers of trustees*

- 7 (1) The trustees of the Fund may invest the assets of the Fund, whether at the time in a state of investment or not, in any investment whatever and may also from time to time vary any such investments.
- (2) The trustees of the Fund may settle or compromise any claim or dispute relating to the Fund, but –
- (a) so far as the claim or dispute relates to a scheme under paragraph 8 or 12, they may do so only with the consent of the IPSA, and
  - (b) so far as the claim or dispute relates to a scheme under paragraph 16, they may do so only with the consent of the Minister for the Civil Service.
- (3) The IPSA must consult the Minister for the Civil Service before giving its consent to the settlement or compromise of a claim or dispute relating to a scheme under paragraph 8.
- (4) Section 35(1) to (4) of the Pensions Act 1995 (pension scheme trustees must prepare statement of investment principles) applies to the trustees of the Fund despite any provision in regulations under section 35 of that Act which would (apart from this sub-paragraph) prevent it applying.
- (5) Any provision in regulations under that section which would require the trustees of the Fund to consult the employer applies as if it required them to consult the IPSA and the Minister for the Civil Service.

*Administration scheme*

- 8 (1) The IPSA may make a scheme containing provision about –
- (a) the administration of the Fund,
  - (b) the management of the Fund's assets,
  - (c) the indemnification of the trustees (and former trustees) of the Fund,
  - (d) the proceedings of the trustees of the Fund, and
  - (e) the application of the Fund's assets in connection with the matters in paragraphs (a) to (d).
- (2) A scheme under this paragraph may in particular –
- (a) include any or all of the provisions specified in paragraphs 31 to 33,
  - (b) make different provision in relation to different cases, circumstances or persons,
  - (c) make such incidental, consequential and transitional provision (other than provision modifying an enactment or subordinate legislation) as the IPSA considers appropriate.
- (3) In sub-paragraph (2)(c) the reference to subordinate legislation does not include a scheme under this paragraph.
- (4) No provision of a scheme under this paragraph is to be construed as restricting the powers of the trustees under paragraph 7(1).

*Procedure for administration scheme*

- 9 (1) The IPSA may make a scheme under paragraph 8 only with the consent of the trustees of the Fund.
- (2) Before making a scheme under paragraph 8 the IPSA must consult –
- (a) the Treasury,
  - (b) the Minister for the Civil Service,
  - (c) persons the IPSA considers to represent those likely to be affected by the scheme, and
  - (d) any other person the IPSA considers appropriate.
- (3) The IPSA must send to the Speaker of the House of Commons for laying before the House of Commons –
- (a) any scheme made by it under paragraph 8, and
  - (b) a statement of the reasons for making the scheme.
- (4) When the scheme and the statement of reasons have been laid, the IPSA must publish them in a way it considers appropriate.

*Exchequer contribution to Fund*

- 10 (1) In respect of each financial year an Exchequer contribution is to be paid into the Fund out of money provided by Parliament.
- (2) Subject to any provision made by the IPSA under paragraph 11, the amount of the contribution for any financial year is to be calculated in accordance with recommendations for that year contained in a report made by the Government Actuary under this paragraph.

- (3) The Government Actuary must make a report under this paragraph as soon as practicable after the beginning of—
  - (a) the period of three years beginning with the relevant date, and
  - (b) each succeeding period of three years.
- (4) The “relevant date” means the date immediately following the end of the three year period which is current for the purposes of section 3 of the Parliamentary and other Pensions Act 1987 when this paragraph comes into force.
- (5) The report is to be made to—
  - (a) the trustees of the Fund,
  - (b) the IPSA,
  - (c) the Minister for the Civil Service, and
  - (d) the Treasury.
- (6) The report must—
  - (a) report on the general financial position of the Fund at the beginning of the period of three years in which the report is made, and
  - (b) make a recommendation as to the rate at which (subject to any subsequent report under this paragraph) Exchequer contributions should be paid into the Fund in respect of any financial year beginning after the report is made.
- (7) The rate is to be expressed by reference to such matters as the Government Actuary considers appropriate.
- (8) A copy of every report made by the Government Actuary under this paragraph is to be laid before the House of Commons.

*Power to determine Exchequer contribution*

- 11 (1) The IPSA may, with the relevant consents, make provision for determining the Exchequer contribution in respect of any financial year.
- (2) The “relevant consents” means—
  - (a) if the result of making the provision is that the amount of the Exchequer contribution in respect of any financial year is less than it otherwise would be, the consent of the Treasury, the Minister for the Civil Service and the trustees of the Fund, and
  - (b) otherwise, the consent of the Treasury and the Minister for the Civil Service.
- (3) The “Exchequer contribution” means the amount to be paid into the Fund under paragraph 10.
- (4) Before making provision under this paragraph the IPSA must consult—
  - (a) (if sub-paragraph (2)(a) does not apply) the trustees of the Fund,
  - (b) the Government Actuary, and
  - (c) persons appearing to the IPSA to represent persons likely to be affected by the provision.
- (5) The IPSA must send to the Speaker of the House of Commons for laying before the House of Commons—
  - (a) any representations made by the trustees of the Fund in response to consultation under this paragraph,

- (b) any provision made by the IPSA under this paragraph, and
  - (c) a statement of the reasons for making the provision.
- (6) When the provision and the statement of reasons have been laid, the IPSA must publish them in a way it considers appropriate.
- (7) Provision under this paragraph may –
- (a) apply to a financial year which has already ended or which has begun before the making of the provision, and
  - (b) make such incidental, consequential and transitional provision (other than provision modifying an enactment or subordinate legislation) as the IPSA considers appropriate.

### MPs' pension scheme

#### *MPs' pension scheme*

- 12 (1) The IPSA may make a scheme containing provision about the application of the assets of the Fund in or towards the provision of pensions for or in respect of persons with service as a member of the House of Commons, in respect of that service.
- (2) A scheme under this paragraph may not provide for the application of any of the assets of the Fund in or towards the provision of pensions for or in respect of persons with service as Lord Chancellor.
- (3) A scheme under this paragraph may not provide for the application of any of the assets of the Fund in or towards the provision of pensions for or in respect of a person ("P") with service as –
- (a) Prime Minister and First Lord of the Treasury, or
  - (b) Speaker of the House of Commons.
- (4) Sub-paragraph (3) does not apply if P elects, in accordance with provision made by the scheme, to contribute to the Fund out of P's salary as a member of the House of Commons while holding the office of Prime Minister and First Lord of the Treasury or Speaker of the House of Commons.
- (5) The provision mentioned in sub-paragraph (4) may not provide for a pension payable under the scheme for or in respect of P to be calculated by reference to service as a member of the House of Commons before 28 February 1991.

#### *Meaning of "service as a member of the House of Commons"*

- 13 (1) For the purposes of this Schedule a person is to be treated as in service as a member of the House of Commons at any time if at that time a salary is or was payable to the person under –
- (a) section 4 of the Parliamentary Standards Act 2009, or
  - (b) in relation to a time before that section was in force, the resolutions of the House of Commons then in force relating to the remuneration of its members.
- (2) For the purposes of this Schedule service as a member of the House of Commons includes service as the holder of a qualifying office or position.

- (3) In relation to a time when a determination under section 4(4) of the Parliamentary Standards Act 2009 is in effect a “qualifying office or position” means an office or position in respect of which, because of section 4A(2) of that Act, a higher salary is payable than the salary payable to members of the House of Commons generally.
- (4) In relation to a time before the first determination under section 4(4) of the Parliamentary Standards Act 2009 comes into effect a “qualifying office or position” means—
- (a) the office of Chairman of Ways and Means and the office of Deputy Chairman of Ways and Means,
  - (b) an office or position in respect of which, under the resolutions of the House of Commons then in force relating to the remuneration of its members, a higher salary was payable than the salary payable to members of the House of Commons generally.

*MPs’ pension scheme: further provision*

- 14 (1) A scheme under paragraph 12 may in particular—
- (a) include any or all of the provisions specified in paragraphs 24 to 32, except for—
    - (i) the provision specified in paragraph 26(1), unless with the consent of the trustees of the Fund,
    - (ii) the provision specified in paragraph 31, unless with the consent of the trustees of the Fund, and
    - (iii) the provision specified in paragraph 29(2),
  - (b) make provision which has effect from a date earlier than the date the scheme is made,
  - (c) make provision in relation to service before the passing of this Act,
  - (d) make different provision in relation to different cases, circumstances or persons, and
  - (e) make such incidental, consequential and transitional provision (other than provision modifying an enactment or subordinate legislation) as the IPSA considers appropriate.
- (2) In sub-paragraph (1)(e) the reference to subordinate legislation does not include a scheme under paragraph 12.

*Procedure for MPs’ pension scheme*

- 15 (1) Before making a scheme under paragraph 12 the IPSA must consult—
- (a) the Treasury,
  - (b) the Minister for the Civil Service,
  - (c) the trustees of the Fund,
  - (d) persons the IPSA considers to represent those likely to be affected by the scheme,
  - (e) the Government Actuary,
  - (f) the Review Body on Senior Salaries, and
  - (g) any other person the IPSA considers appropriate.
- (2) The IPSA must send to the Speaker of the House of Commons for laying before the House of Commons—

- (a) any representations made to it by the trustees of the Fund in response to consultation under this paragraph,
  - (b) any scheme made by it under paragraph 12, and
  - (c) a statement of the reasons for making the scheme.
- (3) When the scheme and the statement of reasons have been laid, the IPSA must publish them in a way it considers appropriate.
- (4) The reference in sub-paragraph (1)(f) to the Review Body on Senior Salaries—
- (a) if the name of the body is changed, is to be treated as a reference to the body by its new name, and
  - (b) if the functions of the body (or substantially corresponding functions) become functions of a different body, is to be treated as a reference to the body by which those functions are exercisable.
- (5) Any question arising under sub-paragraph (4) is to be determined by the Speaker of the House of Commons.

#### Ministers' etc pension scheme

##### *Ministers' etc pension scheme*

- 16 (1) The Minister for the Civil Service may make a scheme containing provision about the application of the assets of the Fund in or towards the provision of pensions for or in respect of persons with service to which this paragraph applies, in respect of that service.
- (2) This paragraph applies to service as—
- (a) the holder of an office specified in Parts 1 to 4 of Schedule 1 to the Ministerial and other Salaries Act 1975 (ministerial offices),
  - (b) the holder of an office specified in Part 1 of Schedule 2 to that Act (Opposition leaders and whips),
  - (c) Speaker of the House of Lords,
  - (d) Chairman of Committees of the House of Lords,
  - (e) Deputy Chairman of Committees of the House of Lords.
- (3) A scheme under this paragraph may not provide for the application of any of the assets of the Fund in or towards the provision of pensions for or in respect of a person with service as—
- (a) Lord Chancellor,
  - (b) Prime Minister and First Lord of the Treasury, or
  - (c) Speaker of the House of Commons.

##### *Ministers' etc pension scheme: further provision*

- 17 (1) A scheme under paragraph 16 may in particular—
- (a) include any or all of the provisions specified in paragraphs 24 to 32 and 34, except the provisions specified in paragraphs 26(1) and 31 unless with the consent of the trustees of the Fund,
  - (b) make provision which has effect from a date earlier than the date the scheme is made,
  - (c) make provision in relation to service before the passing of this Act (including, in relation to service within paragraph 16(2)(a) or (b),

service before the passing of the Ministerial and other Salaries Act 1975),

- (d) make different provision in relation to different cases, circumstances or persons, and
  - (e) make such incidental, consequential and transitional provision (other than provision modifying an enactment or subordinate legislation) as the Minister considers appropriate.
- (2) In sub-paragraph (1)(e) the reference to subordinate legislation does not include a scheme under paragraph 16.

*Procedure for Ministers' etc pension scheme*

- 18 (1) Before making a scheme under paragraph 16 the Minister for the Civil Service must consult—
- (a) the IPSA,
  - (b) the Government Actuary,
  - (c) the trustees of the Fund, and
  - (d) any other person the Minister considers appropriate.
- (2) The Minister for the Civil Service must lay before each House of Parliament—
- (a) any representations made to the Minister by the trustees of the Fund in response to consultation under this paragraph,
  - (b) any scheme made by the Minister under paragraph 16, and
  - (c) a statement of the reasons for making the scheme.
- (3) When the scheme and the statement of reasons have been laid, the Minister must publish them in a way the Minister considers appropriate.

**Supplementary provision**

*Protection of accrued rights*

- 19 (1) This paragraph applies where—
- (a) the IPSA makes a scheme under paragraph 12, or
  - (b) the Minister for the Civil Service makes a scheme under paragraph 16,
- (the “new scheme”).
- (2) The new scheme must not make any provision in relation to an accrued right which puts (or might put) a person in a worse position than the person would have been in apart from the provision.
- (3) Sub-paragraph (2) does not apply if—
- (a) the trustees of the Fund consent to the new scheme making the provision, and
  - (b) the person making the new scheme is satisfied that the consent requirement is met.
- (4) The consent requirement is met if under the new scheme the provision has effect in relation to an accrued right only with the written consent, given in accordance with sub-paragraph (5), of—
- (a) the person (“P”) in respect of whose service the right has accrued, or

- (b) if P is dead, the persons (“the survivors”) who because of the accrued right are entitled, or may become entitled, to a pension or the benefit of any pension.
- (5) Consent is given in accordance with this sub-paragraph if it is given after the person making the scheme has given P (or the survivors) –
- (a) information in writing which adequately explains the nature of the provision and its effect,
  - (b) notice in writing that they may make representations about the provision,
  - (c) an adequate opportunity to make such representations, and
  - (d) notice in writing that the provision has effect in relation to the accrued right only with their written consent.
- (6) Consent may be given by a person acting on behalf of P (or the survivors); and the references in sub-paragraph (5) to P (or the survivors) include a person acting on their behalf.
- (7) In sub-paragraph (4)(a) “service” means –
- (a) where the new scheme is a scheme under paragraph 12, service as a member of the House of Commons, and
  - (b) where the new scheme is a scheme under paragraph 16, service to which that paragraph applies.

*Meaning of “accrued right”*

- 20 (1) This paragraph applies for the interpretation of paragraph 19.
- (2) “Accrued right”, in relation to a provision of the new scheme, means a right (including a contingent right) or entitlement to or in respect of a pension or future pension payable out of the Fund which has accrued in respect of service before the provision comes into force.
- (3) Where the new scheme is a scheme under paragraph 12, in this paragraph “service” means service as a member of the House of Commons.
- (4) Where the new scheme is a scheme under paragraph 16, in this paragraph “service” means service to which that paragraph applies.

*Power to make consequential amendments*

- 21 (1) The Minister for the Civil Service may by order make such modifications of any enactment or subordinate legislation (whenever passed or made) as the Minister considers appropriate in consequence of any provision of a scheme made by the IPSA or the Minister for the Civil Service under this Part of this Schedule.
- (2) In sub-paragraph (1) the reference to subordinate legislation does not include a scheme made by the IPSA or the Minister for the Civil Service under this Part of this Schedule.
- (3) An order under this paragraph is to be made by statutory instrument.
- (4) A statutory instrument containing an order under this paragraph is subject to annulment in pursuance of a resolution of either House of Parliament (subject to sub-paragraph (5)).

- (5) A statutory instrument containing an order made under this paragraph in consequence only of a scheme under paragraph 12 is subject to annulment in pursuance of a resolution of the House of Commons.

*Interpretation etc*

- 22 (1) A scheme made by the IPSA under paragraph 8 or 12 may amend or revoke any previous scheme made by the IPSA under that paragraph.
- (2) A scheme made by the Minister for the Civil Service under paragraph 16 may amend or revoke any previous scheme made by the Minister under that paragraph.
- (3) For the purposes of this Schedule “member” –
- (a) in relation to a scheme under paragraph 12, means a person with service as a member of the House of Commons who, in respect of that service, has a right or entitlement under the scheme to a pension or future pension payable out of the Fund, and
- (b) in relation to a scheme under paragraph 16, means a person with service to which that paragraph applies who, in respect of that service, has a right or entitlement under the scheme to a pension or future pension payable out of the Fund.
- (4) In this Part of this Schedule –
- “the Fund” means the Parliamentary Contributory Pension Fund;
- “the IPSA” means the Independent Parliamentary Standards Authority;
- “member-nominated trustee” has the meaning given by paragraph 2;
- “modifications” includes additions, alterations and omissions (and related expressions are to be read accordingly);
- “pension” includes gratuity;
- “subordinate legislation” has the same meaning as in the Interpretation Act 1978.

PART 2

PROVISION WHICH MAY BE INCLUDED IN SCHEMES

*Introductory*

- 23 (1) In this Part of this Schedule “relevant service” –
- (a) for the purposes of paragraph 14(1)(a), means service as a member of the House of Commons, and
- (b) for the purposes of paragraph 17(1)(a), means service to which paragraph 16 applies.
- (2) Expressions defined in relation to Part 1 of this Schedule have the same meaning in this Part of this Schedule as in that Part.

*Contributions*

- 24 Provision authorising or requiring contributions and other sums to be paid into the Fund by or on behalf of persons in relevant service, including provision for those contributions and sums to be paid –
- (a) by deductions from salary;

- (b) in the case of a person who does not draw a salary, out of money provided by Parliament.

*Conditions etc*

- 25 Provision as to—
- (a) the circumstances in which there is to be entitlement to a pension payable out of the Fund;
  - (b) the conditions of any such entitlement;
  - (c) the persons to or for the benefit of whom such a pension is payable;
  - (d) the calculation of the amount of any such pension;
  - (e) the payment or commutation of any such pension.

*Pensions not paid out of Fund*

- 26 (1) Provision for the application of assets of the Fund in or towards the provision of pensions to be paid otherwise than out of the Fund.
- (2) In connection with such provision, provision for the payment into the Fund out of money provided by Parliament of sums in addition to those paid into the Fund under paragraph 10.

*Transfer values*

- 27 (1) Provision for the payment and receipt of transfer values by the trustees of the Fund (including provision for the payment of such values into the Consolidated Fund).
- (2) Provision for the transfer and receipt by the trustees of the Fund of funds or policies of insurance in lieu of transfer values.

*Service*

- 28 Provision authorising service other than relevant service to be taken into account, in addition to relevant service, for the purposes of any provision of the scheme.

*Repayments*

- 29 (1) Provision as to the circumstances and manner in which amounts equal to some or all of the contributions and other sums paid by or on behalf of a person into the Fund may be repaid or paid to that person.
- (2) Provision as to the circumstances and manner in which any such amounts are to be paid out of the Consolidated Fund in respect of transfer values paid into that Fund.
- (3) Provision under sub-paragraph (1) or (2) may include provision as to whether any repayment or payment made under that provision is to be made with or without interest.

*Assignment etc*

- 30 Provision rendering void—

- (a) any assignment (or, in Scotland, assignation) of a pension which is payable or may become payable out of the Fund;
- (b) any charge on such a pension;
- (c) any agreement to assign or charge such a pension.

*Functions*

- 31 Provision conferring functions under the scheme on persons specified in or determined under the scheme.

*Approvals*

- 32 Provision making the approval, satisfaction or opinion of persons on whom functions are conferred by or under the scheme material for the purposes of any provision of the scheme.

*Payments without probate*

- 33 Provision authorising (in relation to such cases, circumstances or persons as may be specified in or determined under the scheme) any sum due to be paid out of the Fund in respect of a person who has died to be paid without probate or other proof of title.

*Application of other provisions*

- 34 Provision which (with or without modifications) applies in relation to a pension payable out of the Fund so much of any enactment or subordinate legislation (whenever passed or made) as relates to another pension, being a pension payable out of money provided by Parliament.

PART 3

AMENDMENTS, TRANSITIONAL PROVISION ETC

*Pensions (Increase) Act 1971 (c. 56)*

- 35 (1) Part 1 of Schedule 2 is amended as follows.
- (2) For paragraph 3A substitute—
- “3A A pension which, under a scheme under paragraph 12 or 16 of Schedule 6 to the Constitutional Reform and Governance Act 2010, is payable out of the Parliamentary Contributory Pension Fund.”
- (3) In paragraph 3B for “an order” substitute “a scheme”.

*Parliamentary and other Pensions Act 1972 (c. 48)*

- 36 (1) Section 27 (pensions for dependants of Prime Minister or Speaker) is amended as follows.
- (2) In subsection (1)—
- (a) in paragraph (a) for the words from “in respect” to the end substitute “under a scheme made by the Minister for the Civil Service under paragraph 16 of Schedule 6 to the Constitutional Reform and Governance Act 2010 to receive a pension payable out of the

- Parliamentary Contributory Pension Fund in respect of service to which that paragraph applies”, and
- (b) in paragraph (c) for “Treasury” substitute “Minister for the Civil Service”.
- (3) In subsection (2) –
- (a) for “the Parliamentary pension scheme” substitute “a scheme made by the Minister for the Civil Service under paragraph 16 of Schedule 6 to the Constitutional Reform and Governance Act 2010”,
- (b) in paragraph (a) for “as a Member of the House of Commons” substitute “to which that paragraph applies”, and
- (c) in paragraph (b), for “Leader of the House of Commons” substitute “Minister for the Civil Service”.
- (4) In subsection (5), omit from ““the Leader” to the end.
- 37 (1) The amendments made by paragraph 36 do not apply in relation to a person who, having held office as Prime Minister and First Lord of the Treasury or Speaker of the House of Commons, died before that paragraph comes into force.
- (2) In relation to such a person section 27 of the Parliamentary and other Pensions Act 1972, and the provisions designated under that section, have effect as if this Act had not been passed.

*European Parliament (Pay and Pensions) Act 1979 (c. 50)*

- 38 (1) Section 4 (pensions) is amended as follows.
- (2) In subsection (1) –
- (a) for “Leader of the House of Commons may by order make” substitute “IPSA may make a scheme containing”, and
- (b) for “by the order” substitute “in the scheme”.
- (3) In subsection (2) –
- (a) for “orders” substitute “a scheme”, and
- (b) for “order” substitute “scheme”.
- (4) In subsection (3) –
- (a) for “an order” substitute “a scheme”, and
- (b) in paragraphs (d) and (g) for “order” substitute “scheme”.
- (5) In subsection (3A), for “An order” substitute “A scheme”.
- (6) For subsection (4) substitute –
- “(4) Before making a scheme under this section the IPSA must consult –
- (a) the Treasury,
- (b) the Minister for the Civil Service,
- (c) persons it considers to represent those likely to be affected by the scheme,
- (d) the Government Actuary, and
- (e) any other person it considers appropriate.
- (4A) The IPSA must send to the Speaker of the House of Commons for laying before both Houses of Parliament –

- (a) any scheme made by it under this section, and
  - (b) a statement of the reasons for making the scheme.
- (4B) When the scheme and the statement of reasons have been laid, the IPSA must publish them in a way it considers appropriate.”
- (7) For subsection (5) substitute –
- “(5) The IPSA must from time to time prepare a report on the operation of any provisions in force under this section, and send it to the Speaker of the House of Commons for laying before both Houses of Parliament.”
- (8) After subsection (7) insert –
- “(8) A scheme made by the IPSA under this section may amend or revoke any previous scheme made by the IPSA under this section.”
- 39 (1) Section 6 (block transfer into another pension scheme) is amended as follows.
- (2) In subsection (1) –
- (a) for “Leader of the House of Commons may by order” substitute “IPSA may, with the consent of the Treasury and the Minister for the Civil Service”, and
  - (b) for “the order” substitute “the direction”.
- (3) In subsection (2) –
- (a) for “making an order” substitute “giving a direction”,
  - (b) for “Leader of the House of Commons” substitute “IPSA”,
  - (c) for “he” (in both places) substitute “it”,
  - (d) for “make such an order” substitute “give such a direction”, and
  - (e) for “the order” substitute “the direction”.
- (4) In subsection (4), in the definition of “the relevant pension provisions” –
- (a) for “an order” substitute “a direction”,
  - (b) for “orders” substitute “a scheme”, and
  - (c) for “order is made” substitute “direction is given”.
- 40 (1) Section 7 (expenses and receipts) is amended as follows.
- (2) In subsection (1)(c) (expenses and receipts) –
- (a) for “any order” substitute “a scheme”, and
  - (b) omit the words from “or of any” to the end.
- (3) In subsection (1)(d) for “an order” substitute “a direction”.
- 41 (1) Section 8 is amended as follows.
- (2) In subsection (1) (interpretation) –
- (a) after the definition of “electoral region” insert –
    - ““the IPSA” means the Independent Parliamentary Standards Authority;”, and
  - (b) omit the definition of “the Leader of the House of Commons”.
- (3) Omit subsection (2).

*House of Commons Members' Fund and Parliamentary Pensions Act 1981 (c. 7)*

- 42 In section 1 (entitlement to payments out of House of Commons Members' Fund) –
- (a) in subsection (5)(b) for “paragraph (b), (c) or (d) of section 2(2) of the Parliamentary and other Pensions Act 1987” substitute “subsection (5A)”, and
  - (b) after subsection (5) insert –
    - “(5A) The offices are –
      - (a) the offices mentioned in paragraph 16(2)(a), (b), (d) or (e) of Schedule 6 to the Constitutional Reform and Governance Act 2010;
      - (b) the offices of Chairman of Ways and Means and Deputy Chairman of Ways and Means.”

*Parliamentary and other Pensions Act 1987 (c. 45)*

- 43 Omit –
- (a) section 1,
  - (b) section 2(1) to (8) and (10),
  - (c) section 3, and
  - (d) Schedule 1.
- 44 (1) The existing regulations have effect (subject to any provision in an order under section 51 of this Act) –
- (a) so far as they relate to matters which could be contained in a scheme made by the IPSA under paragraph 8, as if they were a scheme made by the IPSA under that paragraph,
  - (b) so far as they relate to matters which could be contained in a scheme made by the IPSA under paragraph 12, as if they were a scheme made by the IPSA under that paragraph, and
  - (c) so far as they relate to matters which could be contained in a scheme made by the Minister for the Civil Service under paragraph 16, as if they were a scheme made by the Minister under that paragraph.
- (2) An order under section 51 or 52 of this Act may provide for any provision of the existing regulations which –
- (a) relates to one or more of the matters listed in paragraph 8(1), but
  - (b) could not be contained in a scheme under paragraph 8,
- to have effect as if contained in a scheme under that paragraph.
- (3) If it does so a scheme under paragraph 8 may –
- (a) revoke the provision;
  - (b) amend it so that it makes provision which may be contained in a scheme under that paragraph (but not otherwise amend it).
- (4) An order under section 51 or 52 of this Act may provide for any provision of the existing regulations which –
- (a) relates to service as a member of the House of Commons, but
  - (b) could not be contained in a scheme under paragraph 12,
- to have effect as if contained in a scheme under that paragraph.
- (5) If it does so a scheme under paragraph 12 may –

- (a) revoke the provision;
  - (b) amend it so that it makes provision which may be contained in a scheme under that paragraph (but not otherwise amend it).
- (6) An order under section 51 or 52 of this Act may provide for any provision of the existing regulations which –
- (a) relates to service to which paragraph 16 applies, but
  - (b) could not be contained in a scheme under that paragraph,
- to have effect as if contained in a scheme under that paragraph.
- (7) If it does so a scheme under paragraph 16 may –
- (a) revoke the provision;
  - (b) amend it so that it makes provision which may be contained in a scheme under that paragraph (but not otherwise amend it).
- (8) “The existing regulations” means the regulations under section 2 of the Parliamentary and other Pensions Act 1987 in force immediately before the date specified in an order made by a Minister of the Crown by statutory instrument.
- (9) An order under sub-paragraph (8) may specify different dates for different purposes.

*Ministerial and other Pensions and Salaries Act 1991 (c. 5)*

45 Omit section 6.

*Pensions Act 2004 (c. 35)*

46 In section 249A(3)(c) (schemes to which section 249A does not apply) for “section 2 of the Parliamentary and other Pensions Act 1987 (c. 45)” substitute “paragraph 8, 12 or 16 of Schedule 6 to the Constitutional Reform and Governance Act 2010”.

*Parliamentary Standards Act 2009 (c. 13)*

- 47 (1) In section 5(9) (MPs’ allowances scheme does not affect pensions) for “the Parliamentary and other Pensions Act 1987 (c. 45)” substitute “Schedule 6 to the Constitutional Reform and Governance Act 2010”.
- (2) In paragraph 18 of Schedule 1 (IPSA’s administration and regulation functions), after sub-paragraph (2) insert –
- “(3) The IPSA’s functions under the following provisions are also regulation functions –
- (a) sections 3, 4 and 6 of the European Parliament (Pay and Pensions) Act 1979 (but not any function relating to the administration of a scheme under section 3 or 4);
  - (b) paragraphs 2 to 5, 8, 9, 11, 12 and 15 of Schedule 6 to the Constitutional Reform and Governance Act 2010 (but not any function relating to the administration of a scheme under paragraph 8 or 12).”
- (3) In paragraph 29(2) of Schedule 1 (interpretation) in the definition of “regulation functions” after “18(2)” insert “and (3)”.

- 48 (1) An order under section 13 of the Parliamentary Standards Act 2009 may make the provision mentioned in section 13(6) (provision for transfer schemes) in connection with this Schedule (as well as in connection with that Act).
- (2) But for this purpose—
- (a) the reference in section 13(6)(a) to matters dealt with by the rules is to be treated as a reference to matters which could be dealt with by a scheme under paragraph 8 or 12;
- (b) section 13(6)(b) and (c) does not apply to property, rights and liabilities, or documents and information, held by or on behalf of the trustees of the Fund.
- (3) Section 13(7) of that Act applies to a scheme made by virtue of section 13(6) and this paragraph.

*Trustees of the Fund*

- 49 (1) This paragraph applies if, under an order under section 52, paragraph 2 comes into force for the purpose of making an appointment under paragraph 2(1)(a) or (b) before it comes into force for other purposes.
- (2) The reference in paragraph 2(1)(a) or (b) to the persons who are already trustees of the Fund is to the persons who are trustees of the Fund by virtue of section 1 of the Parliamentary and other Pensions Act 1987.
- 50 (1) In this paragraph “the transitional period” means the period of six months beginning with the day on which paragraph 2 comes into force (other than for the purpose of making an appointment under paragraph 2(1)(a) or (b)).
- (2) During the transitional period—
- (a) paragraph 2(1) applies as if for paragraph (c) there were substituted—
- “(c) the persons who (by virtue of section 1 of the Parliamentary and other Pensions Act 1987) are the trustees of the Fund immediately before the beginning of the transitional period.”, and
- (b) paragraph 5 applies to persons who are trustees of the Fund because of paragraph (a) as if they were member-nominated trustees.
- (3) But if a person who is a trustee of the Fund immediately before the beginning of the transitional period is appointed under paragraph 2(1)(a) or (b) that person is not to be treated as being a trustee of the Fund because of sub-paragraph (2)(a).
- (4) The trustees of the Fund must make arrangements (the “transitional arrangements”) for 8 persons to be nominated and selected as member-nominated trustees before the end of the transitional period.
- (5) Those persons become member-nominated trustees immediately after the end of the transitional period.
- (6) Only persons who are trustees of the Fund immediately before the beginning of the transitional period may be nominated and selected as member-nominated trustees under the transitional arrangements.
- (7) But if it is not possible to secure 8 member-nominated trustees from among those persons, the deficiency may be supplied by other persons.

- (8) At the end of the transitional period any persons who—
- (a) immediately before the end of that period, are trustees of the Fund because of sub-paragraph (2)(a), but
  - (b) have not been nominated and selected as member-nominated trustees,
- cease to be trustees of the Fund.

## SCHEDULE 7

Section 46

### AMENDMENTS OF FREEDOM OF INFORMATION ACT 2000

- 1 The Freedom of Information Act 2000 is amended as follows.
- 2 In section 2(3) (exemptions not subject to public interest test) after paragraph (e) insert—
  - “(ea) in section 37, paragraphs (a) to (ab) of subsection (1), and subsection (2) so far as relating to those paragraphs,”.
- 3 In section 37(1) (communications with Her Majesty, etc.), for paragraph (a) substitute—
  - “(a) communications with the Sovereign,
  - (aa) communications with the heir to, or the person who is for the time being second in line of succession to, the Throne,
  - (ab) communications with a person who has subsequently acceded to the Throne or become heir to, or second in line to, the Throne,
  - (ac) communications with other members of the Royal Family (other than communications which fall within any of paragraphs (a) to (ab) because they are made or received on behalf of a person falling within any of those paragraphs), and
  - (ad) communications with the Royal Household (other than communications which fall within any of paragraphs (a) to (ac) because they are made or received on behalf of a person falling within any of those paragraphs), or”.
- 4 (1) Section 62 (interpretation of Part 6) is amended as follows.
  - (2) In subsection (1) (meaning of “historical record”), for “thirty years” substitute “twenty years”.
  - (3) After subsection (2) insert—
    - “(2A) Until the end of the period of 10 years beginning with the commencement of paragraph 4 of Schedule 7 to the Constitutional Reform and Governance Act 2010, subsection (1) has effect subject to any order made under section 46(2) of that Act.”
- 5 (1) Section 63 (removal of exemptions: historical records generally) is amended as follows.
  - (2) In subsection (1)—
    - (a) omit “28,”, and
    - (b) for “36, 37(1)(a), 42 or 43” substitute “or 42”.

- (3) In subsection (2) –
- (a) omit “28(3),” and
  - (b) for “36(3), 42(2) or 43(3)” substitute “or 42(2)”.
- (4) After subsection (2) insert –
- “(2A) Information contained in a historical record cannot be exempt information by virtue of section 36 except –
- (a) in a case falling within subsection (2)(a)(ii) of that section, or
  - (b) in a case falling within subsection (2)(c) of that section where the prejudice or likely prejudice relates to the effective conduct of public affairs in Northern Ireland.
- (2B) Compliance with section 1(1)(a) in relation to a historical record is not to be taken to have any of the effects referred to in subsection (3) of section 36, except where the effect –
- (a) falls within subsection (2)(a)(ii) of that section, or
  - (b) falls within subsection (2)(c) of that section and relates to the effective conduct of public affairs in Northern Ireland.
- (2C) Information cannot be exempt information –
- (a) by virtue of section 28 or 43, or
  - (b) by virtue of section 36 in the excepted cases mentioned in subsection (2A),
- after the end of the period of thirty years beginning with the year following that in which the record containing the information was created.
- (2D) Compliance with section 1(1)(a) in relation to any record is not to be taken, at any time after the end of the period of thirty years beginning with the year following that in which the record was created, to be capable –
- (a) of prejudicing any of the matters referred to in section 28(1) or 43(2), or
  - (b) of having any of the effects referred to in section 36(3) in the excepted cases mentioned in subsection (2B).
- (2E) Information cannot be exempt information by virtue of any of paragraphs (a) to (ad) of section 37(1) after whichever is the later of –
- (a) the end of the period of five years beginning with the date of the relevant death, and
  - (b) the end of the period of twenty years beginning with the date on which the record containing the information was created.
- (2F) In subsection (2E)(a) “the relevant death” means –
- (a) for the purposes of any of paragraphs (a) to (ac) of section 37(1), the death of the person referred to in the paragraph concerned, or
  - (b) for the purposes of section 37(1)(ad), the death of the Sovereign reigning when the record containing the information was created.”

6 After section 80 insert –

**“80A Information held by Northern Ireland bodies**

- (1) This section applies to information held by –
  - (a) the Northern Ireland Assembly,
  - (b) a Northern Ireland department, or
  - (c) a Northern Ireland public authority.
- (2) In their application to information to which this section applies, the provisions of this Act have effect subject to the following modifications.
- (3) Section 2(3) (exemptions not subject to public interest test) is to be read as if paragraph (ea) were omitted.
- (4) Section 37(1) (communications with Her Majesty, etc) is to be read as if for paragraphs (a) to (ad) there were substituted –
  - “(a) communications with the Sovereign, with other members of the Royal Family or with the Royal Household, or”.
- (5) Section 62(1) (meaning of “historical record”) is to be read as if the reference to twenty years were a reference to thirty years.
- (6) Section 63 (removal of exemptions: historical records generally) is to be read as if –
  - (a) in subsection (1), for the words from “section” to the end there were substituted “section 28, 30(1), 32, 33, 35, 36, 37(1)(a), 42 or 43”,
  - (b) in subsection (2), for the words from “section” to the end there were substituted “section 28(3), 33(3), 36(3), 42(2) or 43(3)”, and
  - (c) subsections (2A) to (2F) were omitted.”

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# Sanctions and Anti- Money Laundering Act 2018

CHAPTER 13

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understanding of this Act and are available separately

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# Sanctions and Anti-Money Laundering Act 2018

## CHAPTER 13

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# Sanctions and Anti-Money Laundering Act 2018

## 2018 CHAPTER 13

An Act to make provision enabling sanctions to be imposed where appropriate for the purposes of compliance with United Nations obligations or other international obligations or for the purposes of furthering the prevention of terrorism or for the purposes of national security or international peace and security or for the purposes of furthering foreign policy objectives; to make provision for the purposes of the detection, investigation and prevention of money laundering and terrorist financing and for the purposes of implementing Standards published by the Financial Action Task Force relating to combating threats to the integrity of the international financial system; and for connected purposes. [23rd May 2018]

**B**E IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

### PART 1

#### SANCTIONS REGULATIONS

#### CHAPTER 1

#### POWER TO MAKE SANCTIONS REGULATIONS

#### *Power to make sanctions regulations*

#### **1 Power to make sanctions regulations**

- (1) An appropriate Minister may make sanctions regulations where that Minister considers that it is appropriate to make the regulations—

- (a) for the purposes of compliance with a UN obligation,
  - (b) for the purposes of compliance with any other international obligation, or
  - (c) for a purpose within subsection (2).
- (2) A purpose is within this subsection if the appropriate Minister making the regulations considers that carrying out that purpose would –
- (a) further the prevention of terrorism, in the United Kingdom or elsewhere,
  - (b) be in the interests of national security,
  - (c) be in the interests of international peace and security,
  - (d) further a foreign policy objective of the government of the United Kingdom,
  - (e) promote the resolution of armed conflicts or the protection of civilians in conflict zones,
  - (f) provide accountability for or be a deterrent to gross violations of human rights, or otherwise promote –
    - (i) compliance with international human rights law, or
    - (ii) respect for human rights,
  - (g) promote compliance with international humanitarian law,
  - (h) contribute to multilateral efforts to prevent the spread and use of weapons and materials of mass destruction, or
  - (i) promote respect for democracy, the rule of law and good governance.
- (3) Regulations under this section must state the purpose (or purposes) of the regulations, and any purpose stated must be –
- (a) compliance with a UN obligation, or other international obligation, specified in the regulations, or
  - (b) a particular purpose that is within subsection (2).
- (4) Section 2 contains additional requirements in relation to regulations stating a purpose within subsection (2) above.
- (5) In this section “sanctions regulations” means regulations which do one or more of the following –
- (a) impose financial sanctions (see section 3);
  - (b) impose immigration sanctions (see section 4);
  - (c) impose trade sanctions (see section 5 and Schedule 1);
  - (d) impose aircraft sanctions (see section 6);
  - (e) impose shipping sanctions (see section 7);
  - (f) impose sanctions within section 8 (other sanctions for purposes of UN obligations);
  - (g) make supplemental provision in connection with any provision of the regulations or other regulations made under this section.
- (6) In this section “supplemental provision” includes any provision authorised by any other provision of this Act to be made by regulations under this section (see in particular sections 9 to 17, 19 to 21 and 54).
- (7) In this Act any reference to a gross violation of human rights is to conduct which –
- (a) constitutes, or
  - (b) is connected with,

the commission of a gross human rights abuse or violation; and whether conduct constitutes or is connected with the commission of such an abuse or violation is to be determined in accordance with section 241A of the Proceeds of Crime Act 2002.

- (8) In this Act –
- “UN obligation” means an obligation that the United Kingdom has by virtue of a UN Security Council Resolution;
  - “UN Security Council Resolution” means a resolution adopted by the Security Council of the United Nations;
  - “international obligation” means an obligation of the United Kingdom created or arising by or under any international agreement.
- (9) For the purposes of any provision of this Act which refers to an “appropriate Minister”, the following are appropriate Ministers –
- (a) the Secretary of State;
  - (b) the Treasury.
- (10) None of paragraphs (a) to (i) of subsection (2) is to be taken to limit the meaning of any other of those paragraphs.

## **2 Additional requirements for regulations for a purpose within section 1(2)**

- (1) This section applies to regulations under section 1 any of whose purposes (as stated under section 1(3)) is a discretionary purpose.  
In this section “discretionary purpose” means a purpose which is not compliance with a UN obligation or other international obligation but is within section 1(2).
- (2) An appropriate Minister may not decide that it is appropriate to make regulations to which this section applies unless, in respect of each discretionary purpose stated in the regulations, that Minister –
- (a) has considered whether there are good reasons to pursue that purpose and has determined that there are, and
  - (b) has considered whether the imposition of sanctions is a reasonable course of action for that purpose and has determined that it is.
- (3) In subsection (2)(b) “sanctions” means prohibitions and requirements of the kinds which are imposed by the regulations for the purpose in question (or both for that purpose and for another purpose of the regulations).
- (4) In relation to any regulations to which this section applies, the appropriate Minister making the regulations (“the Minister”) must at the required time lay before Parliament a report which explains in respect of each discretionary purpose stated under section 1(3) in the regulations –
- (a) why the Minister considers that carrying out that purpose would meet one or more of the conditions in paragraphs (a) to (i) of section 1(2),
  - (b) why the Minister considers that there are good reasons to pursue that purpose, and
  - (c) why the Minister considers that the imposition of sanctions (within the meaning given by subsection (3)) is a reasonable course of action for that purpose.

- (5) Nothing in subsection (4) requires the report to contain anything the disclosure of which may, in the opinion of the Minister, damage national security or international relations.
- (6) In subsection (4) “the required time” means –
  - (a) in the case of regulations contained in a statutory instrument which is laid before Parliament after being made, the same time as the instrument is laid before Parliament;
  - (b) in the case of regulations contained in a statutory instrument a draft of which is laid before Parliament, the same time as the draft is laid.

*Types of sanction*

### 3 Financial sanctions

- (1) For the purposes of section 1(5)(a) regulations “impose financial sanctions” if they impose prohibitions or requirements for one or more of the following purposes –
  - (a) freezing funds or economic resources owned, held or controlled by designated persons (see section 9);
  - (b) preventing financial services from being provided to, or for the benefit of –
    - (i) designated persons,
    - (ii) persons connected with a prescribed country, or
    - (iii) a prescribed description of persons connected with a prescribed country;
  - (c) preventing financial services from being procured from, or for the benefit of –
    - (i) designated persons,
    - (ii) persons connected with a prescribed country, or
    - (iii) a prescribed description of persons connected with a prescribed country;
  - (d) preventing funds or economic resources from being made available to, or for the benefit of –
    - (i) designated persons,
    - (ii) persons connected with a prescribed country, or
    - (iii) a prescribed description of persons connected with a prescribed country;
  - (e) preventing funds or economic resources from being received from –
    - (i) designated persons,
    - (ii) persons connected with a prescribed country, or
    - (iii) a prescribed description of persons connected with a prescribed country;
  - (f) preventing financial services from being provided, where the services relate to financial products, or financial products of a prescribed description, issued by designated persons;
  - (g) preventing persons from owning, controlling or having a prescribed interest in persons (other than individuals) which are –
    - (i) designated persons,
    - (ii) connected with a prescribed country, or

- (iii) of a prescribed description and connected with a prescribed country.
- (2) For the purposes of section 1(5)(a) regulations also “impose financial sanctions” if they impose prohibitions or requirements for the purpose of preventing persons from entering into, or continuing to be a party to, arrangements for commercial purposes, or for prescribed commercial purposes, with—
  - (a) designated persons,
  - (b) persons connected with a prescribed country, or
  - (c) a prescribed description of persons connected with a prescribed country.
- (3) In subsection (1) any reference to funds, economic resources or financial services being made available, received, procured or provided is to their being made available, received, procured or provided (as the case may be) directly or indirectly.
- (4) In subsection (2) “arrangements” includes any agreement, understanding, scheme, transaction or series of transactions (whether or not legally enforceable).
- (5) Sections 60 and 61 contain definitions for the purposes of this Act of—
  - “economic resources”,
  - “financial products”,
  - “financial services”,
  - “freeze”, and
  - “funds”.
- (6) Section 62 makes provision about the meaning of —
  - (a) funds or economic resources being “owned, held or controlled” or “made available” (see subsection (4) of that section),
  - (b) a person “owning” or “controlling” another person (see subsection (5) of that section), and
  - (c) a person being “connected with” a country (see subsection (6) of that section).

#### **4 Immigration sanctions**

- (1) For the purposes of section 1(5)(b) regulations “impose immigration sanctions” if they provide for designated persons (see section 9) to be excluded persons for the purposes of section 8B of the Immigration Act 1971.
- (2) As to the effect of such provision, see section 8B of the Immigration Act 1971 (as amended by paragraph 1 of Schedule 3 to this Act).

#### **5 Trade sanctions**

- (1) For the purposes of section 1(5)(c) regulations “impose trade sanctions” if they impose prohibitions or requirements for one or more of the purposes mentioned in Part 1 of Schedule 1.
- (2) Part 2 of that Schedule makes further provision in connection with regulations which impose trade sanctions.

## 6 Aircraft sanctions

- (1) For the purposes of section 1(5)(d) regulations “impose aircraft sanctions” if they impose prohibitions or requirements for one or more of the following purposes –
  - (a) detaining disqualified aircraft (see subsection (6)) within the United Kingdom, or controlling the movement of disqualified aircraft within the United Kingdom and the airspace over the United Kingdom;
  - (b) ensuring that disqualified aircraft –
    - (i) do not overfly the United Kingdom, or
    - (ii) leave the airspace over the United Kingdom;
  - (c) preventing persons from owning, chartering or operating aircraft registered in a prescribed country;
  - (d) preventing aircraft from being registered in a prescribed country;
  - (e) preventing the registration of –
    - (i) aircraft in which a designated person (see section 9) holds a prescribed interest (or designated persons, taken together, hold a prescribed interest), or
    - (ii) aircraft chartered by demise to designated persons.
- (2) For the purposes of section 1(5)(d) regulations also “impose aircraft sanctions” if they authorise directions within subsection (3), (4) or (5).
- (3) Directions are within this subsection if they are given for a purpose mentioned in subsection (1)(a) or (b) and either –
  - (a) they are given by the Secretary of State to –
    - (i) the CAA,
    - (ii) a person who holds a licence under Chapter 1 of Part 1 of the Transport Act 2000 (air traffic services), or
    - (iii) an airport operator, or
  - (b) they are given to the operator or pilot in command of a disqualified aircraft by –
    - (i) the Secretary of State, or
    - (ii) a person mentioned in paragraph (a)(i), (ii) or (iii).
- (4) Directions are within this subsection if they are given by the Secretary of State to the CAA for the purpose of terminating the registration of any aircraft mentioned in subsection (1)(e).
- (5) Directions are within this subsection if they are given by the Secretary of State to the operator or pilot in command of a British-controlled aircraft for the purpose of preventing the aircraft from –
  - (a) overflying a prescribed country, or
  - (b) landing in a prescribed country.
- (6) In this section “disqualified aircraft” means aircraft –
  - (a) owned, chartered or operated by –
    - (i) designated persons,
    - (ii) persons connected with a prescribed country, or
    - (iii) a prescribed description of persons connected with a prescribed country,
  - (b) registered in a prescribed country, or
  - (c) originating from a prescribed country.

- (7) Provision authorising directions by virtue of subsection (2) may include provision –
- (a) as to the effect of any such directions so far as they are inconsistent with requirements or permissions under any other enactment;
  - (b) requiring a person not to disclose any such directions if the Secretary of State notifies the person to that effect.
- (8) For the purposes of this section any reference to the United Kingdom includes a reference to the territorial sea.
- (9) In this section “aircraft” –
- (a) subject to paragraph (b), includes –
    - (i) unmanned aircraft, and
    - (ii) aircraft capable of spaceflight activities;
  - (b) does not include the naval, military or air-force aircraft of any country.
- (10) In this section –
- “airport” means the aggregate of the land, buildings and works comprised in an aerodrome within the meaning of the Civil Aviation Act 1982 (see section 105(1) of that Act);
  - “airport operator”, in relation to an airport, means the person by whom the airport is managed;
  - “British-controlled aircraft” has the same meaning as in section 92 of the Civil Aviation Act 1982;
  - “the CAA” means the Civil Aviation Authority;
  - “enactment” includes an enactment mentioned in any of paragraphs (a) to (d) of section 54(6);
  - “operator”, in relation to an aircraft, means the person having the management of the aircraft, and cognate expressions are to be construed accordingly;
  - “pilot in command”, in relation to an aircraft, means the pilot designated by the operator as being in command and charged with the safe conduct of its flight, without being under the direction of any other pilot in the aircraft;
  - “registration” means registration in the register of aircraft kept by the CAA.

## 7 Shipping sanctions

- (1) For the purposes of section 1(5)(e) regulations “impose shipping sanctions” if they impose prohibitions or requirements for one or more of the following purposes –
- (a) detaining within the United Kingdom, or controlling the movement within the United Kingdom of –
    - (i) disqualified ships (see subsection (8)), or
    - (ii) specified ships (see section 14);
  - (b) ensuring that disqualified ships or specified ships –
    - (i) do not enter the United Kingdom, or
    - (ii) leave the United Kingdom;
  - (c) preventing persons from owning, controlling, chartering or operating –
    - (i) ships registered in a prescribed country,

- (ii) ships flying the flag of a prescribed country, or
- (iii) specified ships;
- (d) preventing ships from –
  - (i) being registered in a prescribed country, or
  - (ii) flying the flag of a prescribed country;
- (e) preventing the registration of –
  - (i) ships in which a designated person (see section 9) holds a prescribed interest (or designated persons, taken together, hold a prescribed interest),
  - (ii) ships in which persons connected with a prescribed country hold a prescribed interest, or
  - (iii) specified ships.
- (2) For the purposes of section 1(5)(e) regulations also “impose shipping sanctions” if they authorise directions within subsection (3), (4) or (5).
- (3) Directions are within this subsection if they are given for a purpose mentioned in subsection (1)(a) or (b) and either –
  - (a) they are given to a harbour authority by the Secretary of State, or
  - (b) they are given to the master or pilot of a disqualified ship or a specified ship by –
    - (i) the Secretary of State, or
    - (ii) a harbour authority.
- (4) Directions are within this subsection if they are given by the Secretary of State to the Registrar for the purpose of terminating the registration of any ship mentioned in subsection (1)(e).
- (5) Directions are within this subsection if they are given by the Secretary of State to the master or pilot of a British ship (see subsections (12) and (13)) for the purpose of preventing the ship from travelling to –
  - (a) the sea or other waters within the seaward limits of the territorial sea adjacent to a prescribed country, or a particular place in that sea or those waters, or
  - (b) harbours in a prescribed country.
- (6) For the purposes of section 1(5)(e) regulations also “impose shipping sanctions” if, for the purpose of the implementation of so much of a UN Security Council Resolution as provides for the taking of measures in relation to ships designated for purposes of that resolution, they make provision –
  - (a) relating to such ships and corresponding to provision that may be made by virtue of subsection (1)(a), (b), (c) or (e),
  - (b) authorising directions corresponding to directions within subsection (3) to be given in relation to, or to the master or pilot of, such a ship, or
  - (c) authorising directions corresponding to directions within subsection (4) to be given in relation to such a ship.
- (7) Provision made by virtue of subsection (6) may describe the ships to which it relates by reference to the instrument in which the ships are designated, including by reference to that instrument as varied or supplemented from time to time.
- (8) In this section “disqualified ships” means ships –
  - (a) owned, controlled, chartered, operated or crewed by –

- (i) designated persons,
    - (ii) persons connected with a prescribed country, or
    - (iii) a prescribed description of persons connected with a prescribed country,
  - (b) registered in a prescribed country,
  - (c) flying the flag of a prescribed country, or
  - (d) originating from a prescribed country.
- (9) Provision authorising directions by virtue of this section may include provision as to the effect of any such directions so far as they are inconsistent with requirements under any other enactment.
- (10) Provision made by virtue of this section may include provision as to the meaning of any reference in the provision to a ship being “crewed” by persons.
- (11) In subsection (1) any reference to the United Kingdom includes a reference to the territorial sea.
- (12) In this section “British ship” means a ship which—
- (a) is registered under Part 2 of the Merchant Shipping Act 1995,
  - (b) is a Government ship within the meaning of that Act,
  - (c) is registered under the law of a relevant British possession,
  - (d) is not registered under the law of a country outside the United Kingdom but is wholly owned by persons each of whom has a United Kingdom connection, or
  - (e) is registered under an Order in Council under section 1 of the Hovercraft Act 1968.
- (13) For the purposes of subsection (12)(d), a person has a “United Kingdom connection” if the person is—
- (a) a British citizen, a British overseas territories citizen or a British Overseas citizen,
  - (b) an individual who is habitually resident in the United Kingdom, or
  - (c) a body corporate which is established under the law of a part of the United Kingdom and has its principal place of business in the United Kingdom.
- (14) In this section—
- “enactment” includes an enactment mentioned in any of paragraphs (a) to (d) of section 54(6);
  - “harbour authority” has the same meaning as in the Merchant Shipping Act 1995 (see section 313(1) of that Act);
  - “master” includes every person (except a pilot) having command or charge of a ship and, in relation to a fishing vessel, means the skipper;
  - “pilot”, in relation to a ship, means any person not belonging to the ship who has the conduct of the ship;
  - “the Registrar” means the Registrar General of Shipping and Seamen or, where functions of that person are being discharged by another person, that other person;
  - “registration” means registration in the register of British ships maintained by the Registrar;
  - “relevant British possession” means—
    - (a) any of the Channel Islands,

- (b) the Isle of Man, or
- (c) any British overseas territory;

“ship” includes every description of vessel (including a hovercraft) used in navigation, except the naval, military or air-force ships of any country.

## 8 Other sanctions for purposes of UN obligations

- (1) For the purposes of section 1(5)(f), regulations impose sanctions within this section if they impose prohibitions or requirements, not otherwise authorised by this Part, which the appropriate Minister making the regulations considers that it is appropriate to impose for the purposes of compliance with a UN obligation.
- (2) The reference in subsection (1) to prohibitions or requirements includes prohibitions or requirements imposed on or otherwise relating to designated persons (see section 9).

### *Designation of persons*

## 9 “Designated persons”

- (1) Subsection (2) applies for the purposes of sections 3 and 4, Schedule 1 and sections 6 to 8.
- (2) In each of those provisions, “designated persons” means –
  - (a) persons designated under any power contained in the regulations that authorises an appropriate Minister to designate persons for the purposes of the regulations or of any provisions of the regulations, or
  - (b) persons who are designated persons under any provision included in the regulations by virtue of section 13 (persons named by or under UN Security Council Resolutions).
- (3) In subsection (2) “the regulations” means the regulations mentioned in section 3, 4, 5(1), 6, 7 or 8 (as the case may be).
- (4) As regards designation of persons by virtue of subsection (2)(a), see sections 10 to 12.
- (5) In this Act “person” includes (in addition to an individual and a body of persons corporate or unincorporate) any organisation and any association or combination of persons.

## 10 Designation powers: general

- (1) In this Act a “designation power”, in relation to regulations under section 1, means a power (contained in the regulations by virtue of section 9(2)(a)) for an appropriate Minister to designate persons for the purposes of the regulations or of any provisions of the regulations.
- (2) Regulations under section 1 which contain a designation power may make provision about the way in which the power must or may be exercised, including provision authorising the appropriate Minister to whom the power is granted –
  - (a) to designate a person by name;

- (b) to provide that persons of a description specified by that Minister are designated persons;
  - (c) to designate different persons for the purposes of different provisions of the regulations.
- (3) Regulations under section 1 which contain a designation power must provide that where an appropriate Minister –
  - (a) has made a designation under the power, or
  - (b) has varied or revoked a designation made under the power (see section 22),that Minister must without delay take such steps as are reasonably practicable to inform the designated person of the designation, variation or revocation.
- (4) The regulations may include provision, additional to that required by subsection (3), as to steps to be taken as regards notification or publicity where a designation has been made under the designation power or a designation made under the power has been varied or revoked.
- (5) The regulations need not require a person to be notified of an intention to designate the person.
- (6) Sections 11 and 12 contain provision about criteria for designation under a designation power.

## **11 Designation of a person by name under a designation power**

- (1) This section applies to regulations under section 1 which authorise an appropriate Minister (“the Minister”) to designate persons by name.
- (2) The regulations must contain provision which prohibits the Minister from designating a person by name except where the Minister –
  - (a) has reasonable grounds to suspect that that person is an involved person (see subsection (3)), and
  - (b) considers that the designation of that person is appropriate, having regard to –
    - (i) the purpose of the regulations as stated under section 1(3), and
    - (ii) the likely significant effects of the designation on that person (as they appear to the Minister to be on the basis of the information that the Minister has).
- (3) The regulations must provide that “an involved person” means a person who –
  - (a) is or has been involved in an activity specified in the regulations,
  - (b) is owned or controlled directly or indirectly by a person who is or has been so involved,
  - (c) is acting on behalf of or at the direction of a person who is or has been so involved, or
  - (d) is a member of, or associated with, a person who is or has been so involved.
- (4) An activity may not be specified in the regulations by virtue of subsection (3) unless the Minister considers that specifying the activity is appropriate having regard to the purpose of the regulations as stated under section 1(3).

- (5) The regulations may, in the case of any activity specified in the regulations, make provision as to the meaning for the purposes of the regulations of a person's being involved in that activity.
- (6) The regulations may make provision, for the purposes of the regulations, as to the meaning of a person's –
  - (a) being “owned or controlled directly or indirectly by” another person, and
  - (b) being “associated with” another person.
- (7) The regulations must, in relation to any case where the Minister designates a person by name, require the information given under the provision made under section 10(3) to include a statement of reasons.
- (8) In subsection (7) a “statement of reasons” means a brief statement of the matters that the Minister knows, or has reasonable grounds to suspect, in relation to that person which have led the Minister to make the designation.
- (9) The regulations may authorise matters to be excluded from that statement where the Minister considers that they should be excluded –
  - (a) in the interests of national security or international relations,
  - (b) for reasons connected with the prevention or detection of serious crime in the United Kingdom or elsewhere, or
  - (c) in the interests of justice,
 (but the regulations may not authorise the Minister to provide no statement of reasons).

## **12 Designation of persons by description under a designation power**

- (1) This section applies to regulations under section 1 which grant a power for an appropriate Minister (“the Minister”) to provide that persons of a specified description are designated persons.
- (2) The regulations must contain provision which prohibits the exercise of that power except where conditions A to C are met.
- (3) Condition A is that the description of persons specified is such that a reasonable person would know whether that person fell within it.
- (4) Condition B is that, at the time the description is specified, it is not practicable for the Minister to identify and designate by name all the persons falling within that description at that time.
- (5) Condition C is that the Minister –
  - (a) has reasonable grounds to suspect –
    - (i) in a case where the specified description is members of a particular organisation, that that organisation is an involved person, or
    - (ii) in the case of any other specified description, that any person falling within that description would necessarily be an involved person, and
  - (b) considers that the designation of persons of the specified description is appropriate, having regard to –
    - (i) the purpose of the regulations as stated under section 1(3), and

- (ii) the likely significant effects of the designation (as they appear to the Minister to be on the basis of the information that the Minister has) on persons of that description.
- (6) Subsections (3) to (6) of section 11 apply to regulations which contain provision mentioned in subsection (2) above.
- (7) The regulations must, in relation to any case where the Minister provides that persons of a specified description are designated persons, require the information given under the provision made under section 10(3) to include a statement of reasons.
- (8) In subsection (7) a “statement of reasons” means a brief statement of the matters that the Minister knows, or has reasonable grounds to suspect, in relation to persons of the specified description which have led the Minister to make the provision designating persons of that description.
- (9) The regulations may authorise matters to be excluded from that statement where the Minister considers that they should be excluded –
  - (a) in the interests of national security or international relations,
  - (b) for reasons connected with the prevention or detection of serious crime in the United Kingdom or elsewhere, or
  - (c) in the interests of justice,(but the regulations may not authorise the Minister to provide no statement of reasons).
- (10) In this section “organisation” includes any body, association or combination of persons.

### **13 Persons named by or under UN Security Council Resolutions**

- (1) This section applies where –
  - (a) the purpose, or a purpose, of a provision of regulations under section 1 is compliance with an obligation to take particular measures in relation to UN-named persons that the United Kingdom has by virtue of a UN Security Council Resolution (“the Resolution”), and
  - (b) for that provision of the regulations to achieve its purpose as regards that obligation, the relevant UN-named persons need to be designated persons for the purposes of that provision.
- (2) The regulations must provide for those persons to be designated persons for the purposes of that provision.
- (3) Provision under subsection (2) may be expressed in any way and may in particular refer to the Resolution, or any other instrument, as varied or supplemented from time to time.
- (4) In this section –
  - a “UN-named person” means a person for the time being named (by the Security Council or a subsidiary organ of the Security Council) for the purposes of the Resolution so far as it provides for the taking of the measures in question, and
  - “the relevant UN-named persons” means each such person.

*Specified ships*

**14 “Specified ships”**

- (1) In each of section 7 and Schedule 1 “specified ships” means ships (within the meaning of that provision) specified under any power contained in the regulations that authorises an appropriate Minister to specify ships for the purposes of the regulations or of any provisions of the regulations.  
In this subsection “the regulations” means the regulations mentioned in section 7 or section 5(1) (as the case may be).
- (2) Subsections (3) to (8) apply to regulations under section 1 which authorise an appropriate Minister (“the Minister”) to specify ships.
- (3) The regulations may make provision about the way in which the power must or may be exercised, including provision authorising the Minister to specify ships by their International Maritime Organisation number.
- (4) The regulations may make provision as to the steps to be taken as regards notification and publicity where the power is exercised.
- (5) The regulations need not require a person to be notified of an intention to specify a ship.
- (6) The regulations must contain provision which prohibits the Minister from specifying a ship except where the Minister –
  - (a) has reasonable grounds to suspect that the ship is, has been, or is likely to be, involved in an activity specified in the regulations, and
  - (b) considers that it is appropriate for that ship to be specified, having regard to the purpose of the regulations as stated under section 1(3).
- (7) An activity may not be specified in the regulations by virtue of subsection (6)(a) unless the Minister considers that specifying the activity is appropriate having regard to the purpose of the regulations as stated under section 1(3).
- (8) The regulations may, in the case of any activity specified in the regulations, make provision as to the meaning for the purposes of the regulations of a ship’s being involved in that activity.

*Contents of sanctions regulations: further provision*

**15 Exceptions and licences**

- (1) In this section “regulations” means regulations under section 1.
- (2) Regulations may –
  - (a) create exceptions to any prohibition or requirement imposed by the regulations;
  - (b) provide for a prohibition imposed by the regulations not to apply to anything done under the authority of a licence issued by an appropriate Minister specified in the regulations;
  - (c) provide for a requirement imposed by the regulations to be subject to such exceptions as an appropriate Minister specified in the regulations may direct.

- (3) Regulations may, as respects any licences or directions provided for under subsection (2)(b) or (c) –
- (a) provide that a licence or direction may be general or issued to a category of persons or a particular person;
  - (b) provide that a licence or direction must specify what is authorised by the licence or excepted by the direction;
  - (c) make provision as to what may, or may not, be authorised by a licence or excepted by a direction;
  - (d) provide that a licence or direction may contain conditions;
  - (e) provide that a licence or direction may not be issued unless criteria specified by the regulations are met;
  - (f) make provision as to the duration of licences or directions, which may enable them to be of indefinite duration or a defined duration;
  - (g) make provision enabling licences or directions to be varied, revoked or suspended;
  - (h) make provision as to notifications or publicity to be given in connection with licences or directions.
- (4) Where regulations provide for designated persons to be excluded persons for the purposes of section 8B of the Immigration Act 1971, the regulations may –
- (a) create exceptions from subsections (1) to (3) of that section in relation to any person who under the regulations is an excluded person (a “relevant person”);
  - (b) authorise an appropriate Minister specified in the regulations to direct that, in relation to any relevant person specified, or of a description specified, in the direction, subsections (1) to (3) of that section have effect subject to exceptions specified in the direction.
- (5) Regulations may, as respects any directions provided for under subsection (4)(b), make any provision mentioned (in relation to directions) in subsection (3)(d) to (h).
- (6) The exceptions that may be created under subsection (2)(a) include exceptions in relation to acts done for the purposes of –
- (a) national security;
  - (b) the prevention or detection of serious crime in the United Kingdom or elsewhere.
- In this subsection “act” includes an omission.
- (7) Nothing in subsection (6) is to be taken to limit subsection (2).

## 16 Information

- (1) Regulations under section 1 may make provision –
- (a) requiring persons of a prescribed description –
    - (i) to inform an appropriate authority of prescribed matters;
    - (ii) to create and retain registers or records;
  - (b) authorising an appropriate authority to require persons of a prescribed description to provide information, or produce documents, of a prescribed description;
  - (c) conferring powers to inspect and copy prescribed documents or information;

- (d) conferring powers of entry in relation to powers conferred by virtue of paragraph (b) or (c), and about the exercise of any such powers of entry;
  - (e) authorising or restricting the disclosure of information, including provision—
    - (i) about the purposes for which information held in connection with anything done under or by virtue of the regulations may be used;
    - (ii) about the persons to whom any such information may be disclosed.
- (2) Without prejudice to anything in subsection (1), regulations under section 1 may include provision authorising or requiring prescribed information about a person designated by or under the regulations to be notified to prescribed persons or to be publicised.
- (3) In subsection (1) “appropriate authority” means—
- (a) an appropriate Minister, or
  - (b) such other person as may be prescribed.

## **17 Enforcement**

- (1) In this section “regulations” means regulations under section 1.
- (2) Regulations may make provision—
- (a) for the enforcement of any prohibitions or requirements imposed by regulations;
  - (b) for the enforcement of any prohibitions or requirements imposed under regulations, including, in particular, prohibitions or requirements imposed by—
    - (i) conditions of a licence or direction issued by virtue of section 15, or
    - (ii) directions given by virtue of sections 6 and 7;
  - (c) for preventing any prohibitions or requirements mentioned in paragraph (a) or (b) from being circumvented.
- (3) The provision that may be made by virtue of subsection (2) includes provision as to the powers and duties of any person who is to enforce the regulations.
- (4) Regulations—
- (a) may create criminal offences for the purposes of the enforcement of prohibitions or requirements mentioned in subsection (2)(a) or (b) or for the purposes of preventing such prohibitions or requirements from being circumvented, and
  - (b) may include provision dealing with matters relating to any offences created for such purposes by regulations (including provision that creates defences).
- (5) Regulations may not provide for an offence under regulations to be punishable with imprisonment for a period exceeding—
- (a) in the case of conviction on indictment, 10 years;
  - (b) in the case of summary conviction—
    - (i) in relation to England and Wales, 12 months or, in relation to offences committed before section 154(1) of the Criminal Justice Act 2003 comes into force, 6 months;

- (ii) in relation to Scotland, 12 months;
  - (iii) in relation to Northern Ireland, 6 months.
- (6) Regulations may include provision applying, for the purpose of the enforcement of any relevant prohibition or requirement, any provision of the Customs and Excise Management Act 1979 specified in the regulations, with or without modifications.
- (7) In subsection (6) a “relevant prohibition or requirement” means –
  - (a) a prohibition or requirement imposed by regulations for a purpose mentioned in –
    - (i) section 3(1)(b) to (g) or (2), or
    - (ii) Part 1 of Schedule 1, or
  - (b) a prohibition or requirement imposed by a condition of a licence or direction issued by virtue of section 15 in relation to a prohibition or requirement mentioned in paragraph (a).
- (8) Regulations may provide that a particular offence which is –
  - (a) created by virtue of this section, and
  - (b) specified by the regulations,is an offence to which Chapter 1 of Part 2 of the Serious Organised Crime and Police Act 2005 (investigatory powers) applies.
- (9) Regulations may provide that a particular provision of the regulations which –
  - (a) contains a prohibition or requirement imposed for a purpose mentioned in section 3(1) or (2), and
  - (b) is specified by the regulations,is to be regarded as not being financial sanctions legislation for the purposes of Part 8 of the Policing and Crime Act 2017 (financial sanctions: monetary penalties).

## 18 Report in respect of offences in regulations

- (1) In this section “relevant regulations” means regulations under section 1 which create any offence for the purposes of –
  - (a) the enforcement of any prohibitions or requirements imposed by or under regulations under section 1, or
  - (b) preventing any such prohibitions or requirements from being circumvented.
- (2) The appropriate Minister making any relevant regulations (“the Minister”) must at the required time lay before Parliament a report which –
  - (a) specifies the offences created by the regulations, indicating the prohibitions or requirements to which those offences relate,
  - (b) states that the Minister considers that there are good reasons for those prohibitions or requirements to be enforceable by criminal proceedings and explains why the Minister is of that opinion, and
  - (c) in the case of any of those offences which are punishable with imprisonment –
    - (i) states the maximum terms of imprisonment that apply to those offences,
    - (ii) states that the Minister considers that there are good reasons for those maximum terms, and

- (iii) explains why the Minister is of that opinion.
- (3) Subsection (4) applies where an offence created by the regulations relates to a particular prohibition or requirement and the Minister considers that a good reason –
  - (a) for that prohibition or requirement to be enforceable by criminal proceedings, or
  - (b) for a particular maximum term of imprisonment to apply to that offence,
 is consistency with another enactment relating to the enforcement of a similar prohibition or requirement.
- (4) The report must identify that other enactment.
- (5) In subsection (3) “another enactment” means any provision of or made under an Act, other than a provision of the regulations to which the report relates.
- (6) In subsection (2) “the required time” means –
  - (a) in the case of regulations contained in a statutory instrument which is laid before Parliament after being made, the same time as the instrument is laid before Parliament;
  - (b) in the case of regulations contained in a statutory instrument a draft of which is laid before Parliament, the same time as the draft is laid.
- (7) This section applies to regulations which amend other regulations under section 1 so as to create an offence as it applies to regulations which otherwise create an offence.

## **19 Enforcement: goods etc on ships**

- (1) The provision that may be made by virtue of section 17(2) (enforcement of prohibitions or requirements) includes provision as to the powers and duties of prescribed persons in relation to –
  - (a) British ships in foreign waters or international waters,
  - (b) ships without nationality in international waters, and
  - (c) foreign ships in international waters.
- (2) Regulations may make provision by virtue of this section only for the purpose of enforcing relevant prohibitions or requirements.
- (3) A prohibition or requirement is a “relevant prohibition or requirement” for the purposes of this section if it is –
  - (a) a prohibition or requirement specified by the regulations which is imposed by regulations for a purpose mentioned in any of paragraphs 2 to 7, 15(a), (b) or (c) or 16(a) of Schedule 1, or
  - (b) a prohibition or requirement imposed by a condition of a licence or direction issued by virtue of section 15 in relation to a prohibition or requirement mentioned in paragraph (a).
- (4) The powers that may be conferred by virtue of this section include powers to –
  - (a) stop a ship;
  - (b) board a ship;
  - (c) require any person found on a ship boarded by virtue of this section to provide information or produce documents;
  - (d) inspect and copy such documents or information;

- (e) stop any person found on such a ship and search that person for –
    - (i) prohibited goods, or
    - (ii) any thing that might be used to cause physical injury or damage to property or to endanger the safety of any ship;
  - (f) search a ship boarded by virtue of this section, or any thing found on such a ship (including cargo), for prohibited goods;
  - (g) seize goods found on a ship, in any thing found on a ship, or on any person found on a ship (but see subsection (8));
  - (h) for the purpose of exercising a power mentioned in paragraph (e), (f) or (g), require a ship to be taken to, and remain in, a port or anchorage in the United Kingdom or any other country willing to receive it.
- (5) Regulations that confer a power mentioned in subsection (4)(a) to (f) or (h) must provide that a person may not exercise the power in relation to a ship unless the person has reasonable grounds to suspect that the ship is carrying prohibited goods (and the regulations need not require the person to have reasonable grounds to suspect that an offence is being or has been committed).
- (6) Regulations that confer a power mentioned in subsection (4)(e)(i) or (f) must provide that the power may be exercised only to the extent reasonably required for the purpose of discovering prohibited goods.
- (7) Regulations that confer a power mentioned in subsection (4)(e)(ii) on a person (“the officer”) may permit the search of a person only where the officer has reasonable grounds to believe that that person might use a thing in a way mentioned in subsection (4)(e)(ii).
- (8) Regulations that confer a power mentioned in subsection (4)(g) on a person –
- (a) must provide for the power to be exercisable on a ship only where that person is lawfully on the ship (whether in exercise of powers conferred by virtue of this section or otherwise), and
  - (b) may permit the seizure only of –
    - (i) goods which that person has reasonable grounds to suspect are prohibited goods, or
    - (ii) things within subsection (4)(e)(ii).
- (9) Regulations that confer a power on a person by virtue of this section may authorise that person to use reasonable force, if necessary, in the exercise of the power.
- (10) Regulations that confer a power by virtue of this section must provide that –
- (a) the power may be exercised in relation to a British ship in foreign waters only with the authority of the Secretary of State, and
  - (b) in relation to foreign waters other than the sea and other waters within the seaward limits of the territorial sea adjacent to any relevant British possession, the Secretary of State may give authority only if the State in whose waters the power would be exercised consents to the exercise of the power.
- (11) Regulations that confer a power by virtue of this section must provide that –
- (a) the power may be exercised in relation to a foreign ship only with the authority of the Secretary of State, and
  - (b) the Secretary of State may give authority only if –

- 
- (i) the home state has requested the assistance of the United Kingdom for the purpose of enforcing relevant prohibitions or requirements,
  - (ii) the home state has authorised the United Kingdom to act for that purpose, or
  - (iii) the United Nations Convention on the Law of the Sea 1982 (Cmnd 8941) or a UN Security Council Resolution otherwise permits the exercise of the powers in relation to the ship.
- (12) The reference in subsection (11) to the United Nations Convention on the Law of the Sea includes a reference to any modifications of that Convention agreed after the passing of this Act that have entered into force in relation to the United Kingdom.
- (13) In this section –
- “arrangements” includes any agreement, understanding, scheme, transaction or series of transactions (whether or not legally enforceable);
  - “British ship” means a ship falling within paragraph (a), (c), (d) or (e) of section 7(12);
  - “foreign ship” means a ship which –
    - (a) is registered in a State other than the United Kingdom, or
    - (b) is not so registered but is entitled to fly the flag of a State other than the United Kingdom;
  - “foreign waters” means the sea and other waters within the seaward limits of the territorial sea adjacent to any relevant British possession or State other than the United Kingdom;
  - “goods” includes technology within the meaning of Schedule 1 (see paragraph 37 of that Schedule);
  - “home state”, in relation to a foreign ship, means –
    - (a) the State in which the ship is registered, or
    - (b) the State whose flag the ship is otherwise entitled to fly;
  - “international waters” means waters beyond the territorial sea of the United Kingdom or of any other State or relevant British possession;
  - “prohibited goods” means goods which have been, or are being, dealt with in contravention of a relevant prohibition or requirement (see subsection (3));
  - “regulations” means regulations under section 1;
  - “relevant British possession” has the same meaning as in section 7 (see subsection (14) of that section);
  - “ship” has the same meaning as in section 7 (see subsection (14) of that section);
  - “ship without nationality” means a ship which –
    - (a) is not registered in, or otherwise entitled to fly the flag of, any State or relevant British possession, or
    - (b) sails under the flags of two or more States or relevant British possessions, or under the flags of a State and relevant British possession, using them according to convenience.
- (14) In the definition of “prohibited goods” in subsection (13), the reference to goods dealt with in contravention of a relevant prohibition or requirement includes a reference to a case where –

- (a) arrangements relating to goods have been entered into that have not been fully implemented, and
- (b) if those arrangements were to be fully implemented, the goods would be dealt with in contravention of that prohibition or requirement.

## 20 Goods etc on ships: non-UK conduct

- (1) Regulations may make provision conferring on prescribed persons powers exercisable –
  - (a) in relation to –
    - (i) British ships in foreign waters or international waters,
    - (ii) ships without nationality in international waters, and
    - (iii) foreign ships in international waters,
  - (b) for the purpose of –
    - (i) investigating the suspected carriage of relevant goods on such ships, or
    - (ii) preventing the continued carriage on such ships of goods suspected to be relevant goods.
- (2) The powers that may be conferred by virtue of this section include powers to –
  - (a) stop a ship;
  - (b) board a ship;
  - (c) require any person found on a ship boarded by virtue of this section to provide information or produce documents;
  - (d) inspect and copy such documents or information;
  - (e) stop any person found on such a ship and search that person for –
    - (i) relevant goods, or
    - (ii) any thing that might be used to cause physical injury or damage to property or to endanger the safety of any ship;
  - (f) search a ship boarded by virtue of this section, or any thing found on such a ship (including cargo), for relevant goods;
  - (g) seize goods found on a ship, in any thing found on a ship, or on any person found on a ship (but see subsection (6));
  - (h) for the purpose of exercising a power mentioned in paragraph (e), (f) or (g), require a ship to be taken to, and remain in, a port or anchorage in the United Kingdom or any other country willing to receive it.
- (3) Regulations that confer a power mentioned in subsection (2)(a) to (f) or (h) must provide that a person may not exercise the power in relation to a ship unless the person has reasonable grounds to suspect that the ship is carrying relevant goods.
- (4) Regulations that confer a power mentioned in subsection (2)(e)(i) or (f) must provide that the power may be exercised only to the extent reasonably required for the purpose of discovering relevant goods.
- (5) Regulations that confer a power mentioned in subsection (2)(e)(ii) on a person (“the officer”) may permit the search of a person only where the officer has reasonable grounds to believe that that person might use a thing in a way mentioned in subsection (2)(e)(ii).
- (6) Regulations that confer a power mentioned in subsection (2)(g) on a person –

- (a) must provide for the power to be exercisable on a ship only where that person is lawfully on the ship (whether in exercise of powers conferred by virtue of this section or otherwise), and
  - (b) may permit the seizure only of –
    - (i) goods which that person has reasonable grounds to suspect are relevant goods, or
    - (ii) things within subsection (2)(e)(ii).
- (7) Regulations that confer a power on a person by virtue of this section may authorise that person to use reasonable force, if necessary, in the exercise of the power.
- (8) Regulations that confer a power by virtue of this section must provide that –
- (a) the power may be exercised in relation to a British ship in foreign waters only with the authority of the Secretary of State, and
  - (b) in relation to foreign waters other than the sea and other waters within the seaward limits of the territorial sea adjacent to any relevant British possession, the Secretary of State may give authority only if the State in whose waters the power would be exercised consents to the exercise of the power.
- (9) Regulations that confer a power by virtue of this section must provide that –
- (a) the power may be exercised in relation to a foreign ship only with the authority of the Secretary of State, and
  - (b) the Secretary of State may give authority only if –
    - (i) the home state has requested the assistance of the United Kingdom for a purpose mentioned in subsection (1)(b),
    - (ii) the home state has authorised the United Kingdom to act for such a purpose, or
    - (iii) the United Nations Convention on the Law of the Sea 1982 (Cmnd 8941) or a UN Security Council Resolution otherwise permits the exercise of the powers in relation to the ship.
- (10) The reference in subsection (9) to the United Nations Convention on the Law of the Sea includes a reference to any modifications of that Convention agreed after the passing of this Act that have entered into force in relation to the United Kingdom.
- (11) In this section –
- “regulations” means regulations under section 1;
  - “relevant goods” means goods in relation to which relevant non-UK conduct is occurring or has occurred;
  - “relevant non-UK conduct” means conduct outside the United Kingdom by a person other than a United Kingdom person that would constitute a contravention of a relevant prohibition or requirement if the conduct had been –
    - (a) in the United Kingdom, or
    - (b) by a United Kingdom person;
  - “relevant prohibition or requirement” has the same meaning as in section 19 (see subsection (3) of that section);
  - “United Kingdom person” has the same meaning as in section 21 (see subsection (2) of that section).

- (12) In the definition of “relevant non-UK conduct” in subsection (11), the reference to conduct that would constitute a contravention of a relevant prohibition or requirement if the conduct had been in the United Kingdom or by a United Kingdom person includes a reference to a case where –
- (a) arrangements relating to goods have been entered into that have not been fully implemented, and
  - (b) if those arrangements were to be fully implemented (and if the conduct had been in the United Kingdom or by a United Kingdom person) the goods would be dealt with in contravention of that prohibition or requirement.
- (13) In this section, the following expressions have the same meaning as in section 19 –
- “arrangements”,
  - “British ship”,
  - “foreign ship”,
  - “foreign waters”,
  - “goods”,
  - “home state”,
  - “international waters”,
  - “relevant British possession”,
  - “ship”, and
  - “ship without nationality”.

## 21 Extra-territorial application

- (1) Prohibitions or requirements may be imposed by or under regulations under section 1 in relation to –
- (a) conduct in the United Kingdom or in the territorial sea by any person;
  - (b) conduct elsewhere, but only if the conduct is by a United Kingdom person.
- (2) In subsection (1) “United Kingdom person” means –
- (a) a United Kingdom national, or
  - (b) a body incorporated or constituted under the law of any part of the United Kingdom.
- (3) For this purpose a United Kingdom national is an individual who is –
- (a) a British citizen, a British overseas territories citizen, a British National (Overseas) or a British Overseas citizen,
  - (b) a person who under the British Nationality Act 1981 is a British subject, or
  - (c) a British protected person within the meaning of that Act.
- (4) Her Majesty may by Order in Council provide for this section to have effect as if the list of persons in subsection (2) included a body incorporated or constituted under the law of any of the following named in the Order –
- (a) any of the Channel Islands;
  - (b) the Isle of Man;
  - (c) any of the British overseas territories.
- (5) In this section “conduct” includes acts and omissions.

- (6) Nothing in this section limits the provision that may be made in regulations under section 1 by virtue of section 19 or 20.

## CHAPTER 2

### REVIEW BY APPROPRIATE MINISTER, AND OTHER REVIEWS

#### *Revocation, variation and review of designations*

### **22 Power to vary or revoke designation made under regulations**

- (1) In this section and section 23 –  
     “a relevant designation” means a designation made under a designation power contained in regulations under section 1;  
     “the Minister”, in relation to a relevant designation, means the appropriate Minister who made that designation.
- (2) A relevant designation may at any time be varied or revoked by the Minister.
- (3) If at any time the Minister considers that the required conditions are not met in respect of a relevant designation, the Minister must revoke the designation.
- (4) In subsection (3) “the required conditions” means –
- (a) if the designation is of a named person, the conditions of the provision included in the regulations under section 11(2) (reading that provision, so far as made under section 11(2)(b), as if references to the designation were references to leaving the designation in place),
  - (b) if the designation is of persons of a specified description, the conditions of the provision included in the regulations under section 12(2) (reading that provision, so far as made under section 12(5)(b), as if references to the designation were references to leaving the designation in place).

### **23 Right to request variation or revocation of designation**

- (1) At any time while a relevant designation has effect, the designated person may –
- (a) request the Minister to vary the designation, or
  - (b) request the Minister to revoke the designation.
- (2) But where a request under this section has been made in respect of a designation, no further request may be made under this section in respect of that designation unless the grounds on which the further request is made are or include that there is a significant matter which has not previously been considered by the Minister.
- (3) On a request under this section the Minister must decide whether to vary or revoke the designation or to take no action with respect to it (but see section 22(3)).
- (4) In this section –  
     “the designated person” means the person named by the designation or, where the designation is of persons of a specified description, any person of that description;

“the Minister” has the meaning given by section 22(1);  
“relevant designation” has the meaning given by section 22(1).

## **24 Periodic review of certain designations**

- (1) This section applies where –
  - (a) regulations under section 1 which contain a designation power are in force, and
  - (b) any qualifying designations have been made by an appropriate Minister under the power.
- (2) That appropriate Minister must in each review period –
  - (a) consider each qualifying designation which has effect, and
  - (b) decide in the case of each such designation whether to vary or revoke the designation or to take no action with respect to it (but see section 22(3)).
- (3) In this section a “qualifying designation” means a designation which designates a named person, or persons of a specified description, for the purposes of any provision of the regulations that –
  - (a) imposes a prohibition or requirement for a purpose mentioned in section 3(1)(a), (b)(i) or (d)(i) (asset-freezing etc), or
  - (b) provides for designated persons to be excluded persons for the purposes of section 8B of the Immigration Act 1971.
- (4) For the purposes of this section each of the following is a “review period” –
  - (a) the period of 3 years beginning with the date when the regulations are made, and
  - (b) each period of 3 years that begins with the date of completion of a review under this section of qualifying designations under the regulations.

## **25 Right of UN-named person to request review**

- (1) This section applies where –
  - (a) the purpose, or a purpose, of a provision of regulations under section 1 is compliance with an obligation to take particular measures that the United Kingdom has by virtue of a UN Security Council Resolution (“the Resolution”),
  - (b) a person is a designated person for the purposes of that provision, and
  - (c) the person is such a designated person under provision included in the regulations by virtue of section 13 (persons named by or under UN Security Council Resolutions).
- (2) The person may request the Secretary of State to use the Secretary of State’s best endeavours to secure that the person’s name is removed from the relevant UN list.
- (3) But where a person has made a request under this section in respect of a designation, that person may make no further request under this section in respect of that designation unless the grounds on which the further request is made are or include that there is a significant matter which has not previously been considered by the Secretary of State.

- (4) On a request under this section the Secretary of State must decide whether or not to comply with the request.
- (5) For the purposes of this section a person's name is "removed from the relevant UN list" if the person ceases to be named (by the Security Council or a subsidiary organ of the Security Council) for the purposes of the Resolution so far as it provides for the taking of the measures in question.

*Revocation and review in relation to ships*

**26 Power to revoke specification of ship made under regulations**

- (1) In this section and section 27 –
  - "a ship specification" means a specification of a ship made under a power contained in regulations under section 1 by virtue of section 14;
  - "the Minister", in relation to a ship specification, means the appropriate Minister who made that specification.
- (2) A ship specification may at any time be revoked by the Minister.
- (3) If at any time the Minister considers that the required conditions are not met in respect of a ship specification, the Minister must revoke the specification.
- (4) In subsection (3) "the required conditions" means the conditions of the provision included in the regulations under section 14(6).

**27 Right to request revocation of specification of ship**

- (1) At any time while a ship specification has effect, any person affected by it may request the Minister to revoke the specification.
- (2) But where a person has made a request under this section in respect of a specification, no further request may be made under this section by that person or any other person in respect of that specification unless the grounds on which the further request is made are or include that there is a significant matter which has not previously been considered by the Minister.
- (3) On a request under this section the Minister must decide whether to revoke the specification or to take no action with respect to it (but see section 26(3)).
- (4) In this section –
  - "the Minister", and
  - "ship specification",
 have the meaning given by section 26(1).

**28 Periodic review where ships are specified**

- (1) This section applies where –
  - (a) regulations under section 1 are in force which by virtue of section 14 contain a power to specify a ship, and
  - (b) any specifications have been made by an appropriate Minister under that power.
- (2) That appropriate Minister must in each review period –

- (a) consider each specification of a ship which has effect under the regulations, and
  - (b) decide in the case of each such specification whether to revoke it or to take no action with respect to it (but see section 26(3)).
- (3) For the purposes of this section each of the following is a “review period” –
- (a) the period of 3 years beginning with the date when the regulations are made, and
  - (b) each period of 3 years that begins with the date of completion of a review under this section of specifications made under the regulations.

## **29 UN-designated ship: right to request review**

- (1) This section applies where a provision of regulations under section 1 is made by virtue of section 7(6) or paragraph 15 of Schedule 1 in relation to ships designated by the Security Council or a subsidiary organ of the Security Council for any purposes of a UN Security Council Resolution (“the Resolution”).
- (2) Any person affected by that provision may request the Secretary of State to use the Secretary of State’s best endeavours to secure that a ship so designated ceases to be designated for any purposes of the Resolution.
- (3) But where a person has made a request under this section in respect of the designation of a ship, no further request may be made under this section by that person or any other person in respect of that designation unless the grounds on which the further request is made are or include that there is a significant matter which has not previously been considered by the Secretary of State.
- (4) On a request under this section the Secretary of State must decide whether or not to comply with the request.

### *Review of regulations*

## **30 Review by appropriate Minister of regulations under section 1**

- (1) Subsection (2) applies where any regulations under section 1 are in force.
- (2) The appropriate Minister who made the regulations must in each relevant period review whether the regulations are still appropriate for the purpose stated in them under section 1(3).
- (3) If a purpose so stated in any regulations under section 1 is a purpose other than compliance with a UN obligation or other international obligation, any review of those regulations under this section must also include a consideration of –
  - (a) whether carrying out that purpose would meet any one or more of the conditions in paragraphs (a) to (i) of section 1(2),
  - (b) whether there are good reasons to pursue that purpose, and
  - (c) whether the imposition of sanctions is a reasonable course of action for that purpose.
- (4) In subsection (3)(c) “sanctions” means prohibitions and requirements of the kinds which are imposed by the regulations for the purpose in question (or both for that purpose and for another purpose of the regulations).

- (5) An appropriate Minister who has carried out a review under this section must lay before Parliament a report containing –
  - (a) the conclusions of the review,
  - (b) the reasons for those conclusions, and
  - (c) a statement of any action that that Minister has taken or proposes to take in consequence of the review.
- (6) Nothing in subsection (5) requires the report to contain anything the disclosure of which may, in the opinion of that Minister, damage national security or international relations.
- (7) For the purposes of this section each of the following is a “relevant period” in relation to regulations under section 1 –
  - (a) the period of one year beginning with the date when the regulations are made;
  - (b) each period of one year that begins with the date when a report under this section containing the conclusions of a review of the regulations is laid before Parliament.

### **31 Independent review of regulations with counter-terrorism purpose**

- (1) The Secretary of State must appoint a person to review the operation of such asset-freeze provisions of relevant regulations made by the Secretary of State as the Secretary of State may from time to time refer to that person.
- (2) The Treasury must appoint a person to review the operation of such asset-freeze provisions of relevant regulations made by the Treasury as the Treasury may from time to time refer to that person.
- (3) The persons appointed under subsections (1) and (2) may be the same person.
- (4) In each calendar year, by 31 January –
  - (a) the person appointed under subsection (1) must notify the Secretary of State of what (if any) reviews under that subsection that person intends to carry out in that year, and
  - (b) the person appointed under subsection (2) must notify the Treasury of what (if any) reviews under that subsection that person intends to carry out in that year.
- (5) Reviews of which notice is given under subsection (4) in a particular year –
  - (a) may not relate to any provisions that have not been referred before the giving of the notice, and
  - (b) must be completed during that year or as soon as reasonably practicable after the end of it.
- (6) The person who conducts a review under this section must as soon as reasonably practicable after completing the review send a report on its outcome to –
  - (a) the Secretary of State, if the review is under subsection (1), or
  - (b) the Treasury, if the review is under subsection (2).
- (7) On receiving a report under this section the Secretary of State or (as the case may be) the Treasury must lay a copy of it before Parliament.

- (8) The Secretary of State may pay the expenses of a person who conducts a review under subsection (1) and also such allowances as the Secretary of State may determine.
- (9) The Treasury may pay the expenses of a person who conducts a review under subsection (2) and also such allowances as the Treasury may determine.
- (10) For the purposes of this section, regulations are “relevant regulations” if—
  - (a) they are regulations under section 1, and
  - (b) they state under section 1(3) at least one purpose which—
    - (i) is not compliance with a UN obligation or other international obligation, and
    - (ii) relates to counter-terrorism.
- (11) A purpose “relates to counter-terrorism” if the report under section 2 in respect of the regulations indicated that, in the opinion of the appropriate Minister making them, the carrying out of that purpose would further the prevention of terrorism in the United Kingdom or elsewhere.
- (12) For the purposes of this section a provision of relevant regulations is an “asset-freeze provision” if and to the extent that it—
  - (a) imposes a prohibition or requirement for a purpose mentioned in section 3(1)(a), (b) or (d), or
  - (b) makes provision in connection with such a prohibition or requirement.
- (13) If a provision is referred under this section which contains a designation power, any review under this section of the operation of that provision may not include a review of any decisions to designate under that power.

### **32 Periodic reports on exercise of power to make regulations under section 1**

- (1) The Secretary of State must as soon as reasonably practicable after the end of each reporting period lay before Parliament a report which—
  - (a) specifies the regulations under section 1, if any, that were made in that reporting period,
  - (b) identifies which, if any, of those regulations—
    - (i) stated a relevant human rights purpose, or
    - (ii) amended or revoked regulations stating such a purpose,
  - (c) specifies any recommendations which in that reporting period were made by a Parliamentary Committee in connection with a relevant independent review, and
  - (d) includes a copy of any response to those recommendations which was made by the government to that Committee in that reporting period.
- (2) Nothing in subsection (1)(d) requires a report under this section to contain anything the disclosure of which may, in the opinion of the Secretary of State, damage national security or international relations.
- (3) For the purposes of this section the following are reporting periods—
  - (a) the period of 12 months beginning with the day on which this Act is passed (“the first reporting period”), and
  - (b) each period of 12 months that ends with an anniversary of the date when the first reporting period ends.
- (4) For the purposes of this section—

- (a) regulations “state” a purpose if the purpose is stated under section 1(3) in the regulations;
  - (b) a purpose is a “relevant human rights purpose” if, in the opinion of the Secretary of State, carrying out that purpose would provide accountability for or be a deterrent to gross violations of human rights.
- (5) In this section –
- “the government” means the government of the United Kingdom;
  - “gross violation of human rights” has the meaning given by section 1(7);
  - a “Parliamentary Committee” means a committee of the House of Commons or a committee of the House of Lords or a joint committee of both Houses;
  - a “relevant independent review”, in relation to a Parliamentary Committee, means a consideration by that Committee of whether the power to make regulations under section 1 should be exercised in connection with a gross violation of human rights.

*Procedure for requests to, and reviews by, appropriate Minister*

### **33 Procedure for requests to, and reviews by, appropriate Minister**

- (1) An appropriate Minister may by regulations make provision about the procedure to be followed in connection with a request under section 23, 25, 27 or 29 or a review under section 24, 28 or 30.
- (2) Regulations made under this section in relation to a request under section 23, 25, 27 or 29 must require –
  - (a) the decision on any such request to be made as soon as reasonably practicable after the receipt by the appropriate Minister dealing with the request of the information needed for making the decision, and
  - (b) the person who made the request to be informed of the decision and the reasons for it as soon as reasonably practicable after the decision is made.
- (3) The regulations may authorise matters to be excluded from the reasons given for the decision where the appropriate Minister who made the decision considers that those matters should be excluded –
  - (a) in the interests of national security or international relations,
  - (b) for reasons connected with the prevention or detection of serious crime in the United Kingdom or elsewhere, or
  - (c) in the interests of justice,
 (but the regulations may not authorise that Minister to provide no reasons).

## **CHAPTER 3**

### TEMPORARY POWERS IN RELATION TO EU SANCTIONS LISTS

### **34 Temporary powers in relation to EU sanctions lists**

- (1) This section applies where –
  - (a) a provision of retained EU sanctions law relates to persons named in any Annex, instrument or other document, or

- (b) a provision of an instrument made by the Council of the European Union (however expressed) requires or recommends that persons named, or of a description specified, in that instrument or any other document must not or should not be admitted to the United Kingdom (see section 8B of the Immigration Act 1971).
- (2) An Annex, instrument or other document mentioned in subsection (1)(a) or (b) is an “EU sanctions list” for the purposes of this section.
- (3) An appropriate Minister may, in respect of any EU sanctions list –
  - (a) direct that a person’s name is to be treated as added to the list with effect from a date specified in the direction, or
  - (b) direct that a person’s name is to be treated as removed from the list with effect from a date specified in the direction.
- (4) The giving of a direction under paragraph (a) or (b) of subsection (3) does not prevent the giving of any subsequent direction under either of those paragraphs in respect of the same person.
- (5) The power to give a direction under this section is not exercisable after two years beginning with the day on which this section comes into force.
- (6) In this section “a provision of retained EU sanctions law” means a provision of retained EU law which corresponds to any provision that by virtue of any of sections 3 and 5 to 7 could be made by regulations under section 1 in relation to designated persons.
- (7) Section 35 makes further provision about directions under this section.

### **35 Directions under section 34: further provision**

- (1) An appropriate Minister may not under section 34 direct that a person’s name is to be treated as added to an EU sanctions list except where that Minister –
  - (a) has reasonable grounds to suspect that the person is an involved person (see subsections (2) and (3) below), and
  - (b) considers that it is appropriate to give the direction, having regard to –
    - (i) the purpose of the EU provision which relates to persons in that list (see subsections (4) and (5) below), and
    - (ii) the likely significant effects of the direction on the person to whom it relates (as they appear to that Minister to be on the basis of the information that the Minister has).
- (2) In subsection (1)(a) “an involved person” means a person who –
  - (a) is or has been involved in an activity which is specified, by regulations made by an appropriate Minister, in relation to the list in question,
  - (b) is owned or controlled directly or indirectly by a person who is or has been so involved,
  - (c) is acting on behalf of or at the direction of a person who is or has been so involved, or
  - (d) is a member of, or associated with, a person who is or has been so involved.
- (3) An activity may not be specified by regulations under subsection (2)(a) unless the appropriate Minister making the regulations considers that specifying the activity is appropriate having regard to the purpose of the EU provision which relates to persons in the list in question.

- (4) In subsections (1) and (3) any reference to the “purpose” of any EU provision is to such purpose, or purposes, as may be prescribed in relation to that provision by regulations made by an appropriate Minister.
- (5) Any purpose prescribed under subsection (4) must be a purpose that it is reasonable to assume was the purpose (or one of the purposes) of the provision in question.
- (6) Regulations under subsection (2)(a) which specify an activity may also make provision as to the meaning, for the purposes of subsection (2) as it applies in relation to the list in question, of a person’s –
  - (a) being involved in the specified activity;
  - (b) being “owned or controlled directly or indirectly by” another person;
  - (c) being “associated with” another person.
- (7) Regulations made by an appropriate Minister may make provision as to the steps to be taken as regards notification and publicity where a direction is given under section 34.
- (8) Regulations made under subsection (7) must, in relation to any case where a direction under section 34 has been given, require the appropriate Minister who gave the direction (“the Minister”) to take without delay such steps as are reasonably practicable –
  - (a) to inform the person to whom it relates that the direction has been given, and
  - (b) where the direction is under section 34(3)(a), to include with that information a brief statement of the matters that the Minister knows, or has reasonable grounds to suspect, in relation to that person which have led the Minister to give the direction.
- (9) The regulations may authorise the statement required by virtue of subsection (8)(b) to exclude matters where the Minister considers that they should be excluded –
  - (a) in the interests of national security or international relations,
  - (b) for reasons connected with the prevention or detection of serious crime in the United Kingdom or elsewhere, or
  - (c) in the interests of justice,(but the regulations may not authorise the Minister to provide no such statement).
- (10) The regulations need not require a person to be notified of an intention to make a direction under section 34.
- (11) In this section –
  - “EU sanctions list” has the same meaning as in section 34;
  - “EU provision” means –
    - (a) a provision of retained EU sanctions law (within the meaning of section 34), or
    - (b) a provision of an instrument made by the Council of the European Union.

### **36 Rights of person on EU sanctions list**

- (1) A person whose name is included, or treated as included, in an EU sanctions list may make a request for a direction under section 34(3)(b) that the person's name be treated as removed from the list.  
This is subject to section 37 (UN-named persons).
- (2) Any request under this section must be made –
  - (a) if the person is treated as included in the list by virtue of a direction under section 34(3)(a), to the appropriate Minister who gave that direction;
  - (b) in any other case, to an appropriate Minister.
- (3) Where a request under this section has been made for a direction in respect of a person and a list, no further request may be made under this section in respect of that person and that list unless the grounds on which the further request is made are or include that there is a significant matter which has not previously been considered.
- (4) On a request under this section the appropriate Minister to whom the request is made must decide whether or not to comply with the request.
- (5) An appropriate Minister may by regulations make provision about the procedure to be followed in connection with a request under this section or section 37.
- (6) Regulations made under subsection (5) in relation to a request under this section or section 37 must require –
  - (a) the decision on any such request to be made as soon as reasonably practicable after the receipt by the appropriate Minister dealing with the request of the information needed for making the decision, and
  - (b) the person who made the request to be informed of the decision and the reasons for it as soon as reasonably practicable after the decision is made.
- (7) The regulations may authorise matters to be excluded from the reasons given for the decision where the appropriate Minister who made the decision considers that those matters should be excluded –
  - (a) in the interests of national security or international relations,
  - (b) for reasons connected with the prevention or detection of serious crime in the United Kingdom or elsewhere, or
  - (c) in the interests of justice,(but the regulations may not authorise that Minister to provide no reasons).
- (8) In this section “EU sanctions list” has the same meaning as in section 34.

### **37 Rights of UN-named person on EU sanctions list**

- (1) This section applies where –
  - (a) a person whose name is included or treated as included in an EU sanctions list is a person in relation to whom, by virtue of a UN Security Council Resolution (“the Resolution”), the United Kingdom has an obligation to take particular measures, and
  - (b) that obligation is met by –
    - (i) provision mentioned in section 34(1)(a) which relates to that EU sanctions list, or

- (ii) the application to the person, by virtue of that EU sanctions list, of any provision of section 8B of the Immigration Act 1971.
- (2) The person –
  - (a) may not make a request under section 36 in respect of the EU sanctions list concerned, but
  - (b) may at any relevant time make a request under this section for the Secretary of State to use the Secretary of State’s best endeavours to secure that the person’s name is removed from the relevant UN list.
- (3) Where a person has made a request under this section by virtue of being on an EU sanctions list, the person may make no further request under this section by virtue of being on that list unless the grounds on which the further request is made are or include that there is a significant matter which has not previously been considered by the Secretary of State.
- (4) On a request under this section the Secretary of State must decide whether or not to comply with the request.
- (5) For the purposes of this section a person’s name is “removed from the relevant UN list” if the person ceases to be named (by the Security Council or a subsidiary organ of the Security Council) for the purposes of the Resolution so far as it provides for the taking of the measures in question.
- (6) In subsection (2) a “relevant time” means a time when no provision of regulations under section 1 has been made the purpose (or a purpose) of which is compliance with the United Kingdom’s obligation to take the measures in question.
- (7) For the purposes of subsection (3) a person is “on” an EU sanctions list if the person’s name is included or treated as included in that list.
- (8) In this section “EU sanctions list” has the same meaning as in section 34.

## CHAPTER 4

### COURT REVIEWS

#### **38 Court review of decisions**

- (1) This section applies to –
  - (a) any decision under section 23(3) or 24(2) (decision, following a request to or review by an appropriate Minister, on whether a designation of a person made under a designation power should be varied or revoked);
  - (b) any decision under section 27(3) or 28(2) (decision, following a request to or review by an appropriate Minister, on whether a ship specification should be revoked);
  - (c) any decision under section 25(4), 29(4), 36(4) or 37(4) not to comply with a request;
  - (d) any other decision of an appropriate Minister in connection with functions of that Minister under this Part or regulations under this Part, other than –
    - (i) a decision to make or vary, or not to revoke or vary, a designation under a designation power where the designated person has a right to make a request under section 23 or would have but for section 23(2),

- (ii) a decision to make a ship specification, or not to revoke a ship specification, where a person has a right to make a request in respect of that specification under section 27 or would have but for section 27(2), or
  - (iii) a decision to give a direction under section 34(3)(a) where the person has a right to make a request under section 36 or would have but for section 36(3) or 37.
- (2) The appropriate person may apply to the High Court or, in Scotland, the Court of Session, for the decision to be set aside.
- (3) “The appropriate person” means –
  - (a) in relation to a decision within subsection (1)(a), the person named by the designation or, where the designation is of persons of a specified description, any person of that description;
  - (b) in relation to a decision within subsection (1)(b) or (d), any person affected by the decision;
  - (c) in relation to a decision within subsection (1)(c), the person who made the request.
- (4) In determining whether the decision should be set aside, the court must apply the principles applicable on an application for judicial review.
- (5) If the court decides that a decision should be set aside it may make any such order, or give any such relief, as could in the absence of this section be made or given in proceedings for judicial review of the decision; but this is subject to section 39(1) to (4).
- (6) In this section and section 39 “a ship specification” means a specification of a ship made under a power contained in regulations under section 1 by virtue of section 14.

### **39 Court reviews: further provision**

- (1) Subsection (2) applies to the court in any of the following proceedings –
  - (a) any proceedings on an application under section 38 in respect of a decision mentioned in section 38(1)(a), (b) or (c) (“a relevant application”);
  - (b) any proceedings on a claim arising from any matter to which a relevant application relates;
  - (c) if –
    - (i) a designation made under a designation power contained in regulations under section 1 is revoked without an application under section 38 being made,
    - (ii) a ship specification (within the meaning of section 38) is revoked without such an application being made, or
    - (iii) a corrective direction is given under section 34(3)(b) without such an application being made,any proceedings on a relevant claim.
- (2) If the court would, in the absence of this subsection, have power to award damages, the court may not award damages unless –
  - (a) the reason (or one of the reasons) that the court would have that power is that it is satisfied that the tort of negligence was committed, or, in Scotland, that there has been negligence, or

- (b) the court is satisfied that the decision concerned was made in bad faith.
- (3) In subsection (1)(c) –
- a “corrective direction” means a direction given in respect of a person and a list following the giving of a direction under section 34(3)(a) in respect of that person and list;
  - a “relevant claim” means a claim made by (as the case may be) –
    - (a) a person designated by the designation,
    - (b) a person affected by the ship specification, or
    - (c) the person in respect of whom the direction under section 34(3)(a) was given,
 which arises from any matter relating to the designation, ship specification or direction.
- (4) In subsection (2) “the decision concerned” means –
- (a) in relation to proceedings within subsection (1)(a) or (b) where the relevant application was in respect of a decision mentioned in section 38(1)(a), the decision in respect of which the relevant application was made or the designation to which that decision related;
  - (b) in relation to any other proceedings within subsection (1)(a) or (b), the decision in respect of which the relevant application was made;
  - (c) in relation to proceedings within subsection (1)(c), the designation or ship specification or the decision to give the direction under section 34(3)(a).
- (5) A decision mentioned in sub-paragraph (i), (ii) or (iii) of section 38(1)(d) may not be questioned by way of proceedings for judicial review (and nor may a decision to which section 38 applies).

#### **40 Rules of court**

- (1) Sections 66 to 68 of the Counter-Terrorism Act 2008 (supplementary provisions relating to rules of court and special advocates) apply in relation to proceedings –
- (a) on an application under section 38 (court review of decisions), or
  - (b) on a claim arising from any matter to which such an application relates,
- as they apply in relation to financial restrictions proceedings within the meaning of section 65 of that Act, but with the following modification.
- (2) That modification is that any reference in those sections to the Treasury is to be read, in relation to proceedings on an application under section 38 of this Act in respect of a decision of the Secretary of State or a claim arising from any matter to which such an application relates, as a reference to the Secretary of State.
- (3) The first time after the passing of this Act that rules of court are made in exercise of the powers conferred by subsection (1) in relation to proceedings in England and Wales –
- (a) on an application under section 38, or
  - (b) on a claim arising from any matter to which such an application relates,
- those rules (together with any related rules of court) may be made by the Lord Chancellor instead of by the person who would otherwise make them.

- (4) The first time after the passing of this Act that rules of court are made in exercise of the powers conferred by subsection (1) in relation to proceedings in Northern Ireland –
  - (a) on an application under section 38, or
  - (b) on a claim arising from any matter to which such an application relates, those rules (together with any related rules of court) may be made by the Lord Chancellor instead of by the person who would otherwise make them.
- (5) Before making rules of court under this section, the Lord Chancellor must consult –
  - (a) in relation to rules applicable to proceedings in England and Wales, the Lord Chief Justice of England and Wales;
  - (b) in relation to rules applicable to proceedings in Northern Ireland, the Lord Chief Justice of Northern Ireland.
- (6) The Lord Chancellor is not required to undertake any other consultation before making the rules.
- (7) The requirements of subsection (5)(a) and (b) may be satisfied by consultation that took place wholly or partly before the passing of this Act.
- (8) Rules of court made by the Lord Chancellor under this section –
  - (a) must be laid before Parliament, and
  - (b) if not approved by a resolution of each House before the end of 28 days beginning with the day on which they were made, cease to have effect at the end of that period.
- (9) In calculating a period of 28 days for the purposes of subsection (8), no account is to be taken of any time during which Parliament is dissolved or prorogued or during which both Houses are adjourned for more than 4 days.
- (10) If rules cease to have effect in accordance with subsection (8)(b) –
  - (a) that does not affect anything done under the rules, and
  - (b) subsection (3) or (as the case may be) (4) applies as if the rules had not been made.
- (11) The following provisions do not apply to rules of court made by the Lord Chancellor under this section –
  - (a) section 3(6) of the Civil Procedure Act 1997 (Parliamentary procedure for civil procedure rules);
  - (b) section 56(1), (2) and (4) of the Judicature (Northern Ireland) Act 1978 (statutory rules procedure).
- (12) Section 4(1) of the Statutory Instruments Act 1946 (statutory instruments which are required to be laid before Parliament) applies to any such rules applicable to proceedings in Northern Ireland as it applies to a statutory instrument which is required to be laid before Parliament after being made.
- (13) Until section 85 of the Courts Act 2003 (process for making civil procedure rules) comes into force, in subsection (11)(a) above “section 3(6)” is to be read as “section 3(2)”.
- (14) In this section –

“related rules of court” means rules of court that –

  - (a) are contained in the same instrument as the rules mentioned in subsection (3) or (as the case may be) (4), and

- (b) relate specifically to the same kind of proceedings as those rules,  
 “rules of court” means rules for regulating the practice and procedure to be followed in the High Court or the Court of Appeal.

## CHAPTER 5

### MISCELLANEOUS

#### **41 Procedure for dealing with goods etc seized from ships**

- (1) The Secretary of State may by regulations make provision about the procedure to be followed in connection with goods seized under a power conferred by regulations under section 1 by virtue of section 19 or 20.
- (2) Regulations under this section relating to goods seized on suspicion of being prohibited goods or relevant goods may include provision –
  - (a) requiring prescribed persons to be notified of the seizure of the goods;
  - (b) requiring the Secretary of State to determine whether the seized goods were, at the time of their seizure, prohibited goods (where the goods were seized under a power conferred by virtue of section 19) or relevant goods (where the goods were seized under a power conferred by virtue of section 20);
  - (c) enabling the making of a claim by prescribed persons in relation to the seized goods;
  - (d) about the determination by a prescribed court of any such claim;
  - (e) about the publicity to be given to any such determination by a court;
  - (f) for and about the return of seized goods to prescribed persons before or after any such determination of a claim by a court;
  - (g) about the treatment of seized goods not so returned (including, in prescribed circumstances, their destruction or sale);
  - (h) for and about the payment of compensation by the Secretary of State following a determination by a court that the goods were not, at the time of their seizure, prohibited goods (where the goods were seized under a power conferred by virtue of section 19) or relevant goods (where the goods were seized under a power conferred by virtue of section 20).
- (3) In this section –
  - “goods” has the same meaning as in sections 19 and 20 (see subsections (13) of those sections);
  - “prohibited goods” has the same meaning as in section 19 (see subsection (13) of that section);
  - “relevant goods” has the same meaning as in section 20 (see subsection (11) of that section).

#### **42 Suspension of prohibitions and requirements**

- (1) An appropriate Minister may make regulations (“suspending regulations”) providing that –
  - (a) while the suspending regulations have effect, or
  - (b) for a specified period,

a specified prohibition or requirement of regulations under section 1 is not to have effect.

- (2) In this section “specified” means specified in the suspending regulations.
- (3) A period specified under subsection (1)(b) may be expressed in any way, including, for example, being expressed in a way such that –
  - (a) the period begins, or ends, when a specified condition is met, or
  - (b) the period begins when a specified condition is met and lasts for so long as the suspending regulations or a specified provision of those regulations has effect.

#### **43 Guidance about regulations under section 1**

- (1) Where regulations are made under section 1, the appropriate Minister who made the regulations must issue guidance about any prohibitions and requirements imposed by the regulations.
- (2) The guidance may include guidance about –
  - (a) best practice for complying with the prohibitions and requirements;
  - (b) the enforcement of the prohibitions and requirements;
  - (c) circumstances where the prohibitions and requirements do not apply.

#### **44 Protection for acts done for purposes of compliance**

- (1) This section applies to an act done in the reasonable belief that the act is in compliance with –
  - (a) regulations under section 1, or
  - (b) directions given by virtue of section 6 or 7.
- (2) A person is not liable to any civil proceedings to which that person would, in the absence of this section, have been liable in respect of the act.
- (3) In this section “act” includes an omission.

#### **45 Revocation and amendment of regulations under section 1**

- (1) Section 1 includes a power, by further regulations under that section (“new regulations”) –
  - (a) to revoke any regulations under that section, or
  - (b) to amend any regulations under that section where the condition in subsection (2) below is met.
- (2) The condition referred to in subsection (1)(b) is that the appropriate Minister making the new regulations –
  - (a) considers that the regulations being amended will, as amended, be sanctions regulations within the meaning given by section 1(5) that are appropriate for the purpose stated in them under section 1(3), and
  - (b) if any purpose stated in the regulations being amended is a purpose other than compliance with a UN obligation or other international obligation, considers in respect of each such purpose –
    - (i) that carrying out that purpose would meet one or more of the conditions in paragraphs (a) to (i) of section 1(2),
    - (ii) that there are good reasons to pursue that purpose, and

- (iii) that the imposition of sanctions is a reasonable course of action for that purpose.
- (3) In subsection (2)(b)(iii) “sanctions” means prohibitions and requirements of the kinds imposed by the amended regulations for the purpose in question (or both for that purpose and for another purpose of those regulations).  
 In this subsection “the amended regulations” means the regulations being amended as those regulations will be when amended.
- (4) Except as permitted by subsection (5), the purpose stated under section 1(3) in any regulations under section 1 may not be amended (but this does not prevent regulations under that section from being revoked and replaced by regulations with a purpose that is to any extent different from that of the revoked regulations).
- (5) Where the purpose stated under section 1(3) in any regulations under section 1 is or includes compliance with a specified UN obligation or other international obligation, regulations made by virtue of this section may amend that purpose so as to –
  - (a) add a reference to a UN obligation, or other international obligation, to which the United Kingdom is for the time being subject,
  - (b) substitute such a reference for another reference to a UN obligation or other international obligation, or
  - (c) remove a reference to a UN obligation, or other international obligation, to which the United Kingdom is no longer subject.
- (6) The requirements of section 1(1) and (3), section 2 and section 30 do not apply in relation to regulations made by virtue of this section.
- (7) In relation to section 1, this section has effect in place of section 14 of the Interpretation Act 1978 (implied power to revoke and amend).

#### **46 Report where regulations for a purpose within section 1(2) are amended**

- (1) This section applies where –
  - (a) by virtue of section 45 regulations under section 1 are amended by further regulations under section 1 (“new regulations”), and
  - (b) the regulations being amended state under section 1(3) a purpose other than compliance with a UN obligation or other international obligation.
- (2) The appropriate Minister making the new regulations must at the required time lay before Parliament a report which explains why that Minister is of the opinion mentioned in section 45(2)(b).
- (3) Nothing in subsection (2) requires the report to contain anything the disclosure of which may in the opinion of that Minister damage national security or international relations.
- (4) In subsection (2) “the required time” means –
  - (a) where the new regulations are contained in a statutory instrument which is laid before Parliament after being made, the same time as the instrument is laid before Parliament;
  - (b) where a draft of a statutory instrument containing the new regulations is laid before Parliament, the same time as the draft is laid.

#### **47 Power to amend Part 1 so as to authorise additional sanctions**

- (1) An appropriate Minister may by regulations amend this Part so as to authorise regulations under section 1 to impose prohibitions or requirements of kinds –
  - (a) which are not for the time being authorised by Chapter 1 (ignoring section 8), but
  - (b) which are kinds of prohibition or requirement that the United Kingdom –
    - (i) has any UN obligation or other international obligation to impose, or
    - (ii) has at any time had any UN obligation or other international obligation to impose.
- (2) Without prejudice to the generality of subsection (1) or section 54(2), regulations under this section –
  - (a) may amend the definition of “sanctions regulations” in section 1(5), and
  - (b) where they make any such amendment, may amend this Part in connection with that amendment.
- (3) For the avoidance of doubt, regulations under this section may not add to or amend the purposes mentioned in section 1(1) or amend section 1(2).

#### **48 Power to make provision relating to certain appeals**

- (1) In this section an “immigration designation” means a designation of a person (whether by name or by description) which –
  - (a) is made under a designation power contained in regulations under section 1, and
  - (b) designates the person for the purposes of any provision of the regulations that provides for designated persons to be excluded persons for the purposes of section 8B of the Immigration Act 1971.
- (2) In this section an “immigration claim” means any representation made by a person to an appropriate Minister which –
  - (a) is made in connection with an immigration designation of that person, and
  - (b) is within subsection (3).
- (3) A representation is within this subsection if it is a representation by a person –
  - (a) that removal from the United Kingdom of that person would –
    - (i) breach the United Kingdom’s obligations under the Human Rights Convention (“human rights obligations”), or
    - (ii) breach the United Kingdom’s obligations under the Refugee Convention (“Refugee Convention obligations”),
  - (b) that requiring that person to leave the United Kingdom would breach human rights obligations or breach Refugee Convention obligations, or
  - (c) that refusal of entry of that person into the United Kingdom would breach human rights obligations or breach Refugee Convention obligations.
- (4) The Secretary of State may by regulations make provision –
  - (a) about the effect of an immigration claim, or a prescribed description of immigration claim, for the purposes of prescribed provisions of the Immigration Acts;

- (b) for a decision of a prescribed description made by an appropriate Minister under this Part, or such a decision so far as relating to prescribed matters, to be treated as a decision from which a person may appeal under section 82(1) of the Nationality, Immigration and Asylum Act 2002 (“the 2002 Act”);
  - (c) modifying Part 5 of the 2002 Act in relation to an appeal relating to such a decision;
  - (d) preventing the court in proceedings on an application under section 38 above from considering prescribed issues where –
    - (i) an immigration claim has been made and the circumstances are such as may be prescribed, or
    - (ii) a representation within subsection (3) is made in the proceedings and the circumstances are such as may be prescribed;
  - (e) in relation to any case where under regulations under section 1 above a person is an excluded person for the purposes of section 8B of the Immigration Act 1971, disapplying any of subsections (1), (2) and (3) of that section until the end of a prescribed period or until the occurrence of a prescribed event.
- (5) In this section “the Human Rights Convention” and “the Refugee Convention” have the same meaning as in section 8B of the Immigration Act 1971.

## PART 2

### ANTI-MONEY LAUNDERING

#### 49 Money laundering and terrorist financing etc

- (1) An appropriate Minister may by regulations make provision for one or more of the following purposes –
  - (a) enabling or facilitating the detection or investigation of money laundering, or preventing money laundering;
  - (b) enabling or facilitating the detection or investigation of terrorist financing, or preventing terrorist financing;
  - (c) the implementation of Standards published by the Financial Action Task Force from time to time relating to combating threats to the integrity of the international financial system.
- (2) Schedule 2 makes further provision about regulations under this section.
- (3) In this Part –
  - “money laundering” has the meaning given by section 340(11) of the Proceeds of Crime Act 2002;
  - “terrorist financing” means an act which constitutes an offence under –
    - (a) section 15 (fund-raising), 16 (use and possession), 17 (funding arrangements), 18 (money laundering) or 63 (terrorist finance: jurisdiction) of the Terrorism Act 2000,
    - (b) paragraph 7(2) or (3) of Schedule 3 (freezing orders: offences) to the Anti-terrorism, Crime and Security Act 2001,
    - (c) regulation 10 (contravention and circumvention of prohibitions) of the ISIL (Da’esh) and Al-Qaida (Asset-Freezing) Regulations 2011 (S.I. 2011/2742), or

- (d) section 11 (freezing of funds and economic resources), 12 (making funds or financial services available to designated person), 13 (making funds or financial services available for benefit of designated person), 14 (making economic resources available to designated person), 15 (making economic resources available for benefit of designated person) or 18 (circumventing prohibitions etc) of the Terrorist Asset-Freezing etc Act 2010.

## **50 Reports on progress towards register of beneficial owners of overseas entities**

- (1) The Secretary of State must, after the end of each reporting period, publish a report explaining the progress that has been made during that period towards putting in place a register of beneficial owners of overseas entities.
- (2) For the purposes of this section, the following are reporting periods –
  - (a) the period of 12 months beginning with the day on which this Act is passed;
  - (b) the period of 12 months beginning with the day after the end of the period mentioned in paragraph (a);
  - (c) the period of 12 months beginning with the day after the end of the period mentioned in paragraph (b).
- (3) The first and second reports under this section must include –
  - (a) a statement setting out the steps that are to be taken in the next reporting period towards putting the register in place, and
  - (b) an assessment of when the register will be put in place.
- (4) The third report under this section must include a statement setting out what further steps, if any, are to be taken towards putting the register in place.
- (5) Where a report is published under this section the Secretary of State must lay a copy of it before Parliament.
- (6) For the purposes of this section “a register of beneficial owners of overseas entities” means a public register –
  - (a) which contains information about overseas entities and persons with significant control over them, and
  - (b) which in the opinion of the Secretary of State will assist in the prevention of money laundering.

## **51 Public registers of beneficial ownership of companies registered in British Overseas Territories**

- (1) For the purposes of the detection, investigation or prevention of money laundering, the Secretary of State must provide all reasonable assistance to the governments of the British Overseas Territories to enable each of those governments to establish a publicly accessible register of the beneficial ownership of companies registered in each government’s jurisdiction.
- (2) The Secretary of State must, no later than 31 December 2020, prepare a draft Order in Council requiring the government of any British Overseas Territory that has not introduced a publicly accessible register of the beneficial ownership of companies within its jurisdiction to do so.
- (3) The draft Order in Council under subsection (2) must set out the form that the register must take.

- (4) If an Order in Council contains requirements of a kind mentioned in subsection (2) –
  - (a) it must be laid before Parliament after being made, and
  - (b) if not approved by a resolution of each House of Parliament before the end of 28 days beginning with the day on which it is made, it ceases to have effect at the end of that period (but without that affecting the power to make a new Order under this section).
- (5) In calculating a period of 28 days for the purposes of subsection (4), no account is to be taken of any time during which Parliament is dissolved or prorogued or during which both Houses are adjourned for more than four days.
- (6) For the purposes of this section, “British Overseas Territories” means a territory listed in Schedule 6 of the British Nationality Act 1981.
- (7) For the purposes of this section, “a publicly accessible register of the beneficial ownership of companies” means a register which, in the opinion of the Secretary of State, provides information broadly equivalent to that available in accordance with the provisions of Part 21A of the Companies Act 2006.

### PART 3

#### GENERAL

#### *Supplementary*

#### **52 Crown application**

- (1) Regulations under section 1 or 49 may make provision binding the Crown.
- (2) The regulations may not provide for the Crown to be criminally liable.
- (3) Nothing in this Act affects Her Majesty in Her private capacity (within the meaning of the Crown Proceedings Act 1947).

#### **53 Saving for prerogative powers**

- (1) Nothing in this Act affects any power to exclude a person from the United Kingdom by virtue of the prerogative of the Crown.
- (2) Nothing in this Act affects any power exercisable in relation to ships by virtue of the prerogative of the Crown.

#### **54 Regulations: general**

- (1) Regulations under this Act may –
  - (a) make different provision for different purposes;
  - (b) confer functions on a prescribed person;
  - (c) confer jurisdiction on any court or tribunal.
- (2) Regulations under this Act may make supplemental, incidental, consequential, transitional or saving provision, including –
  - (a) in the case of regulations under section 1 or 49, provision amending, repealing or revoking enactments (whenever passed or made), and

- (b) in the case of regulations under section 1 which repeal or revoke an enactment, provision for persons designated by or under that enactment to be treated as persons designated under the regulations.
- (3) Regulations under section 1 may amend the definition of “terrorist financing” in section 49(3) so as to remove any reference to a provision of regulations that is revoked by regulations under section 1.
- (4) Regulations under section 1 may amend the definition of “terrorist financing” in section 49(3) so as to add a reference to a provision of regulations under section 1 that contains an offence, but only if—
  - (a) each purpose of the regulations containing the offence, as stated under section 1(3), is compliance with a UN obligation or other international obligation, or
  - (b) paragraph (a) does not apply but the report under section 2 in respect of the regulations containing the offence indicates that, in the opinion of the appropriate Minister making those regulations, the carrying out of a purpose stated in those regulations under section 1(3) would further the prevention of terrorism in the United Kingdom or elsewhere.
- (5) Any power under this Act to make regulations is exercisable by statutory instrument.
- (6) In this section “enactment” includes—
  - (a) an enactment contained in any Order in Council, order, rules, regulations or other instrument made under an Act,
  - (b) an enactment contained in, or in an instrument made under, an Act of the Scottish Parliament,
  - (c) an enactment contained in, or in an instrument made under, a Measure or Act of the National Assembly for Wales,
  - (d) an enactment contained in, or in an instrument made under, Northern Ireland legislation, and
  - (e) any retained direct EU legislation.
- (7) In subsection (2)(b) the reference to persons “designated” by or under a repealed or revoked enactment includes, where the enactment is retained direct EU legislation, persons listed in or under that enactment.
- (8) This section does not apply to regulations under—
  - (a) section 56 (regulations under section 1: transitory provision), or
  - (b) section 64 (commencement).

## 55 Parliamentary procedure for regulations

- (1) Subsection (3) applies to a statutory instrument which—
  - (a) contains non-UN regulations under section 1 (see subsection (7)),
  - (b) does not contain any UN regulations under that section, and
  - (c) is not a statutory instrument mentioned in subsection (5)(a) to (d).
- (2) Subsection (3) also applies to a statutory instrument which contains only regulations under section 49 which make new provision about high-risk countries (see subsection (9)).
- (3) A statutory instrument to which this subsection applies—

- (a) must be laid before Parliament after being made, and
  - (b) if not approved by a resolution of each House of Parliament before the end of 28 days beginning with the day on which it is made, ceases to have effect at the end of that period (but without that affecting anything done under the regulations or the power to make new regulations).
- (4) In calculating a period of 28 days for the purposes of subsection (3), no account is to be taken of any time during which Parliament is dissolved or prorogued or during which both Houses are adjourned for more than 4 days.
- (5) A statutory instrument containing (whether alone or with other provision) –
- (a) regulations under section 1 that repeal, revoke or amend any provision of primary legislation,
  - (b) regulations under section 47,
  - (c) regulations under section 48, or
  - (d) regulations under section 49,
- may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament.
- This subsection does not apply to a statutory instrument to which subsection (3) applies by virtue of subsection (2).
- (6) A statutory instrument containing regulations under this Act which is not –
- (a) a statutory instrument to which subsection (3) applies,
  - (b) a statutory instrument mentioned in subsection (5)(a) to (d),
  - (c) a statutory instrument containing only regulations under section 56, or
  - (d) a statutory instrument containing only regulations under section 64,
- is subject to annulment in pursuance of a resolution of either House of Parliament.
- (7) In subsection (1) “UN regulations” means regulations under section 1 that –
- (a) are regulations the stated purpose of which, or one of the stated purposes of which, is compliance with a UN obligation, or
  - (b) amend regulations under section 1 the stated purpose of which, or one of the stated purposes of which, is compliance with a UN obligation,
- and “non-UN regulations” means any regulations under section 1 which are not UN regulations.
- (8) For the purposes of subsection (7), a purpose is a “stated purpose” of regulations under section 1 if it is stated under section 1(3) in the regulations.
- (9) For the purposes of subsection (2), regulations under section 49 “make new provision about high-risk countries” if they add or remove an entry in a list of countries in relation to which enhanced customer due diligence measures are required to be taken by virtue of –
- (a) the Money Laundering Regulations 2017 (S.I. 2017/692), or
  - (b) regulations under section 49.
- (10) In this section “primary legislation” means –
- (a) an Act of Parliament,
  - (b) an Act of the Scottish Parliament,
  - (c) a Measure or Act of the National Assembly for Wales, or
  - (d) Northern Ireland legislation.

## 56 Regulations under section 1: transitory provision

- (1) If the appropriate Minister making a statutory instrument containing (whether alone or with other provision) any regulations under section 1 considers it is appropriate to do so in consequence of, or otherwise in connection with, the withdrawal of the United Kingdom from the EU, the instrument may provide that it comes into force, or that any provision of regulations contained in the instrument comes into force, on such day as that Minister may by regulations under this section appoint.
- (2) Any power of an appropriate Minister to appoint a day under this section includes—
  - (a) a power to appoint different days for different purposes, and
  - (b) a power to appoint a time on a day if that Minister considers it appropriate to do so (including a time that has effect by reference to the coming into force of any other enactment).
- (3) Any power under this section to make regulations is exercisable by statutory instrument.
- (4) Subsection (5) applies in the case of a statutory instrument—
  - (a) which contains provision by virtue of subsection (1) of this section, and
  - (b) to which section 55(3) applies by virtue of subsection (1) of that section.
- (5) Where this subsection applies—
  - (a) the reference in section 55(3)(b) to the day on which the statutory instrument is made is to be read as a reference to the first day on which any provision of the regulations contained in the instrument comes into force for any purpose in accordance with regulations under this section, and
  - (b) any reference in section 55(3) or (4) to 28 days is to be read as a reference to 60 days.
- (6) In this section “enactment” includes an enactment mentioned in any of paragraphs (a) to (d) of section 54(6).

## 57 Duties to lay certain reports before Parliament: further provision

- (1) In this section “a reporting provision” means section 2(4), 18(2) or 46(2) or paragraph 21(2) of Schedule 2 (duties to lay before Parliament certain reports relating to regulations).
- (2) Where more than one reporting provision applies in relation to particular regulations under section 1, the reports to which those provisions relate may be contained in a single document.
- (3) If a reporting provision is not complied with, the appropriate Minister who should have complied with that provision must publish a written statement explaining why that Minister failed to comply with it.
- (4) Subsection (5) applies where a reporting provision applies and—
  - (a) a statutory instrument containing the regulations concerned, or
  - (b) a draft of such an instrument,is laid before the House of Commons and House of Lords on different days.
- (5) Where this subsection applies, the reporting provision in question is to be read as requiring the laying of a copy of the report to which that provision relates—

- (a) before the House of Commons at the time the instrument or draft mentioned in subsection (4) is laid before the House of Commons, and
- (b) before the House of Lords at the time that instrument or draft is laid before the House of Lords.

## 58 Retained EU rights

- (1) If and to the extent that anything in the European Union (Withdrawal) Act 2018 would, in the absence of this section, prevent any power within subsection (2) from being exercised so as to modify anything which is retained EU law by virtue of section 4 of that Act (saving for certain rights etc), it does not prevent that power from being so exercised.
- (2) The following powers fall within this subsection –
  - (a) any power conferred by this Act, or by regulations under this Act, on a Minister of the Crown within the meaning of the Ministers of the Crown Act 1975 (however that power is expressed);
  - (b) any power conferred by regulations under Schedule 2 on a supervisory authority.
- (3) In this section “modify” has the same meaning as in the European Union (Withdrawal) Act 2018.

## 59 Consequential amendments and repeals

- (1) Part 1 of the Terrorist Asset-Freezing etc Act 2010 is repealed, except for –
  - (a) paragraphs 1 to 5 of Schedule 1 to that Act (amendments of rules of court), and
  - (b) section 45(1) of that Act so far as it introduces that Schedule.
- (2) Neither paragraphs 1 to 5 of Schedule 1 to that Act, nor the exception of those paragraphs from the repeal made by subsection (1), affects any power to amend or revoke any provision of –
  - (a) the Rules of the Court of Judicature (Northern Ireland) 1980 (S.R. 1980/346), or
  - (b) the Civil Procedure Rules 1998 (S.I. 1998/3132)).
- (3) Subsection (1) does not affect the power in section 54 of the Terrorist Asset-Freezing etc Act 2010 to make provision by Order in Council extending to any of the Channel Islands, the Isle of Man or any British overseas territory.
- (4) Part 1 of Schedule 3 contains amendments consequential on Parts 1 and 2 of this Act.
- (5) Part 2 of Schedule 3 contains repeals and other provision consequential on subsection (1).

### *Definitions*

## 60 Meaning of “funds”, “economic resources” and “freeze”

- (1) In this Act “funds” means financial assets and benefits of every kind, including (but not limited to) –
  - (a) cash, cheques, claims on money, drafts, money orders and other payment instruments;

- (b) deposits, balances on accounts, debts and debt obligations;
  - (c) publicly and privately traded securities and debt instruments, including stocks and shares, certificates representing securities, bonds, notes, warrants, debentures and derivative products;
  - (d) interest, dividends and other income on or value accruing from or generated by assets;
  - (e) credit, rights of set-off, guarantees, performance bonds and other financial commitments;
  - (f) letters of credit, bills of lading and bills of sale;
  - (g) documents providing evidence of an interest in funds or financial resources;
  - (h) any other instrument of export financing.
- (2) In this Act “economic resources” means assets of every kind, whether tangible or intangible, movable or immovable, which are not funds but can be used to obtain funds, goods or services.
- (3) In this Act references to “freezing” funds are to preventing funds from being dealt with; and for the purposes of this subsection funds are “dealt with” if—
- (a) they are used, altered, moved, or transferred or access is allowed to them,
  - (b) they are dealt with in any other way that would result in any change in volume, amount, location, ownership, possession, character or destination, or
  - (c) any other change is made that would enable their use, including portfolio management.
- (4) In this Act references to “freezing” economic resources are to preventing economic resources from being dealt with; and for the purposes of this subsection economic resources are “dealt with” if—
- (a) they are exchanged for funds, goods or services, or
  - (b) they are used in exchange for funds, goods or services (whether by being pledged as security or otherwise).

## **61 Meaning of “financial services” and “financial products”**

- (1) In this Act “financial services” means any service of a financial nature, including (but not limited to)—
- (a) insurance-related services consisting of—
    - (i) direct life assurance;
    - (ii) direct insurance other than life assurance;
    - (iii) reinsurance and retrocession;
    - (iv) insurance intermediation, such as brokerage and agency;
    - (v) services auxiliary to insurance, such as consultancy, actuarial, risk assessment and claim settlement services;
  - (b) banking and other financial services consisting of—
    - (i) accepting deposits and other repayable funds;
    - (ii) lending (including consumer credit, mortgage credit, factoring and financing of commercial transactions);
    - (iii) financial leasing;
    - (iv) payment and money transmission services (including credit, charge and debit cards, travellers’ cheques and bankers’ drafts);

- (v) providing guarantees or commitments;
  - (vi) financial trading (as defined in subsection (2));
  - (vii) participating in issues of any kind of securities (including underwriting and placement as an agent, whether publicly or privately) and providing services related to such issues;
  - (viii) money brokering;
  - (ix) asset management, such as cash or portfolio management, all forms of collective investment management, pension fund management, custodial, depository and trust services;
  - (x) settlement and clearing services for financial assets (including securities, derivative products and other negotiable instruments);
  - (xi) providing or transferring financial information, and financial data processing or related software (but only by suppliers of other financial services);
  - (xii) providing advisory and other auxiliary financial services in respect of any activity listed in sub-paragraphs (i) to (xi) (including credit reference and analysis, investment and portfolio research and advice, advice on acquisitions and on corporate restructuring and strategy).
- (2) In subsection (1)(b)(vi), “financial trading” means trading for own account or for account of customers, whether on an investment exchange, in an over-the-counter market or otherwise, in financial products.
- (3) In this Act “financial products” means –
- (a) money market instruments (including cheques, bills and certificates of deposit);
  - (b) foreign exchange;
  - (c) derivative products (including futures and options);
  - (d) exchange rate and interest rate instruments (including products such as swaps and forward rate agreements);
  - (e) transferable securities;
  - (f) other negotiable instruments and financial assets (including bullion).

## 62 Interpretation

- (1) In this Act –
- “appropriate Minister” is to be read in accordance with section 1(9);
  - “country” includes any territory, region or other place;
  - “designation power” has the meaning given by section 10(1);
  - “economic resources” has the meaning given by section 60(2);
  - “financial products” has the meaning given by section 61(3);
  - “financial services” has the meaning given by section 61(1);
  - “freeze”, in relation to funds or economic resources, has the meaning given by section 60(3) and (4);
  - “funds” has the meaning given by section 60(1);
  - “international obligation” has the meaning given by section 1(8);
  - “person” has the meaning given by section 9(5);
  - “prescribed”, in any provision relating to regulations, means prescribed by the regulations;

“retained direct EU legislation” has the same meaning as in the European Union (Withdrawal) Act 2018;  
“retained EU law” has the same meaning as in that Act;  
“the Security Council” means the Security Council of the United Nations;  
“the territorial sea” (without more) means the territorial sea adjacent to the United Kingdom;  
“terrorism” has the same meaning as in the Terrorism Act 2000 (see section 1(1) to (4) of that Act);  
“UN obligation” has the meaning given by section 1(8);  
“UN Security Council Resolution” has the meaning given by section 1(8).

- (2) Any reference in this Act to a person named “for the purposes of” a UN Security Council Resolution so far as it provides for the taking of particular measures includes any person who, by virtue of –
- (a) being named for any purposes by the Security Council or a subsidiary organ of the Security Council, and
  - (b) the terms of the resolution,
- is a person in relation to whom the resolution provides for the measures to be taken.
- (3) Any reference in this Act to ships designated “for purposes of” a UN Security Council Resolution which provides for the taking of measures in relation to ships includes any ship which, by virtue of –
- (a) being designated for any purposes by the Security Council or a subsidiary organ of the Security Council, and
  - (b) the terms of the resolution,
- is a ship in relation to which the resolution provides for the measures to be taken.
- (4) Regulations under section 1 may make provision as to the meaning of any reference in the regulations to funds, economic resources or technology (or a particular description of funds, economic resources or technology) being –
- (a) owned by a person,
  - (b) held by a person,
  - (c) controlled by a person, or
  - (d) made available to or for the benefit of a person.
- (5) Regulations under section 1 may make provision as to the meaning of any reference in the regulations to a person “owning” or “controlling” another person.
- (6) Regulations under section 1 may make provision as to the connection that is required between –
- (a) a person, or a person of a prescribed description, and
  - (b) a country,
- in order for the person to be regarded as “connected with” that country for the purposes of any provision of the regulations.

*Final provisions***63 Extent**

- (1) Subject to the following provisions of this section, this Act extends to England and Wales, Scotland and Northern Ireland.
- (2) Any amendment or repeal made by Schedule 3 of any provision of –
  - (a) the Senior Courts Act 1981,
  - (b) the Crime and Courts Act 2013, or
  - (c) the Charities Act 2011,does not extend to Scotland or Northern Ireland.
- (3) Her Majesty may by Order in Council provide for any of the provisions of Part 1, section 51 and this Part, or any regulations under Part 1 (whether made before or after the making of the Order in Council), to extend with or without modifications to –
  - (a) any of the Channel Islands;
  - (b) the Isle of Man;
  - (c) any of the British overseas territories.
- (4) The power conferred by subsection (3), so far as relating to regulations, includes power to provide for the regulations as amended from time to time to extend as mentioned in that subsection.
- (5) Her Majesty may by Order in Council provide for the repeal in section 59(1) (repeal of provisions of the Terrorist Asset-Freezing etc Act 2010) to extend to –
  - (a) any of the Channel Islands;
  - (b) the Isle of Man;
  - (c) any of the British overseas territories.
- (6) The power under section 36 of the Immigration Act 1971 may be exercised so as to extend to any of the Channel Islands or the Isle of Man any amendment made by this Act of any part of that Act (with or without modifications).
- (7) The power under section 272(6) of the Investigatory Powers Act 2016 may be exercised so as to extend to the Isle of Man or any of the British overseas territories any amendment made by this Act of any part of that Act (with or without modifications).

**64 Commencement**

- (1) The following provisions come into force on the day on which this Act is passed –
  - (a) section 32;
  - (b) section 50;
  - (c) sections 52 to 56;
  - (d) sections 60 to 63;
  - (e) this section;
  - (f) section 65.
- (2) The remaining provisions of this Act come into force on such day as the Secretary of State may by regulations appoint.

- (3) Different days may be appointed for different purposes.
- (4) The Secretary of State may by regulations make transitional or saving provision in connection with the coming into force of any provision of this Act.
- (5) Any power under this section to make regulations is exercisable by statutory instrument.

**65 Short title**

This Act may be cited as the Sanctions and Anti-Money Laundering Act 2018.

## SCHEDULES

### SCHEDULE 1

Section 5

#### TRADE SANCTIONS

#### PART 1

#### TRADE SANCTIONS

- 1 The purposes referred to in section 5(1) are the purposes set out in paragraphs 2 to 16.
- 2 Preventing the export of goods of a prescribed description –
  - (a) to, or for the benefit of –
    - (i) designated persons (see section 9),
    - (ii) persons connected with a prescribed country, or
    - (iii) a prescribed description of persons connected with a prescribed country, or
  - (b) to, for the benefit of, or for use in, a prescribed country.
- 3 Preventing the import of all goods, or of goods of a prescribed description –
  - (a) which are consigned from a prescribed country,
  - (b) which originate in a prescribed country,
  - (c) which are consigned from or imported, manufactured, produced or owned by –
    - (i) designated persons,
    - (ii) persons connected with a prescribed country, or
    - (iii) a prescribed description of persons connected with a prescribed country,
  - (d) for the benefit of –
    - (i) designated persons,
    - (ii) persons connected with a prescribed country, or
    - (iii) a prescribed description of persons connected with a prescribed country, or
  - (e) for the benefit of a prescribed country.
- 4 Preventing the movement outside the United Kingdom of goods of a prescribed description –
  - (a) to, or for the benefit of –
    - (i) designated persons,
    - (ii) persons connected with a prescribed country, or
    - (iii) a prescribed description of persons connected with a prescribed country,
  - (b) to, or for the benefit of, a prescribed country,

- (c) from a prescribed country,
  - (d) which originate in a prescribed country, or
  - (e) in specified ships (see section 14).
- 5 Preventing a transfer of technology of a prescribed description –
- (a) to, or for the benefit of –
    - (i) designated persons,
    - (ii) persons connected with a prescribed country, or
    - (iii) a prescribed description of persons connected with a prescribed country,
  - (b) to a place (see paragraph 36) in a prescribed country,
  - (c) to, or for the benefit of, persons outside the United Kingdom, where the transfer is from a designated person, a person connected with a prescribed country or a place in a prescribed country,
  - (d) to a place outside the United Kingdom, where the transfer is from a designated person, a person connected with a prescribed country or a place in a prescribed country,
  - (e) to persons (other than designated persons) in the United Kingdom, where the person effecting, or responsible for, the transfer has reason to believe that the technology may be used in a prescribed country, or
  - (f) to a place in the United Kingdom, where the person effecting, or responsible for, the transfer has reason to believe that the technology may be used in a prescribed country.
- 6 Preventing goods or technology of a prescribed description from being made available –
- (a) to, or for the benefit of –
    - (i) designated persons,
    - (ii) persons connected with a prescribed country, or
    - (iii) a prescribed description of persons connected with a prescribed country,
  - (b) for the benefit of, or for use in, a prescribed country, or
  - (c) for use in connection with specified ships.
- 7 Preventing the acquisition of goods or technology of a prescribed description –
- (a) from, or for the benefit of –
    - (i) designated persons,
    - (ii) persons connected with a prescribed country,
    - (iii) a prescribed description of persons connected with a prescribed country, or
    - (iv) persons on board specified ships, or
  - (b) in, or which originate in, a prescribed country.
- 8 Preventing land, or land of a prescribed description, from being made available to, or for the benefit of –
- (a) designated persons,
  - (b) persons connected with a prescribed country, or
  - (c) a prescribed description of persons connected with a prescribed country.

- 9 Preventing the acquisition of land, or land of a prescribed description –
- (a) from, or for the benefit of –
    - (i) designated persons,
    - (ii) persons connected with a prescribed country, or
    - (iii) a prescribed description of persons connected with a prescribed country, or
  - (b) in a prescribed country.
- 10 Preventing –
- (a) activities of a prescribed description relating (directly or indirectly) to military activities from being carried on for the benefit of –
    - (i) designated persons,
    - (ii) persons connected with a prescribed country, or
    - (iii) a prescribed description of persons connected with a prescribed country, or
  - (b) activities of a prescribed description from being carried on, where the activities relate (directly or indirectly) to military activities carried on, or proposed to be carried on, in a prescribed country.
- 11 Preventing all services, or services of a prescribed description, from being provided –
- (a) to, or for the benefit of –
    - (i) designated persons,
    - (ii) persons connected with a prescribed country, or
    - (iii) a prescribed description of persons connected with a prescribed country, or
  - (b) in the United Kingdom by a prescribed description of persons connected with a prescribed country.
- 12 Preventing all services, or services of a prescribed description, from being procured –
- (a) from, or for the benefit of –
    - (i) designated persons,
    - (ii) persons connected with a prescribed country, or
    - (iii) a prescribed description of persons connected with a prescribed country, or
  - (b) for provision in a prescribed country.
- 13 Preventing services, or services of a prescribed description, from being provided or procured, where the services relate to –
- (a) the export of goods of a prescribed description to, or for the benefit of, persons as mentioned in paragraph 2(a),
  - (b) the export of goods of a prescribed description to, for the benefit of, or for use in, a prescribed country,
  - (c) the import of goods, or goods of a prescribed description, which are consigned from, or originate in, a prescribed country,
  - (d) the import of goods, or goods of a prescribed description, which are consigned from or imported, manufactured, produced or owned by persons as mentioned in paragraph 3(c),
  - (e) the import of goods, or goods of a prescribed description, for the benefit of persons as mentioned in paragraph 3(d),

- (f) the import of goods, or goods of a prescribed description, for the benefit of a prescribed country,
  - (g) the movement of goods of a prescribed description to, or for the benefit of, persons as mentioned in paragraph 4(a),
  - (h) the movement of goods of a prescribed description to, or for the benefit of, a prescribed country,
  - (i) the movement of goods of a prescribed description from a prescribed country, or which originate in a prescribed country,
  - (j) the movement of goods of a prescribed description in specified ships,
  - (k) the transfer of technology of a prescribed description to, or for the benefit of, persons as mentioned in sub-paragraph (a), (c) or (e) of paragraph 5,
  - (l) the transfer of technology of a prescribed description to a place as mentioned in sub-paragraph (b), (d) or (f) of paragraph 5,
  - (m) the making available of goods or technology of a prescribed description to, or for the benefit of, persons as mentioned in paragraph 6(a),
  - (n) the making available of goods or technology of a prescribed description for the benefit of, or for use in, a prescribed country,
  - (o) the making available of goods or technology of a prescribed description for use in connection with specified ships,
  - (p) the acquisition of goods or technology of a prescribed description from, or for the benefit of, persons as mentioned in paragraph 7(a),
  - (q) the acquisition of goods or technology of a prescribed description in, or which originate in, a prescribed country,
  - (r) the making available of land, or land of a prescribed description, to, or for the benefit of, persons as mentioned in paragraph 8,
  - (s) the acquisition of land, or land of a prescribed description, from, or for the benefit of, persons as mentioned in paragraph 9(a),
  - (t) the acquisition of land, or land of a prescribed description, in a prescribed country,
  - (u) the carrying on of activities of a prescribed description as mentioned in sub-paragraph (a) of paragraph 10 for the benefit of persons as mentioned in that sub-paragraph,
  - (v) the carrying on of activities of a prescribed description as mentioned in paragraph 10(b), or
  - (w) the provision or procurement of other services, or services of a prescribed description, which relate to a matter mentioned in any of sub-paragraphs (a) to (v).
- 14 Preventing services, or services of a prescribed description, from being provided or procured, where the services relate to –
- (a) the provision of other services, or services of a prescribed description, to, or for the benefit of, persons as mentioned in paragraph 11(a),
  - (b) the provision of other services, or services of a prescribed description, in the United Kingdom by a prescribed description of persons connected with a prescribed country,
  - (c) the procurement of other services, or services of a prescribed description, from, or for the benefit of, persons as mentioned in paragraph 12(a),

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- (d) the procurement of other services, or services of a prescribed description, for provision in a prescribed country,
  - (e) projects, industries, sectors or infrastructure of a prescribed description in a prescribed country,
  - (f) activities of a prescribed description carried on, or proposed to be carried on, in a prescribed country,
  - (g) trade with a prescribed country,
  - (h) aircraft registered in a prescribed country,
  - (i) ships registered in a prescribed country,
  - (j) specified ships, or
  - (k) the provision or procurement of other services, or services of a prescribed description, which relate to a matter mentioned in any of sub-paragraphs (e) to (j).
- 15 So far as a UN Security Council Resolution provides for the taking of measures in relation to ships designated for purposes of that resolution, and so far as the purposes set out in this paragraph are relevant to that resolution, preventing—
- (a) the movement outside the United Kingdom of goods of a prescribed description in such ships,
  - (b) goods or technology of a prescribed description from being made available for use in connection with such ships,
  - (c) the acquisition of goods or technology of a prescribed description from persons on board such ships, or
  - (d) the provision or procurement of services which relate to such ships.
- 16 Preventing—
- (a) the export, import, movement, making available or acquisition of objects of cultural interest, or objects of cultural interest of a prescribed description, which have been removed from a prescribed country, or
  - (b) services of a prescribed description from being provided or procured, where the services relate to objects of cultural interest, or objects of cultural interest of a prescribed description, which have been removed from a prescribed country.

## PART 2

### FURTHER PROVISION

#### *Further provision*

- 17 Regulations which include provision for a purpose mentioned in Part 1 may describe goods wholly or partly by reference to—
- (a) the uses to which the goods, or any information recorded on or derived from them, may be put,
  - (b) the types of users of the goods, or of any such information,
  - (c) the industries, sectors, infrastructure or projects to which the goods, or any such information, may relate, or
  - (d) the place where the goods originate.
- 18 Regulations which include provision for a purpose mentioned in paragraph 2 or 3 may describe goods wholly or partly by reference to their being of an

- amount, quantity or value in excess of a prescribed amount, quantity or value.
- 19 Regulations which include provision for a purpose mentioned in Part 1 may describe technology wholly or partly by reference to –
- (a) the uses to which the technology may be put,
  - (b) the industries, sectors, infrastructure or projects to which the technology may relate, or
  - (c) any activities carried on, or proposed to be carried on, to which the technology may relate.
- 20 Regulations which include provision for a purpose mentioned in Part 1 may describe services wholly or partly by reference to –
- (a) the uses to which the services may be put,
  - (b) the industries, sectors, infrastructure or projects to which the services may relate,
  - (c) any goods, technology or land to which the services may relate,
  - (d) any activities carried on, or proposed to be carried on, to which the services may relate (including the export, import, movement, transfer, making available, acquisition, development, manufacture, production, maintenance or use of goods, technology or land), or
  - (e) any other services to which the services in question may relate.
- 21 Regulations which include provision for a purpose mentioned in Part 1 may include provision having the effect that references to specified provisions of orders made under the Export Control Act 2002 are to operate as references to specified provisions of such orders as amended from time to time.
- 22 Regulations which include provision for a purpose mentioned in Part 1 may include provision having the effect that references to a specified Annex of Council Regulation (EC) No 428/2009 of 5 May 2009 (setting up a Community regime for the control of exports, transfer, brokering and transit of dual-use items) are to operate as references to that Annex as amended from time to time.
- 23 Regulations which include provision for a purpose mentioned in Part 1 may include provision having the effect that references to a technical list of goods or technology (including a list by reference to which any UN obligation operates) are to operate as references to that list as revised or re-issued from time to time.
- 24 Regulations which include provision for a purpose mentioned in paragraph 2 may include provision in relation to the removal from the United Kingdom of vehicles, ships and aircraft (as an export of goods), whether or not they are moving under their own power or carrying goods or passengers.
- 25 Regulations which include provision for a purpose mentioned in paragraph 3 may include provision in relation to the taking into the United Kingdom of vehicles, ships and aircraft (as an import of goods), whether or not they are moving under their own power or carrying goods or passengers.
- 26 (1) This paragraph applies where regulations include provision for a purpose mentioned in paragraph 15 in relation to ships designated by the Security Council or a subsidiary organ of the Security Council for purposes of a UN Security Council Resolution.

- (2) The provision may describe the ships by reference to the instrument in which the ships are designated, including by reference to that instrument as varied or supplemented from time to time.

#### *Enforcement*

- 27 (1) This paragraph applies in relation to any provision of CEMA which specifies a maximum period of imprisonment with which an offence is punishable on conviction on indictment.
- (2) Regulations under this paragraph may modify any such provision in the case of an offence committed in connection with a prohibition or requirement—
- (a) imposed for a purpose mentioned in Part 1, and
  - (b) specified in the regulations.
- (3) The modification may not have the effect that such an offence is punishable with imprisonment for a period exceeding 10 years.
- 28 (1) For the purpose of the enforcement of any relevant prohibition or requirement, regulations under this paragraph may modify any provision of CEMA which—
- (a) determines whether any thing is liable to forfeiture under CEMA by virtue of a contravention of the prohibition or requirement,
  - (b) provides for the treatment of any thing which is so liable by virtue of such a contravention, or
  - (c) confers any power exercisable in relation to a ship, aircraft or vehicle.
- (2) In sub-paragraph (1) a “relevant prohibition or requirement” means a prohibition or requirement—
- (a) imposed for a purpose mentioned in Part 1, and
  - (b) specified in the regulations under this paragraph.

#### *Restriction*

- 29 Regulations may not contain prohibitions for a purpose mentioned in Part 1 which have the effect of prohibiting any of the following activities—
- (a) the communication of information in the ordinary course of scientific research,
  - (b) the making of information generally available to the public, or
  - (c) the communication of information that is generally available to the public,
- unless the interference by the regulations in the freedom to carry on the activity in question is necessary (and no more than is necessary).
- 30 The question whether any such interference is necessary is to be determined by the appropriate Minister making the regulations—
- (a) by reference to the circumstances prevailing at the time the regulations are made, and
  - (b) having considered the purpose of the regulations as stated under section 1(3) and the need to respect the freedom to carry on that activity.

*Interpretation*

- 31 In this Schedule, any reference to goods, technology, land or services being moved, made available, acquired, provided or procured is to their being moved, made available, acquired, provided or procured (as the case may be) directly or indirectly.
- 32 For the purposes of this Schedule –
- (a) “export” means export from the United Kingdom,
  - (b) goods removed to the Isle of Man from the United Kingdom are not to be regarded as exported, and
  - (c) goods transported out of the United Kingdom by aircraft or ship as stores within the meaning of CEMA (see section 1(1) and (4) of that Act) are to be regarded as exported.
- 33 For the purposes of this Schedule –
- (a) “import” means import into the United Kingdom, but
  - (b) goods removed to the United Kingdom from the Isle of Man are not to be regarded as imported.
- Sub-paragraph (a) does not apply for the purposes of paragraph 34.
- 34 Paragraph 33(b) does not apply to goods imported into the Isle of Man in contravention of any prohibition or requirement and which are of a description the import of which into the United Kingdom is subject to a corresponding prohibition or requirement imposed by regulations for a purpose mentioned in paragraph 3.
- 35 For the purposes of this Schedule –
- (a) goods, technology or land are “acquired” by a person if the person buys, leases, hires, borrows or accepts as a gift the goods, technology or land (as the case may be), and “acquisition” is to be construed accordingly, and
  - (b) a reference to goods which “originate” in a country includes a reference to goods which are manufactured or produced in that country.
- 36 In paragraph 5 “place” includes –
- (a) any vehicle, ship or aircraft,
  - (b) any installation (including a floating installation or one resting on the seabed or its subsoil or on other land covered with water or its subsoil), or
  - (c) any tent or movable structure.
- 37 In this Schedule –
- “aircraft” includes unmanned aircraft and aircraft capable of spaceflight activities;
  - “CEMA” means the Customs and Excise Management Act 1979;
  - “objects of cultural interest” includes objects of historical or scientific interest;
  - “regulations” means regulations under section 1;
  - “ship” includes every description of vessel (including a hovercraft) used in navigation;
  - “specified ship” has the meaning given by section 14;

“technology” means information (including information comprised in software) that is capable of use in connection with—

- (a) the development, production or use of any goods or software, or
- (b) the development of, or the carrying out of, an industrial or commercial activity or an activity of any other kind whatsoever;

“transfer”, in relation to any technology, means a transfer by any means (or combination of means), including oral communication and the transfer of goods on which the technology is recorded or from which it can be derived, other than the export of such goods.

- 38 Nothing in section 3 prevents any reference to services in this Schedule from including financial services.

## SCHEDULE 2

Section 49

### MONEY LAUNDERING AND TERRORIST FINANCING ETC

#### *Regulations under section 49*

- 1 Without prejudice to the generality of section 49, regulations under that section may do any thing mentioned in paragraphs 2 to 17.
- 2 (1) Require—
  - (a) the Secretary of State or the Treasury, or both of them acting jointly,
  - (b) supervisory authorities (within the meaning given by paragraph 24), and
  - (c) such persons carrying on relevant business (within the meaning given by that paragraph) as are prescribed for the purposes of this paragraph,
 to identify and assess risks relating to money laundering, terrorist financing or other threats to the integrity of the international financial system.
- (2) Make provision about factors to be taken into account in the assessment of such risks.
- 3 Require any person carrying on relevant business who is of a description prescribed for the purposes of this paragraph (“a relevant person”) to have policies, controls and procedures which—
  - (a) are policies, controls and procedures for mitigating and managing risks relating to money laundering, terrorist financing or other threats to the integrity of the international financial system,
  - (b) are of prescribed kinds, and
  - (c) are appropriate having regard to the size and nature of the business that the person carries on.
- 4 Require relevant persons to take prescribed measures in relation to their customers in prescribed circumstances.
- 5 Make provision for and in connection with—
  - (a) the provision of information by prescribed persons, and
  - (b) the disclosure of information, including provision about—

- (i) the purposes for which information held in connection with anything done under the regulations may be used, and
  - (ii) the persons to whom any such information may be disclosed.
- 6 Make provision for and in connection with the creation, production and retention of –
  - (a) registers, and
  - (b) records,including registers of people with significant control and registers and records relating to the beneficial ownership of prescribed entities, trusts or other arrangements.
- 7 (1) Confer supervisory functions on the Financial Conduct Authority, the Commissioners for Her Majesty’s Revenue and Customs and such other bodies as may be prescribed (“supervisory authorities”) in relation to relevant persons, including powers or duties to –
  - (a) collect information,
  - (b) give directions,
  - (c) issue guidance,
  - (d) approve individuals in their capacity as relevant persons or as owner of, or in positions of control over or responsibility in, relevant persons that are not individuals, and
  - (e) cooperate with other supervisory authorities or other prescribed persons.(2) Make provision about the exercise of functions conferred on supervisory authorities under sub-paragraph (1).
- 8 (1) Confer supervisory functions on a prescribed body (an “oversight body”) in relation to bodies prescribed as, or seeking to be prescribed as, supervisory authorities, including powers or duties to –
  - (a) collect information,
  - (b) give directions,
  - (c) issue guidance, and
  - (d) give recommendations as to whether bodies should be, or should cease to be, prescribed as supervisory authorities.(2) Make provision about the exercise of functions conferred on an oversight body under sub-paragraph (1).
- 9 Make provision for and in connection with the registration of relevant persons by supervisory authorities, including –
  - (a) provision which prohibits a person from carrying on a business of a prescribed description unless registered, and
  - (b) provision about the suspension or cancellation of a person’s registration.
- 10 Make provision enabling supervisory authorities to enter into arrangements with other bodies for the purposes of the enforcement of the regulations.
- 11 (1) Confer investigatory powers on –
  - (a) supervisory authorities, and
  - (b) prescribed enforcement partners within the meaning given by paragraph 24.

- 
- (2) Make provision about the exercise of investigatory powers.
- (3) Make provision enabling investigatory powers to be exercised by a supervisory authority in relation to persons supervised by another supervisory authority.
- (4) In this paragraph “investigatory powers” includes powers of entry, search, inspection, seizure of documents or information and retention of documents or information.
- 12 (1) Authorise supervisory authorities to impose charges on persons supervised by them in respect of expenses incurred for the purposes of the regulations.
- (2) Make provision in connection with any charges for which provision is made under sub-paragraph (1), including provision for charges to meet expenses incurred by enforcement partners for the purposes of the regulations.
- (3) Where provision is made by virtue of paragraph 11(3), authorise supervisory authorities to impose charges on other supervisory authorities in respect of expenses incurred in relation to the exercise of powers in accordance with such provision.
- (4) Authorise an oversight body to impose charges on supervisory authorities or persons seeking to be prescribed as supervisory authorities in respect of the exercise by the oversight body of functions conferred on it by the regulations.
- (5) Make provision in connection with any charges for which provision is made under sub-paragraph (3) or (4).
- 13 (1) Authorise the Financial Conduct Authority and the Commissioners for Her Majesty’s Revenue and Customs to impose civil monetary penalties in relation to the contravention of prescribed requirements.
- (2) Authorise supervisory authorities to impose civil penalties (other than monetary penalties) in relation to the contravention of prescribed requirements, including –
- (a) the publication of statements of censure,
  - (b) the suspension or revocation of, or restrictions on, any permission or authorisation granted by a supervisory authority,
  - (c) the suspension or cancellation of, or restrictions on, a person’s registration as mentioned in paragraph 9, and
  - (d) restrictions on the holding of management responsibilities.
- (3) Authorise an oversight body to –
- (a) impose civil monetary penalties, and
  - (b) publish statements of censure,
- in relation to the contravention of prescribed requirements by supervisory authorities.
- (4) Make provision in connection with any civil penalties for which provision is made under sub-paragraph (1), (2) or (3), including provision for publishing details of persons who have incurred penalties.
- 14 Make provision for and in connection with the grant of injunctions (or, in Scotland, interdicts) and other orders by prescribed courts in relation to the contravention of prescribed requirements.

- 15 Make provision—
  - (a) creating criminal offences for the purposes of the enforcement of requirements imposed by or under regulations under section 49, and
  - (b) dealing with matters relating to any offences created for such purposes by regulations under section 49,but see paragraphs 18 and 19.
- 16 Make provision for and in connection with reviews of, and appeals against, decisions of—
  - (a) prescribed supervisory authorities, and
  - (b) an oversight body.
- 17 Make provision exempting prescribed persons from prescribed requirements, generally or in prescribed circumstances.

*Criminal offences: restrictions and relationship with civil penalties*

- 18 Regulations under section 49 may not provide for an offence created by such regulations to be punishable with imprisonment for a period exceeding—
  - (a) in the case of conviction on indictment, 2 years;
  - (b) in the case of summary conviction, 3 months.
- 19 Regulations under section 49 may provide for the creation of a criminal offence only if the regulations also provide for either or both of the following in relation to the offence—
  - (a) a mental element necessary for its commission;
  - (b) a defence to it (for example, a defence grounded on a person’s knowledge or belief, or a defence that a person took all reasonable steps and exercised all due diligence).
- 20 Regulations under section 49 which confer a power to impose a civil monetary penalty must provide that a person is not liable to such a penalty in respect of acts or omissions for which the person has been convicted of a criminal offence created by such regulations.

*Criminal offences: report in respect of offences in regulations*

- 21 (1) In this paragraph “relevant regulations” means regulations under section 49 which create any offence for the purposes of the enforcement of any requirements imposed by or under regulations under section 49.
- (2) The appropriate Minister making any relevant regulations (“the Minister”) must at the required time lay before Parliament a report which—
  - (a) specifies the offences created by the regulations, indicating the requirements to which those offences relate,
  - (b) states that the Minister considers that there are good reasons for those requirements to be enforceable by criminal proceedings and explains why the Minister is of that opinion, and
  - (c) in the case of any of those offences which are punishable with imprisonment—
    - (i) states the maximum terms of imprisonment that apply to those offences,
    - (ii) states that the Minister considers that there are good reasons for those maximum terms, and

- (iii) explains why the Minister is of that opinion.
- (3) Sub-paragraph (4) applies where an offence created by the regulations relates to particular requirements and the Minister considers that a good reason—
- (a) for those requirements to be enforceable by criminal proceedings, or
  - (b) for a particular maximum term of imprisonment to apply to that offence,
- is consistency with another enactment relating to the enforcement of similar requirements.
- (4) The report must identify that other enactment.
- (5) In sub-paragraph (3) “another enactment” means any provision of or made under an Act, other than a provision of the regulations to which the report relates.
- (6) In sub-paragraph (2) “the required time” means the same time as the draft of the statutory instrument containing the regulations is laid before Parliament.
- (7) This paragraph applies to regulations which amend other regulations under section 49 so as to create an offence as it applies to regulations which otherwise create an offence.

*Extra-territorial application*

- 22 (1) Regulations under section 49 may impose requirements in relation to conduct outside the United Kingdom by a United Kingdom person.
- (2) In sub-paragraph (1) “United Kingdom person” means—
- (a) a United Kingdom national,
  - (b) a body incorporated or constituted under the law of any part of the United Kingdom, or
  - (c) a body within paragraph (3) or (4) of regulation 9 of the Money Laundering Regulations 2017 (bodies to be regarded for the purposes of those Regulations as carrying on business in the United Kingdom), as that regulation has effect immediately before it is saved by section 2 of the European Union (Withdrawal) Act 2018.
- (3) For this purpose a United Kingdom national is an individual who is—
- (a) a British citizen, a British overseas territories citizen, a British National (Overseas) or a British Overseas citizen,
  - (b) a person who under the British Nationality Act 1981 is a British subject, or
  - (c) a British protected person within the meaning of that Act.
- (4) In this paragraph “conduct” includes acts and omissions.

*Money Laundering Regulations 2017*

- 23 (1) Without prejudice to anything in section 49, paragraphs 1 to 22 or section 54(2), regulations under section 49 may—
- (a) subject to any modifications the appropriate Minister making those regulations considers appropriate, make provision corresponding or similar to any provision of retained money laundering Regulations

- as those Regulations have effect immediately after being saved by section 2 or 3 of the European Union (Withdrawal) Act 2018;
- (b) amend or revoke any retained money laundering Regulations.
- (2) In sub-paragraph (1) “retained money laundering Regulations” means –
- (a) the Money Laundering Regulations 2017;
- (b) Regulation (EU) 2015/847 of the European Parliament and of the Council of 20 May 2015 on information accompanying transfers of funds;
- (c) any provision made under Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing by virtue of Article 290 or 291(2) of the Treaty on the Functioning of the European Union.
- (3) In paragraph 15 (offences), any reference to regulations under section 49 includes the Money Laundering Regulations 2017.
- (4) In paragraph 21 (report in respect of offences) –
- (a) the reference in sub-paragraph (1) to requirements imposed by or under regulations under section 49 includes requirements imposed by or under the Money Laundering Regulations 2017, and
- (b) the reference in sub-paragraph (7) to other regulations under section 49 includes the Money Laundering Regulations 2017.

### *Interpretation*

- 24 In this Schedule –
- “enforcement partners” means bodies with which supervisory authorities enter into arrangements for the purposes of the enforcement of regulations under section 49;
- “money laundering” has the meaning given by section 49;
- “Money Laundering Regulations 2017” means the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 (S.I. 2017/692);
- “oversight body” means a body on which functions are conferred under paragraph 8(1);
- “relevant business” means business of a kind which entails risks relating to money laundering, terrorist financing or other threats to the integrity of the financial system;
- “relevant person” means a person on whom requirements are imposed under paragraph 3;
- “requirements” includes prohibitions;
- “supervisory authority” means the Financial Conduct Authority, the Commissioners for Her Majesty’s Revenue and Customs or any other body on which functions are conferred under paragraph 7(1);
- “terrorist financing” has the meaning given by section 49.

SCHEDULE 3

Section 59(4) and (5)

CONSEQUENTIAL AMENDMENTS

PART 1

AMENDMENTS CONSEQUENTIAL ON PARTS 1 AND 2

*Immigration Act 1971 (c. 77)*

- 1 (1) Section 8B of the Immigration Act 1971 (persons excluded from the United Kingdom under international obligations) is amended as follows.
  - (2) In the heading for “international obligations” substitute “certain instruments”.
  - (3) For subsection (4) substitute –
    - “(4) “Excluded person” means –
      - (a) a person named by or under, or of a description specified in, an instrument falling within subsection (5), or
      - (b) a person who under regulations under section 1 of the Sanctions and Anti-Money Laundering Act 2018 is an excluded person for the purposes of this section (see section 4 of that Act).”
  - (4) In subsection (5A)(b), for the words from the beginning to “that subsection” substitute “the person is within subsection (4)(a) and not within subsection (4)(b) and has been exempted from the application of subsection (1), (2) or (3), as the case may be,”.
  - (5) After subsection (5A) insert –
    - “(5B) In relation to any person within subsection (4)(b), subsections (1) to (3) are subject to any exception created under, or direction given by virtue of, section 15(4) of the Sanctions and Anti-Money Laundering Act 2018 (power to create exceptions etc).”

*Senior Courts Act 1981 (c. 54)*

- 2 In paragraph 2 of Schedule 1 to the Senior Courts Act 1981 (business allocated to the Queen’s Bench Division), after sub-paragraph (be) insert –
  - “(bf) all proceedings –
    - (i) on an application under section 38 of the Sanctions and Anti-Money Laundering Act 2018 (court review of decisions), or
    - (ii) on a claim arising from any matter to which such an application relates;”.

*Regulation of Investigatory Powers Act 2000 (c. 23)*

- 3 (1) Section 18 of the Regulation of Investigatory Powers Act 2000 (exceptions to matters excluded from legal proceedings) is amended as follows.
  - (2) In subsection (1), after paragraph (de) insert –
    - “(df) any proceedings –

- (i) on an application under section 38 of the Sanctions and Anti-Money Laundering Act 2018 (court review of decisions), or
  - (ii) on a claim arising from any matter to which such an application relates,
- or any proceedings arising out of such proceedings;”.
- (3) In subsection (2), after paragraph (zd) insert –
  - “(ze) in the case of proceedings falling within paragraph (df), to –
    - (i) a person, other than the Secretary of State or the Treasury (as the case may be), who is or was a party to the proceedings, or
    - (ii) any person who for the purposes of the proceedings (but otherwise than by virtue of appointment as a special advocate) represents a person falling within sub-paragraph (i);”.

*Serious Organised Crime and Police Act 2005 (c. 15)*

- 4 In section 61(1) of the Serious Organised Crime and Police Act 2005 (offences to which investigatory powers etc apply), after paragraph (i) insert –
  - “(j) any offence under regulations under section 1 of the Sanctions and Anti-Money Laundering Act 2018 (sanctions regulations) which is specified by those regulations by virtue of section 17(8) of that Act.”

*Serious Crime Act 2007 (c. 27)*

- 5 (1) Schedule 1 to the Serious Crime Act 2007 (offences in relation to which a serious crime prevention order may be made) is amended as follows.
  - (2) In paragraph 13B after sub-paragraph (5) insert –
    - “(5A) An offence under regulations made under section 1 of the Sanctions and Anti-Money Laundering Act 2018.”
  - (3) In paragraph 16MA after sub-paragraph (5) insert –
    - “(5A) An offence under regulations made under section 1 of the Sanctions and Anti-Money Laundering Act 2018.”
  - (4) In paragraph 29A after sub-paragraph (5) insert –
    - “(5A) An offence under regulations made under section 1 of the Sanctions and Anti-Money Laundering Act 2018.”
  - (5) In the italic headings before each of paragraphs 13B, 16MA and 29A, omit “Financial”.

*Crime and Courts Act 2013 (c. 22)*

- 6 (1) Part 2 of Schedule 17 to the Crime and Courts Act 2013 (offences in relation to which a deferred prosecution agreement may be entered into) is amended as follows.

(2) In paragraph 26A, after sub-paragraph (5) insert –

“(5A) An offence under regulations made under section 1 of the Sanctions and Anti-Money Laundering Act 2018 (sanctions regulations).”

(3) After paragraph 27 insert –

“27A An offence under regulations made under section 49 of the Sanctions and Anti-Money Laundering Act 2018 (money laundering and terrorist financing etc).”

*Investigatory Powers Act 2016 (c. 25)*

7 In Schedule 3 to the Investigatory Powers Act 2016 (exceptions to section 56), after paragraph 9 insert –

*“Sanctions proceedings*

9A (1) Section 56(1) does not apply in relation to any proceedings –

(a) on an application under section 38 of the Sanctions and Anti-Money Laundering Act 2018 (court review of decisions), or

(b) on a claim arising from any matter to which such an application relates,

or any proceedings arising out of such proceedings.

(2) But sub-paragraph (1) does not permit the disclosure of anything to –

(a) any person, other than the Secretary of State or the Treasury (as the case may be), who is or was a party to the proceedings, or

(b) any person who –

(i) represents such a person for the purposes of the proceedings, and

(ii) does so otherwise than by virtue of appointment as a special advocate.”

*Policing and Crime Act 2017 (c. 3)*

8 (1) Part 8 of the Policing and Crime Act 2017 (financial sanctions) is amended as follows.

(2) In section 143(4) (meaning of “financial sanctions legislation”) after paragraph (e) insert –

“(f) a provision of regulations made under section 1 of the Sanctions and Anti-Money Laundering Act 2018 that contains a prohibition or requirement imposed for a purpose mentioned in section 3(1) or (2) of that Act.”

(3) After section 143(4) insert –

“(4A) But “financial sanctions legislation” does not include any provision of regulations made under section 1 of the Sanctions and Anti-Money Laundering Act 2018 which is specified in the regulations as

a provision to be regarded as not being financial sanctions legislation for the purposes of this Part.”

(4) Omit sections 152 to 156 (avoidance of delay: temporary regulations).

PART 2

REPEALS ETC CONSEQUENTIAL ON REPEALS IN TERRORIST ASSET-FREEZING ETC ACT 2010

*Repeals and revocations*

9 The following provisions are repealed or revoked –

<i>Title</i>	<i>Extent of repeal or revocation</i>
Senior Courts Act 1981	In Schedule 1, paragraph 2(bc).
Regulation of Investigatory Powers Act 2000	In section 18, subsection (1)(dc) and, in subsection (2)(zb), the words “or (dc)”.
Counter-Terrorism Act 2008	Section 28(2)(d).
Charities Act 2011	In section 178(1), in Case J, paragraph (a).
Electronic Money Regulations 2011 (S.I. 2011/99)	In regulation 13(8)(d), the words “the Terrorist Asset-Freezing etc Act 2010,”.
Legal Aid, Sentencing and Punishment of Offenders Act 2012	In Schedule 5, paragraph 71.
Financial Services Act 2012	In Schedule 18, paragraph 132.
Counter-Terrorism and Security Act 2015	Section 45(2).  Section 46(1)(b). Section 49(4)(c).
Investigatory Powers Act 2016	In Schedule 3, paragraph 11. In Schedule 10, paragraph 25.
Payment Services Regulations 2017 (S.I. 2017/752)	Regulation 14(5)(e).
Sanctions and Anti-Money Laundering Act 2018	In section 49(3), in the definition of “terrorist financing”, paragraph (d).

*Consequential amendment*

10 In Schedule 3 to the Investigatory Powers Act 2016 (exceptions to section 56), in paragraph 12, for “neither paragraph 10 nor paragraph 11 permits” substitute “paragraph 10 does not permit”.



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**SOCIAL SECURITY ORDINANCE**

**ARRANGEMENT OF SECTIONS**

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VIRGIN ISLANDS

Chap. 266

Social Security

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(1<sup>ST</sup> July, 1980.)

17/1979

10/1981

7/1985

2/1990

1. This Ordinance may be cited as the Social Security Ordinance.

Short title.

2. (1) In this Ordinance-

Interpretation.

“appointed day” shall have the meaning ascribed to it in Section 48;

beneficiary” means a person entitled to benefit;

“benefit” means any benefit under this Ordinance;

“Board” means the Social Security Board established under section 4;

“claimant” means a person who has claimed benefit;

“contribution” means a contribution under this Ordinance;

“contributory period” means the prescribed period in respect of which the contribution is payable;

“contributory week” means a period of seven days commencing from midnight between Sunday and Monday;

“employee or employed person” means a person who is insured by virtue of subsection (2) (a) of section 18;

“gratuities” include service charges and tips payable to employees engaged in the catering trades;

“incapable of work” means incapable of work by reason of a specific disease or bodily or mental disablement or deemed in accordance with regulations to be so incapable;

“insurable employment” means subject to subsection (3) of section 18 any employment specified in subsection (2) of section 18;

“insured” means insured under this Ordinance;

“Investment Committee” means the Social Security Fund Investment Committee of the Board established by subsection (1) of section 13;

“Minister” means the Minister responsible for the subject of Social Security;

“wages” means the basic pay and overtime, but for the avoidance of doubt it is hereby declared to exclude pensions and gratuities.

(2) For the purposes of this Ordinance, a person shall be deemed to be over or under any age therein mentioned according to whether he has or has not attained that age and a person shall be deemed to be between the ages therein mentioned if he has attained the first-mentioned age but has not attained the second-mentioned age.

**PART I**

**ADMINISTRATION AND FINANCE**

**3.** (1) There is hereby established a fund to called the Social Security Fund, hereinafter called the Fund, into which shall be paid-

- (a) all contributions;
- (b) all rent, interest or investments, or other income derived from the assets of the Fund;
- (c) all sums recovered under this Ordinance as fines, fees, penalties or costs;
- (d) all sums properly accruing to the Fund under this Ordinance including the repayment of benefit; and
- (e) such other sums as may be provided by the Consolidated Fund for the purposes of the Ordinance or as may be received and accepted by the Board on behalf of the Fund.

(2) There shall be paid out of the Fund –

- (a) all benefits;
- (b) refunds of contributions; and

Social Security Fund.

- (c) all expenses properly incurred in the administration of this Ordinance (including the grant of special credits under section 21).

**4.** (1) There is hereby established a Board to be called the Social Security Board in which the Fund shall be vested and which shall subject to the provisions of this Ordinance, be responsible for administering the Fund, and the provisions of the Schedule shall apply in respect of the constituting of the Board and its proceedings.

Social Security Board.  
19/2005

(2) The Board shall be a body corporate with perpetual succession and a common seal, in its corporate name, be capable of suing and being sued and, subject to the provisions of this Ordinance, shall have power of purchasing or otherwise acquiring, holding, charging and alienating real or personal property and of doing or performing such acts as bodies corporate may by law do or perform.

(3) The Board shall have a Head Office in Road Town, Tortola and service on the Board of any notice, order or other document shall be executed by delivering the same or sending the same by post, addressed to the Director and of such other person as the Board may appoint for the purpose.

(4) The seal of the Board shall be kept in the custody of the Director and shall not be affixed to any instrument except by the authority of a resolution of the Board, and the sealing of any instrument shall be authenticated by the signature of the Director and of such other person as the Board may appoint for the purpose.

(5) The Board shall consider and advise upon all matters which may from time to time be referred to it by the Minister, and shall furnish to the Minister such information as he may reasonably require about the operation of the Ordinance.

(6) The Board shall render annual reports to the Minister by the 31<sup>st</sup> day of March each year and the Minister shall within thirty days after receiving any such report, lay a copy thereof before the Legislative Council.

(7) The Executive Council may, by Order published in the *Gazette* and in at least one newspaper published and circulating in the Territory, amend the Schedule and such Order shall be subject to a negative resolution to the Legislative Council.

**5.** (1) Subject to the provisions of this Ordinance the Board may appoint such committees of the Board as it may think fit:

Committees of the Board.

Provided that any such committee shall include not less than two members of the Board and may include persons who are not members of the Board.

(2) Subject to the provisions of this Ordinance, the Constitution and functions of a committee of the Board shall be determined by the Board.

**6.** There shall be paid out of the Fund-

Remuneration of the Board and its Committees.

(a) to the Chairman, Deputy Chairman and each member of the Board in respect of his office as such, such remuneration and allowances as the Legislative Council may determine; and

(b) to any person, not being a member of the Board, who serves on the Committee of the Board, such remuneration and allowances as the Legislative Council may determine upon a recommendation by the Board.

**7.** (1) The Executive Council shall appoint a fit and proper person to be the Director of the Board on such terms and conditions as are considered appropriate.

Director  
19/2005

(1A) For the purposes of subsection (1),

(a) the Minister shall, before referring the matter of the appointment of the Director to the Executive Council, consult with the Board; and

(b) the appointment of the Director shall be subject to a negative resolution of the Legislative Council.

(2) The Director shall subject to the provisions of this Ordinance, and any direction by the Minister, be charged with the administration of the staff of the Board and for the management of the Fund and in particular for -

(a) the collection of contributions under this Ordinance;

(b) the payment of benefit under this Ordinance, and of the expenditure necessary for the administration of the Fund; and

(c) accounting for all moneys collected, paid and invested under this Ordinance.

**8.** (1) The Director, may in relation to any mater or class of matters, by writing under his hand delegate to an officer or employee of the Board any of his functions under the Ordinance, except this power of delegation, so that the delegated function may be

Delegation by  
the Director.

performed by such officer or employee with respect to the matter or class of matters specified in the instrument of delegation.

(2) Every delegation under this section shall be revocable at will, but any delegation shall not prevent the performing of any function by the Director.

**9.** (1) The Executive Council shall appoint a fit and proper person to be the Deputy Director of the Board on such terms and conditions as are considered appropriate.

Director's  
Deputy.

(1A) For the purposes of subsection (1),

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(a) the Minister shall, before referring the matter of the appointment of the Deputy Director to the Executive Council, consult with the Board; and

(b) the appointment of the Deputy Director shall be subject to a negative resolution of the Legislative Council.

(2) On the occurrence of a vacancy in the office of Director (whether caused by death, resignation or otherwise) and in the case of illness, absence or temporary incapacity of the Director from whatever cause arising, and so long as such vacancy, illness, absence or incapacity continues, the Deputy Director shall have and may exercise all the powers, duties and functions of the Director.

(3) The fact that the Deputy Director exercises any power, duty or function as aforesaid shall be sufficient evidence of his authority so to do.

**10.** The Board may from time to time appoint persons to be officers or employees of the Board.

Staff of the  
Board.

**11.** The terms and conditions of employment of officers and employees of the Board (other than those of the Director and the Deputy Director) shall be prescribed from time to time by the Board.

Terms and  
conditions of  
employment with  
the Board.

**12.** (1) The Board may designate such officers or employees in its service as it thinks fit to be inspectors for the purposes of this Ordinance.

Inspectors.

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(2) Every inspector shall be furnished with a certificate of his appointment and on applying for admission to any premises or place for the purposes of this Ordinance shall produce the certificate.

(3) The premises or places liable to inspection under this section shall include any premises or place where an inspector has reasonable cause to believe that any persons

are employed whether or not such premises or place is used exclusively for residential purposes.

(4) An inspector shall for the purposes of this Ordinance have power to enter at all reasonable times any premises or place liable to inspection under this Ordinance and there make any examination or inquiry necessary for the purposes of this Ordinance, and to require the production of any documents relating to contributions or liability to contribute to the Fund, for inspection by him on the said premises or place, and to copy such documents or make extracts therefrom.

(5) The occupier of any premises or place liable to inspection under this section, and any other person who is or has been employing any person, and the servants or agents or any such occupier or other person shall furnish to an inspector any such information and shall produce for his inspection all such documents as the inspector may reasonably require.

(6) Any person who without reasonable cause obstructs, impedes, molests or refuses admission to an inspector in the exercise of any of his powers under this section or refuses or neglects to furnish any information or produce any document when required to do so under this section shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding five hundred dollars.

**13.** (1) There is hereby established a committee to be called the Social Fund Investment Committee.

(2) The Investment Committee shall consist of –

- (a) the Chairman of the Board, who shall be the Chairman of the Committee;
- (b) one person nominated by the Minister of Finance;
- (c) a member of the Board nominated by the Director.

(3) The Investment Committee shall meet as often as necessary and may regulate the procedure of its meetings, and shall be able to act notwithstanding any vacancy among its members. Three members of the Committee including the Chairman, shall form a quorum.

(4) The Investment Committee shall, in addition, meet at such time or times as the Chairman or the Minister may request, to give consideration and advice on such matters relating to the operation of this Ordinance as the Minister may require.

(5) In the absence of the Director, the Deputy Director shall attend any meeting and in such case the Deputy Director shall be deemed to be a member of the Committee for the purpose of that meeting.

(6) The Investment Committee shall give general or give specific directions from time to time on the investment of moneys in the Fund which are surplus to current needs and the Director shall give the Investment Committee any information necessary for the discharging of its functions.

**14.** (1) Moneys in the Fund may, subject to the approval of the Legislative Council, may be lawfully expended by the Board in the purchase of land or building deemed by the Board to be necessary for the proper administration of this Ordinance.

Investment of moneys.

(2) The investment of moneys in the Fund not otherwise required shall, subject to any direction of the Board, be made by the Director in accordance with any directions of the Investment Committee.

(3) The Investment Committee shall submit a report of its work to the Board half-yearly and at such times as the Board directs.

(4) Without limiting or affecting the powers of the Director or of the Board, where an investment proposed to be made under this section is by way of loan to a statutory body –

- (a) The loan shall only be made after the Legislative Council has passed a resolution giving its approval for the making of the loan; and
- (b) The Government of the Territory shall be deemed to be the guarantor of every loan so made.

**15.** (1) Any temporary insufficiency in the assets of the Fund to meet the liabilities of the Fund shall be advanced out of the Consolidated Fund as soon as may be practicable.

Temporary insufficiency of assets.

(2) Subject to the provisions of this Ordinance, any sums advanced under subsection (1) shall be repaid to the Consolidated Fund.

**16.** (1) The Board shall cause to be kept proper books of accounts and other books and records in relation thereto, in which shall be recorded all financial transactions of the Fund.

Accounts and audit.

(2) The accounts of the Funds shall be prepared in such form as may be prescribed in the Financial regulations to be framed by the Minister and such Regulations shall provide for the form and conduct of the accounts of the Fund and, in particular, for

- (a) the establishment and maintenance of different branches of such accounts; and
- (b) the establishment and maintenance within the Fund of different reserves, for different purposes, and the Chief Auditor shall examine every document.

(3) The Board shall –

- (a) submit to the Minister every account certified by the appointed auditor in accordance with subsection (2), within one month of the date of such certificate; and
- (b) submit annually to the Minister a statement of the securities in which moneys forming part of the Fund are for the time being invested.

(4) The Minister shall within thirty days after receiving any account in accordance with subsection (3), lay a copy thereof before the Legislative Council.

**17.** (1) The Board shall with the assistance of an actuary approved by the Minister review the operation of this Ordinance, during the period ending with the 31<sup>st</sup> day of December, 1983 and thereafter during the period with the thirty-first day of December in every third year, and on each such review shall make a report to the Minister on the financial condition of the Fund and the adequacy or otherwise of contributions to support benefits, having regard to its other liabilities under this Ordinance:

Provided that the Minister may at any time direct that the period to be covered by any review and the report under this subsection shall be reduced and that the making of that and subsequent reviews shall be accelerated accordingly.

(2) The Minister shall, within thirty days after receiving any report in accordance with subsection (1) lay a copy thereof before the Legislative Council.

**PART II****INSSURED PERSONS AND CONTRIBUTIONS****INSURED PERSONS.**

**18.** (1) Subject to the provisions of this Ordinance-

Persons to be insured.

- (a) Every person who on or after the appointed day being over the age of fifteen years and under the age of sixty-five years, is gainfully occupied in an insurable employment shall be insured under this Ordinance; and
- (b) Any person who at the said date is, or who subsequently becomes insured under the Ordinance shall thereafter continue throughout his life to be so insured.

(2) Notwithstanding the provisions of subsection (1), any person employed by or under the crown being a person who is the substantive holder of a permanent and pensionable office shall be exempt from the requirement to be insured under this Ordinance in respect of the contingency in relation to which sickness benefit is provided under paragraph (a) of subsection (1) of section 25 and there shall not be payable to or in respect of any such person any benefit payable by virtue of the said paragraph.

(3) Notwithstanding anything to the contrary in any enactment where the employment of a person to whom subsection (2) applies is for any reason terminated and that person becomes otherwise employed he shall be deemed to have been insured in respect of the contingency in relation to which sickness benefit is payable under paragraph (a) of subsection (1) of section 25 during his employment as a person mentioned in subsection (2) of that section and the insurable earnings of such person during such employment shall be taken into account in computing his average insurable earnings for the purpose of sickness benefit.

(4) For the purposes of this Ordinance, insured persons shall be divided into the following two classes, namely –

- (a) employed persons, that is to say, persons gainfully occupied in employment in the British Virgin Islands, being employment under a contract of service;
- (b) self-employed persons, that is to say, persons gainfully occupied in employment in the British Virgin Islands who are not employed persons.

(5) Regulations may provide for modifying the classifications aforesaid in relation to cases where it appears to the Minister desirable by reason of the nature or circumstances of a person's employment or otherwise, and such regulations may, in particular, provide –

- (a) for treating as an employed contributor's employment –
  - (i) employment under a public or local authority constituted in the British Virgin Islands notwithstanding that it is not employment under a contract of service;
  - (ii) employment outside the British Virgin Islands in continuation of employment in the service of an employer liable to employer's contributions under this Ordinance;
- (b) for treating as not being an employed contributor's employment or for disregarding –
  - (i) employment in which is of a causal or subsidiary nature or in which the insured person is engaged only to an inconsiderable extent;
  - (ii) employment in the service, or for the purposes of the trade or business, or as a partner, of the insured's person husband or wife;
  - (iii) employment by a relative in the common home of the insured person and the employer;
- (c) for treating a person's employment as continuing during periods of holiday or incapacity for work and in such other circumstances as may be prescribed.
- (d) for treating as not being in insurable employment in the service of any international organization or country other than the British Virgin Islands, as may be prescribed.

(6) Insured persons shall be insured under this Ordinance in respect of the several contingencies in relation to which benefits are provided under subsection (1) of section 26 and there shall be payable to or in respect of any such person, in the prescribed circumstances, any benefit payable by virtue of the said subsection.

(7) Regulations may provide for the insurance of persons under fifteen years of age and for persons over sixty-five years of age in respect of any of the several contingencies in relation to which benefits are provided under this Ordinance.

**CONTRIBUTIONS**

**19.** (1) For the purposes of this Ordinance, contributions shall, subject to the provisions of this Ordinance, be payable by insured persons and by employers. Source of Funds.

(2) Regulations shall provide for fixing, from time to time, the rates of contribution to be paid by such different categories of insured persons and employers as may be prescribed.

**20.** (1) Except where regulations otherwise provide an employer liable to pay a contribution in respect of a person employed by him shall be liable to pay also of and to the exclusion of such person any contribution payable by such person for the same contributory period, and for purposes of this Ordinance contributions so paid by an employer shall be deemed to be contributions paid by such person. Contribution by employed persons and employers.

(2) Notwithstanding any contract to the contrary an employer shall not be entitled to deduct from the wages of a person employed by him or otherwise recover from such person the contribution of the employer in respect of such person.

(3) An employer shall be entitled, subject to and in accordance with regulations, to recover from the pecuniary remuneration of a person employed by him the amount of any contribution paid or to be paid by him on behalf of such person and, notwithstanding anything in any enactment, such regulations may authorize such recovery to be made by deduction from wages of such person.

**21.** Regulations may provide for exempting insured persons and their employers from liability to pay contributions for such periods as may be prescribed. Exemption from liability for and crediting of contributions.

**22.** Where an employed person is employed successively or concurrently in a contributory week or part of a contributory week by more than one employer, each employer shall be liable to pay to the Fund contributions with respect to the wages paid by each employer to that person. Employment by more than one employer.

**23.** Regulations may provide – Collection of contributions etc.

(a) for the registration of employed persons;

- (b) for the payment and collection of contributions;
- (c) for the maintenance by employers of records of the payment of contributions;
- (d) for treating, for the purpose of any right to benefit, contributions paid after the due dates as paid on such dates, or on such later dates as may be prescribed, or as not having been paid;
- (e) for treating, as paid for the purpose of any right to benefit, contributions payable by an employer on behalf of an insured person but not paid where the failure to pay is shown not to have been due to any negligence on the part of such person;
- (f) for treating contributions appropriate to the wrong category of person, or at the wrong rate, as paid on account of the contributions properly payable;
- (g) for the return of contributions paid in error; and
- (h) for any other matters incidental to the payment and collection of contributions under this Ordinance.

**24.** (1) Any insured person who is not liable to pay contributions shall be entitled on making application to the Director within such time and in such manner as may be prescribed to receive a certificate of voluntary insurance if he satisfied the prescribed conditions.

(2) An insured person holding a certificate of voluntary insurance may pay within such time and in such manner as may be prescribed, the contributions at the prescribed rate for any contributory period for which he is not liable to pay a contribution as an insured person, and regulations may prescribe the circumstances in which such a person may cease to be entitled to contribute in default of payment of contributions within the prescribed time.

Voluntary  
insurance.

**PART III**

**BENEFITS**

25. (1) Benefits payable under this Ordinance shall be of the following kinds, namely –
- |  |                          |
|--|--------------------------|
|  | Description of benefits. |
| <ul style="list-style-type: none"> <li>(a) sickness benefit, that is to say, periodical payments to an insured person who is rendered incapable of work other wise than as a result of injury;</li> <li>(b) maternity benefit, that is to say, a payment of periodical payments to an insured woman or the wife of an insured man, in the case of her confinement;</li> <li>(c) invalidity benefit, that is to say, a payment of periodical payments to an insured person who is rendered permanently incapable of work otherwise than as a result of employment injury;</li> <li>(d) survivor’s benefit, that is to say, a payment or periodical payments made inspect of an insured person who dies otherwise than as a result of an employment injury;</li> <li>(e) funeral grant, that is to say, a payment on the death of an insured person, or the spouse of an insured person;</li> <li>(f) age benefit, that is to say, a payment of periodical payments to an insured person who has reached sixty-five years of age;</li> <li>(g) employment injury benefits, that is to say, a payment of periodical payments to an insured person in respect of an injury or a prescribed disease arising out of or in the course of employment.</li> </ul> | 19/2005                  |
| <p>(2) Employment injury benefits payable under this Ordinance are as follows-</p> <ul style="list-style-type: none"> <li>(a) injury benefit, that is to say, in addition to such free medical care and attention as may be prescribed, a payment of periodical payments to an employed person who suffers personal injury which is caused by an accident arising out of and in the course of insurable employment or develops any prescribed disease being a disease due to the nature of such employment;</li> </ul>   | 1/10/93                  |

- (b) disablement benefit, that is to say, in addition to such free medical care and attention as may be prescribed, a payment or periodical payments to an employed person who as a result of an injury or disease as is referred to in paragraph (a) suffers loss of faculty;
- (c) medical expenses, that is to say, payment of medical expenses in respect of an employed person who suffered personal injury or disease as is referred to in paragraph (a);
- (d) death benefit, that is to say, a payment of periodical payments of benefits in respect of an employed person who dies as a result of such injury as is referred to in paragraph (a);
- (e) funeral benefit; that is to say, payment on the death of an employed person, who dies as a result of such injury or disease as is referred to in paragraph (a).

(3) Employment injury benefits shall not be payable in respect of an accident happening or prescribed disease developing, while the insured person is outside the territory.

(4) From and after the employment injury date when regulations relating to employment injury benefits under subsection (2) come into operation an insured person who suffers any personal injury or develops any such disease as entitles him to employment injury benefit shall not in relation to such injury or disease be regarded as a workman for the purposes of the Workmen's Compensation Ordinance.

**26. (1) Regulations shall provide for –**

- (a) the rates or amounts of benefits and the variation of such rates or amounts in different or special circumstances;
- (b) the conditions subject to which and the periods for which benefit may be granted;
- (c) the date from which benefit is provided.

(2) Regulations made under subsection (1) shall include provisions that where it is a condition of title to benefit that a person is the wife, husband, widow or widower of an insured person, the Director may treat -

- (a) a single woman as if in law, she was his wife; or
- (b) a single man or widower who was living with a single woman or widow as if in law, he was never her husband.

Rate of and conditions for benefit

(3) Where the question of marriage or re-marriage or the date of the marriage or re-marriage arises in regard to title to benefit, the Director shall in the absence of the subsistence of a lawful marriage decide whether or not the person concerned should be treated as if he were married or had re-married as the case may be, and if so from what date; and in determining the question, the Director shall have regard to the provisions of subsection (2).

(4) The determination of the Director under subsection (2) or (3) shall, unless the context otherwise requires, have the effect of extending, as regards title to benefit, the meaning of the word ‘marriage’ to include the cohabitation of a single man or widower with a single woman or widow as aforesaid and the words ‘wife’, husband, ‘widow’, ‘widower’ and ‘spouse’ shall be construed accordingly.

**27.** (1) It shall be a condition of a person’s right to a benefit –

Time and manner of making claims.

- (a) that within the prescribed time, he makes a claim therefore to the Director on the form provided by the Director for the purpose or in such other manner as the Director may accept in the circumstances of the case; and
- (b) that he produces such certificates, documents, information and evidence for the purpose of determining the right to benefit as the Director may require, and for that purpose attends at such office or place as the Director may appoint.

(2) Regulations may require employers to maintain such records, to make such reports and to furnish such information as may be prescribed for the purpose of establishing any person’s title to benefit.

**28.** Regulations may provide –

Time and manner of paying benefit; disqualifications; adjustments or extinguishment of benefit; persons unable to act; deceased persons.

- (a) for disqualifying a person for the receipt of any benefit if he fails to make a claim therefore within the prescribed time:

Provided that any such regulation shall provide for extending the time within which the claim is to be made in the cases where good cause is shown for the delay;

- (b) for the prevention of the receipt of two benefits and the adjustment of benefits in special circumstances;
- (c) as to the time and manner of payment of benefit and the information to be furnished by any person when applying for payment;

- (d) for adjusting the commencement and termination of benefit, or changes in the rate of benefit, so that except in the case of sickness benefit, payments shall not be made in respect of any period shorter than a contributory week or at different rates for different parts of a contributory week;
- (e) for extinguishing the right to payment of any sum by way of benefit if payment is not obtained within a prescribed period;
- (f) for disqualifying a person for receiving sickness benefit, or such other benefit as may be prescribed for such period as may be prescribed if that person –
  - (i) has become incapable of work through his own misconduct;
  - (ii) fails without good cause to attend for or submit to such medical examination or treatment as may be required in accordance with the regulations; or
  - (iii) does any work as an employed or self-employed person.
- (g) for suspending payment of benefit to or in respect of any person during any period when he –
  - (i) is absent from the British Virgin Islands; or
  - (ii) is undergoing imprisonment or detention in legal custody.

And for specifying the circumstances and manner in which the whole or any part of the benefit may instead of being suspended be made during any such period to any prescribed person nominated by the beneficiary, or for the maintenance of any prescribed person who the Director is satisfied is a dependant of the beneficiary;

- (h) for enabling a person to be appointed to exercise on behalf of any person who may be or become unable for the time being to act, any right or power which that other person may be entitled to exercise under this Ordinance and for authorizing a person so appointed to receive and deal with any sum payable by way of benefit to that other person;
- (i) in connection with the death of any person for enabling a claim for benefit to be made or proceeded with in his name, for authorizing payment to or among persons claiming as his personal representatives,

legatees, next of kin, creditors or otherwise, and for dispensing with strict proof of title of persons so claiming; and

(j) for such other matters as may be necessary for the proper administration of benefits, including the obligations of claimants, beneficiaries, and employers.

**29.** (1) Regulations may provide for the appointment of medical officers or medical referees or other professional persons and for the establishment of medical boards for the purposes of this Ordinance.

Appointment and remuneration of medical officers or referees.

(2) There shall be paid out of the Fund to a medical officer or medical referee or professional person appointed under such regulation, and to a member of a medical board so established, such salary or other remuneration as the Board with the prior approval of the Governor in Council may determine and such expenses incurred in connection with the work of such medical officer, medical referee or member or professional person as may be so determined.

**30.** (1) If it is found that any person by reason of the non-disclosure or misrepresentation by him of a material fact (whether such non-disclosure or misrepresentation was or was not fraudulent) has received any sum by way of benefit, he shall be liable to repay the sum so received by him.

Repayment of benefit improperly received.

(2) Where any person is liable to repay any sum received by him by way of benefit, that sum may be recovered without prejudice to any other remedy by means of deductions from any payment of benefit to which he thereafter becomes entitled.

**31.** Every assignment of or charge on benefit, and every agreement to assign or charge benefit shall be void, and on the bankruptcy of a beneficiary the benefit shall not pass to any trustee or other person acting on behalf of creditors.

Benefits to be alienable.

**PART IV**

**ADJUDICATION AND LEGAL PROCEEDINGS**

**32.** (1) Regulations may provide for the determination by the Board, by the Director, or by a person or tribunal appointed or constituted in accordance with the regulations of any question arising under or in connection with benefit, and subject to the provisions of the regulations, the decision in accordance therewith of any such question shall be final.

Determination of claims and questions.

(2) Without prejudice to the generality of subsection (1), regulations made thereunder may in relation to the determination of questions in accordance with regulations include provision –

- (a) as to the procedure to be followed, the form of any document, the evidence to be required, and the circumstances in which the official record or certificate is to be sufficient or conclusive evidence;
- (b) as to the time to be allowed for making any claim or appeal, for raising any question with a view to the review of any decision, or for producing any evidence.
- (c) for summoning persons to attend and give evidence or produce documents for authorizing the administration of oaths and witnesses;
- (d) as to the representation of one person at the hearing of a case by another person whether having professional qualifications or not,

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and except in so far as it may be applied by such regulations the Arbitration Ordinance shall not apply to any proceedings under this section.

(3) Notwithstanding anything in any enactment, the decision of the High Court in a reference or appeal shall be final, and the Court may order the Board to pay costs of any person whether or not the decision is in favour of the Board and whether or not the Board appears on the reference or appeal.

Interim  
payments, arrears  
and payments.

**33.** (1) Regulations may provide as respects matters arising –

- (a) pending the determination under this Ordinance (whether in the first instance or on appeal or review) of any claim for benefit or of any question affecting the right of any person to benefit or to the receipt thereof; or
- (b) out of the revision or appeal or review of any decision of any such claim or question.

(2) Without prejudice to the generality of subsection (1), regulations thereunder may include provision -

- (a) for the suspension of benefit where it appears to the Director that there is or may be a question whether the conditions for the receipt thereof are or were fulfilled or whether the award ought to be revisited;

- (b) as to the date from which any decision or review is to have effect;
- (c) for treating any benefit paid to any person which it is subsequently decided was not payable, or as paid on account of any other benefit which it is decided was payable to him, or for the repayment of any such benefit;
- (d) for treating benefit paid to a person in respect of a child as properly payable for any period notwithstanding that by reason of a subsequent decision another person is entitled to benefit in respect of that child for that period; and for reducing or withholding accordingly, any arrears payable for that period by virtue of that subsequent decision.

**34.** There shall be paid out of the Fund to any person appointed under regulations made under subsection (1) of section 32 to a member of a tribunal constituted under such regulations such salary or other remuneration as the Board with the approval of the Governor in Council may determine and such expenses in connection with the work of such person or member as may be so determined.

Remuneration of persons and tribunal appointed under section 32.

**35.** (1) Any person who fails to pay at or within the time prescribed for the purpose, any contribution which he is liable under this Ordinance to pay, shall for each such failure be liable on summary conviction to a fine not exceeding five hundred dollars and in default of payment of such fine, to imprisonment for a term not exceeding three months.

Offences and penalties.

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(2) An employer who deducts or attempts to deduct or otherwise recovers or attempts to recover the whole or any part of the contributions of the employer in respect of any person from the wages or other remuneration of such person, shall be liable on summary conviction to a fine not exceeding five hundred dollars and in default of payment of such fine to imprisonment not exceeding three months.

(3) Any person who for the purpose of obtaining any benefit or other payment under this Ordinance, whether for himself or for some other person, or for any other purpose connected with this Ordinance –

- (a) knowingly makes any false statement or false representation; or
- (b) produces or furnishes, causes or knowingly allows to be produced or furnished, any document or information which he knows to be false in material particular,

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shall be liable on summary conviction to a fine not exceeding five hundred dollars or imprisonment for a term not exceeding three months.

**35A.** (1) Where a body corporate has failed to deduct, withhold, remit or pay an amount as required by this Ordinance and regulations made thereunder, every Director and manager of such body corporate at the time the body corporate was required to deduct, withhold, remit or pay moneys, is jointly and severally liable together with the body corporate to pay that amount and interest and penalties relating thereto.

(2) No director or manager shall be liable for a failure under subsection (1) when he exercised a degree of care, diligence and skill to prevent the failure that a reasonably prudent person would have exercised in comparable circumstances.

(3) In determining whether a director or manager exercised the degree of care, diligence and skill to prevent the failure referred to in subsection (1), the court shall take into account all the circumstances of the case but shall not make a finding that the director or manager exercised the degree of care, diligence and skill to prevent the failure referred to in subsection (1) unless the court is satisfied that the director or manager had regard to the interests of the employees of the body corporate.

(4) No action or proceedings to recover any amount payable by a director or manager of a body corporate shall be commenced more than three years after the director or manager has ceased to be a director or manager of that body corporate.

(5) Where a director or manager pays an amount in respect of any liability of the body corporate that is proved in liquidation, dissolution or bankruptcy proceedings, he is entitled to any preference the Social Security Fund could have been entitled to and such amount not been so paid.

(6) For the purposes of this section, the reference to director or manager shall be construed to mean the director or manager who has responsibility for the administration or operation of the body corporate.

**36.** (1) Proceedings for an offence under this Ordinance shall not be instituted except by or with the consent of the Board or by an officer of the Board authorized in that behalf by specific or general directions of the Board.

(2) Any such officer although not a barrister or a solicitor may prosecute or conduct before a court of summary jurisdiction any such proceedings as aforesaid.

(3) Notwithstanding any provisions in any enactment fixing the period within such summary proceedings may be commenced, proceedings for an offence under this Ordinance may be commenced at any time within six years after evidence sufficient in the opinion of the Board to justify a prosecution for the offence comes to its knowledge

General provisions as to prosecutions.

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and for the purpose of this subsection a certificate purporting to be signed on behalf of the Board as to the date on which such evidence came to its knowledge shall be conclusive evidence thereof.

(4) In any proceedings for an offence under this Ordinance the wife or husband of the accused shall be competent to give evidence against the accused:

Provided that a wife or husband shall not be compelled to give evidence to disclose any communication made to her or him during the marriage with the accused.

(5) Where an offence under this Ordinance which has been committed by a body corporate is proved to have been committed with the consent or connivance of or to be attributable to any negligence on the part of any directors, manager, secretary or other officer of the body corporate, they as well as that body shall be deemed to be guilty of that offence and shall be liable to be proceeded against and penalized.

**37.** (1) In any case where a person has been convicted of the offence under subsection (1) of section 35 of failing to pay a contribution he shall be liable to pay to the Fund a sum equal to the amount which he failed to pay.

Recovery of contributions on prosecution.

(2) On any such conviction as is mentioned in subsection (1) above, if notice of intention to do so has been served with the summons or warrant, evidence may be given of the failure on the part of the person concerned to pay other contributions during the two years preceding the date of the offence, and on proof of such failure the persons concerned shall be liable to pay to the Fund a sum equal to the total of all the contributions which he is so proved to have failed to pay.

(3) Where any person is charged with an offence as is mentioned in subsection (1) or (2) and a probation order is made in respect of such offence the forgoing provisions of this section shall apply as if the making of the order were a conviction.

(4) Any sum ordered to be paid out of the Fund under this section shall be recoverable as a penalty.

(5) Any sum paid by an employer under this section shall be treated as a payment in satisfaction of the unpaid contributions and any part of such which represents employee's contribution shall not be recoverable by the employer from the insured person.

(6) If an employer being a corporate body fails to pay to the Fund any sum which the employer has been ordered to pay under this section such sum or part thereof as remains unpaid shall be a debt due to the Fund jointly and severally from any directors of the body corporate who knew or reasonably be expected to have known of the failure to pay the contribution in question.

(7) Nothing in this section shall be construed as preventing the Board from recovering any sums due to the Fund by means of civil proceedings.

**38.** (1) All sums due to the Fund under this Ordinance shall be recoverable as debts due to the Board and, without prejudice to any remedy may be recoverable as a civil debt:

Provided that any sum due by way of contributions shall for such date as may be prescribed, bear interest at the rate of ten per cent per annum or such other rate as may be prescribed.

(2) Proceedings for the summary recovery of sums due to the Fund may, notwithstanding anything in any enactment to the contrary, be brought at any time from the time when the matter complained of arose.

(3) Proceedings for the summary recovery as civil debts of sums due to the Fund may be instituted by an Officer of the Board authorized in that behalf by special or general directions of the Board and any such officer may, although not a barrister or a solicitor conduct such proceedings.

**38A.** (1) An officer or agent of the board authorized in that behalf (hereinafter referred to as “the authorized officer”) may make an application to the court for an order to seize goods and chattels of the defendant in execution of a judgment debt where such judgment debt has remained unpaid despite a court order to that effect.

(2) The Court on the application of the authorized officer shall cause to be issued an order of attachment and sale whereby the authorized officer shall be empowered to levy or cause to be levied by distress and sale of goods and chattels, wherever they may be found within the Territory, the money payable under the judgment and the costs of the execution.

(4) Where a Court has made an order for payment of any sum of money by installments, no order of execution of the judgment shall be issued until after the default in payment of some installments according to the order.

(5) In or upon every order of execution against the property of any person, the court shall specify the sum of money and costs adjudged, and the fees of the execution of the order.

(6) Every authorized officer executing any order of execution issued from a court against the property of chattels of any person may by virtue thereof seize \_

(a) any of the goods and chattels of that person, except the wearing apparel and bedding of that person or his family and the tools and implements of

his trade, to the value, which shall to that extent be protected from seizure;  
and

(b) any money, bank notes, bills of exchange, promissory notes, bonds, specialties or securities for money belonging to that person.

(7) Goods seized in execution under process of a court shall thereof be safeguard in such manners as the court directs.

(8) The authorized officer shall hold any bills of exchange, promissory bonds, specialties or other securities for money seized in execution under an order of a court as security of the amount directed to be levied by the execution, or for so much thereof as has not been otherwise levied or raised for the benefit of the Board, and the authorized officer may sue in the name of the defendant, or in the name of any person in whose name the defendant might have sued, for the recovery of the sum secured or made payable thereby, when the time of payment thereof arrives.

(9) If any person rescues or attempts to rescue any goods seized in execution under an order of the court or in any other way resists or obstructs the execution of an order for the enforcement of a judgment of a court, he shall be liable, either on an order made in that behalf by the court from which the order of execution issues, or on summary conviction, to a fine not exceeding one thousand dollars or to a term of imprisonment not exceeding three months.

(10) The provisions of Part XI of the Magistrate's Code of Procedure shall apply with the necessary modification in respect of an order made under this section save that for purposes of this section the word "constable" in that Part shall be read as if it were a reference to the words "authorized officer" in this section.

**39.** (1) Where an employer has failed or neglected to pay any contribution which he is liable to pay in respect of or on behalf of an insured person, and by reason of such failure or neglect such person or any other person becomes disentitled to any benefit on a lower scale, the Director may, on being satisfied that the contributions should have been paid by the employer, pay to the person or the other person benefit at the rate to which he would have been entitled if the failure or neglect had not occurred and the Board shall be entitled to recover from the employer summarily as a civil debt a sum equal to the amount of the benefit so paid or the contributions not paid whichever be the greater.

Proceedings for benefits lost by employer default.

(2) Proceedings may be taken under this section notwithstanding that proceedings have been taken under any other provision of this Ordinance in respect of the same failure or neglect.

(3) Proceedings under this section may, notwithstanding any enactment to the contract, be brought at any time within one year after the date on which the person concerned, would, but for the employer's failure or neglect have been entitled to receive the benefit in question.

## PART V

### MISCELLANEOUS

Crown Servants.

**40.** This Ordinance shall apply to persons employed by or under the Crown in like manner as if the Crown were a private person, with such modifications as may be made therein by regulations for the purpose of adapting the provisions of this Ordinance to the case of such persons:

Provided that the provisions of this Ordinance shall not affect adversely any vested rights of an employee under any pension or superannuation scheme in existence before the coming into operation of this Ordinance.

Persons employed aboard ships, vessels or aircraft.

**41.** (1) Without prejudice to the generality of any other power to make regulations the Minister may make regulations modifying in such manner as he thinks proper the provisions of this Ordinance in relation to persons who are or have not been employed on board any ship, vessel, or aircraft.

(2) Regulations made under subsection (1) may in particular provide –

- (a) for the insurance under this Ordinance of persons who are or have been employed on or after the appointed day on board ships, vessels, or aircraft notwithstanding they do not fulfill the conditions of section 18;
- (b) for excepting for insurance under this Ordinance or from liability to pay contributions, any persons employed as aforesaid who neither are domiciled nor have a place of residence in the Territory;
- (c) for the taking of evidence for the purpose of any claim for benefit in any place outside the Territory;
- (d) for enabling persons on board ships, vessels, or aircraft to authorize the payment of the whole or any part of their dependants as may be prescribed;
- (e) for withholding any benefit which may be payable to a mariner for any period while the owner of his ship or vessel is under a statutory obligation to pay him wages.

**42.** For the purposes of giving effect to any agreement with the Government of any other part of the Commonwealth or the Government of any other country, being an agreement which provides reciprocity in matters of Social Security, it shall be lawful for

Reciprocal agreements with other countries.

the Minister by order, to modify or adapt the provisions of this Ordinance in their application to cases affected by the agreement.

**43.** (1) Stamp duty shall not be chargeable upon any draft or order or receipt given in respect of any benefit or upon any receipt given in respect of any other payment out of the Fund under subsection (2) of section 3 of this Ordinance or upon any receipt given by an officer or employee of the Board for or in respect of any sum payable to the Fund.

Exemption from stamp duty.

(2) Nothing in subsections (1) shall be deemed to exempt any person from liability to pay stamp duty on any power of attorney or on any documents other than those mentioned in subsection (1) which is otherwise liable to duty under the Stamp Duty Act.

Cap. 212 .

**44.** (1) The Minister may make regulations as are required by this Ordinance to be made.

Power to make regulations.

(2) Such regulations may modify or affect the operation of any provision of this Ordinance as he may consider necessary or desirable generally for giving effect to the principles of this Ordinance.

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(3) Notwithstanding anything to the contrary in any other law, where no penalty is specified for any offence under this Ordinance or regulations made thereunder, regulations may provide a penalty for one hundred dollars for each offence being a contravention of or failure to comply with any regulation, or where the offence consists of continuing thereof, five hundred dollars together with a further twenty-five dollars for each day on which it so continues.

(4) Any power conferred by this Ordinance to make regulations may be exercised –

(a) either in relation to all cases to which the power extends or in relation to all such cases subject to specified exceptions or in relation to any specified cases or class of cases;

(b) so as to make as represents the cases in relation to which it is exercised –

(i) the full provision for all cases to which the power extends or any less provision;

- (ii) the same provision for all cases to which the power is exercised, or different provision for different cases, or different provision as respects the same case for different purposes of this Ordinance;
  
- (iii) any such provision either unconditionally or subject to any specified condition.

(5) Without prejudice to any specific provision of this Ordinance any regulation may contain such incidental or supplementary provisions as appear to the Minister to be expedient for the purposes of the regulations.

**45.** (1) All regulations shall be laid before the Legislative Council as soon as may be after they are made and if within a period of thirty days beginning with the day on which such regulations are so laid the Legislative Council resolves that the regulations be annulled they shall thereupon cease to have effect but without prejudice to anything previously done thereunder or to the making of new regulations.

(2) In reckoning any period of thirty days specified in subsection (1) no account shall be taken of any time during which the Legislative Council is dissolved or prorogued or during which the Legislative Council is adjourned for more than fourteen days.

**46.** (1) Nothing in this Ordinance shall be deemed to prevent an employer from operating any private schemes providing, for any person who is or has been employed by him, benefits of any kind whether similar to benefits under this Ordinance or greater.

(2) Where any such employer desires to modify any such scheme in operation before the coming into effect of this Ordinance such modification shall have prior approval of the Minister.

**47.** (1) In any case where –

- (a) any warrant of distress of executed against the property of any employer and the property is seized or sold in pursuance of the execution; or
  
- (b) on the application of a secured creditor the property of an employer is sold, the proceeds of the sale of the property shall not be distributed to any person entitled thereto until the Court ordering the sale has made provision for the payment of any amounts due in respect of contributions payable by the employer.

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- (2) For the purposes of this section, the expression “employer” includes any company in liquidation under the provisions of the Bankruptcy Act. Cap. 8.
- (3) Notwithstanding anything contained in any other law, contributions made under this Ordinance by employers shall be regarded as a deduction allowed under Section 11 of the Income Tax Ordinance. 10/1981.  
Cap. 206.
- 48.** (1) In this Ordinance the expression “the appointed day” means subject to the following provisions of this section, such day as the Minister may by Order published in the Gazette appoint, and different days may be appointed for different provisions of this Ordinance. Appointed Day.
- (2) Any Order made under subsection (1) may contain such incidental or supplementary provisions as appear to the Minister to be necessary or expeditious for the orderly implementation of the provisions and purposes of this Ordinance.
- 49.** For the purposes of this Ordinance, an accident arising in the course of an insured’s person employment shall be deemed in the absence of evidence to the contrary to have arisen out of that employment. Presumption as to accident in certain cases.
- 50.** (1) An accident shall be deemed to arise out of or in the course of an insured person’s employment notwithstanding that he is at the time of the accident acting in contravention of any statutory, or other regulations applicable to his employment, or of any orders given by or on behalf of his employer, or that he is acting without instructions from his employer, if – Accidents happening while acting in breach of regulations etc.
- (a) the accident would have been deemed to have arisen had the act not been done as aforesaid without instructions from his employer, as the case may be; and
- (b) the act is done for the purpose of and in connection with the employer’s trade or business..
- 51.** (1) An accident happening while an insured person is, with the express or implied permission of his employer, traveling as a passenger by any vehicle to or from his place of work shall, notwithstanding that he is under no obligation to his employer to travel by that vehicle, be deemed to arise out of and in the course of the employment, if at that time of the accident, the vehicle is being operated by or on behalf of his employer or by some other person, firm or company who is providing the service in pursuance of arrangements made with the employer and is otherwise not being operated in its ordinary course or as a public transport service. Accidents while travelling in employer’s transport.
- (2) In this section reference to a vehicle includes a ship, aircraft or other vessel.

Accidents happening while meeting emergency situations.

**52.** An accident happening to an insured person in or about any premises at which he is for the time being employed for the purpose of his employer's trade or business shall be deemed to have arisen out of and in the course of his employment if it happened while he was taking steps, on an actual or supposed emergency at those premises, to rescue, succour, or to protect persons who, are, thought to be or may possibly be, injured or imperiled, or to avert, or to minimize serious damage to property.

Industrial disease and injuries not caused by accident.

**53.** (1) A person under this Ordinance, is insured against personal injury caused by accident arising out of and in the course of his employment shall be deemed to be insured also against any prescribed disease or injury being a disease or injury due to the nature of the employment and which developed on after the appointed day.

(2) A disease may be prescribed as liable for employment injury benefit in relation to any insured person, if the Director is satisfied that –

- (a) it ought to be treated, having regard to its cause and incidence and any other relevant considerations, as a risk of their occupation and not as a risk common to all persons; and
- (b) it is such that, in absence of special circumstances, the attribution of particular cases can be established with reasonable certainty to the nature of employment.

Regulations relating to disease and injuries, medical officers and boards.

**54.** Regulations may provide for-

- (a) determining the time at which a person is to be treated for the purposes of this Ordinance as having developed any prescribed disease or injury and the circumstances in which any such disease or injury is, where the person in question has previously suffered therefrom, to be treated as having been developed or received afresh;
- (b) for presuming any prescribed disease or injury-
  - (i) to be due, unless the contrary is proved, to the nature of a person's employment where he was employed in any prescribed occupation at the time when, or within a prescribed period or for a prescribed length of time, whether continuous or not, before he developed the disease or injury;
  - (ii) not to be due to a person's employment unless he was employed in some prescribed occupation at the time when, or within a prescribed length of time, whether continuous or not, before he developed the disease or injury.

- (c) the establishment of special medical boards and the appointment of medical officers for the purposes of this Ordinance.
- (d) Such other matters as may appear to the Minister to be incidental to or consequential on provisions included in the regulations by virtue of the foregoing provisions of this section.

**55.** No suit or prosecution shall be instituted against the Director or against any member of the Board for any act which in good faith is done or purported to be done by such Director, member or officer under this Ordinance or on the direction of the Board.

Protection for action taken under the Ordinance.

**56.** In all actions brought under this Ordinance where it is alleged that any person is an employer it will be sufficient for the Director or the Board to allege that any person who pays contributions or is otherwise liable to pay contributions is an employer within the meaning of the Ordinance and the onus of proof shall be on that person to prove that he is not such an employer.

Onus on employer to prove he is not employer.

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**SCHEDULE.**S.4.  
19/2005**Constitution and Proceedings of the Social Security Board.**

1. The Board shall consist of seven persons appointed by the Minister of whom-
  - (a) one shall be the Director, or in his absence his Deputy;
  - (b) two shall represent Government;
  - (c) two shall represent employers; and
  - (d) two shall represent employed persons:

Provided that members of the Legislative Council shall not be eligible for appointment to the Board.

2. The members representing employers shall be appointed after consultation with such associations or employers, or such persons or bodies, as appear to the Minister likely to produce representation for employers generally throughout the Territory.
3. The members representing employed persons shall be appointed after consultation with such persons or bodies, as appear to the Minister to be representative of employees throughout the Territory.
4. (1) The Minister shall with the concurrence of the Leader of the Opposition designate two representative members of the Board to be Chairman and Deputy Chairman.
  - (2) Where, within a period of twenty-one days after the Minister notifies the Leader of the Opposition in writing of a proposal for the appointment of a Chairman or Deputy Chairman, an agreement on the appointment is not reached, the Minister shall refer the matter to the Executive Council whose decision shall be final.
5. The representative members of the Board shall hold office for such period not exceeding three years as may be determined by the Minister. Any member of the Board shall be eligible for re-appointment.

6. A member of the Board may at any time, by notice in writing addressed to the Minister, resign his office; and if a member becomes, in the opinion of the Minister, unfit to continue in office or incapable of performing his duties, the Minister shall in such manner as he thinks fit declare the office of the member vacant.
  7. The quorum for any meeting of the Board shall be three including the Chairman or Deputy Chairman, one of whom shall preside at all meetings; the Director or Deputy Director shall be present and the Board may act notwithstanding any vacancy in its membership.
  8. A substitute member may be appointed by the Minister after consultation with the appropriate body, for any one meeting which a member is unable to attend.
  9. The decision of the Board shall be a majority of votes and in the event of an equality of votes the Chairman presiding at the meeting shall have a casting vote.
  10. Minutes of each meeting shall be kept in a proper form by such officer of the Board as the Board may appoint for the purpose, and shall be confirmed by the Board at its next meeting and signed by the Chairman or Deputy Chairman as the case may be.
  11. The Board may invite one or more persons to attend any particular meeting of the Board for the purpose of advising or assisting the Board, but no such invited person shall have any right to vote.
  12. If any member of the Board or other person present at a meeting of the Board is directly or indirectly interested in any contract or proposed contract or other matter, he shall, at the meeting and as soon as is practicable after the commencement of the meeting disclose the fact of his interest and shall not take part in the discussion, consideration or voting on such contract or other matter.
  13. Subject to the provisions of this Ordinance, the Board shall have power to regulate its own proceedings.
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**VIRGIN ISLANDS**

**STATUTORY INSTRUMENT 1999 NO. 25**

**PRISON ORDINANCE  
(Cap. 166)**

**THE PRISON RULES, 1999**

[Gazetted 13<sup>th</sup> May, 1999]

The Governor in Council in exercise of the powers conferred by section 27 of the Prison Ordinance (Cap. 166), makes the following Rules:

**PRELIMINARY**

Citation.

**1.** These Rules may be cited as the Prison Rules, 1999.

Interpretation.

**2.** In these Rules, unless the context otherwise requires,

**"adjudged term"** means the length of imprisonment imposed by a court on passing sentence, and where it passes two or more sentences of imprisonment to be served consecutively by a prisoner, means the aggregate length of all those sentences;

**"Committee"** means the Prison Visiting Committee established under Part IV;

**"medical officer"** in relation to prisons, means the Director of Health Services of the Territory or other medical practitioner appointed by the Governor for the purposes of these Rules;

**"Officer"** means a Prison Officer appointed under section 7 (2) of the Ordinance;

**"religion"** includes a religious faith;

**"sentence"** means the sentence of imprisonment being served by a prisoner pursuant to an order of a court made upon his conviction for a criminal offence, and includes any such sentence being served in default of payment of a fine or other monetary penalty imposed by the court upon his conviction;

**“Superintendent”** means the Superintendent of Prisons appointed under section 7(1) of the Ordinance;

**"unconvicted prisoner"** means a prisoner awaiting trial, a prisoner on remand, a prisoner committed for contempt of court, a prisoner convicted but not sentenced, or a prisoner under lawful temporary detention without charge, but does not include a prisoner detained for an indeterminate term at the pleasure of the Governor.

## **PART I GENERAL**

**3.** (1) Immediately upon the admission of a prisoner into prison the Superintendent shall cause to be entered

Admission,  
search and  
briefing of  
prisoners

- (a) in the Prisons Admission Book the name of the prisoner, whether he is convicted, and, if so, the date of commencement and expiration of his sentence, his age, height, weight and other details relevant to his identification;
- (b) in the Reconviction Book the name of every prisoner admitted into prison on a subsequent conviction; and
- (c) in the Prisoner's Property Book any property found upon the prisoner at the time of his admission into prison.

(2) Subject to rule 15, immediately upon the admission of a prisoner into prison the prisoner shall be searched by an Officer of the same sex as the prisoner concerned, in as seemly a manner (out of sight of other prisoners) as is consistent with the discovery of anything concealed.

(3) Every prisoner shall, as soon as possible after admission, be separately examined by the medical officer and such examination shall include any test necessary to determine whether a prisoner has an infectious or contagious disease, except that where an unconvicted prisoner is to be tested his consent will be required before the test is carried out.

(4) The Superintendent may require that any prisoner admitted into prison be photographed and finger-printed.

(5) Every prisoner shall be provided, within 24 hours of his admission into prison, with sufficient information about these Rules and any other matters which it is necessary for him to know, including the proper method of making requests and complaints.

(6) A copy of these Rules shall be made available to any prisoner who requests it.

Classification and separation of prisoners.

**4.** (1) Subject to rule 5 and any direction of the Governor, the Superintendent may classify prisoners according to their age, temperament and record, with a view to maintaining good order and furthering rehabilitation.

(2) As far as reasonably possible unconvicted prisoners shall be kept apart from convicted prisoners, unless any unconvicted prisoner is willing to associate with convicted prisoners.

Female prisoners.

**5.** (1) Female prisoners shall be kept separate from male prisoners.

(2) The Superintendent may, subject to any conditions he thinks fit, permit a female prisoner to nurse or tend her child in prison, in which case everything necessary for the child's maintenance and care shall be provided there.

Privileges.

**6.** For the encouragement of the good conduct, industry and rehabilitation of prisoners the Superintendent shall, subject to the approval of the Governor, establish a system of privileges for each prisoner, including schemes under which money earned by prisoners may be spent by them within the prison.

Remission of sentence.

**7.** (1) Where a prisoner is sentenced to a term of imprisonment for a period exceeding one month, the Superintendent may, on account of that prisoner's good conduct, recommend to the Governor that a portion of the prisoner's sentence not exceeding one third of the adjudged term be remitted.

(2) A prisoner whose sentence is remitted pursuant to sub-rule (1) shall be discharged when the adjudged term of his sentence less the period of remission has been served.

(3) In calculating for the purposes of this section how much of the adjudged term of a sentence of a prisoner remains to be served, account shall be taken of any period during which that prisoner was, in respect of the offence for which he was convicted, remanded in custody by any court or by a Justice of the Peace either before conviction and before

the passing of sentence, unless in passing sentence a court has directed that any such period shall not be taken into account.

(4) Any number of days forfeited by the prisoner under rules 32 and 33 shall not be taken into account in calculating the adjudged term of a sentence.

(5) This rule shall not apply to any prisoner serving a sentence of imprisonment for life or ordered to be detained in prison for an indefinite term during the pleasure of the Governor.

**8.** (1) Every request by a prisoner to see the Superintendent or the Committee shall be recorded in the Application Book by the Officer to whom it is made and promptly communicated to the Superintendent.

Requests by prisoners to see certain authorities.

(2) The Superintendent, as soon as practicable after he is informed of a request under sub-rule (1), shall

- (a) if the request is addressed to himself, make himself available to hear it on any day other than Sunday, or a public holiday;
- (b) if the request is addressed to the Committee, inform a member of the Committee of the request.

**9.** (1) A prisoner shall be treated as being of the religion stated on his record upon his admission into prison but the Superintendent may, in a proper case and after due inquiry, direct that record to be amended.

Religious ministrations.

(2) The Superintendent shall approve the choice by any religious denomination of a prison minister of religion, and shall also approve the nomination of any substitute for the prison minister during the absence of the prison minister.

(3) A prison minister shall

- (a) visit prisoners of his religion as regularly as practicable;
- (b) conduct divine service for prisoners of his religion at least once each week and on the special days of religious observance of that religion; and
- (c) unless other arrangements are made, read the burial service at the funeral of any prisoner of his religion who dies in prison.

(4) The honorary chaplain shall

- (a) interview every prisoner individually as soon as practicable after the prisoner's admission into and before release from prison; and
- (b) prepare a report of such prisoner interviewed for submission to the committee.

(5) Where a prisoner belongs to a religion for which no prison minister has been appointed, the Superintendent shall do what he reasonably can, if so requested by the prisoner, to arrange for him to be visited by a minister of that religion.

(6) The Superintendent shall not require a prisoner to do unnecessary work against his will

- (a) on a Sunday, Saturday or Friday, where that prisoner is of the Christian, Jewish or Muslim religion, respectively;
- (b) on a Saturday where that prisoner is of the Seventh Day Adventist faith;
- (c) on a day recognised as a day for religious observance by any other religion where that prisoner is of a religion not mentioned in (a) or (b).

(7) Notwithstanding sub-rule (6) (c) the Superintendent shall not allow a prisoner more than one day in any week for religious observance.

(8) So far as is reasonably practicable, there shall be available for the personal use of every prisoner such religious books as are approved by the Superintendent for use in prisons.

Illness and  
death of  
prisoners.

**10.** (1) The medical officer shall have the death of care of the mental and physical health of the prisoners.

(2) Every request by a prisoner to see the medical officer shall be recorded in the Medical Book by the Officer to whom it is made and promptly communicated to the medical officer.

(3) The medical officer may call another medical practitioner into consultation, and shall do so, if time permits, before performing any serious operation.

(4) If an unconvicted prisoner desires the attendance of a registered medical practitioner or dentist, and will pay any expense incurred, the Superintendent shall, if he is satisfied that there are reasonable grounds for the request, allow him to be attended by that practitioner or dentist, with or without the consultation of the medical officer.

(5) The medical officer shall report in writing immediately to the Superintendent on the case of any prisoner

(a) suffering from a disease is notifiable under the that Infectious Diseases Notification Act; or

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(b) whose health is likely to be injuriously affected by continued imprisonment or any conditions of imprisonment,

and the Superintendent shall duly send a copy of the report to the Governor without delay together with his own recommendations.

(6) The medical officer shall report in writing to the Superintendent on the case of any prisoner whose mental condition appears to require that special arrangements be made for the prisoner's supervision or care, and the Superintendent may approve any such arrangements, or seek further medical or other advice and notify the Committee of the matter.

(7) The medical officer shall inform the Superintendent if he suspects any prisoner of having suicidal intentions, and such prisoner shall thereupon be placed under special observation.

(8) If a prisoner dies, becomes seriously ill, sustains any severe injury or is removed to a hospital on account of mental or physical disorder, the Superintendent shall, if the address concerned is known to him, inform the prisoner's spouse or next of kin, and also any person whom the prisoner may reasonably have asked should be informed.

(9) If an infant in the prison or a prisoner dies, the Superintendent shall immediately notify the coroner having jurisdiction, the Committee, and the Governor of that death.

**11.** (1) An unconvicted prisoner may wear his own clothing and arrange for it to be supplied to him from outside the prison, insofar as such clothing is adequate, clean and tidy, but this rule shall otherwise apply to him as to a convicted prisoner.

Clothing of prisoners.

(2) A convicted prisoner shall be provided with clothing adequate for the climate and consistent with good health in accordance with a scale approved by the Governor.

(3) The clothing referred to in sub-rule (2) includes protective clothing for use at work where it is needed.

(4) Subject to sub-rule (5), a convicted prisoner shall only wear the clothing provided for him under this section unless the Superintendent directs otherwise.

(5) A prisoner required to be taken in custody to any court shall wear his own clothing or clothing different from that worn in prison.

(6) A prisoner may be provided, where necessary, with suitable and adequate clothing on his release.

Food. **12.** (1) Subject to any directions of the Superintendent, an unconvicted prisoner may arrange at his own expense for food to be supplied to him from outside the prison.

(2) Subject to any directions of the Superintendent, or as advised by the medical officer, no convicted prisoner shall -

(a) be allowed to have any food other than that ordinarily provided;

(b) be given less food than is ordinarily provided.

(3) The Superintendent may, at his discretion, allow prisoners to receive unprepared food from visitors.

(4) A prisoner shall be provided at normal times with food that is prepared in accordance with the standards laid down by the medical officer and which satisfies in quality and quantity the standards of dietetics and modern hygiene and takes into account the age, health, nature of work and religious or cultural requirements of the prisoner.

(5) The medical officer shall regularly inspect the food both before and after it is cooked, and shall report any deficiency or defect to the Superintendent.

(6) Drinking water shall be made available to a prisoner.

Alcohol and tobacco. **13.** (1) No prisoner shall be allowed to have any intoxicating liquor except under a written order of the

medical officer specifying the quantity and the name of the prisoner.

(2) No prisoner shall be allowed to smoke or have any tobacco except as a privilege under rule 6 and in accordance with any directions of the Superintendent.

**14.**(1) No room or cell shall be used as sleeping accommodation unless certified by the Superintendent

Accommodation and hygiene.

(a) as being capable of accommodating a specified maximum number of prisoners who may sleep or be confined at one time in the room or cell, which number shall not be exceeded without the authority of the Superintendent; and

(b) as being otherwise suitable for the confinement of any prisoner.

(2) Each prisoner shall be provided with a separate bed and with separate bedding adequate for warmth and health.

(3) Every prisoner shall be provided with toilet articles necessary for his health and cleanliness, which shall be replaced as necessary.

(4) Every prisoner shall be required to wash at proper times, have a shower on admission into prison and thereafter at least once per week and, in the case of a male prisoner not exempted by the Superintendent, to shave or be shaved daily, and to have his hair cut as may be necessary for neatness, except that an unconvicted prisoner shall not be required to have his hair cut or any beard or moustache usually worn by him shaved off unless the medical officer directs this to be done for the sake of health or cleanliness.

(5) Notwithstanding sub-rule (4), a prisoner's hair shall not be cut without that prisoner's consent except where the medical officer certifies in writing that this is necessary for the sake of health or cleanliness.

**15.** The Superintendent may permit the medical officer or any person authorised by the medical officer

Intrusive bodily examination of prisoners.

(a) to conduct, with or without the consent of the prisoner, an intrusive bodily search of a prisoner for the purpose of discovering any prohibited or unauthorised article;

- (b) to obtain samples from a prisoner of such bodily fluids as may be necessary to detect illness or drug abuse except that no sample other than urine and saliva may be obtained from the prisoner without his consent.

Daily exercise.

**16.** (1) A prisoner not engaged in outdoor work shall be given exercise in the open air for not less than one hour each day, if health permits or alternatively exercise consisting of physical training may be given indoors instead of in the open air.

(2) The period of exercise referred to in sub-rule (1) may be reduced in special circumstances by the Superintendent.

(3) The medical officer shall decide upon the fitness of every prisoner for exercise and physical training, and may excuse a prisoner from, or modify, any activity on medical grounds.

Work.

**17.** (1) A convicted prisoner shall be required to do useful work, approved by the Committee, for not more than 10 hours a day, and arrangements shall be made to allow prisoners to work, where possible, outside the cells and in association with one another.

(2) The medical officer may excuse a prisoner from work on medical grounds, and no prisoner shall be set to do work which is not of a class for which he has been passed by the medical officer as being fit.

(3) No prisoner shall work in the service of another prisoner or an Officer, or for the private benefit of any person, without the authority of the Superintendent.

(4) An unconvicted prisoner may, if he wishes, do work as if he were a convicted prisoner.

(5) A Prisoner may be paid for work at rates approved by the Superintendent, whether generally or in relation to particular cases.

(6) Every prisoner shall be searched on parade immediately on return from outside work.

Education and social welfare.

**18.** (1) Every prisoner able to profit from the educational facilities at a prison shall be encouraged to do so.

(2) Programmes of daytime and evening educational classes shall be arranged and, subject to the directions of the

superintendent, reasonable facilities shall be afforded to prisoners who wish to do so to improve their education by correspondence courses or private study, or to practise handicrafts in their spare time.

(3) Special attention shall be paid to the education of illiterate prisoners, and if necessary, they shall be taught to read and write within the hours normally allotted to work.

(4) A library shall be provided and, subject to the direction of the Superintendent, every prisoner shall be allowed to have library books and exchange them.

**19.** (1) The Superintendent shall endeavour to maintain such relations between a prisoner and his family as are desirable in the best interests of both.

Outside  
contacts and  
aftercare.

(2) A prisoner shall be encouraged and assisted to establish and maintain such relations with persons and agencies outside prison as may, in the opinion of the Superintendent, best promote the interests of his family and his own social rehabilitation.

(3) From the beginning of a prisoner's sentence, consideration shall be given, in consultation with the appropriate aftercare organisation, to the prisoner's future and the assistance to be given to him after his release.

(4) The Superintendent may, for the purpose of the rehabilitation of a convicted prisoner, recommend to the Governor that the prisoner be allowed to engage in employment or receive training outside the prison on a day release system, subject to any conditions the Superintendent may see fit to impose.

(5) Before the Superintendent makes a recommendation to the Governor under sub-rule (4) he shall refer the matter to the Committee for a hearing and determination as to the suitability of the prisoner for the programme.

(6) The Superintendent when making a recommendation under sub-rule (4) shall specify the security arrangements he intends to put in place for the daily release of the prisoner.

(7) The Governor in considering a recommendation under sub-rule (4) shall take into account the conditions being imposed and the security arrangements for the release of the prisoner and if he is satisfied make an Order to that effect, but if he is not, he shall specify any other conditions and

security measures he sees fit to impose before making the Order.

(8) A convicted prisoner shall not be eligible to take part in the day release programme under sub-rule (4)

- (a) if he is serving a sentence for any of the following classes of offence:
  - (i) rape or other sexual offence;
  - (ii) murder;
  - (iii) manslaughter;
  - (iv) drugs;
  - (v) firearms; and
  - (vi) any other offence for which the maximum penalty is 14 years or above or an indefinite term during the pleasure of the Governor; and
- (b) unless he has served at least one third of his sentence.

(9) An employer participating in the day release programme shall sign such agreement of responsibility for and in relation to the prisoner as the Governor may approve, during the time the prisoner is working for him.

Letters and visits.

**20.** (1) The Superintendent may, with a view to securing discipline or the prevention of crime, or in the interests of any persons, impose restrictions, either generally or in a particular case, upon the communications to be permitted between a prisoner and other persons.

(2) Except as provided by this rule, a prisoner shall not be permitted to communicate with any person outside the prison, or that person with him, without the leave of the Superintendent.

(3) Except as provided by this rule, every letter or communication to or from a prisoner may be read or examined by the Superintendent or an Officer deputed by him, and the Superintendent may, at his discretion, stop any letter or communication on the ground that its contents are objectionable or that it is of inordinate length.

(4) Every visit to a prisoner shall take place within the sight and,

except as provided by this rule, the hearing of an Officer, unless the Superintendent otherwise directs.

(5) The Superintendent may give directions, generally in relation to any visit or class of visit, concerning the days and times when prisoners may be visited.

(6) An unconvicted prisoner may send and receive as many letters and receive as many visits as he wishes within such limits and subject to such conditions as the Superintendent may direct, either generally or in a particular case.

(7) A convicted prisoner shall be entitled

- (a) to send or receive a letter on his admission into prison and thereafter once a week; and
- (b) to receive a visit once every two weeks.

(8) The Superintendent may allow a prisoner an additional letter or visit where necessary for his welfare or that of his family.

(9) Superintendent may allow a prisoner entitled to a visit to send and receive a letter instead.

(10) The Superintendent may defer the right of a prisoner to a visit until the expiration of any period of cellular confinement.

(11) The Superintendent may allow additional letters and visits in relation to any prisoner or class of prisoner.

(12) A prisoner shall not be entitled under this rule to receive a visit from any person other than a relative or friend, except with the leave of the Superintendent.

**21.** (1) A police officer may, on production of an order issued by or on behalf of the Commissioner of Police, interview any prisoner willing to see him.

(2) A person detained in prison in default of finding a surety, or of payment of a sum of money, may communicate with, and be visited at any reasonable time on a weekday by, any relative or friend to arrange for surety or payment in order to secure his release from prison.

Visits and communications in connection with legal and other proceedings.

(3) The legal adviser of a prisoner in any proceedings, civil or criminal, to which the prisoner is a party, shall be afforded reasonable facilities for interviewing him in connection with those proceedings out of hearing but in the sight of an Officer.

(4) A prisoner's legal adviser may, with the leave of the Superintendent, interview the prisoner in connection with any other legal business in the sight and hearing of an Officer.

(5) A prisoner who is a party to any legal proceedings may correspond with his legal adviser in connection with the proceedings and unless the Superintendent has reason to suppose that any such correspondence contains matter not relating to the proceedings it shall not be read or stopped under rule 20 (1).

(6) A prisoner shall on request be provided with any writing materials necessary for the purposes of sub-rule (5).

(7) Subject to any directions given in the particular case by the Superintendent, a registered medical practitioner selected by or on behalf of a prisoner who is a party to legal proceedings shall be afforded reasonable facilities for examining him in connection with the proceedings, and may do so out of hearing but in the sight of an Officer.

Custody  
outside prison.

**22.** (1) A person being taken to or from a prison in custody shall be exposed as little as possible to public observation, and proper care shall be taken to protect him from curiosity and insult.

(2) A prisoner required to be taken in custody anywhere outside a prison shall be kept in the custody of an Officer or a police officer.

Prisoners  
property.

**23.** (1) Subject to any directions by the Superintendent, an unconvicted prisoner may have supplied to him at public expense and retain for his own use, books, newspapers, writing material and any other means of occupation, except any that appear objectional to the Committee or, pending consideration by them, to the Superintendent.

(2) A prisoner's property, other than property which he is allowed to retain for his own use, shall be taken into the custody of the Superintendent and an inventory of the property shall be kept, and the prisoner shall be required to sign the inventory after he has had a proper opportunity to see that it is correct.

(3) Any cash which a prisoner has at a prison shall be paid into

an account under the control of the Superintendent and the prisoner shall be credited with the amount in the books of the prison.

(4) Any article belonging to a prisoner which remains unclaimed for a period of more than three years after he leaves prison, or dies, may be sold or otherwise disposed of, and the net proceeds of any sale shall be paid to Government funds for its general purposes.

(5) The Superintendent may confiscate any unauthorised article found in the possession of a prisoner after his admission into prison, or concealed or deposited anywhere within the prison.

**24.** (1) Any money or other article (other than a letter or other communication) sent to a convicted prisoner through the post office shall be dealt with in accordance with the provisions of this rule, and the prisoner shall be informed of the manner in which it is dealt with.

Money and articles received by post.

(2) Any cash shall, at the discretion of the Superintendent, be

(a) dealt with in accordance with rule 23 (3)

(b) returned to the sender; or

(c) in a case where the sender's name and address are not known, paid to Government funds for its general purposes

except that in relation to a prisoner committed to prison in default of payment of any sum of money, the prisoner shall be informed of the cash and, unless he objects to it being so applied, it shall be applied in or towards the satisfaction of the amount due from him.

(3) Any security for money shall, at the discretion of the Superintendent,

(a) be delivered to the prisoner or placed with his property at the prison; or

(b) be returned to the sender; or

(c) in a case where the sender's name and address are not known or the article is of such a nature that it would be unreasonable to return it, be sold or

any sale applied in accordance with sub-rule (2).

## PART II DISCIPLINE

Removal from  
association.

**25.** (1) Where it appears desirable, for the maintenance of good order and discipline or in his own interests, that a prisoner should not associate with other prisoners, either generally or for particular purposes, the Superintendent may arrange for prisoner's removal from association accordingly.

(2) A prisoner shall not be removed under this rule for a period of more than 24 hours without the recommendation of the Committee.

(3) The Superintendent may arrange at his discretion for such a prisoner to resume association with other prisoners, and shall do so if in any case the medical officer so advises on medical grounds.

Use of force.

**26.** (1) An Officer in dealing with a prisoner shall not use force unnecessarily and, when the application of force to a prisoner is necessary, no more force to a prisoner than is necessary shall be used.

(2) No Officer shall act deliberately in a manner calculated to provoke a prisoner.

Temporary  
confinement.

**27.** The Superintendent may order a refractory or violent prisoner to be confined temporarily in a special cell (if available), but a prisoner shall not be so confined as a punishment, or after he ceases to be refractory or violent.

Restraints.

**28.** (1) The Superintendent may order a prisoner to be put under restraint where this is necessary to prevent the prisoner from injuring himself or others, damaging property or creating a disturbance.

(2) Notice of such an order shall be given without delay to a member of the Committee, and to the medical officer.

(3) On receipt of the notice, the medical officer shall inform the Superintendent whether he concurs in the order and the Superintendent shall give effect to any recommendations which the medical officer may make.

(4) A prisoner should not be kept under restraint longer than is necessary, nor shall he be so kept for longer than 24 hours without a direction in writing given by the

duration of time it may continue.

(5) Particulars of every case of restraint under the foregoing provisions of this rule shall be forthwith recorded.

(6) Except as provided by this rule, no prisoner shall be kept under restraint otherwise than for safe custody during removal, or on medical grounds by direction of the medical officer.

(7) No prisoner shall be put under restraint as a punishment.

(8) Any means of restraint shall be of a pattern authorised by the Governor and shall be used in such manner and under such conditions as the Governor may direct.

**29.** A prisoner commits an offence against discipline if he

- (a) mutinies or incites another prisoner to mutiny;
- (b) commits an assault;
- (c) detains any person against his will;
- (d) denies access to any part of the prison to an Officer;
- (e) fights with any person;
- (f) intentionally endangers the health or personal safety of others or, by his conduct, is reckless whether such health or personal safety is endangered;
- (g) intentionally obstructs an officer in the execution of his duty;
- (h) escapes from prison or legal custody;
- (i) has in his possession
  - (i) any prohibited article, or
  - (ii) a greater quantity of any article than he is authorised to have;
- (j) sells or delivers to any person any prohibited article;
- (k) sells or, within permission, delivers to any person any article which he is allowed to have only for his own use;

Offences  
against  
discipline.

- (l) takes improperly any article belonging to another person or to

the prison;

- (m) intentionally or recklessly sets fire to any part of the prison or any other property, whether or not his own;
- (n) destroys or damages any part of the prison or any other property other than his own;
- (o) absents himself from any place where he is required to be or is present at any place where he is not authorised to be;
- (p) is disrespectful to the Superintendent or to any Officer or to any person visiting the prison;
- (q) uses threatening, abusive or insulting words or behaviour;
- (r) intentionally fails to work properly or, being required to work, refuses to do so;
- (s) disobeys any lawful order;
- (t) disobeys or fails to comply with any rule applying to him;
- (u) makes any false and malicious allegation against an Officer;
- (v) repeatedly makes groundless complaints;
- (w) in any way offends against good order and discipline;
- (x) attempts to commit, or incites another prisoner to commit, or assists another prisoner to commit, any of the foregoing offences.

Disciplinary  
charges.

**30.** (1) Where a prisoner is to be charged with an offence against discipline, the charge shall be laid as soon as possible, and, save in exceptional circumstances, within 48 hours of the discovery of the offence.

(2) A prisoner who is to be charged with an offence against discipline may be kept apart from other prisoners pending adjudication of his case.

(3) Every charge shall be inquired into, in the first instance, by the Superintendent.

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(4) Save in exceptional circumstances, every charge shall be first

inquired into not later than the next day, not being a Sunday or public holiday, after it is laid.

**31.** (1) Where a prisoner is charged with an offence against discipline, he shall be informed of the charge as soon as possible and, in any case, before the time when it is inquired into by the Superintendent.

Rights of  
prisoners  
charged.

(2) At any enquiry into a charge against a prisoner, the prisoner shall be given a full opportunity of hearing what is alleged against him and of presenting his own case.

**32.** (1) If the Superintendent finds a prisoner guilty of an offence against discipline, he may, subject to rule 35, impose one or more of the following punishments

Punishments.

- (a) a caution;
- (b) forfeiture for a period not exceeding 28 days of any privileges under rule 6;
- (c) exclusion from associated work for a period not exceeding 14 days;
- (d) stoppage of earnings for a period not exceeding 28 days;
- (e) cellular confinement for a period not exceeding 3 days;
- (f) forfeiture of remission of sentence for a period not exceeding 28 days;
- (g) in the case of an unconvicted prisoner, forfeiture for any period of the right under rule 24 (1) to have articles there mentioned;
- (h) in the case of an unconvicted prisoner guilty of escaping or attempting to escape, forfeiture of the right to wear his own clothing under rule 11 (1);

(2) If a prisoner is found guilty of more than one offence, punishments may be ordered to run consecutively.

(3) In the case of an offence against discipline committed by a prisoner who was under the age of 21 years when it was committed, sub-rule (1) shall have effect, but

- (a) the maximum period of forfeiture of privileges shall be 14 days; and

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- (b) the maximum period of stoppage of earnings shall be 14 days.

**33.** (1) Where at an inquiry held pursuant to rule 31 (3) the Superintendent decides that, if the prisoner were found guilty, the punishments provided under rule 32 would, having regard to the nature and circumstances of the offence, be inadequate, the Superintendent may refer the charge to the Committee.

(2) Where a charge is referred to the Committee, the Chairman shall summon a special meeting at which not more than five nor fewer than two members shall be present.

(3) The Committee shall inquire into the charge, and if it finds the prisoner guilty it may, subject to sub-rule (4), impose one or more of the following punishments:

- (a) a caution;
- (b) forfeiture or postponement for any period of any privileges under rule 6;
- (c) stoppage of earnings for a period not exceeding 56 days;
- (d) cellular confinement for a period not exceeding 56 days;
- (e) exclusion from associated work for a period not exceeding 56 days;
- (f) forfeiture of remission of sentence of a period not exceeding 120 days;
- (g) the punishments referred to in rule 32 (1) (g) and (h).

(4) If a prisoner is found guilty of more than one offence, punishments may be ordered to run consecutively, but where forfeiture of remission is concerned the total period forfeited shall not exceed 180 days.

(5) In the case of an offence against discipline committed by a prisoner who was under the age of 21 years when it was committed, sub-rule (3) shall have effect but

- (a) the maximum period of forfeiture or postponement of privileges shall be 28 days;
- (b) the maximum period of exclusion from associated work and stoppage of earnings shall be 28 days;

- (c) the maximum period of cellular confinement shall be 7 days;

(d) the maximum period of forfeiture of remission of sentence shall be 90 days; and

(e) the maximum period of forfeiture of remission arising from punishments ordered to run consecutively on charges arising from an incident shall be 135 days.

**34.** (1) A punishment of stoppage of earnings may, instead of forfeiting all a prisoner's earnings for a specified period not exceeding 28 or 56 days, as the case may be, may be expressed so as to forfeit a proportion (not being less than one half) of his earnings for a period not exceeding a correspondingly greater number of days.

Particular  
punishments.

(2) No punishment of cellular confinement shall be imposed unless the medical officer has certified that the prisoner is in a fit state of health to be so dealt with.

(3) In the case of an offence against discipline committed by an unconvicted prisoner, a punishment of prospective or contingent forfeiture of remission may be made and such punishment shall have effect only if a sentence of imprisonment is imposed upon conviction of the prisoner, in which case it shall have effect even if the sentence is stated to be reduced by the period during which the prisoner was a convicted prisoner.

**35.** (1) Subject to any directions of the Superintendent, the power to impose a punishment (other than a caution) under this Part, shall include the power to suspend for up to six months the operation of the punishment unless, within the period of the suspension, the prisoner commits another offence against discipline.

Suspension,  
remission and  
mitigation of  
punishments.

(2) Where a prisoner upon whom a suspended punishment is imposed commits another offence against discipline, the Superintendent or Committee, as the case may be, may

(a) direct that the suspended punishment take effect;

(b) direct that it take effect subject to a specified reduction of its period or amount;

(c) suspend the operation of the suspended punishment for a further period of up to six months; or

(d) give no directions with respect to the suspended punishment.

(3) The Superintendent may quash any finding of guilt and may remit any punishment or mitigate it either by reducing it or by substituting another which is, in his opinion, less severe.

(4) Subject to any directions of the Governor, the Committee may recommend to the Governor that any punishment imposed by the Superintendent be remitted or mitigated.

### **PART III**

#### **FUNCTIONS AND CONDUCT OF OFFICERS**

General duty of  
Officers.

**36.** (1) It shall be the duty of every Officer to conform to these Rules, to assist and support the Superintendent in their observance, and to obey the lawful instructions of the Superintendent.

(2) An Officer shall inform the Superintendent promptly of any abuse or impropriety which comes to his knowledge.

Search of  
Officers.

**37.** An Officer or servant of the prison shall submit himself to be searched in the prison if so required by the Superintendent.

Dealings with  
Prisoners.

**38.** (1) No Officer shall take part in any business or pecuniary transaction with or on behalf of a prisoner without leave of the Superintendent.

Communica-  
tions to the  
press, etc.

**39.** (1) No Officer shall make, directly or indirectly, any unauthorised communication to a representative of the press or any other person concerning matters which have become known to him in the course of his duty.

(2) No Officer shall, without authority, publish any matter or make any public pronouncement relating to the prison administration.

Code of  
Discipline.Sche-  
dule 1.

**40.** The Code of Discipline set out in Schedule 1 shall have effect in relation to the Superintendent and all Officers.

## THE PRISON VISITING COMMITTEE

**41.** (1) For the purpose of exercising the functions conferred upon it by these Rules, there shall be a body to be known as the Prison Visiting Committee which shall consist of a Chairman and not less than two nor more than six other members, any of whom may be a Justice of the Peace, appointed by the Governor in accordance with the form set out in Schedule 2.

Constitution  
and  
proceeding  
of Prison  
Visiting  
Committee.  
  
Schedule 2.

(2) A person appointed to be a member of the Committee shall hold office for a period not exceeding three years, as may be determined by the Governor, and shall be eligible for reappointment.

(3) A member may at any time resign his office by notice in writing to the Governor.

(4) At any meeting of the Committee any three members shall constitute a quorum.

(5) The Chairman shall preside at meetings of the Committee but in the event of his absence from any meeting the members present shall appoint any other member to preside at that meeting.

(6) No person interested in any contract for the supply of goods or services to a prison shall be a member of the Committee.

(7) The Committee shall meet at the Prison once in each month or, if it resolves for reasons specified in the resolution that less frequent meetings are sufficient, not fewer than eight times in 12 months.

(8) The proceedings of the Committee shall not be invalidated by any vacancy in the membership or any defect in the appointment of a member.

(9) Decisions of the Committee shall be reached by a majority of the members present and voting, and in the case of an equality of votes the Chairman or member presiding shall have a casting vote.

(10) The Committee shall otherwise regulate its procedure as it thinks fit.

**42.** (1) The Committee shall satisfy itself as to the state of the prison and the treatment of prisoners and in particular it shall

Duties of  
Committee.

or any member;

- (b) arrange for the food of the prisoners to be inspected by a member of the Committee at frequent intervals;
- (c) inquire into any report made to it that a prisoner's health, mental or physical, is likely to be injuriously affected by any conditions of his imprisonment;
- (d) inquire into and report upon any matter into which the Governor may ask them to inquire;
- (e) direct the attention of the Superintendent to any matter it considers calls for his attention, and report to the Governor on any matter which it considers expedient to report upon;
- (f) inform the Governor immediately of any abuse which comes to its knowledge.

(2) The Committee shall, in a case of any abuse or neglect by an Officer of his functions, recommend to the Superintendent the suspension of the Officer until the decision in the case is known.

Visiting of  
prisons.

**43.** (1) The members of the Committee shall arrange a rota whereby at least one member visits each prison between meetings of the Committee.

(2) The members of the Committee shall have access to all parts of the prison, the prison records and all prisoners of any prison.

Annual report.

**44.** The Committee shall make an annual report to the Superintendent at the end of each year concerning the state of prisons and their administration, and including any recommendations it considers appropriate.

## **PART V SUPPLEMENTARY**

Control of  
access to  
prisons.

**45.** (1) Any person or vehicle entering or leaving a prison may be stopped, examined and searched.

(2) The Superintendent may direct the removal from a prison of any person who does not leave upon being required to do so.

(3) No person outside the prison shall be permitted to view it unless authorised by the Superintendent.

(4) No person viewing a prison shall be permitted to take a

photograph or make sketch of the prison, nor to communicate with a prisoner unless authorised by the Superintendent.

**46.** The Superintendent may, with the leave of the Governor, delegate any of his functions under these Rules to an Officer. Delegation by Super-intendent.

**47.** The Prison Rules, 1956 are revoked. Revocation.

## SCHEDULE 1

### CODE OF DISCIPLINE

[Rule 40]

#### A. The Superintendent

Residence,  
employment,  
etc., of the  
Super-  
intendent.

**1.** (1) The Superintendent shall have the general control and management of prison and

- (a) shall reside in such quarters as may be assigned to him by the Governor;
- (b) shall not follow or be concerned in any other occupation or trade, unless specially authorised by the Governor;
- (c) shall not derive, directly or indirectly, any emolument or benefit, pecuniary or otherwise, from the supplies furnished for the use of the prison, or from the sale of any article produced in the prison;
- (d) shall not let for hire any portion of his quarters or any part of the prison buildings or grounds.

(2) The Superintendent shall be allowed medical attendance and medicine for himself at the public expense.

Absence.

**2.** The Superintendent shall not absent himself for a night from the quarters assigned to him without the permission of the Governor.

Observance or  
enforcement of  
prison laws.

**3.** The Superintendent shall

- (a) conform to the provisions of these rules and of all the laws relating to the prison;
- (b) require obedience to the same from all Officers;
- (c) enforce them on the prisoners; and
- (d) be responsible for every relaxation or infringement of such rules and laws.

Inspection of  
prison.

**4.** (1) The Superintendent shall inspect every part of the men's prison, and see every prisoner at least once in every twenty-four hours, and shall in like manner inspect the women's prison at least twice a week, and in default of such inspections shall state in his journal how far he has omitted them, and the cause thereof.

(2) The Superintendent shall, at least five times in each month, go through the men's prison at an uncertain hour of the night, and he shall record in his journal, the date and time of the visit and the state of the prison at the time.

(3) When visiting the women's prison he shall be accompanied by the Matron or some other female Officer on duty at the time.

(4) He Superintendent shall not allow anyone to enter or leave the prison between the hours of locking at night and unlocking in the morning except the Governor or members of the Committee.

(5) This rule shall not apply to the admission of prisoners unavoidably brought to the prison at night, or to prisoners who have to be transported to hospital.

**5.** The Superintendent shall at least once in every twenty-four hours visit each cell at the prison in which a prisoner is undergoing cellular confinement, and shall see that every prisoner under punishment is visited, during the day, at intervals of not more than three hours by the appointed officer.

Inspection of cells.

**6.** The Superintendent shall take care that no prisoner is subjected to any corporal, cellular, or dietary punishment which the medical officer has not certified that he is capable of undergoing.

Medical certificate prior to punishment.

**7.** The Superintendent shall not allow any person unconnected with the prison to sleep therein without the written permission of the Governor.

Prohibition of unauthorised person sleeping in prison.

**8.** The Superintendent shall not permit any person not being an Officer to have any communication with any prisoner, except as provided by these Rules.

Communication with prisoners.

**9.** (1) The Superintendent shall take every precaution to guard against the escape of any prisoner, and shall cause a daily examination to be made of all cells, bars, bolts, locks, and related matters.

Precaution against Escapes and fires.

(2) In the event of an escape being effected, the Superintendent shall immediately report it to the Governor and to the Police.

(3) The Superintendent shall also adopt proper precautions against fire.

Escape of prisoners.

**10.** The Superintendent shall enquire into the escape of any prisoner and the conduct of the officers in charge at the time.

Inspection of Supplies.

**11.** (1) The Superintendent shall satisfy himself that the food, clothing and other supplies furnished by the contractors are wholesome and good, and are in quality, description, and weight, in accordance with the requisitions and contracts and shall reject all supplies which are not satisfactory.

(2) All contractors' accounts for articles supplied shall be certified by him and he shall frequently inspect the diets of prisoners and see that they are of the proper description, quantity and quality.

Prisoners' complaints.

**12.** The Superintendent shall at all reasonable times be ready to hear the complaints of any prisoner and, should he deem it necessary, shall report the same to the Committee.

(2) All such complaints shall be entered in his journal.

Notification of illness of Officer or prisoner.

**13.** (1) The Superintendent shall report to the medical officer, without delay, the sudden illness of any Officer or prisoner, and shall acquaint him with the names of all prisoners who complain of illness or are undergoing cellular confinement.

(2) The Superintendent shall report to the medical officer any case of insanity or apparent insanity occurring amongst the prisoners, or any case in which the life of any prisoner seems to him likely to be endangered by further continuance in prison or by the discipline thereof.

Observance of medical officer's orders.

**14.** The Superintendent shall carry or cause to be carried into effect any orders of the medical officer with reference to health and cleanliness.

Notification of clergymen.

**15.** The Superintendent shall give notice to a minister of the religious denomination to which any prisoner belongs in any case where he is informed by the medical officer that the life of such prisoner appears to be in danger.

Notification of relatives and friends.

**16.** The Superintendent shall notify, whenever practicable, the relatives or friends of any officer or prisoner whom the medical officer reports to be seriously ill.

Prisoners whose health endangered.

**17.** On receipt of any report from the medical officer that the mind or body of any prisoner is likely to be injured by the discipline or by further detention in prison the

Superintendent shall give such directions as may be requisite, reporting every such case to the Governor.

**18.** The Superintendent shall take care that all convicted prisoners are regularly worked in accordance with the rules for employment of prisoners.

Employment of prisoners.

**19.** The Superintendent shall attend all corporal punishment and shall enter in his journal any orders which the medical officer may have given on such occasion.

Punishment.

**20.** (1) The Superintendent shall be responsible for all stores, clothing and related matters, and for all deficiencies in the same.

Responsibility for prison stores.

(2) The Superintendent shall direct the issue of the proper supplies and take care that no article of any description is issued until it is properly marked with the prison marks.

(3) The Superintendent shall carefully study the requirements of the prison for the purpose of promoting economy and preventing waste.

**21.** (1) Once in each year the Superintendent shall prepare and forward to the Governor a list of articles to be condemned as unfit for further use and shall dispose of such articles as directed.

Condemnation of articles.

(2) The Superintendent shall take stock of all prison property on or before the 31st March each year and shall keep a certified inventory thereof.

**22.** The Superintendent shall annually prepare and forward to the Governor a report upon the condition and working of the prison.

Annual report.

**23.** The Superintendent shall periodically inform a minister of religion of a prisoner who belongs to that religion.

Notification of religion of prisoners.

**24.** (1) The Superintendent shall exercise his authority with firmness, temper, and humanity, and abstain from all irritating language.

Conduct of Officers.

(2) He shall not strike a prisoner, unless compelled to do so in self defence.

(3) He shall enforce similar conduct on the part of the officers, under penalty of their dismissal.

**25.** (1) Where an Officer is charged with any of the offences mentioned in sub-paragraph (7) the Superintendent

Offences by Officers.

shall, save as hereinafter mentioned, hold an investigation into the charge and if on completion of the investigation he is satisfied that the offence is proved, he may impose a fine not exceeding one hundred and fifty dollars for each such offence.

(2) Where the Superintendent considers the offence with which an Officer is charged to be of a serious nature he shall not hold an investigation into the charge but shall report the matter to the Chairman or one of the other members of the Committee, and the Committee shall without undue delay investigate the charge and if after such investigation the Committee is satisfied that the offence is proved it may recommend to the Superintendent that he award any of the following punishments:

- (a) reduction in rank or grade;
- (b) suspension, stoppage or deferment of increment;
- (c) forfeiture of good conduct pay or of any benefit arising from service;
- (d) forfeiture of not more than half a month's salary;
- (e) admonition;
- (f) reprimand;
- (g) severe reprimand;
- (h) recommendation for dismissal.

(3) In any investigation held by the Superintendent or the Committee pursuant to the provisions of this rule the person charged shall be given a proper opportunity of presenting his case.

(4) Any Officer against whom any such fine is imposed or any such punishment awarded may, within seven days of his conviction, appeal in writing to the Governor and the Governor may allow the appeal, reduce or confirm the fine or punishment or make such other order as he may deem fit.

(5) Where an offence against an Officer is to be tried by the Committee the Superintendent may with the approval of the Governor suspend the Officer from his duties pending the decision of the Committee or the Governor, as the case may be, and while his suspension continues such Officer shall be allowed to receive such portion of his salary not being less than one half, as the Governor shall think fit.

(6) Where an Officer has been guilty of and fined for any offence specified in paragraph (7), the name of the offender, the date and description of the offence, the amount of the fine and the authority by whom he was punished shall be entered in the Officers' Punishment Book.

(7) The offences to which reference is made in sub-paragraphs (1) and (6) are as follows:

- (a) reporting late for duty;
- (b) leaving a cell or principal door or gate unlocked;
- (c) entering a prisoner's cell at night contrary to orders;
- (d) allowing any unauthorized person to communicate with a prisoner;
- (e) leaving keys in a door or lying about;
- (f) cursing, swearing, or using indecent or immoral language;
- (g) neglecting to guard, supervise or attend prisoners under his charge;
- (h) speaking of the prison arrangements in the hearing of a prisoner or of any person not connected with the prison;
- (i) carelessly searching, or neglecting when necessary or directed, to search a prisoner or a visitor;
- (j) neglecting to have the cell lights lit at the proper times;
- (k) neglecting to examine the cells and fastenings of the cells under his charge, and to examine and search the wards, cells, bedding, and clothing;
- (l) allowing tools, materials, or other articles to be lying about out of their appointed places;
- (m) allowing dirt to accumulate in the wards, cells, passages, or other places under his charge;
- (n) omitting to report any misconduct, breach of rules or omission of duty in himself, another Officer, or a prisoner, or any injury done to the prison furniture, or to the walls, windows, partitions, or any part of the prison;

- (o) inattention when in charge of prisoners;
- (p) allowing unauthorised persons to remain in the vicinity of the prison;
- (q) appearing on duty out of uniform, or improperly or slovenly dressed or dirty;
- (r) quitting his post without authority and before being properly relieved;
- (s) wrangling, talking of his own private affairs in the hearing of prisoners or making unnecessary noise, either within the prison or when on duty outside;
- (t) in any way obstructing the duties of the prison;
- (u) omitting, when sick and unable to attend the prison to send notice to the Superintendent and to the medical officer;
- (v) neglecting to count the prisoners at the time prescribed by these Rules, or by the Superintendent;
- (w) allowing prisoners to stray from their work, neglecting to keep them in view;
- (x) smoking or reading whilst on duty;
- (y) drunkenness, disobedience of, or negligence in carrying out, the prison rules, or any orders or directions given by any proper authority;
- (z) when on duty as Gate Keeper -
  - (i) neglecting to keep the gates locked except when absolutely necessary to admit authorised persons and things;
  - (ii) allowing a prisoner to leave the prison without being attended by an Officer;
  - (iii) allowing unauthorized persons or improper things to go in or out of the prison;
  - (iv) allowing any person to loiter about the gate;
- (aa) disobedience of, or negligence with respect to, these Rules or any lawful order given by any person in authority connected with the prison;

(bb) conduct to the prejudice of good order or prison discipline.

**26.** (1) The Superintendent shall, after consultation with the Committee, make reports at the intervals specified in sub-paragraph (2) to the Governor with a copy to the Minister and each report shall be accompanied by the written recommendation of the Committee as described in paragraph (3) in respect of each prisoner to which the report refers.

Reports on  
certain  
prisoners.

(2) The written report referred to in sub-paragraph (1) shall be made –

(a) after four years of the sentence has been served and thereafter at two yearly intervals in respect of all prisoners who were of the age of twenty years or more at the date of their conviction and who are serving a sentence of four years or more; and

(b) after twelve months of the sentence has been served and thereafter at twelve monthly intervals in respect of prisoners serving a sentence of twelve months or more and who had not attained the age of twenty years at the date of their conviction.

(3) Each report to be submitted under the provisions of this rule shall describe the prisoners' mental and bodily condition with particular reference to the effect of the imprisonment upon his health, his demeanour and his attitude towards the offence and towards crime generally and upon his conduct and industry and on any other point which might be of assistance to the Governor in considering his case.

**27.** The Superintendent shall be responsible for the following and such other books and records as may from time to time be required at a prison being kept properly and up-to-date:

Records.

(a) a Prison Register;

(b) a Journal of all occurrences of importance in the prison;

(c) a Prisoners' Punishment Book;

(d) a book recording interviews with prisoners by the Superintendent;

- (e) an Inventory Book of all articles belonging to the prison;
- (f) an Order Book for the entry of any standing orders relative to the discipline of the prison;
- (g) a record of officers' services, defaults and related matters;
- (h) a Provision Ledger;
- (i) an Official Visitors' Book;
- (j) a General Visitors' Book;
- (k) a Diet Book, showing the daily number of prisoners on regular and special diets;
- (l) a record of previous convictions;
- (m) a Cash Book for all receipts and payments;
- (n) a Monthly Pay and Stoppage Book;
- (o) a Diary of daily occurrences;
- (p) a Prisoners' Property Book.

Visits of inspection.

**28.** The Superintendent shall accompany the Governor and the Committee on their inspection of the prison.

Release of prisoner unprovided with clothing.

**29.** The Superintendent shall, upon the release of any prisoner unprovided with clothing, ascertain whether his relatives or friends can furnish him with clothing, and, if they cannot, he shall, after consultation with the Chairman of the Committee, supply the prisoner from public funds and at the lowest possible cost with such clothing as may be necessary.

Prisoners eligible for discharge.

**30.** The Superintendent shall transmit to the Governor the names and descriptions of such prisoners as are eligible for discharge under the rules herein provided for remission of sentences.

Care of prison walls.

**31.** The Superintendent shall see that no trees are allowed to grow against the outer walls of the prison and that no rubbish or other article is laid against them.

Inspection of prisoners' work.

**32.** The Superintendent shall frequently inspect the work performed by prisoners both inside and outside the prison walls, so as to satisfy himself that every prisoner at

work is working diligently and shall also cause the Officers to do the same.

(2) Such inspection of outside work shall be recorded in a book kept for that purpose in the prison.

**33.** The Superintendent shall forthwith forward to the proper authority all fines and costs received by him from prisoners committed in default of payment.

Disposal of fines and costs collected.

#### B. The Medical Officer

**1.** (1) The medical officer shall certify the class of labour for which every prisoner is fit on admission, and from time to time thereafter.

Class of labour to be performed by prisoner.

(2) No prisoner shall be employed at any labour for which he is not certified as being medically fit.

(3) The Medical Officer shall also assist, when necessary, in assigning the task of labour according to the physical capacity of a prisoner.

**2.** (1) The medical officer shall attend to and prescribe for all sick prisoners, and all officers of the prison who shall require his attendance at the prison.

Sick prisoners and officers.

(2) Without prejudice to rule 3(3) he shall examine all prisoners on admission and record in the Medical Minute Book the cases of any who are found to be in an unfit state to be sent to prison; he shall also certify that a prisoner, previous to his being transferred to any other authorised place of confinement, is in a fit state of health to be removed.

**3.** (1) Whenever the Medical Officer has reasons to believe that the mind or body of a prisoner is or is likely to be injuriously affected by the discipline or treatment of the prison he shall record the case in the Medical Minute Book for the information of the Superintendent and shall give such directions as he may think proper.

Health of prisoner endangered by further imprisonment.

(2) The Medical Officer shall also report to the Superintendent whenever he shall be of the opinion that the life of any prisoner is endangered by his continuance in prison, with the grounds of his opinion.

**4.** (1) The medical officer shall be in attendance at the prison at least once a week or as often as is necessary and shall arrange his several visits and duties so as not to disturb the routine or discipline of the prison.

Visits.

(2) He shall enter in the Prisoners' Medical Journal the name of each prisoner, together with such directions for his treatment, diet, clothing, exercise and related matters, and such other observations as he shall see fit.

(3) The Journal shall be signed by him and handed over at least once a fortnight to the Superintendent, for his information and guidance.

Illness of officer.

**5.** (1) The Medical Officer shall keep an Officers' Medical Journal of all Officers who may apply to him for advice, and shall, on receiving information from the Superintendent that any officer has absented himself on the plea of illness, request the officer to report to him and shall record in the said Journal whether such Officer is fit or unfit for duty, and if unfit, the period of time for which he is excused.

(2) The Journal when signed by him shall be handed over to the Superintendent for his information and guidance.

Books to be kept by medical officer.

**6.** (1) The medical officer shall keep at the prison the following books:

- (a) a Prisoners' Medical Journal;
- (b) a Prison Officers' Medical Journal;
- (c) a Medical Minute Book;
- (d) a Hospital Case Book.

(2) The form of these books shall be settled by him from time to time with the approval of the Superintendent subject always to revision by the Governor in Council.

Inspection of prison.

**7.** (1) The medical officer shall not less than once a quarter inspect every part of the prison and record in the Medical Minute Book the result of his inspection, together with any observations he may think fit to make on the cleanliness, drainage, or ventilation, the quality of the provisions, the sufficiency of the clothing or bedding, the quantity or quality of the water, or anything which may in his opinion affect the health of the prisoners.

(2) He shall also frequently inspect the prisoners' diet and satisfy himself that it is of proper quantity, quality and description, and shall keep a record of any irregularity in the Medical Minute Book.

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| <b>8.</b> The Medical Officer shall occasionally inspect the prisoners at work in order to observe the effect it has upon them.  | Inspection of prisoners at work.   |
| <b>9.</b> The Medical Officer shall visit every prisoner under punishment in cellular confinement and record the visit in the Prisoners' Medical Journal.  | Prisoners in cellular confinement. |
| <b>10.</b> The Medical Officer shall attend all corporal punishment and his instructions for preventing injury to health shall be carried out.   | Punishment.                        |
| <b>11 .</b> The Medical Officer shall give notice to the Superintendent when any case of illness appears to him to assume a dangerous aspect.  | Report of dangerous illness.       |
| <b>12.</b> The Medical Officer shall on the death of any prisoner or a child in prison enter in the Prisoners' Medical Journal the following particulars:  | Death of prisoner.                 |
| <ul style="list-style-type: none"> <li>(a) the time the deceased was taken ill;</li> <li>(b) when the circumstances were first communicated to him;</li> <li>(c) the nature of the disease, and when it assumed a dangerous aspect;</li> <li>(d) whether there were any special circumstances connected with the case;</li> <li>(e) when the prisoner or the child died;</li> <li>(f) when the Coroner sat;</li> <li>(g) the verdict; and</li> <li>(h) any comments made by the Governor.</li> </ul> |                                    |
| <b>13.</b> No sick prisoner shall at the expiration of his sentence be released from prison, unless in the opinion of the Medical Officer he can be released with safety to health, or such prisoner refuses to stay.  | Discharge of sick prisoners.       |

C. Officers (General)

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| <b>1.</b> (1) An Officer shall strictly conform to and obey all rules and orders of the Superintendent and assist to their utmost in maintaining order and discipline. | Maintenance of order and discipline. |
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(2) To this end punishment for prison offences may sometimes be resorted to upon their report, but good temper and good example on their part will have great influence on prisoners in preventing the frequent recurrence of offences and the necessity for such punishments.

Conduct  
towards  
prisoners.

**2.** (1) Neither the Superintendent nor an officer shall allow any familiarity between a prisoner and himself, nor shall he discuss his duties, any matters of discipline or prison arrangements, within the hearing of a prisoner.

(2) No Officer shall by word, gesture, or demeanour, do anything which may tend to irritate any prisoner.

Report of  
prisoners'  
complaints  
, etc.

**3.** (1) An Officer shall inform the Superintendent of any prisoner who desires to see him or to make any complaint or refer any request to him or to any other superior authority.

(2) Any neglect in carrying out this rule will be severely dealt with.

Visitors.

**4.** An Officer shall not be permitted to receive any visitors in a prison without the special permission of the Superintendent.

Report of  
prisoner's  
illness.

**5.** (1) An Officer shall not compel any prisoner to go to work who complains of illness but shall report all such cases to the Superintendent.

(2) An Officer shall direct the attention of the Superintendent to any prisoner who may appear to them to be suffering from illness, although he may not complain, or whose state of mind may appear to him deserving of special notice and care.

Responsibi  
lity for  
stores,  
tools etc.

**6.** An Officer in charge of stores, tools or other Government articles, will be held responsible for them, and will be liable to pay for any articles committed to his charge which may be negligently lost or damaged, or for any other damage which he may commit.

Duties on  
relieving  
each other.

**7.** (1) An Officer shall when he relieves another officer on duty, point out to his successors all matters of special importance, check over all tools, other articles committed to his care and explain any directions of the Superintendent affecting any particular prisoner or the work to be performed.

(2) No Officer shall, on any pretext whatsoever, leave prisoners entrusted to his care until he has received an

audible and proper acknowledgement for them from the Officer to whom he is handing over.

**8.** An Officer shall pay particular attention to prisoners under punishment in cellular confinement and see that they are provided with necessaries, that their slops are frequently removed, and that they are visited at the regular times, and that they receive one hour's exercise daily in the open air.

Prisoners in cellular confinement.

**9.** (1) No Officer shall correspond or hold any intercourse with the friends or relatives of any prisoner, unless expressly authorized by the Superintendent, nor shall he make any unauthorized communication concerning the prison or prisoners to any person whatsoever.

Correspondence, etc., with prisoners's friends.

(2) He shall also carefully abstain from forming acquaintance with discharged prisoners.

**10.** (1) No Officer shall be absent during the regular hours of attendance without the permission of the Superintendent.

Absence of Officers.

(2) When absent for his meals, or on other authorised occasions, an Officer shall return to his duty at the appointed time.

**11.** An Officer entrusted with keys shall not on any pretext take them out of the prison, but shall, when leaving the prison on any occasion, deliver his keys to such Officer as the Superintendent may depute for that purpose.

Prison keys.

**12.** An Officer shall at all times confine himself to his respective post, unless specially ordered to go to another part of the establishment in the performance of other duties.

Attendance at posts.

**13.** It shall be the duty of all Officers to make an immediate report to the Superintendent of any misconduct or willful breach of the Prisons Rules.

Report of misconduct, etc.

**14.** (1) Conversations between Officers on duty and prisoners, apart from any remarks that may be necessary for the proper performance of duty, work or maintenance of order and discipline, shall be kept to a minimum.

Conversation, etc.

(2) Conversations between prisoners at work shall be kept to a minimum and no idle talking on general subjects shall be permitted.

(3) Out of working hours the making of a remark or two need not be forbidden, but when the remarks are

continued and the Officer sees a gossiping conversation is developing he shall direct the prisoners to stop, and if they fail to do so after one or more such orders, he may report them.

(4) Reports shall not be for talking but for disobedience of orders by taking after being told to stop.

(5) If there are any special reasons for preventing all communication between prisoners, the right plan is to keep them separated.

Dress and appearance.

**15.** (1) An Officer shall at all times pay strict attention to cleanliness of person and dress and shall always appear, when on duty, properly shaved (in the case of a man), well groomed and dressed in such uniforms as may be allowed them.

(2) All accoutrements, badges and related matters shall be kept perfectly clean and bright at all times.

(3) No civilian clothing may be worn together with uniforms.

(4) Caps shall be worn on duty in the prison and off duty.

Wearing of uniforms.

**16.** An Officer shall not wear uniforms except when on duty or going to or coming from the prison for the purposes of duty.

Damage to quarters.

**17.** An Officer occupying quarters shall be answerable for any damage thereto committed by him willfully or negligently during his occupancy and shall refund the cost of repairing the same before the amount due to him as salary is paid.

Combination amongst Officers.

**18.** It is the duty of all Officers to report to the Superintendent of Prisons any proceedings that may come to their knowledge having the character of a combination amongst the Officers with regard to their duties or positions in the prison, and any complaint of one officer against another shall be made within twenty-four hours of the occurrence complained of.

Restriction on striking prisoners.

**19.** (1) No officer shall strike a prisoner unless compelled to do so in self-defence or when ordered to inflict corporal punishment.

(2) When in charge of a gang beyond the prison walls, an officer may place a prisoner in hand-cuffs in case of

gross misconduct, or for the purpose of security, reporting the occurrence to the Superintendent on his return to the prison.

**20.** (1) An officer shall carefully observe the character and habits of the prisoners under his charge and shall afford unreserved information on such subjects, it being of the utmost importance that the Superintendent shall be fully informed on these points.

Observation of prisoners character, etc.

(2) Any unfairness or partiality in this respect will be dealt with as a serious offence.

**21.** (1) An Officer shall count the prisoners under his charge at locking up and at unlocking time and shall report the state of his respective division and the numbers present.

Counting, etc., of prisoners.

(2) An Officer shall examine daily the state of the cells, bedding, locks, bolts, and other articles, and shall seize all prohibited articles and deliver them to the Superintendent.

**22.** (1) An Officer proceeding with prisoners to work beyond the prisons walls shall be furnished with the name of each prisoner entered therein.

Duty of Officers in charge of gangs at work outside the prison.

(2) He shall, before leaving, check the name of each prisoner with the Superintendent or other appointed Officer, after which he shall be held responsible for the safe custody and proper conduct of such prisoners.

(3) He shall see that they do not straggle, or hold communication with any unauthorised person.

(4) Upon his return to the prison he shall check the name of each prisoner as before with the appointed Officer and give up his book to be signed.

**23.** (1) An Officer shall thoroughly search every prisoner on his return to the prison, for the purpose of ascertaining whether he has any prohibited articles secreted on his person.

Searching of prisoners on return to prison.

(2) All tools and other implements are to be checked at the commencement and completion of work and handed over to the officer deputed for that purpose.

**24.** (1) An Officer placed in authority over prisoners shall be a person of good moral principles.

Standard of conduct required of an officer.

(2) Any disreputable conduct will render an Officer liable to dismissal.

(3) Intoxication will be liable to be visited with dismissal and it will not be taken into consideration at what place it occurred or whether it be a greater or less degree of intoxication, nor will it be regarded as any excuse that the person offending may claim to have been at the time capable of performing his duties, it being absolutely necessary that all persons connected with the prison shall be perfectly sober at all times.

(4) Swearing, cursing, the use of improper language, incurring debts which he is unable to pay, frequently brothels, keeping bad company and gambling will be considered sufficient grounds for the discontinuance of an officer's service.

Pecuniary dealings, etc., with prisoners forbidden.

**25.** No Officer, or any person in trust for him or employed by him, shall sell or have any benefit or advantage from the sale of any article to any prisoner, nor shall he have pecuniary dealings whatever with any prisoner or employ any prisoner on his private account or in any official capacity in the discipline of the prison.

Interest in prison contract forbidden.

**26.** No Officer shall directly or indirectly have any interest in any contract or agreement for the supply of the prison, nor shall he receive, directly or indirectly, under any pretence whatever, any fee or present from any contractor or person tendering any contract with the establishment, but he may, if the terms of the contract permit it, purchase provisions for the use of himself and family at the contract rates.

Receipt of fees prohibited.

**27.** No Officer shall at any time receive money, fees or gratuity of any kind for the admission of any visitors to the prison or to prisoners, or from or on behalf of any prisoner, on any pretext whatsoever.

Using or bringing in prohibited articles.

**28.** (1) No officer shall introduce into, keep or use in the prison tobacco or liquor of any kind or any newspaper, book or other publication, except under such restrictions as may from time to time be laid down by the Superintendent.

(2) An Officer in charge of gangs employed outside the prison walls shall on no account use tobacco or spirituous liquors whilst in charge of such gangs.

Punishments for dealings with prohibited articles.

**29.** (1) Every Officer or servant of the establishment who shall (except for lawful purposes and with the authority of the Superintendent) bring in or carry out, or endeavour to bring in or carry out, or knowingly allow to be brought in or carried out of the prison, or convey or attempt to convey, or knowingly allow to be conveyed to or for any prisoner within

or without the prison walls, any money clothing, provisions, tobacco, letters, papers or other articles whatsoever not allowed by the rules of the prison, shall be suspended from his duties and placed under arrest by the superintendent who shall forthwith report the offence to the Governor.

(2) Such conduct shall be liable to be punished by fine or imprisonment under the provisions of the law relating to prisons.

**30.** (1) An Officer shall be watchful to detect and prevent any person secreting prohibited articles for the prisoners when employed outside the walls or within a prison and shall immediately report any such occurrence.

Introduction of prohibited articles by outside persons.

(2) He shall especially guard against the clothes of workmen or others being left lying about in places accessible to the prisoners and shall report at the earliest opportunity any circumstance of this kind or the loitering of improper or suspicious persons about the prison or in the vicinity of prisoners working outside.

**31.** (1) Special care shall be taken that no ladder, ropes, implements or materials of any kind likely to facilitate escape are left lying about the yard or elsewhere.

Removal of articles facilitating escape.

(2) All such articles when not in use shall be kept in their appointed places.

(3) Every Officer shall immediately report any instance of such articles being left about in contravention of this rule.

**32.** No Officer shall on any account enter the cell of any prisoner at night unless accompanied by another officer, and even then only in cases of illness or other emergency.

Entering cell at night.

**33.** An Officer residing in the prison and off duty shall be in his quarters punctually at 10:00 p.m., and he will not be admitted to the prison after that time until next morning at 5:30.

Hours of return to quarters at night.

**34.** An Officer shall, when superintending interviews between prisoners and their friends, repress and prevent as far as may be in his power all improper communication.

Duty when superintending interviews.

**35.** An Officer shall be entitled to medical attendance and medicine at the public expense.

Medical attendance.

**36.** (1) An Officer may be allowed uniforms and those uniforms shall be issued when necessary on the approval of

Uniforms.

the Superintendent, but the issues shall not exceed a fixed limit.

(2) The uniforms shall remain the property of the government and all worn articles should be returned for condemnation before any fresh issues are made.

Officers responsible for upkeep of uniforms.

**37.** An Officer shall keep all articles of uniform in proper repair at his own expense, unless the Superintendent is satisfied that any damage to an article of uniform was incurred whilst in the execution of duty and through no fault of an Officer.

Return of uniform on leaving the services.

**38.** (1) Whenever an Officer quits the service on resignation, dismissal or otherwise, he shall return into store all articles of uniform in his possession and all bedding and equipment issued to him.

(2) In default of so doing, their value at the time may either be charged to him and deducted out of any salary due at the time of his quitting the service or he may be proceeded against for unlawful detention of prison property.

#### D. The Matron

Duties.

**1.** (1) The Matron, if any, shall be under the immediate direction of the Superintendent.

(2) The Matron shall be responsible for organising rehabilitation activities for the female prisoners.

Enforcement of rules.

**2.** The Matron shall make herself fully acquainted with the Prison Rules and shall enforce them so far as they apply to the female prisoners and any Officers under her.

Absence.

**3.** The Matron shall not absent herself from prison at any time without leave from the Superintendent and during her absence she shall give charge to such other woman officer as the Superintendent may direct.

Night Inspections.

**4.** The Matron shall make such visit of inspection during the night as the Superintendent may direct.

Superintendence of meals.

**5.** The Matron shall be directly responsible in the women's prison for the distribution of the prisoners' meals according to the prescribed scale of diet, and shall report to the Superintendent whether the food is properly cooked and of sufficient quantity.

Instruction of prisoners in their work.

**6.** The Matron shall give instruction to female prisoners in sewing, washing and other approved labour, and shall be directly responsible under the Superintendent for the enforcement of the proper tasks.

Misconduct of woman prisoner.

**7.** The Matron shall report to the Superintendent any misconduct or breach of the rules by a female prisoner and also touching anything in the discipline and condition of the women's prison.

Subject to general rules for Officers.

**8.** The Matron and every other female Officer shall be subject to the general rules for Officers so far as they apply to them.

Powers and duties in the absence of the Superintendent.

**9.** In the absence of the Superintendent the Matron shall, in the women's prison, perform the duties of, and have such of the duties and powers (except as to the punishment of prisoners) as may be required from, or conferred upon, the Superintendent by these Rules.

#### E. The Officer in Charge of Sick Prisoners

Medical Officer's directions.

**1.** (1) The Officer in charge of sick prisoners shall take charge of the sick under the directions of the Medical Officer and shall see that all medicines, and other related articles ordered by him are regularly administered to and taken by the patients and that they conform in every respect to his direction.

(2) He shall also have charge of the books and records connected with the sick in the prison.

Dietary, cleanliness, etc.

**2.** (1) The Officer in charge of sick prisoners shall see that all sick prisoners receive their regular meals or any special diet or article ordered by the Medical Officer.

(2) The Officer shall pay strict attention to the cleanliness of the infirmary and of the sick prisoners, also to their clothing and bedding, and shall report to the Superintendent any irregularity or misconduct on the part of such prisoners.

**VIRGIN ISLANDS**

**BY THE GOVERNOR OF THE VIRGIN ISLANDS**

By virtue of the power and authority vested in me under rule 41 (1) of the Prison Rules, 1999 I appoint you, \_\_\_\_\_, to be a member of the Prison Visiting Committee for a period of \_\_\_\_\_ years effective from \_\_\_\_\_ until \_\_\_\_\_.

Given under my hand this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

Governor

Made by the Governor in Council this 7<sup>th</sup> of April, 1999.

AUDREY WESTON,  
for Clerk of the Executive Council.

**VIRGIN ISLANDS**

**PUBLIC FINANCE MANAGEMENT REGULATIONS, 2005**

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**VIRGIN ISLANDS**

**STATUTORY INSTRUMENT 2005 NO. 87**

**PUBLIC FINANCE MANAGEMENT ACT, 2004  
(No. 2 of 2004)**

**Public Finance Management Regulations, 2005**

[Gazetted 1<sup>st</sup> December, 2005]

The Executive Council, on the advice of the Financial Secretary and in exercise of the powers conferred by section 44 of the Public Finance Management Act, 2004 (No. 2 of 2004), makes the following Regulations:

**PART 1  
PRELIMINARY**

- Citation.                   **1.** These Regulations may be cited as the Public Finance Management Regulations, 2005.
- Interpretation.           **2.** In these Regulations,
- No. 2 of 2004           “Act” means the Public Finance Management Act, 2004;
- “allocated stores” means stores the cost of which is chargeable directly to an appropriate sub-head of expenditure;
- “approved form” means a form issued or approved for the purpose by the Accountant General;
- No. 13 of 2003       “Auditor General ” means the Auditor General appointed under section 4 of the Audit Act, 2003;
- U.K.S.I. 1976       “Constitution” means the Virgin Islands (Constitution) Order, 1976;  
No. 2145
- “department” means a Ministry or a non-ministerial department of Government;
- “expendable stores” means stores of a consumable nature which may be issued in bulk without subsequent records of detailed issues;
- “general revenue receipt” includes all forms, licences, permits, tickets, discs, electronic devices approved by the Accountant General for use in the collection of revenue;

“stores” means stores of personal property, including plant, equipment, machinery, tools and vehicles, being the property or in the possession or under the control of the Government;

“sub-accountant” means an officer who

- (a) is entrusted with the receipt, custody and disbursement of public money; and
- (b) is required to keep one of the recognised cash accounts, the transactions in which are accounted for to the Accountant General and subsequently embodied in the final accounts of the Government;

“unallocated stores” means stores the cost of which is chargeable to a general sub-head of expenditure and which cannot be charged directly to an appropriate sub-head of expenditure until they are issued for the specific work or service concerned;

“unexpendable stores” means stores which are not of a consumable nature and which have a life assigned to them and which will remain on ledger charge whether in use or in store until they are written-off or disposed of.

3. If an officer is uncertain about

- (a) a duty or responsibility of a person, or
- (b) a procedure to be followed in carrying out a provision of these Regulations,

Reference of matters to Financial Secretary.

the matter shall be referred to the Financial Secretary for his directions.

## **PART 2 ACCOUNTING OFFICERS**

4. (1) The Accountant General is the Chief Accounting Officer and is responsible for the accounting arrangements in each department.

Accountant General.

(2) The Accountant General shall

- (a) control issues out of the Consolidated Fund and ensure that each payment made from the Fund is authorised in accordance with section 60(1) of the Constitution;

- (b) control issues out of other funds established by or in accordance with an Act to ensure that each payment is made for the purpose for which the fund was established;
- (c) maintain accounts of all appropriations made by the Legislative Council;
- (d) ensure that there is sufficient unencumbered balance available out of every appropriation to discharge any commitments payable during the financial year in which the commitment is made;
- (e) pre-audit or examine before issue all vouchers and acquittances for payment of money in order to ensure that they comply with these Regulations;
- (f) provide accounting services to departments in connection with the collection of revenue and the expenditure of public moneys;
- (g) exercise control over all officers in his department and sub-accountants entrusted with the receipt or payment of public moneys;
- (h) take precautions by the maintenance of efficient checks, including surprise inspections, against the occurrence of fraud, embezzlement or negligence;
- (i) act as custodian of all Government securities and other financial instruments;
- (j) receive all moneys accruing to the Consolidated Fund and other funds entrusted to him;
- (k) maintain the central financial accounts of Government including revenue, expenditure, assets and liabilities; and
- (l) prepare monthly and annual financial statements and periodic and special accounting and financial statements as are required for audit and management purposes.

Accounting  
Officers.

**5.** An Accounting Officer shall ensure that

- (a) the financial business of Government for which he is responsible is properly conducted;

- (b) any fund entrusted to his care is properly safeguarded and that money in the fund is applied only to the approved purposes;
- (c) each payment from the vote or fund under his control is properly authorised;
- (d) any information required by the Accountant General or the Auditor General concerning his accounts is promptly made available;
- (e) departmental records are maintained in accordance with these Regulations and any accounting instructions issued by the Accountant General;
- (f) an efficient system of internal control with respect to all financial transactions is maintained; and
- (g) his financial and accounting records are produced for audit on demand by the Auditor General .

**6. (1)** If an Accounting Officer believes that to comply with a direction given to him by the Minister would be inconsistent with the officer's duties, the officer shall give the Minister written notice of the officer's disagreement and the reasons for the disagreement and place a copy of the notice on record.

Disagreement with Minister.

(2) If the Minister concerned persists with his direction, the Accounting Officer shall act on that direction if it is given to him in writing and is not unlawful.

**7.** An Accounting Officer shall answer to the Public Accounts Committee of the Legislative Council for the way in which he carries out his duties under the Act when required to do so by that Committee.

Public Accounts Committee.

**8. (1)** An Accounting Officer is not, by virtue of any duty of the Accountant General or the Auditor General , absolved from his duty to comply or to ensure compliance with the Constitution, the Act, these Regulations and any instructions given to him by the Accountant General.

Accounting Officer not absolved from responsibility.

(2) An Accounting Officer remains responsible for any act which he is required to perform by the Act, these Regulations and any instructions given to him by the Accountant General, even though he has delegated the performance of the act to an officer subordinate to him.

(3) If it is proved to the Financial Secretary's satisfaction that an officer to whom an Accounting Officer has delegated authority for the doing of an

act has exceeded the authority delegated to him, the Financial Secretary may consider that officer to be jointly responsible with the Accounting Officer .

### **PART 3 ACCOUNTS**

Accounting unit.

**9. (1)** An Accounting Officer shall establish in his department an accounting unit under his supervision.

(2) An Accounting Officer shall ensure that proper arrangements are made in the unit for the disposal of its work.

Vote  
accounting.

**10. (1)** An Accounting Officer shall ensure that expenditure is classified in strict accordance with the expenditure votes.

(2) An Accounting Officer shall maintain control over the expenditure of his department to ensure that an amount provided in an expenditure vote is not exceeded.

(3) In pursuance of his obligation under this regulation, an Accounting Officer shall keep a departmental vote account in the approved form which shall clearly show at all times in respect of each expenditure vote

- (a) the original amount approved by the Legislative Council for the year;
- (b) any supplementary amount approved by the Legislative Council;
- (c) any amount reserved by the Minister;
- (d) any reallocation approved by the Minister under section 24 of the Act;
- (e) each credit to the vote;
- (f) any transfer to be added or deleted;
- (g) each charge or payment made against the vote;
- (h) the total expenditure to date;
- (i) the balance on the vote;
- (j) all outstanding commitments; and

(k) the uncommitted balance on the vote.

(4) A vote account shall be maintained in the following manner:

(a) as soon as a voucher is authorised for payment it shall be entered in the vote account and the entry shall be initialled by the Accounting Officer or any officer authorised by him to do so;

(b) the Accounting Officer or the officer authorised by him shall ensure that expenditure commitments in respect of goods invoiced but not yet paid for, and all other commitments are noted in the commitments column of the vote account;

(c) at the end of each month the vote account shall be reconciled item by item with the Accountant General's accounts;

(d) liabilities, including outstanding commitments, incurred but not paid during the financial year shall be charged to the appropriate expenditure vote account at the end of the financial year.

**11.** (1) If expenditure covers a variety of services or projects, the Accounting Officer shall maintain appropriate departmental accounts to enable him to control the progress of each service or project. Records relating work to cost.

(2) An Accounting Officer shall maintain a separate account for each service or project.

**12.** If a charge is incurred by an external agent or agency against a loan or grant in respect of which an appropriation has been made, the Accounting Officer shall ensure that the charge is brought to account against the appropriate expenditure vote. Charges incurred by external agents.

**13.** An Accounting Officer shall ensure that the balance of each expenditure vote is always sufficient to meet all commitments against that vote for the remainder of the year. Sufficiency of votes.

**14.** An Accounting Officer shall undertake a regular review of his expenditure vote accounts and report any unfavourable trend to the Financial Secretary. Review of expenditure.

**15.** (1) A commitment incurred before the end of a financial year for goods or services or an amount due or owing under a contract that remains unpaid Commitments.

at the end of the financial year shall be recorded as a charge payable against the expenditure vote to which it relates and shall be credited by the Accounting Officer to a deposit account.

(2) Subject to subregulation (3), payment may be made from a deposit account for the purpose of settling a commitment recorded as a charge against the expenditure vote in accordance with subregulation (1).

(3) Any part of a payment made in accordance with subregulation (2) which is in excess of the amount charged under subregulation (1)

- (a) shall be charged against the appropriate expenditure vote in the year in which the payment is made; and
- (b) reduces by an amount equal to that excess the amount available for spending under that vote.

Use of vote  
balances.

**16.** (1) An Accounting Officer shall ensure that except with the approval of the Financial Secretary any unexpended portion of an expenditure vote is not

- (a) used to set up a reserve to meet future payments; or
- (b) except in accordance with regulation 15 (1), carried to a deposit or suspense account.

(2) An Accounting Officer shall ensure that stores are not

- (a) drawn from unallocated stores, or
- (b) purchased for use before they are required,

to utilise balances in the expenditure vote account which would otherwise lapse at the end of the financial year.

(3) An Accounting Officer shall ensure that expenditure properly chargeable to an expenditure vote account of a financial year is not

- (a) deferred, or
- (b) placed in suspense,

to avoid an excess in that account for that financial year.

Charges incurred  
by procurement  
agents.

**17.** (1) The Accountant General shall notify the relevant Accounting Officer of any charge incurred through a procurement agent against an

expenditure vote under the officer's control and the officer shall record the charge in that vote account.

(2) The Accounting Officer shall return a copy of the debit advice issued by the Accountant General in accordance with subregulation (1) endorsed by the Accounting Officer to the effect that the charge has been recorded in the vote account.

**18. (1)** An Accounting Officer shall not open a personal advance account except on instructions from the Financial Secretary with the approval of the Minister. Advance or suspense accounts.

(2) An Accounting Officer may with the approval of the Accountant General open a temporary advance account incidental to the business of Government but the Accounting Officer shall ensure that the account is cleared by the end of the financial year.

(3) An Accounting Officer shall not open a suspense account except where the incidence of a charge is not known and in such a case the Accounting Officer shall take prompt action to determine the incidence of the charge and to remove the charge from the suspense account to the appropriate vote account.

**19. (1)** An Accounting Officer shall ensure that accounts are maintained in the form approved by the Accountant General. Forms of accounts.

(2) Without limiting the generality of subregulation (1), the Accountant General may approve accounts kept in the following ways:

- (a) in bound or loose-leaf registers;
- (b) on photographic film;
- (c) by any system of mechanical or electronic data processing;
- (d) by any other information storage device that is capable of reproducing information required in intelligible written form within a reasonable period of time.

(3) An Accounting Officer shall ensure

- (a) that each page of an account book kept by him is serially numbered; and
- (b) that if a mechanical or electronic device is used by him to maintain and store accounts

- (i) adequate measures are taken to secure the accounts against unauthorised entry; and
- (ii) the pages of all print-outs of the accounts are serially numbered and secured in a binder.

Security of accounts.

**20.** (1) An Accounting Officer shall ensure that

- (a) computer tapes, discs, diskettes or other mechanical or electronic devices used by him for recording accounts, and
- (b) accounting data produced by him,

are secured when not in use.

(2) An Accounting Officer shall ensure that

- (a) computer tapes, discs, diskettes or other mechanical or electronic devices used by him to record accounts, and
- (b) accounting data produced by him,

are not erased except with his approval.

(3) An Accounting Officer shall ensure that a card or a loose leaf issued for use by the Accounting Officer is not removed or destroyed without his authority.

Alteration of audited accounts and documents.

**21.** An audited account or document shall not be altered without the written consent of the Auditor General .

Use of green pencil and ink reserved for audit purposes.

**22.** An officer shall not use a green pencil or green ink on an account book or record except for audit purposes.

Inspection of accounts.

**23.** (1) The Accountant General shall from time to time carry out an inspection of the accounts of each department without first giving notice.

(2) The Accountant General shall inform the Financial Secretary of any irregularity discovered as a result of any such inspection.

**PART 4  
SUB-ACCOUNTANTS**

**24.** (1) A sub-accountant shall maintain the records he is required to maintain by the Accountant General. Sub-accountant's accounts.

(2) A sub-accountant shall balance his cash account daily and show in the cash register details of the cash on hand at the close of each business day.

(3) A sub-accountant shall

(a) carry out monthly reconciliation between the opening and closing cash balances and the totals of receipts and payments; and

(b) endorse details of the reconciliation in the cash register.

**PART 5  
PREPARATION OF ESTIMATES**

**25.** (1) An Accounting Officer shall each year, before the deadline stipulated by the Financial Secretary, submit to the Financial Secretary in a form approved by the Financial Secretary for the purpose Revenue estimates.

(a) an estimate of the revenue to be collected by the officer's department in the following financial year;

(b) a revised estimate of revenue to be collected during the current financial year; and

(c) a forecast of expected revenue in respect of the two financial years succeeding the following financial year.

(2) An Accounting Officer shall review the estimate of revenue for the current financial year and the following financial year on the last working day of September in each year and inform the Financial Secretary of any apparent changes in those estimates.

**26.** An Accounting Officer shall each year, before the deadline stipulated by the Financial Secretary, submit to the Financial Secretary in a form approved by the Financial Secretary for the purpose Expenditure estimates.

(a) an estimate of the sum required for recurrent and capital expenditure to be incurred by the officer's department during the following financial year;

- (b) a revised estimate of expenditure in respect of the current financial year; and
- (c) a forecast of expenditure in respect of the two financial years succeeding the following financial year.

Economy in estimating.

**27.** An Accounting Officer shall carefully scrutinise each items of expenditure included in an estimate of expenditure to ensure that

- (a) public funds are spent to the best advantage;
- (b) any service no longer essential is eliminated;
- (c) each necessary service is provided at the lowest cost possible; and
- (d) each new project or programme is analysed in detail giving
  - (i) the financial requirement for the budget years; and
  - (ii) an operation plan covering the material and other inputs and personnel required.

Inclusion of commitments.

**28.** An Accounting Officer shall ensure when preparing an estimate of expenditure that

- (a) each Executive Council decision that affects the estimate is adequately provided for; and
- (b) each known commitment arising out of the implementation of any project or programme is included in the estimate.

New expenditure proposals.

**29. (1)** An Accounting Officer shall not include in an estimate of expenditure

- (a) proposals for new staff positions, or
- (b) increases in salary, other than normal increments, or
- (c) new or expanded services,

except with the Minister's approval.

(2) An application for the Minister's approval for the purposes of subregulation (1) shall be submitted to the Financial Secretary not later than May in each year unless otherwise directed.

(3) Each application shall be submitted separately with a full explanation together with relevant extracts from any prior correspondence or report.

**30.** An Accounting Officer shall not assume from the fact that provision for expenditure has been included in the draft estimates, that authority for the expenditure has been given and no such authority is to be taken to exist until approved by the Legislative Council.

Inclusion does not imply sanction.

**31.** (1) An Accounting Officer when preparing an estimate of expenditure shall

Estimates to be accurately stated.

- (a) state estimated expenditure to the nearest one hundred dollars;
- (b) base his estimates of expenditure on the latest current information on revenue and expenditure trends; and
- (c) provide explanations for any substantial differences between
  - (i) the original and revised estimates for the current financial year; and
  - (ii) the revised estimates for the current financial year and the estimates for the following financial year.

**32.** Unless the Minister or an officer authorised by the Minister otherwise directs, an Accounting Officer shall forward to the Financial Secretary with the officer's draft estimates a statement in support of each item of personal emoluments showing

Supporting statements.

- (a) the name of each officer;
- (b) the date on which an increment, if any, will accrue to the officer;
- (c) the actual salary payable to the officer in the current financial year; and
- (d) the salary provided for the officer in the following financial year.

Separation of estimates.

**33.** (1) An Accounting Officer when preparing an estimate of expenditure shall

- (a) show separately
  - (i) items of recurrent and non-recurrent expenditure; and
  - (ii) items to be appropriated to the Consolidated Fund, items to be appropriated to the Development Fund and items to be appropriated to any other fund established by or in accordance with an Act; and
- (b) indicate
  - (i) which sums are to be appropriated by the Legislative Council; and
  - (ii) which sums are already charged on the Consolidated Fund by the Constitution or any other law.

(2) In respect of each sum referred to in subregulation (1)(b)(ii), the estimate of expenditure shall include a reference to the relevant section of the Constitution or the law, as the case may be, under which the sum is charged on the Consolidated Fund.

Estimates of statutory bodies.

**34.** If the law which created a statutory body requires that its annual budget is to be approved by the Government, that body shall comply with any specific instructions given by the Minister in respect of the preparation of its budget or by an officer authorised by the Minister to give the body those instructions.

## **PART 6 RESTRICTIONS ON EXPENDITURE**

Warrants to be numbered.

**35.** A warrant issued under the Constitution, the Act or under any other Act authorising payment from the Consolidated Fund or from any other fund established by or in accordance with an Act shall be

- (a) classified according to type; and
- (b) numbered serially within its type in respect of each financial year.

**36.** The Financial Secretary shall ensure that a copy of each warrant is distributed to Copies to be distributed.

- (a) the Accountant General;
- (b) the Auditor General ; and
- (c) the Accounting Officer concerned.

**37.** (1) If the Minister, in the exercise of his powers under section 4 of the Act, limits any item of expenditure he shall indicate the limitation Limitation on expenditure.

- (a) in the warrant issued by him; or
- (b) by letter signed by him and addressed to the Accounting Officer concerned.

(2) If an Accounting Officer considers expenditure essential under an expenditure vote for which he is responsible but which has been limited, he shall apply to the Minister for the release of the whole or part of the amount withheld and the Minister may grant such release as he thinks fit.

(3) In an application under subregulation (2), the Accounting Officer shall

- (a) give full reasons why the release is necessary; and
- (b) set out any reason why the expenditure should not be deferred.

(4) The Financial Secretary shall arrange for a copy of any release given by the Minister under subregulation (2) to be sent to

- (a) the Accountant General;
- (b) the Auditor General ; and
- (c) the Accounting Officer concerned.

**38.** (1) An Accounting Officer and any officer authorised by him Liability of officers.

- (a) who incurs expenditure in excess of the amount appropriated or otherwise approved by the Minister or the Financial Secretary, or
- (b) who incurs expenditure without authority,

is liable to be surcharged under Part 6 of the Act.

## PART 7 REVENUE COLLECTION

Accounting  
Officers  
responsible for  
collection and  
claims.

**39.** (1) An Accounting Officer is responsible for the prompt collection of all revenue relating to his department.

(2) An Accounting Officer shall ensure

(a) that a person is given notice of a debt

(i) about to fall due to the Government; or

(ii) which becomes due to the Government by virtue of the notice;

(b) that a person is reminded of a debt which has become due to the Government

(i) by regular requests or demands for payment; or

(ii) if the debt is in the nature of an annual or periodic licence fee, by notification in the *Gazette* and either in a newspaper circulating in the Territory or on the radio, or both.;

(c) that prompt legal action is taken for the collection of the debt; and

(d) that a case referred to court is actively pursued and any court order is executed.

(3) An Accounting Officer shall ensure that

(a) each claim in respect of expenditure against an externally financed project is promptly submitted for reimbursement; and

(b) a reimbursement received is correctly accounted for and brought into revenue.

Liability of  
receiver of  
revenue.

**40.** If

(a) a debt due to Government becomes unrecoverable, and

- (b) there has been unreasonable delay by the responsible officer
  - (i) in making a request or demand for payment, or
  - (ii) in instituting legal action for the recovery of the debt,

the officer is liable to be surcharged under Part 6 of the Act.

**41.** An Accounting Officer shall ensure that a record is kept in his department of Record of debt notices to be kept.

- (a) the date of issue of each notice of debt
  - (i) that is due to the Government;
  - (ii) that is about to become due to the Government; or
  - (iii) which has become due to the Government by virtue of the issue of the notice; and
- (b) the date of issue of each request or demand for payment of a debt due to the Government.

**42.** An Accounting Officer shall ensure that a record is kept in his department of the date on which legal action is instituted for the recovery of each overdue debt due to the Government. Record of legal action to recover debt to be kept.

**43.** (1) An Accounting Officer who is responsible for the collection of revenue shall submit to the Accountant General Reports of arrears of revenue.

- (a) an annual return of arrears of revenue; and
- (b) a monthly report of arrears of revenue recovered.

(2) A return and report shall

- (a) be in the approved form
- (b) reach the Accountant General not later than one month after the end of the relevant period; and
- (c) be submitted whether or not any arrears have accrued or any recovery has been made, as the case may be.

**PART 8**  
**RECEIPTS OF PUBLIC MONEY**

Receipt of money to be accounted for.

**44.** An Accounting Officer shall ensure that each receipt of public money by his department is properly accounted for in a

- (a) book, or
- (b) record of account,

in the approved form.

Receipts of public money to be vouched.

**45.** An Accounting Officer shall ensure that each receipt entry in the accounts of his department is vouched for in the approved form.

Receipts to be issued to and by collectors of revenue.

**46.** (1) A receiver of revenue, other than a sub-accountant, who receives public money

- (a) shall pay the amounts received daily or, if daily is not practicable, at the earliest opportunity
  - (i) into a bank to the credit of the appropriate account;
  - (ii) to the Accountant General; or
  - (iii) to a sub-accountant; and
- (b) shall obtain a receipt for the amounts paid in.

(2) A receiver of revenue shall issue an official receipt for each sum received by him except that, in the case of the Comptroller of Customs, a duly stamped, signed and numbered copy of a customs entry serves as a receipt.

Lodgements.

**47.** A receiver of revenue or a sub-accountant who deposits money into a bank shall obtain from the bank, in the approved form, a deposit receipt for the amount of the deposit.

Verification of receipts.

**48.** (1) A receiver of revenue when making a payment of money or a submission of deposit receipts to the Accountant General or to a sub-accountant shall ensure that the payment or deposit is supported

- (a) by a paying-in slip quoting the serial numbers of the receipts issued by the receiver of revenue in respect of the amounts received by him; and

- (b) by
    - (i) the used receipt books from which the receipts were issued; or
    - (ii) a certified statement of a computer print-out showing details of all receipts issued.
- (2) The Accountant General or the sub-accountant, as the case may be, shall
- (a) verify the serial numbers of the receipts appearing on the paying-in slip; and
  - (b) enter the serial number of the paying-in slip on the Treasury receipt issued by him to the receiver of revenue.
- (3) A receiver of revenue shall ensure that a deposit receipt is submitted to the Accountant General at the earliest opportunity after the deposit was made.

**49.** If an officer, other than the Accountant General, a sub-accountant or a receiver of revenue, receives public money, he shall

- (a) as soon as possible pay the money to the Accountant General or sub-accountant; and
- (b) obtain a receipt for the money.

Receipts of public money by officers who are not receivers of revenue.

**50.** An alteration in paying-in slips shall be initialled by the payer.

Alterations in paying-in slips.

**51.** (1) Revenue receipts

- (a) shall be issued in serial number order; and
- (b) shall not be altered except with the approval of the Accountant General.

Alterations in receipts.

(2) A revenue receipt book shall not be cut or divided.

(3) If an electronic system is used, the receiver of revenue shall ensure that measures are taken to secure its receipt-writing device.

(4) An alteration shall not be made in the amount shown as received on a receipt but if a correction is necessary to that amount the receipt shall be cancelled and a new one issued.

Cancellation of receipts.

**52.** (1) If it is necessary to cancel a receipt each copy of the receipt bearing the same serial number shall be

- (a) endorsed "Cancelled";
- (b) signed by the responsible officer; and
- (c) securely attached to the relevant receipt book.

(2) If an electronic system is in use, a receipt shall be cancelled in accordance with a procedure approved by the Accountant General.

Lost receipt.

**53.** (1) If an issued receipt is lost and a copy is applied for,

- (a) a certified true copy on departmental stationery may be furnished; but
- (b) a new receipt shall not be issued from a receipt book or electronic system.

(2) A duplicate copy of a receipt shall not be issued except with the approval of the Accountant General.

Public notice regarding receipts.

**54.** An Accounting Officer shall ensure that there is displayed in each office in his department where money is collected a notice stating that a printed official receipt shall be obtained by a person paying money to the Government.

Facsimile signature stamps not to be used.

**55.** An officer shall not use a facsimile signature stamp to sign a receipt or any other revenue document.

Maintenance of cash accounts.

**56.** A receiver of revenue shall maintain a manual or electronic cash account in the approved form.

Receipts to be posted in cash accounts.

**57.** A receiver of revenue shall enter in serial number order in the cash account kept by him each revenue receipt issued by him for money received.

Verification of cash accounts.

**58.** A receiver of revenue shall submit his cash account at intervals not exceeding one month to the Accountant General or to a sub-accountant for verification and certification of any amounts paid in.

- 59.** The examination of cash account by the Accountant General or a sub-accountant does not absolve an Accounting Officer from any of his responsibilities under the Act. Accounting Officer's responsibility to examine cash accounts.
- 60.** (1) An Accounting Officer shall ensure that a document on which a payment is received is not issued by his department unless a duplicate copy or a counterfoil is retained. Receipt forms.
- (2) An Accounting Officer shall ensure that printed receipt forms available for issue by his department are bound and pre-numbered serially.
- (3) If a specially printed receipt has not been approved in respect of a transaction a general revenue receipt shall be used.
- 61.** (1) An Accounting Officer shall ensure that general revenue receipt forms are not issued to a person who is not a receiver of revenue. Issue of receipt forms.
- (2) The Accountant General shall order the printing of general receipt forms and the manufacture of plates, discs or other forms of articles used in acknowledgement of receipt of public money.
- 62.** The Accountant General shall advise the Auditor General of each issue of general revenue receipt forms. Auditor General to be advised of issues.
- 63.** (1) A receiver of revenue shall secure revenue receipt forms in his custody or the custody of an officer authorised by him. Custody of receipt forms.
- (2) An officer to whom revenue receipt forms have been issued for use is responsible for them until they are returned to the receiver of revenue.
- 64.** A receiver of revenue shall Used receipt forms.
- (a) retain used receipt forms until they have been checked by an Audit Officer; and
- (b) return them to the Accountant General immediately after audit.
- 65.** A receiver of revenue shall Obsolete receipt forms.
- (a) list and return to the Accountant General revenue receipt forms which are obsolete and no longer required for use; and

- (b) retain a copy of the list signed by the Accountant General as a receipt for the forms.

Responsibility for checking receipt forms.

**66.** A receiver of revenue shall ensure

- (a) that revenue receipt forms are carefully checked upon receipt;
- (b) that the officer who received them certifies to that effect; and
- (c) that any error either in the numbering or in the quantity supplied is immediately reported to the Accountant General and the Auditor General .

Transfer of receipt forms.

**67.** An officer in possession of revenue receipt forms shall not transfer them to another officer without the consent of the Accountant General except if the officer is handing over his responsibilities to another officer, in which case the transfer shall be made after a handing over statement has been signed by the officer who is to receive the revenue receipt forms and the officer who is to hand them over.

Stock register.

**68.** (1) The Accountant General shall maintain a stock register showing the receipt, issues and balances of each type of revenue receipt form.

(2) A receiver of revenue who holds a stock of revenue receipt forms

- (a) shall maintain a stock register in the approved forms; and
- (b) shall enter details of each bound book of revenue receipt forms received or issued for use by him on a separate line in the stock register with a separate page being reserved for each type of revenue receipt form.

Half-yearly returns of receipt forms.

**69.** (1) A receiver of revenue who has the custody of revenue receipt forms, shall render a return on the approved form to the Accountant General as at the end of each June and December showing every revenue receipt form or book of forms, as the case may be, recorded in his stock register with a notation to indicate

- (a) whether it is used, partly used or unused;
- (b) whether it is audited or not audited; and
- (c) whether it has been returned to the Accountant General or is still held in his custody.

- (2) The Accountant General shall
  - (a) check each return; and
  - (b) report any discrepancy to the Auditor General .

**PART 9  
PAYMENTS**

**70.** An officer shall not make a payment out of the Consolidated Fund or any other fund established by or in accordance with an Act except with the specific authority of a warrant issued in accordance with section 60(1) of the Constitution or that Act. Authority for payment.

**71.** An officer Unauthorised payment.

- (a) who makes, allows or directs an unauthorised payment to be made, or
- (b) who submits or checks any such payment,

is liable to be surcharged under Part 6 of the Act.

**72.** (1) An officer shall not make a payment unless authorised to do so by an Accounting Officer or an officer appointed by an Accounting Officer to authorise the payment. Payment instrument.

- (2) The following instruments may be used to make a payment:
  - (a) a purchase order indicating expenditure commitment; or
  - (b) a payment voucher in an approved form; or
  - (c) a procurement invoice in an approved form; or
  - (d) a machine-readable instruction that is either transmitted electronically by a data communication network or is recorded on magnetic tape, disk, diskette or other electronic device approved by the Accountant General.

**73.** An Accounting Officer or an officer authorised by an Accounting Officer who signs or authorises a payment instrument Responsibility when signing.

- (a) shall certify the accuracy of each detail set out in the instrument; and

- (b) shall ensure that
  - (i) the service specified has been satisfactorily delivered;
  - (ii) the prices charged are either according to contract or approved scales or fair and reasonable according to current local rates;
  - (iii) proper authority has been obtained for the expenditure in respect of which payment is made;
  - (iv) the computation and costings have been verified and are arithmetically correct;
  - (v) the person named in the instrument is entitled to receive payment; and
  - (vi) any stores purchased have been correctly received and put to use or taken on charge.

Payment instruments to contain full particulars.

**74.** A payment instrument shall

- (a) contain full particulars of each service (such as dates, numbers, quantities, distances and rates) sufficient to enable them to be checked without reference to any other document;
- (b) be supported by claims, purchase orders, invoices or other relevant documents;
- (c) quote the appropriate authority for expenditure or payment;
- (d) quote the head, sub-head and item number of the expenditure vote or the appropriate expenditure code in the case of non-appropriated items;
- (e) contain the required certificates and endorsements; and
- (f) contain the amount of the payment in figures in the appropriate column and in words in the appropriate spaces.

Payment instruments to be certified.

**75. (1)** A payment instrument shall be certified by an officer authorised to do so by the Accounting Officer .

- (2) The Accounting Officer shall
  - (a) obtain a specimen signature of each officer he has authorised to sign or certify payment instruments; and
  - (b) send a copy of the specimen signature to
    - (i) the Accountant General; and
    - (ii) the Auditor General ; and
  - (c) retain one copy of the specimen signature.

**76.** A certifying officer shall ensure that each certificate he signs is true and correct. Certifying officers to exercise care.

**77. (1)** A payment instrument shall be Payment instruments to be written and signed in ink.

- (a) written or printed; and
- (b) signed in ink.

(2) A stamped facsimile signature shall not be used on a payment instrument.

**78.** The original of a payment instrument shall be signed by the certifying officer and the authorising officer, and each copy of the instrument shall Original instrument to be signed.

- (a) be initialled by the certifying officer; and
- (b) clearly marked “Copy not for payment”.

**79.** The Accountant General or an officer authorised by him to do so shall ensure before passing a payment instrument for payment Payment instrument to be pre-audited.

- (a) that the head, sub-head and item of the expenditure vote charged with the payment is correctly charged according to the appropriations for the current financial year;
- (b) that the authority for the payment is correctly stated;
- (c) that the person who signed the instrument as Accounting Officer is authorised to do so;

- (d) that the appropriate certificate has been attached to the payment instrument;
- (e) that the amount to be paid is correctly stated in words and figures;
- (f) that the payment represents a fair charge against funds;
- (g) that any alteration on the face of the payment instrument and any particulars that relate to an alteration have been initialled by the authorised officer; and
- (h) that any deduction due to be made from the payment has been made.

Payment to persons.

**80.** A payment shall be made to the person named in the payment instrument or to the person's representative.

Payments to persons other than those named in payment instrument.

**81.** (1) A payment shall not be made to a representative of the person named in a payment instrument unless the appropriate authority of the representative has been produced to the Accountant General.

(2) For the purpose of subregulation (1), "appropriate authority" includes a power of attorney, letters of administration and other written warranty of authority or order.

(3) The Accountant General shall

- (a) retain a copy of any authority produced to him; or
- (b) endorse a suitable notation in respect of the authority on the payment instrument.

Lost payment instruments.

**82.** An Accounting Officer shall ensure that if an original payment instrument is lost

- (a) any payment instrument prepared in substitution for the lost instrument contains an endorsement that the original has been lost;
- (b) the loss of the original payment instrument is noted in the relevant section of the expenditure vote account register; and
- (c) the payee when presenting the substituted payment instrument for payment is first required to sign an

indemnity to refund the amount paid to him by virtue of that instrument if a double payment is made.

**83.** (1) An Accounting Officer shall ensure that a payment in respect of a charge incurred during a financial year is made during that financial year.

Payments to be made within the financial year.

(2) Subject to regulation 15 and except with the approval of the financial Secretary, a payment in respect of a charge incurred during a financial year shall not be made in a subsequent period.

**84.** (1) If it becomes necessary for work to be done by one department on behalf of another, the Accounting Officer of the department on whose behalf the work is to be done may authorise the Accounting Officer of the department undertaking the work, by means of a departmental warrant, to incur expenditure against an expenditure vote under the first Accounting Officer's control.

Departmental warrant.

(2) An Accounting Officer to whom a departmental warrant is given shall

(a) maintain an account of the expenditure incurred against the expenditure vote specified in the warrant; and

(b) submit monthly reports in respect of that vote to the Accounting Officer who gave the warrant.

(3) An Accounting Officer to whom a departmental warrant is issued is personally responsible for all expenditure incurred in excess of the amount stated in the warrant.

## **PART 10 SALARIES, WAGES AND ALLOWANCES**

**85.** (1) An Accounting Officer shall keep a record of each officer paid from the personal emoluments expenditure vote in respect of his department.

Records to be kept.

(2) The record shall be sufficient to enable the Accounting Officer to determine at all times in respect of an officer

(a) the rate of salary and any allowance payable to the officer;

(b) the authorised deductions to be made from the officer's salary;

(c) the dates on which salary increments become due to the officer;

- (d) the leave due to and taken by the officer;
- (e) any other matter affecting the personal emoluments payable to the officer; and
- (f) the establishment position held and the station to which the officer is posted.

Authority for payment of salaries.

**86.** A salary or allowance is not to be paid in respect of

- (a) a new appointment or an acting appointment; or
- (b) a change in office or rate,

except on the written authority of the Director of Human Resources.

Unpaid salaries and wages.

**87.** An Accounting Officer s shall ensure that

- (a) unpaid salaries and wages are properly accounted for and secured; and
- (b) subject to regulation 15, procedures that apply to the regular payment of salaries and wages are applied to the payment of unpaid salaries and wages.

Salaries and wages unpaid for more than three months.

**88.** (1) A salary or wage that is unpaid for more than three months shall

- (a) be paid to the Accountant General; and
- (b) be credited by him to the account “Deposits: Unpaid Salaries, Wages and Allowances”.

(2) If the payee concerned makes a claim, the Accounting Officer shall

- (a) prepare a payment instrument charged to the account “Deposits: Unpaid Salaries, Wages and Allowances”; and
- (b) send it to the Accountant General for payment.

Daily paid workers.

**89.** An Accounting Officer shall, if his department employs daily paid workers, ensure that

- (a) the officer employing those workers keeps a record of the days and hours worked by each worker sufficient to determine
  - (i) the amount of wages to be paid to the worker; and
  - (ii) the gratuities, leave entitlement and similar benefits due to the worker; and
- (b) the record referred to in paragraph (a) is prepared daily on the spot where the work is done and is open for inspection by an authorised officer; and
- (c) each record is checked by an officer assigned to that duty in the Accounting Officer 's department before payment is made to the worker.

**90.** An Accounting Officer shall ensure that, if overtime is to be paid to a worker or officer, the time record clearly distinguishes between ordinary time and overtime. Overtime.

**91.** (1) Salaries and allowances paid by half-monthly installments of one twenty-fourth of the annual rates are final settlements for the periods to which they relate. Computation of salaries.

(2) The computation for a broken period of a half-month shall be made with reference to the number of days in that half-month.

**92.** (1) A payment instrument in respect of a claim for a reimbursement or an allowance shall be certified by the claiming officer. Certificates required.

(2) The following certificates are to be used:

- (a) for ordinary claims, "Certified Correct";
- (b) for transport allowance, "I certify that vehicle No...has been maintained in running order during the period for which allowance is claimed.";
- (c) for subsistence allowance, "I certify that ... was travelling on duty on the days specified and I am satisfied that the amount claimed in respect of such travel is fair and reasonable.";
- (d) for claims where supporting receipts or invoices are not obtainable, "I certify that the charges have been incurred

solely upon the public business, receipts/invoices being unobtainable.”.

Delayed claims.

**93.** If, in the opinion of the Accounting Officer , an officer has unreasonably delayed in submitting a claim for reimbursement the Accounting Officer may disallow the claim in whole or in part.

## **PART 11 PENSIONS**

Records of retiring benefits.

**94.** The Director of Human Resources shall maintain a record of approved retiring benefits showing in respect of each retired officer

- (a) the name of the officer and the office held on the date of his retirement;
- (b) the date of birth and date of retirement of the officer;
- (c) the cause of retirement of the officer;
- (d) the date from which a pension was payable to the officer;
- (f) the rate of pension payable to the officer;
- (g) the file reference number of the officer; and
- (h) the address of the officer.

Notice of retirement.

**95.** (1) An Accounting Officer shall ensure that not later than 6 months before the end of each financial year he obtains the names of the officers in his department who intend to retire from the public service during the following financial year.

(2) An Accounting Officer shall submit to the Financial Secretary and the Director of Human Resources not later than six months before the end of each financial year the names and pensionable emoluments of the officers in his department who will be retiring from the public service during the following financial year.

Deferred payment of retiring benefits.

**96.** If an officer fails to inform the Accounting Officer of the officer's intention to retire from the public service when requested to do so by the Accounting Officer the payment of a retiring benefit to the officer may be deferred by the Accounting Officer by up to four months.

**PART 12**  
**OVERPAYMENT RECOVERIES**

**97.** An Accounting Officer shall ensure that if an unauthorised payment or overpayment is discovered Unauthorised or incorrect payment.

- (a) the person paid or overpaid is informed and asked to repay the amount or the amount of the overpayment;
- (b) any further instalments of the unauthorised or incorrect payment are stopped immediately; and
- (c) if the amount of the payment or overpayment is not repaid, steps are taken to recover the amount.

**98.** (1) If the unauthorised payment or overpayment has already been made in part or in full, the Accounting Officer shall Steps to recover unauthorised payment or overpayment.

- (a) take steps to determine the liability of the person responsible for the unauthorised payment or overpayment;
- (b) report the circumstances to the Financial Secretary; and
- (c) take steps to recover the unauthorised payment or the amount overpaid.

(2) An Accounting Officer may, with the written consent of the Financial Secretary, accept proposals for the repayment by instalments of an unauthorised payment or overpayment on such terms and conditions as the Financial Secretary directs.

(3) In fixing repayment terms the Financial Secretary shall take notice of any voluntary repayment made by the person to whom the unauthorised payment or overpayment was made.

**99.** An Accounting Officer shall ensure that Overpayments recovered.

- (a) an amount received on account of an unauthorised payment or an overpayment in respect of expenditure incurred in a previous financial year is credited to an appropriate revenue head; and
- (b) an amount received on account of an unauthorised payment or overpayment in respect of expenditure incurred within the same financial year in which the unauthorised payment or overpayment was made is credited to the expenditure

vote to which the unauthorised payment or overpayment was charged.

### **PART 13 EXPENDITURE FROM LOANS**

Authority of expenditure from loans.

**100.** (1) The Accountant General shall ensure that expenditure is not incurred against funds deriving from a loan to the Government unless the loan was authorised by or in accordance with an Act.

(2) The Accountant General shall ensure

- (a) that each payment made against a loan fund is accounted for in the appropriate loan account; and
- (b) that each payment made is kept within the loan amount authorised.

### **PART 14 DEPOSITS**

Deposit accounts.

**101.** (1) In this Part “deposit” means money, not being money raised or received for the purposes of the Government, which is deposited

- (a) with the Accountant General; or
- (b) with any other public officer authorised to receive the money by the Accountant General.

(2) A deposit shall be credited to a deposit account.

(3) An Accounting Officer shall not open a deposit account unless he is authorised by the Accountant General to do so.

(4) An Accounting Officer shall operate a deposit account in accordance with such instructions as the Accountant General shall specify.

Payments from deposit accounts.

**102.** A payment shall not be made from a deposit account unless it is authorised by the Accounting Officer responsible for the operation of the account or by another officer appointed by him for the purpose.

Accounts not to be exceeded.

**103.** An Accounting Officer shall ensure that the payments made from a deposit account are not in excess of the unspent balances of the account.

**104.** (1) If an officer receives money that is not identifiable with any service or purpose, Suspense  
Accounts.

(a) the officer shall credit the money to a suspense account;  
and

(b) the Accountant General shall

(i) investigate the source and purpose of the money;  
and

(ii) as soon as possible, transfer the money to the  
appropriate head of revenue.

(2) The Accountant General shall transfer any balance held in a suspense account to general revenue at the end of each financial year.

## **PART 15 ADVANCES**

**105.** An advance may be made to a public or police officer on such terms and conditions as may be approved by the Minister on the recommendation of the Financial Secretary. Advances to  
officers.

**106.** (1) An advance shall not be made to a person who is not a public or police officer except for a public purpose approved by the Minister on the recommendation of the Financial Secretary. Advances to  
persons other  
than public  
officers.

(2) If the Minister approves an advance to a person who is not a public officer, a police officer or a retired public or police officer, the terms on which the advance is given and the reason why the loan was given shall be explicitly stated in the loan agreement.

**107.** (1) The Accountant General shall ensure that an advance is repaid within the time and in accordance with the terms and conditions of the loan agreement. Recovery of  
advances.

(2) The Accountant General shall take measures for the recovery of the amount due if an advance is not repaid within the time or in accordance with the terms and conditions of the loan agreement.

(3) Unless the Financial Secretary directs otherwise it is to be a condition of a loan agreement that the Accountant General can recover the outstanding balance of the advance either in part or in full from any emoluments, pension or gratuity payable to or in respect of an officer who dies or leaves the

public service on transfer, retirement, resignation, termination of appointment, dismissal or for any other cause.

## **PART 16 IMPRESTS**

- Issue of imprests.           **108.**     The Accountant General may issue an imprest if it is authorised by a warrant issued by the Minister **and, in the event that the Accountant General fails to issue the warrant, he must give reasons for the failure.**
- Purpose of imprests.           **109.**     An imprest shall not be made except for the specific purpose for which it was issued.
- Payments from imprests.       **110.**     An imprest shall not be used unless an immediate payment is required which for purposes of efficiency and the exigencies of the service cannot be made by the submission of a payment voucher to the Accountant General
- Accounting for imprests.       **111.** (1) The Accountant General shall maintain an account for each imprest issued to an Accounting Officer .
- (2) Each Accounting Officer in receipt of an imprest shall keep an account of each payment made from that imprest.
- Imprest cash account.       **112.**     An Accounting Officer in receipt of an imprest shall
- (a) keep a cash account; and
  - (b) record in the cash account
    - (i) each sum received on the issue of the imprest; and
    - (ii) each payment made out of the sums received.
- Reimbursements of imprest payments.   **113.**     An Accounting Officer may obtain reimbursement for payments made out of an imprest by submitting to the Accountant General or a sub-accountant
- (a) receipted claims and payment instruments in respect of the payments; and
  - (b) a signed journal voucher to debit the expenditure vote to which the payment is charged and to credit the imprest account.
- Retirement of imprest.       **114.** (1) An Accounting Officer shall retire an imprest by

- (a) the date indicated in the warrant that authorised it; or
- (b) the end of the current financial year,

being whichever first occurs.

(2) An Accounting Officer shall

- (a) account for an imprest by the date stipulated in the warrant; and
- (b) pay any unexpended balance at the date of the accounting to the Accountant General

**115.** An Accounting Officer to whom an imprest is issued is not relieved of responsibility for the imprest until all payment instruments and claims paid from the imprest have been examined by the Accountant General and found to be correct.

Imprests not fully accounted for until pre-audit of payment.

## **PART 17 BANK ACCOUNTS**

**116.** (1) An officer shall not open a bank account in the name of the Government or on behalf of the Government except with the approval of the Minister.

Opening of bank accounts.

(2) The Accountant General may issue instructions that specify how a bank account is to be opened and operated.

(3) If the Minister gives approval to open a bank account in the name of, or on behalf of, the Government it shall be opened and operated by an Accounting Officer.

**117.** An Accounting Officer shall not overdraw a bank account opened or operated by the Accounting Officer.

Overdrafts prohibited.

**118.** An Accounting Officer shall ensure that

Cash register to be maintained.

- (a) a cash register is properly maintained for each bank account opened or operated by the Accounting Officer; and
- (b) that a sum paid into or out of the bank account is immediately brought to account in the cash register.

Signatories to be designated.

**119.** An Accounting Officer shall designate at least two officers in his department as signatories in respect of cheques or other instruments drawn against a bank account opened or operated by the Accounting Officer.

Reconciliation of bank accounts.

- 120.** An Accounting Officer shall ensure that
- (a) the balance of the bank account as shown in the bank statement is verified with the balance shown in the cash register at least monthly; and
  - (b) a reconciliation statement is prepared in respect of each verification.

## **PART 18 CHEQUES**

Cheques to be signed.

**121.** (1) A cheque drawn on a Government bank account shall be signed by at least two officers designated by

- (a) the Accountant General; or
- (b) an Accounting Officer,

for that purpose.

(2) Each signing officer shall initial the counterfoil or machine copy of each cheque.

Computerised cheques.

**122.** (1) A cheque may be issued by the use of mechanical or electronic equipment.

(2) The Accountant General shall ensure that adequate security measures are taken to restrict entry to each mechanical or electronic cheque-writing device to people specifically authorised by the Accountant General.

(3) The Accountant General may allow cheques to be signed by the use of mechanical or electronic equipment that can reproduce signatures.

Cheque books to be secured.

**123.** An Accounting Officer to whom a Government cheque book has been issued shall take measures to secure

- (a) the cheque book when not in use; and
- (b) the counterfoil of each used cheque so that it can be audited and verified.

- 124.** An Accounting Officer to whom a Government cheque book has been issued shall ensure that any spoilt cheque in the cheque book Spoilt cheques.
- (a) is retained and clipped to the matching counterfoil;
  - (b) has marked or stamped across its face “Cancelled”; and
  - (c) is initialled by an officer designated by the Accounting Officer.
- 125.** An officer Cheques may be accepted in payment.
- (a) may accept in payment of revenue or for any other service a cheque drawn on a bank that is regulated in accordance with internationally recognised prudential standards; but
  - (b) shall take reasonable steps to establish the validity of the cheque and the good standing of the account against which the cheque is drawn.
- 126.** An officer who accepts a cheque shall lodge it as soon as possible Cheques to be lodged.
- (a) in the appropriate bank account; or
  - (b) with the Accountant General.
- 127.** An officer who has accepted a cheque in payment of revenue or for any other service shall, immediately, take appropriate action to recover the payment if the cheque is dishonoured upon presentation. Dishonoured cheques.
- 128.** An officer shall not convert into cash a cheque received by him or a cheque presented to him by any person whether or not an officer. Cheques not to be encashed.

## PART 19 DIRECT DEPOSIT

- 129.** The Accountant General may authorise a direct deposit to be made in a bank or other financial institution to the account of a person to whom the payment is due Direct deposit.
- (a) if the payment is one of a continuing or recurring number of payments;

- (b) in compliance with the conditions of a contract or agreement; or
- (c) on the specific written instruction of the payee.

Form of deposit.

**130.** (1) The Accountant General ensure that

- (a) each direct deposit is made using an electronic medium; and
- (b) the instrument of deposit
  - (i) is in the approved form and
  - (ii) contains the information specified by the Accountant General.

(2) The Accountant General shall ensure the security and safe-keeping of the medium containing direct deposit instructions or transactions while

- (a) in his custody; and
- (b) in transit to the bank or other financial institution into which the deposit is to be made.

Authentication of direct deposit.

**131.** (1) A medium that contains direct deposit instructions or transactions

- (a) shall contain internal labels or records indicating, in respect of each file of instructions or transactions
  - (i) the originator of the file;
  - (ii) the date the file was created;
  - (iii) the creation sequence number of the file;
  - (iv) the number of debit transactions;
  - (v) the total value of debit transactions;
  - (vi) the number of credit transactions;
  - (vii) the total value of credit transactions; and
  - (viii) the bank or financial institution to which the medium is to be delivered for processing; and

- (b) shall, when delivered to the bank or financial institution for processing, be accompanied by a transmittal document signed by an officer authorised to do so by the Accountant General.

(2) The Accountant General shall notify a bank or financial institution in which a direct deposit is to be made of the names and specimen signatures of the officers authorised by him to sign a transmittal document.

**132.** (1) An Accounting Officer shall notify the Accountant General that a direct deposit is to cease if Termination of direct deposit.

- (a) the service in respect of which payment is made is terminated;
- (b) any instruction from the payee in respect of the direct deposit has been withdrawn;
- (c) a contract under which the direct deposit is made comes to an end; or
- (d) the payee dies or is otherwise ineligible for payment.

(2) Notwithstanding subregulation (1), the Accountant General may at any time suspend or revoke direct deposits instructions if he has reason to believe that there has been impropriety or a breach of security.

**PART 20**  
**CUSTODY OF CASH, STAMPS, RECEIPT BOOKS**  
**SECURITIES, KEYS, ETC.**

**133.** An Accounting Officer shall ensure that cash held in his department in excess of daily requirements Security of cash.

- (a) is lodged in a commercial bank; or
- (b) if banking facilities are not available, is secured in a strong room or safe.

**134.** An Accounting Officer shall ensure that supplies of stamps, receipt forms, cheque books and any securities and other financial instruments received on behalf of Government Security of stamps, securities, receipt forms, etc.

- (a) are secured in a strong room or safe; and

- (b) are not removed except when requisitioned by an authorised officer.

Control of securities.

**135.** An officer who receives securities shall deposit them with the Accountant General as soon as practicable and the Accountant General shall

- (a) give an acquittance for them; and
- (b) record them in a register kept by him for the purpose.

Bonds, securities, and agreements.

**136.** The Accountant General shall

- (a) secure bonds, sureties and agreements in a strong room or safe; and
- (b) record them in a register kept by him for the purpose.

Provision of strong room and safes.

**137.** An Accounting Officer and a receiver of revenue shall each ensure

- (a) that a strong room safe or other suitable receptacle is provided in his department for securing cash, stamps, receipt books, securities and other financial instruments in his possession or in the possession of officers in his department;
- (b) that the strong room or safe is secured by a combination lock or by at least two different locks;
- (c) in the case of a moveable safe, that it is attached to the structure of the building in which it is kept; and
- (d) in the case of a strong room, that it is regularly examined to ensure that it is secure against entry or damage.

Inventory of safes and strong rooms.

**138.** An Accounting Officer shall keep proper inventory records of all safes and strong rooms in use in his department.

Custody of keys.

**139.** (1) Keys to safes and strong rooms shall only be issued by the Accounting Officer or receiver of revenue of the department.

(2) An Accounting Officer or receiver of revenue when issuing keys shall ensure

- (a) that the keys are only issued to officers on the permanent establishment; and

- (b) that if there are two or more locks, the key to each lock is issued to a different officer.
- (3) An officer to whom a key to a strong room or safe has been issued
  - (a) is responsible for the safe custody of the key;
  - (b) is responsible for the contents of the strong room or safe; and
  - (c) shall ensure that if the strong room or safe is not open for use all the locks of it are secured.

**140.** (1) If the key of a strong room or safe is lost the officer to whom the key was issued shall Loss of keys.

- (a) forthwith report the loss to the Accounting Officer or receiver of revenue with a detailed explanation of the circumstances surrounding the loss;
- (b) forthwith inform any other officer to whom a key to the strong room or safe was issued; and
- (c) seal the door to the strong room or safe and note the time of the sealing.
- (2) An officer shall not use a duplicate key except
  - (a) to remove the contents of the strong room or safe; and
  - (b) in the presence of the Accounting Officer or of any other officer authorised by him.

(3) The Accounting Officer shall ensure that the strong room or safe is not used until the locks have been replaced or altered and new keys have been issued.

(4) An officer who loses a key to a strong room or safe may be surcharged the cost required to replace or alter the lock and to provide new keys and for any other miscellaneous expenses.

**141.** An Accounting Officer shall ensure that a safe or strong room is not repaired or altered and that keys are not replaced without his authority. Repairs to safes and strong rooms.  
Personal money and effects.

**142.** (1) An Accounting Officer shall ensure that personal money and effects are not kept in a strong room or safe provided for the security of public money, stamps, securities and other financial instruments.

(2) An Accounting Officer may confiscate on behalf of the Government personal money or effects found in a strong room or safe provided for Government use.

**PART 21**  
**HANDING OVER OF CASH, STAMPS, RECEIPT FORMS,**  
**CHEQUE BOOKS AND KEYS**

Handing over statement.

**143.** If cash, stamps, securities or other financial instruments, receipt books, cheque books or accounting records are handed over from one officer to another, a handing over statement shall be

- (a) prepared;
- (b) endorsed by the Accounting Officer concerned;
- (c) submitted to the Accountant General

Items handed over to be checked.

**144.** (1) Each item to be handed over shall be

- (a) checked in the presence of the officer handing over and the officer taking over; and
- (b) recorded in detail in the handing over statement

(2) On a handing over

- (a) any key of a strong room, safe or cash box that is handed over shall be recorded on the handing over statement;
- (b) copies of all orders, circular, books, Financial Instructions and instructions issued to the officer handing over shall be handed over to the officer taking over; and
- (c) cash registers, stamp registers and other accounting records shall be balanced as at the date of the handing over and signed by both officers.

Absence of officer handing over.

**145.** If the officer handing over is unable to attend, the Accounting Officer shall appoint a board of two officers who shall

- (a) check the stocks of cash, stamps, securities and other financial instruments, receipt forms, cheque books and any other items handed over, with the appropriate cash registers; and
- (b) submit copies of their report and handing over statement to the Accountant General.

**PART 22**  
**BOARDS OF SURVEY OF CASH AND STAMPS**

**146.** (1) The Financial Secretary, with the approval of the Minister, shall from time to time appoint boards to carry out surveys of cash and stamps in the custody of Accounting Officers or receivers of revenue. Appointment of boards.

(2) The appointment of a board to carry out surprise surveys shall not be announced.

**147.** (1) A board shall consist of at least two members, one of whom shall be designated chairman. Constitution of boards.

(2) A member appointed to a board shall report immediately to the Financial Secretary if for any reason he is unable to serve, or to continue to serve on the board.

(3) The chairman of a board shall arrange with the other members of the board the time of its assembly.

**148.** A board appointed to carry out a survey of cash and stamps shall Duties of boards.

- (a) count the cash and stamps on hand, including the contents of all strong rooms, safes and cash boxes;
- (b) reconcile balances of cash and stamps counted with the balances shown in the cash register and bank statement and the stamp register; and
- (c) report its findings and any discrepancies to the Financial Secretary.

**149.** (1) A board of survey shall be held to count the stock of cash and stamps held by the Accountant General, the Postmaster General and sub-accountants Compulsory boards of survey.

- (a) after the close of business on the last business day of each financial year; or

- (b) before the commencement of business on the first day of a new financial year.

(2) A board of survey shall be held at least once each year on the main stock of postage stamps held by the Accountant General and the Postmaster General

- (a) to determine obsolescence; and
- (b) to make recommendations for the destruction of obsolete stamps.

Attendance of Accounting Officers.

**150.** An Accounting Officer or an officer designated by him shall be present while a survey is being held on cash or stamps in his charge.

Suspension of business during survey.

**151.** An Accounting Officer shall ensure that, except with the approval of the chairman of the board of survey, no cash transaction takes place between the start of the survey and the completion of the survey.

Procedure when survey lasts more than one day.

**152.** If the verification of stock of cash and stamps extends beyond the day appointed for the survey

- (a) the strong room or safe containing the verified portion of the stock shall be sealed by the members of the board at the end of each day while the survey continues; and
- (b) the Accounting Officer shall ensure that the seal is not broken except in the presence of the members of the board.

Report of the board of survey.

**153.** (1) The report of a board of survey shall

- (a) be completed in triplicate and signed by each member; and
- (b) state the date and hour of the commencement and completion of the survey.

(2) The original of the report shall be submitted to the Financial Secretary and the Minister and

- (a) one copy shall be sent to the Accountant General; and
- (b) one copy shall be sent to the Auditor General .

**154.** If a board of survey discovers a substantial shortage in cash or stamps it shall report the shortage at once to such senior officer as appears to the board to be the proper person to take immediate action.

Substantial shortages to be reported immediately.

**PART 23**  
**SHORTAGE OR LOSS OF MONEY, STAMPS, SECURITIES**  
**AND OTHER FINANCIAL INSTRUMENTS**

**155.** (1) An officer who discovers a shortage in, or loss of, public money shall make an immediate report to the Accounting Officer or receiver of revenue.

Shortage and loss to be reported immediately.

(2) The Accounting Officer or receiver of revenue to whom the report is made shall immediately submit a report to

- (a) the Financial Secretary; and
- (b) the Auditor General .

(3) If the Accounting Officer or receiver of revenue has reasonable grounds for suspecting theft or any other irregularity, he shall also immediately report the loss to the Police.

**156.** (1) If the Auditor General discovers a loss, shortage or irregularity, he shall inform the Accounting Officer or receiver of revenue concerned.

Loss or irregularity discovered by audit.

(2) The

- (a) Auditor General ; and
- (b) Accounting Officer or receiver of revenue, as the case may be,

shall submit independent reports to the Financial Secretary and the Minister.

**157.** (1) An Accounting Officer or receiver of revenue shall

Investigation and recommendations.

- (a) investigate the shortage in or loss of money, stamps, securities and other financial instruments discovered by or reported to him; and
- (b) submit a report of the investigation to the Financial Secretary as soon as possible after the investigation has been completed.

(2) A report required under subregulation (1) shall include

- (a) the name of the department, office or place where the shortage or loss occurred;
- (b) the date on which the shortage or loss occurred and the date on which it was discovered;
- (c) if there has been a delay in discovering the loss, the reason for the delay;
- (d) details of the amounts of cash, stamps, securities or other financial instruments that are short or lost;
- (e) any amount of the shortage or loss recovered;
- (f) the name and designation of the officer responsible for the shortage or loss;
- (g) a statement as to whether the shortage or loss was due to negligence on the part of any officer;
- (h) an assessment of the arrangements made for security, accounting and periodical checking;
- (i) details of the last check made including the name of the officer who made the check;
- (j) a statement on any grounds for suspicion of criminal activity or any other irregularity;
- (k) the result of any police investigation;
- (l) recommendations for improved security or accounting arrangements; and
- (m) recommendations for any action to be taken against any officer responsible for the shortage or loss.

Accounting procedures for shortages and losses.

**158.** (1) As soon as a shortage or loss has been certified by the Accounting Officer or the receiver of revenue, he shall take action to account for the shortage or loss.

(2) The amount of the shortage or loss shall be accounted for against an advance account in the name of the officer deemed to be responsible for the shortage or loss.

**159.** The Financial Secretary may direct that an advance account in the name of an officer charged with shortage or loss is to be credited with the amount of the shortage or loss if

Write-off of losses.

- (a) the Financial Secretary is satisfied that
  - (i) the shortage or loss is irrecoverable from the officer who has been charged with that shortage or loss; or
  - (ii) the circumstances of the shortage or loss are such that the officer deemed to be responsible should be absolved from that responsibility; and
- (b) in accordance with section 37 of the Act, the Financial Secretary with the approval of the Executive Council has given written approval to write-off the shortage or loss.

#### **PART 24 ACCOUNTING RECORDS**

**160.** (1) An Accounting Officer shall

Custody of accounting records.

- (a) take care of receipts, payment instruments and other accounting records in his custody; and
- (b) retain them until they are destroyed in accordance with regulation 161.

(2) An Accounting Officer

- (a) shall ensure that if a receipt, payment instrument or other accounting record is in the form of an electronic medium, the information contained in it is reproduced on microfilm or in printed form for retention until the microfilm or printed form is destroyed in accordance with regulation 161; and
- (b) may reuse the electronic medium after the information contained in it has been reproduced on microfilm or printed form.

**161.** (1) An Accounting Officer may, on the instructions of the Financial Secretary with the approval of the Minister, destroy accounting records after the expiration

Destruction of accounting records.

- (a) in the case of principal Treasury ledgers, cash registers and journals, 10 years;
  - (b) in the case of abstract, subsidiary journals, cheques, receipt forms and counterfoil, 7 years;
  - (c) in the case of payment instruments and subsidiary records, 5 years;
  - (d) in the case of special ledgers and records, such as Savings Bank records, 10 years;
  - (e) in the case of loans register, trust fund registers, 7 years after the closing of the last account.
- (2) An Accounting Officer shall not destroy
- (a) a receipt, payment instrument or other accounting record; or
  - (b) a reproduction made in accordance with regulation 160(2)(a),

if the Financial Secretary has advised him that in his opinion it might be required in connection with any litigation, inquiry, investigation or other examination.

## **PART 25 SPECIAL FUNDS AND TRUST FUNDS**

Administration  
of special fund.

**162.** (1) In accordance with section 12(1) of the Act, the Minister shall appoint an Accounting Officer

- (a) to administer a special fund; and
- (b) to control and account for the receipt of moneys into and payments made out of the funds.

(2) In accordance with section 12(2) of the Act, the Financial Secretary may give instructions

- (a) for the administration of a special fund; and
- (b) for regulating the receipt of money into and payments made out of the fund.

(3) The Accountant General shall ensure that a separate account is maintained for each special fund.

(4) Any balance standing to the credit of a special fund at the end of a financial year shall be retained for the purposes of the fund.

**163.** The Minister may, in accordance with section 11(5) of the Act, declare that a special fund is to be wound up and closed, and thereupon Winding-up of special funds.

(a) after the liabilities of the fund have been paid, the fund is to be taken to have been closed accordingly; and

(b) any balance standing to the credit of the fund is to be paid into the Consolidated Fund.

**164.** (1) A trust fund shall be administered in accordance with the Act, deed of trust, trust instrument or agreement which created it. Administration of trust funds.

(2) If in relation to a trust fund

(a) there is no Act, deed of trust, trust instrument or agreement relating to the administration of the fund; or

(b) in the opinion of the Financial Secretary, the Act, deed of trust, trust instrument or agreement contains inadequate provision for the administration of the fund,

the Financial Secretary shall

(c) appoint a public officer to be the Accounting Officer for the fund; and

(d) give instructions for the administration of the fund.

## **PART 26**

### **RESPONSIBILITY FOR THE CARE AND CUSTODY OF STORES**

**165.** An Accounting Officer shall ensure Duties of Accounting Officers.

(a) the care and custody of stores received, held or disposed of by or on behalf of his department;

(b) that proper accounts are kept of the receipt and issue of stores in his department;

- (c) that regular checks are made to verify physical stocks and ledger balances of stores under his control;
- (d) that stores under his control are inspected regularly and reports made to him with respect to the sufficiency and security of storage and the general condition of stores and storage facilities;
- (e) that the weights, measures, and scales used in his department are examined by an inspector of weights and measures each year.

Duties of storekeepers.

- 166.** A storekeeper shall, in respect of stores under his control
- (a) check, handle and store the stores received by him;
  - (b) check, pack and dispatch the stores issued from stock;
  - (c) check the correctness of stock balances;
  - (d) control losses, deterioration, wastage or irregular issues;
  - (e) ensure the safe custody and security of allocated and unallocated stores;
  - (f) carry out monthly checks of stores on hand against the stores ledger or bin cards and report to the Accounting Officer any surpluses, shortages, deterioration, wastage, damage, unserviceability or obsolescence of stores;
  - (g) ensure that stocks are maintained to the required level;
  - (h) not permit a shortage or excess of stores to occur;
  - (i) ensure each storeroom under his control is kept clean, properly ventilated and secure from fire and unauthorised entry.

Stores accountant.

- 167.** (1) An Accounting Officer shall designate a suitable officer to perform the duties of stores accountant in his department.
- (2) A stores accountant shall
- (a) maintain proper records of receipts and issues of stores;

- (b) ensure that the procurement of goods is in accordance with these Regulations;
- (c) reconcile stocks on hand with financial records;
- (d) assist in the annual survey of stores and the verification of stock balances;
- (e) exercise general control over the rate of consumption of expendable stores;
- (f) prepare documents and perform accounting functions for the procurement of goods.

**168.** (1) An Accounting Officer shall nominate in writing an officer in his department to hold the keys to the storage areas in the department. Key holders.

(2) A key holder shall ensure that when a store key is not in use it is secured against unauthorised use.

(3) A duplicate key to a storeroom shall be secured by the Accounting Officer.

(4) A key holder is responsible for a loss from a storage due to

- (a) the loss of a key; or
- (b) a failure on his part to comply with these Regulations.

**169.** An officer is responsible for stores under his control or in his custody. Other officers.

## **PART 27 PROCUREMENT OF STORES AND SERVICES**

**170.** (1) Subject to subregulation (2), the Financial Secretary, with the approval of the Minister, shall, from time to time, issue directions with respect to Procurement of goods and services.

- (a) the procurement of goods and services by tender or by direct purchase;
- (b) the sale of stores by tender or direct sale;
- (c) the conditions under which goods may be procured by tender or by direct purchase.

(2) Goods and services shall be procured by tender where the value of the goods or services exceeds \$75,000, unless the Executive Council otherwise directs.

Overseas purchases.

**171.** (1) The Financial Secretary, **with the approval of the Minister**, shall, designate agents necessary for the procurement of goods from overseas sources.

(2) Subject to subregulation (1), an Accounting Officer may, with the approval of the Financial Secretary, place an order for the procurement of goods from an overseas source.

(3) A purchase of goods from an overseas source shall be supported by a valid invoice and shipping documents.

Local purchases.

**172.** (1) Except where a tender or contract for the supply of goods has been awarded, goods may be purchased from any distributor, wholesaler or retailer carrying on business in the Territory if

- (a) where the cost of a single item of goods **does not exceed \$10,000**, quotations from at least two different suppliers have been obtained; or
- (b) where the total value of a purchase order exceeds **\$10,000 and up to \$20,000**, the authority of the Accounting Officer has been obtained; or
- (c) where the total value of a purchase order exceeds **\$20,000 and up to \$75,000**, the approval of the Financial Secretary has been obtained.

(2) A purchase of goods locally shall be made by a local purchase order signed by an Accounting Officer or an officer authorised by the Accounting Officer to sign local purchase orders.

(3) Local purchase orders shall

- (a) be in books of serially numbered forms in triplicate; or
- (b) if a computerised system is in use, be in a form approved by the Accountant General.

(4) An officer who makes a local purchase which is not in accordance with these Regulations

- (a) may be held responsible for the cost of the item purchased; and

- (b) if the price or rate paid was excessive, may be surcharged in accordance with the Act with the amount charged in excess.

**173.** (1) A tender for

Tenders.

- (a) the procurement or sale of goods, or
- (b) the procurement of services including construction work,

shall be invited in accordance with directions given by the Financial Secretary, with the approval of the Minister.

(2) Notice of an invitation to tender shall be published in the *Gazette* and at least one local newspaper.

(3) A copy of the notice shall be sent to the Chairman of the Central Tenders Board.

**174.** (1) There shall be a Central Tenders Board to receive and evaluate tenders.

Appointment of  
Central Tenders  
Board.

(2) The members of the Central Tenders Board shall be

- (a) the Financial Secretary or his representative, who shall be the Chairman of the Central Tenders Board;
- (b) the Attorney General or his representative;
- (c) the Director of Public Works or his representative;
- (d) the Permanent Secretary in the Ministry responsible for the subject matter of the particular tender or his representative;
- (e) the Permanent Secretary who is, for the time being, a member by virtue of subregulation (3) or his representative.

(3) Membership of the Central Tenders Board under subregulation (2)(e) shall be rotated among the Permanent Secretaries, in such order as may be determined by the Minister.

(4) The Procurement Coordinator, or in his absence the Budget Analyst, shall serve as Secretary of the Central Tenders Board.

- 175.** (1) Subject to subregulation (2), the Central Tenders Board may
- (a) reject a tender or part of a tender on the grounds of non-responsiveness; or
  - (b) if all tenders have been rejected, advise the Financial Secretary
    - (i) that the tenderers be permitted to submit such documents as are necessary to make their tenders responsive,
    - (ii) that new tenders be invited, or
    - (iii) that the approval of Executive Council be sought for departmental arrangements to be made for procurement,

and the Central Tenders Board shall, on the instructions of the Financial Secretary, **with the approval of the Minister**, permit the tenderers to submit such documents as are necessary to make their tenders responsive or invite new tenders, as the case may be.

(2) The Central Tenders Board shall evaluate all tenders that are deemed to be responsive and submit its recommendations thereon to the Minister, who shall forward those recommendations to Executive Council.

(3) The Executive Council shall consider the recommendations of the Central Tenders Board and make such decision as it thinks fit.

(4) The Secretary of the Central Tenders Board shall notify a successful tenderer in writing that his tender has been accepted.

(5) A copy of each letter of acceptance shall be sent to

- (a) the Accounting Officer concerned;
- (b) the Accountant General; and
- (c) the Auditor General.

(6) The Central Tenders Board shall report its activities to the Minister not later than 14 days after each meeting.

**176.** (1) A tender shall not be evaluated unless it is sent in a sealed envelope addressed to the Central Tenders Board under confidential cover.

(2) Until a decision regarding the responsiveness of a tender has been taken by the Central Tenders Board

- (a) the tenders shall be kept in a secure place by the Secretary; and
- (b) the contents of any tender shall not be divulged outside the Central Tenders Board.

(3) Except as provided by subregulation (4), a tender shall not be evaluated unless it is delivered before the closing date and time specified in the notice published in the *Gazette* and a local newspaper.

(4) A tender received after the closing date and time shall not be evaluated except in very exceptional circumstances.

(5) A tender shall not be opened before the date and time specified in the notice published in the *Gazette* and a local newspaper.

**177.** (1) The Central Tenders Board may appoint a technical committee

Technical committees.

- (a) to evaluate tenders; or
- (b) to pre-qualify contractors.

(2) A copy of a report by a technical committee shall be made available to the Minister.

(3) A technical committee may consist of one person.

**178.** The Financial Secretary, **with the approval of the Minister**, may require that any contract **or contracts** for the procurement of goods or services, including construction works, be approved by him before it is entered into on behalf of the Government.

Approval of contracts.

**179.** (1) The Accounting Officer concerned shall prepare and process contract documents, except contract documents for the supply of common user goods and services.

Preparation and processing of contracts.

(2) The Financial Secretary shall prepare and process contracts for common user goods and services.

**180.** (1) A copy of each contract document shall be sent by the Accounting Officer to

Copies of contracts.

- (a) the Accountant General; and
- (b) the Auditor General .

(2) A contract for common user goods and services with priced lists of the goods and services to be supplied by the contractor shall be distributed by the Financial Secretary to each Accounting Officer .

Contracts where no tenders are received or accepted.

**181.** (1) The Financial Secretary on the recommendation of a technical committee appointed under regulation 177 shall maintain a list **to be approved by the Minister**, of pre-qualified contractors for the procurement of services, including construction works.

(2) Subject to regulation 179, if

- (a) tenders are not invited, received or accepted for the procurement of services, including construction works, or
- (b) a contractor defaults in the performance of a contract,

an Accounting Officer may select a suitable contractor for providing the services required from the list of pre-qualified contractors if

- (c) where the contract sum **does not** exceed \$50,000, the approval of the Financial Secretary has been obtained; or
- (d) where the contract sum **exceeds \$50,000 and up to \$75,000**, the approval of the Minister has been obtained.

Contracts to be signed.

**182.** A contract for the purchase or sale of goods or services shall

- (a) be in the name of the Government; and
- (b) **be signed by the Minister or a person designated by him.**

Security for contract.

**183.** (1) An Accounting Officer shall ensure that any security or bond required to be signed by a contractor and his sureties is verified and lodged with the Accountant General.

(2) Repayment of an amount lodged for security shall not be made except on a certificate signed by the Accounting Officer which certifies that the service to be provided has been satisfactorily completed.

Advance payment.

**184.** An advance payment shall not be made on a contract without the approval of the Financial Secretary.

- 185.** A contract may contain the following, as applicable: Details of contract.
- (a) detailed specifications of the goods to be supplied or the work or service to be performed;
  - (b) drawings, plans and other instructions;
  - (c) the contractual commencement and completion dates;
  - (d) the maintenance period;
  - (e) the sum to be retained and the retention period;
  - (f) the total sum payable or the manner in which that sum is to be calculated;
  - (g) a penalty clause;
  - (h) any security or bond required;
  - (i) any conditions relating to goods, material, equipment or plant;
  - (j) any other conditions.

**186. (1)** An Accounting Officer or an officer authorised by him shall sign a certificate in respect of a payment to be made relating to a contract as follows: Contract payment certificate.

- (a) if the payment is to be made for work in progress or services partially completed:

“I certify that the value of the work performed (or the service provided) exceeds the amount claimed and that the work (or service) has been carried out satisfactorily and in accordance with the terms of the contract”;

- (b) if final payment is to be made:

“I certify that the work (or service) has been satisfactorily completed in accordance with the terms and conditions of the contract and that all progress payments and any retention money have been deducted from the amount payable under the contract.”;

(2) If a consulting engineer is engaged his certificate shall be attached to each payment voucher in respect of the contract.

Variation of contracts.

**187.** The terms and conditions of a contract shall not be varied except with the approval of

- (a) the Accounting Officer;
- (b) where the variation would result in additional costs exceeding 10% but not exceeding 15% of the original cost of the contract, the Financial Secretary; and
- (c) where the variation would result in additional costs of not less than 15% of the original cost of the contract, the Minister,

but no variation shall cause the cost of a petty contract to exceed \$75,000.

Contract register.

**188.** An Accounting Officer shall maintain a contract register in which he shall record

- (a) the contract number;
- (b) a description of the contract;
- (c) the file number in which the contract documents are filed;
- (d) the name of the contract;
- (e) the name of the officer who signed the contract;
- (f) the head and item of expenditure to which the contract costs are to be charged;
- (g) the contractual dates for commencement and completion;
- (h) details of any security or bond deposited;
- (i) the contract price or the manner in which that price is to be calculated;
- (j) the amount of the contract price to be retained on completion;
- (k) the retention period;
- (l) any variation subsequently made to the terms and conditions of the contract;

- (m) any progress payment made;
- (n) the final payment made;
- (o) any payment of retention money made;
- (p) any deduction for penalty; and
- (q) any release of any security or bond deposited with respect to the contract.

**189.** (1) A contract for work or a service not exceeding \$10,000 in value may be entered into without the execution of a specific contract document by a works orders signed by an officer authorised to do so by **the Minister or person designated by him**.

(2) Two or more works orders shall not be issued for the same works or services.

(3) An officer who signs a works order shall ensure that the works or services are performed and completed satisfactorily.

(4) Payment in respect of a works order shall be made on the following certificate signed by the authorising officer:

“I certify that the works (or services) performed under Works Order No. ... have been completed satisfactorily and in accordance with the terms of the Order.”.

## **PART 28 ALLOCATED STORES**

**190.** (1) Except as provided by subregulation (2), allocated stores shall not be issued to and used except on the service or project to which the stores have been charged. Use of allocated stores.

(2) Allocated stores may be issued for use on any other service or project with the approval of the Accounting Officer.

(3) Allocated stores issued for use on any other service or project shall be accounted for by journal entry transferring the charge to the service or project on which the stores are used.

Allocated stores ledger.

**191.** An allocated stores ledger shall be maintained in the manner approved by the Accountant General.

Storage of allocated stores.

**192.** An Accounting Officer shall ensure that allocated stores are securely stored physically separate from unallocated or any other stores.

## **PART 29 UNALLOCATED STORES**

Accounting for stores.

**193.** (1) An Accounting Officer responsible for maintaining unallocated stores shall ensure that accurate accounts are maintained for all receipts and issues of those stores.

(2) Unallocated stores shall be accounted for by both quantities and values and the accounts shall indicate the unit cost of each item in store.

Stock limits.

**194.** An Accounting Officer responsible for unallocated stores shall ensure that the total value of stores on hand at any time does not exceed the authorised stock limit.

Pricing of stores.

**195.** (1) The price of unallocated stores for accounting purposes

- (a) shall be determined on the basis of a unit of quantity; and
- (b) shall include the invoice price, freight, insurance, inspection fee, local transportation, handling and all other charges related to the purchase and storage of the stores.

(2) Other expenses which have not been taken into account in the costing of the value of the stores shall not be charged against unallocated stores.

(3) The issue price per unit

- (a) shall be arrived at by dividing the total cost of an item of stores by the number of units of quantity;
- (b) shall be fixed at the nearest whole cent; and
- (c) shall be revised whenever a new purchase is made to replenish that particular item of stores.

(4) If on calculating an issue price per unit the total cost is not divisible by the number of units, the amount over or under the cost price shall be accounted for in a price adjustment account.

Unallocated stores ledger.

**196.** (1) An unallocated stores ledgers shall be maintained in the manner determined by the Accountant General.

(2) If it is necessary to introduce a new unallocated stores ledgers with the opening balances based on the physical stocks on hand and not on the closing balances in the previous ledgers

- (a) the full circumstances necessitating the use of physical stock balances shall be reported to the Accountant General; and
- (b) the approval of the Accountant General shall be obtained before the new ledgers are brought into use.

(3) The balance and value of each item of stores shall be recorded whenever a receipt or issue is made.

**197.** (1) An Accounting Officer responsible for unallocated stores shall as soon as possible after the end of each financial year prepare a stock valuation list showing the numerical and financial balances for each item of stores in the unallocated stores ledger.

Stock valuation lists.

(2) A signed copy of the stock valuation list shall be sent

- (a) to the Financial Secretary; and
- (b) to the Auditor General .

(3) If at any time the total value of stock exceeds the authorised limit, the Accounting Officer concerned shall

- (a) immediately report the excess to the Financial Secretary; and
- (b) explain the reasons for the excess to the Financial Secretary.

(4) Stock held in excess of the authorised limit may be treated in the accounts in the same manner as unauthorised expenditure and the Accounting Officer concerned may be held responsible for it.

**198.** (1) An Accounting Officer responsible for unallocated stores shall as soon as possible after the close of each financial year prepare a tabular summary in respect of each item in those unallocated stores.

Tabular summary.

(2) A signed copy of the tabular summary shall be sent

- (a) to the Financial Secretary; and
- (b) to the Auditor General .

Inventory records.

**199.** (1) A storekeeper shall keep an inventory record for each item of unallocated stores to record receipts, issues and balances on hand by quantities.

(2) The officer in charge of unallocated stores

- (a) shall at least once in each quarter check the balances on the inventory records; and
- (b) shall investigate and report any discrepancy.

(3) A copy of a report prepared in accordance with subregulation (2)(b) shall be submitted to the Accounting Officer concerned.

### **PART 30 FURNITURE AND OFFICE EQUIPMENT**

Responsibility for furniture and equipment.

**200.** Responsibility to account for and control furniture and equipment rests with

- (a) in respect of furniture and equipment in Government offices, the Ministry or department in possession of the furniture or equipment,
- (b) in respect of furniture, furnishings and equipment in or intended for Government quarters, the Human Resources Department, and
- (c) in respect of furniture and equipment in or intended for an institution or establishment, the Ministry or department responsible for the institution or establishment,

in this Part referred to as “the controlling department”.

Safe custody and care of furniture and equipment.

**201.** (1) The controlling department is responsible for furniture and equipment issued

- (a) to the controlling department; or
- (b) to institutions and establishments under the control of the department.

(2) The occupants of government quarters or other residences assigned to them are personally responsible for furniture, furnishings or equipment provided for their use.

**202.** The controlling department shall maintain a master control register in which shall be recorded Master control registers to be kept.

- (a) each purchase and issue of furniture or equipment; and
- (b) the department, institution or establishment to which furniture or equipment has been issued.

**203.** (1) An Accounting Officer shall ensure that an inventory of furniture and equipment is maintained in each office, institution and establishment under his control. Inventories to be maintained.

(2) An item of furniture or equipment shall not be moved from an inventory except on the written authority of the Financial Secretary.

**204.** An Accounting Officer shall ensure that each inventory is checked against the physical stock on hand Inventories to be checked.

- (a) at least once a year; and
- (b) if there is a change of
  - (i) the officer in charge of an office, institution or establishment; or
  - (ii) the occupant of the government quarters or a government assigned residence.

**205.** (1) An officer shall report to the controlling department any discrepancy found during inventory checks of furniture and equipment. Discrepancies in inventory holdings.

(2) A discrepancy found at a handing over of an inventory holding shall be dealt with in accordance with regulation 262 (procedure for handing over of stores).

**206.** (1) Furniture and equipment shall remain on charge in the master control register and in department inventories until authority to write it off has been given by the Financial Secretary. Authority for write-off

(2) Unserviceable or obsolete items of furniture and equipment shall be dealt with in accordance with regulation 251 (disposal of condemned stores).

**PART 31**  
**BUILDINGS, PLANT, EQUIPMENT AND TOOLS**

Responsibility for plant, equipment and tools.

**207.** (1) An Accounting Officer is responsible for all buildings, plant, equipment and tools assigned to his departments.

(2) Despite subregulation (1), an officer to whom plant, equipment and tools have been issued has personal responsibility for the plant, equipment and tools until they are

- (a) returned into store; or
- (b) condemned and disposed of in accordance with regulation 251 (disposal of condemned stores).

Register to be kept.

**208.** (1) An Accounting Officer shall ensure that

- (a) a plant and equipment register is maintained; and
- (b) each item of plant or equipment is entered in that register together with
  - (i) a description of the plant or equipment;
  - (ii) the name of its manufacturer;
  - (iii) its registration or serial number;
  - (iv) the date it was received;
  - (v) the source of supply;
  - (vi) any period of warranty; and
  - (vii) any ancillary equipment and spares supplied.

(2) An Accounting Officer shall ensure that

- (a) a tools register is maintained; and
- (b) there is recorded in that register details of each tool received and issued.

Plant operating records.

**209.** An Accounting Officer shall ensure that

- (a) a plant operating record is maintained for each item of plant or equipment; and

- (b) there is recorded in that record details of the operating hours, down time, servicing, overhauls and repairs of the plant or equipment.

**210.** (1) An Accounting Officer shall ensure that a register is kept in respect of each vehicle or other equipment assigned to his department.

Vehicle and equipment registers.

(2) A register

- (a) shall be in a form approved by the Accountant General; and
- (b) shall be used to record
  - (i) details of travel done or works performed by the vehicle or equipment;
  - (ii) details of oils, fuels and spares used;
  - (iii) details of servicing or repairs; and
  - (iv) the authorisation for travel or other operation.

(3) An Accounting Officer shall designate an officer

- (a) to check the registers; and
- (b) to report any misuse of, or damage to, a vehicle or equipment assigned to his department.

(4) An Accounting Officer shall ensure that

- (a) each register is checked at least once every month; and
- (b) reports of misuse of, or damage to, vehicles or equipment are submitted to the Financial Secretary.

(5) If it is proved to the satisfaction of the Financial Secretary that an officer is responsible for the misuse of, or damage to, a vehicle or equipment assigned to him or to his control, the officer may be surcharged in accordance with the Act.

**211.** At least once every six months an Accounting Officer shall

Stocks to be verified.

- (a) verify stocks of plant, equipment and tools against the balances shown in the plant and equipment register or the tools register; and
- (b) immediately report any deficiency found
  - (i) to the Financial Secretary; and
  - (ii) to the Auditor General .

Register of buildings.

**212.** The Accountant General shall

- (a) maintain a register of all permanent government buildings; and
- (b) record in the register
  - (i) the description or designation of the building;
  - (ii) the date of completion or purchase of the building;
  - (iii) the plant reference;
  - (iv) the site reference;
  - (v) the prime cost or purchase price of the building; and
  - (vi) the cost and date of any structural alteration.

**PART 32**

**LIVESTOCK**

Records to be kept.

**213.** An Accounting Officer shall ensure that

- (a) there is kept a record of any livestock assigned to or maintained by his department; and
- (b) there is entered in the record
  - (i) the date of receipt, sale, transfer or death of each animal;
  - (ii) any addition due to reproduction; and
  - (iii) the total number of each category of animal.

**214.** If an animal is sold its weight, selling price and receipt number shall be entered in the record. Sale of livestock.

**215.** (1) If an animal dies a certificate of death and disposal shall be obtained from a veterinary officer or an officer authorised to issue those certificates. Death of livestock.

(2) The cause of death and the manner of disposal shall be entered in the record.

**216.** An Accounting Officer shall check the number of animals in stock against the number shown in the record at least twice a year. Checks to be made.

**217.** (1) An Accounting Officer shall Surpluses or deficiencies.

(a) investigate any surplus or deficiency in stock; and

(b) report it

(i) to the Financial Secretary; and

(ii) to the Auditor General .

(2) If the Financial Secretary is satisfied that an officer is responsible for

(a) the death of an animal, or

(b) a loss or deficiency in stock,

the officer may be surcharged in accordance with the Act.

### **PART 33 RECEIPTS**

**218.** Except for goods purchased in small quantities for immediate use, goods received shall be taken into allocated or unallocated stores as appropriate. Stores to be received in stock.

**219.** (1) Goods received Stores received vouchers.

(a) shall be entered on a stores received voucher; and

(b) shall be supported by

- (i) an invoice or bill;
- (ii) the triplicate copy of the local purchase order;
- (iii) in the case of stores received from unallocated stores into allocated stores, a copy of a stores issue voucher; or
- (iv) the original copy of a stores conversion form.

(2) Stores received vouchers

- (a) shall be in duplicate; and
- (b) shall be pre-numbered serially or in a form approved by the Accountant General.

Stores conversion form.

**220.** (1) If stores are issued from a store for conversion into a different article, the article produced

- (a) shall be received back into the same store; and
- (b) shall be supported by a stores conversion form.

(2) A stores conversion form shall

- (a) be prepared in duplicate; and
- (b) record in detail
  - (i) the quantities and values of the stores converted; and
  - (ii) the quantities and values of the article produced.

Unused stores.

**221.** Stores which have been issued but not used shall be returned to the original store and taken on charge on a stores received voucher at the current issue price irrespective of the price at which they were originally issued.

Used stores.

**222.** Used stores which are no longer required for the purpose for which they were issued shall be returned to the original store and taken charge on a stores received voucher.

Surplus stores.

**223.** Surplus stores found

- (a) by a board of survey, or

- (b) as a result of stock verification, internal stock-taking or over-delivery,

shall be taken on charge on a stores received voucher.

**224.** (1) An officer who receives goods shall ensure that the goods received are in accordance with the goods invoice. Verification of deliveries.

(2) Goods shall not be paid for except on a certificate by the receiving officer certifying that the goods have been correctly delivered and received into store.

**225.** (1) As soon as possible after the receipt of goods, the receiving officer shall examine each item, package or other container to ensure that the goods making up the consignment are exactly equal to the quantity and specifications shown on the accompanying invoice, delivery note, packing-slip or other document. Examination of goods.

(2) The receiving officer shall prepare and sign a certificate of examination.

(3) Any damage or spoiled goods shall be recorded in detail on the certificate of examination.

(4) Perishable food items shall be examined immediately and any spoilage or any item considered to be unfit for the purpose intended shall be reported to a public health officer for the issue of a certificate of condemnation in respect of the item.

**226.** (1) Bulk supplies shall be checked on discharge and on receipt into store. Bulk supplies.

(2) The contents of a broken container and any quantity retrieved from sweepings shall be accounted for before any shortage is determined.

**227.** (1) Stores transferred on a vehicle or vessel shall be accompanied by a delivery slip which shall be signed by Delivery of stores.

(a) the officer consigning the stores; and

(c) the driver of the vehicle or vessel.

(2) An officer who receives stores transferred on a vehicle or vessel shall check the quantities delivered against the quantities shown on the delivery slip.

(3) A copy of the delivery slip signed by the receiving officer shall be returned to the consigning officer with a notation of any shortage or surplus discovered.

Stores received short.

**228.** (1) If stores are received short or damaged the receiving officer shall immediately report the shortage to the Accounting Officer .

(2) The Accounting Officer shall

- (a) immediately investigate the shortage or damage; and
- (b) as soon as possible, report the matter to the Financial Secretary.

(3) If the Financial Secretary is satisfied that an officer is responsible for the shortage or damage the officer may be surcharged in accordance with the Act.

Accounting procedure where goods are received short or damaged.

**229.** (1) If goods are received short or damaged the quantity shown on the invoice or bill shall be taken on charge.

(2) A stores issue voucher shall be issued for the quantity of goods found short or damaged which shall be charged against the appropriate head of expenditure.

Claims register.

**230.** (1) Goods received short or damaged shall be accounted for in a claims register.

(2) A claim shall not be considered settled until

- (a) the value has been recovered in full; or
- (b) the Financial Secretary has authorised the claim to be written-off or waived.

(3) Any recovery in respect of a claim shall be entered in the claims register.

Reusable containers.

**231.** If it is economical to do so reusable containers shall be returned to the suppliers as soon as possible after the discharge of goods.

**PART 34  
ISSUE OF STORES**

**232.** (1) Stores shall not be removed from allocated or unallocated stores except on the authority of a stores requisition signed by an authorised officer. Issue of stores.

**233.** (1) The officer in charge of stores shall prepare a serially numbered stores issue voucher in triplicate on receipt of a requisition for unallocated stores if he is satisfied that Stores issue vouchers.

- (a) the requisition is in order; and
- (b) the stores requisitioned are in stock.

(2) A stores issue voucher shall be signed by the officer in charge of the stores or by an officer specifically authorised to do so.

(3) The officer who receives the stores shall sign the original and duplicate copies of the stores issue voucher as acknowledgment of the receipt of the stores.

(4) The original copy of the store issue voucher shall be retained by the officer in charge of stores for accounting purposes.

(5) The duplicate copy of the stores issue voucher shall be returned to the requisitioning officer together with the stores issued.

**234.** (1) Subject to regulations 235 (stores issued for conversion) and 236 (sale of stores), a stores issue voucher shall indicate the expenditure head and item number to which the charge is to be made. Stores to be charged.

**235.** (1) Stores may be issued from unallocated stores for conversion to a different article on the authority of a conversion form signed by an authorised officer. Stores issued for conversion

**236.** (1) Unallocated or allocated stores shall not be sold to private persons except with the approval of the Accounting Officer . Sale of stores.

(2) An official receipt for the full value of stores sold shall be presented together with the requisition for the release of the stores.

(3) The officer in charge or any officer authorised by him to do so shall prepare a stores issue voucher for the quantity and value of the stores sold.

Responsibility of officers signing stores issue vouchers.

- 237.** (1) An officer who signs a stores issue voucher shall ensure that
- (a) the voucher is accurate and complete in all respects; and
  - (b) the stores to be issued correspond with the requirements for the stores requisition signed by the authorised officer.

Issue before stores are priced.

**238.** (1) If stores are issued in an emergency before the price is determined, a store issue voucher shall be prepared showing the quantities of stores issued with the notation "Price to follow".

(2) A debit advice shall be sent to the requisitioning officer for the full cost of the stores issued as soon as possible after the price of the stores has been determined.

Monthly summaries of issues

**239.** (1) The officer in charge of stores shall as soon as possible after the end to each month prepare a monthly summary of stores issued from unallocated stores in the form approved by the Accountant General.

(2) The original copy of the monthly summary of stores issued shall be submitted to the Accountant General for accounting purposes.

## **PART 35 STOCK VERIFICATION**

Appointment of stock verifier.

**240.** The Financial Secretary may appoint a stock verifier if he considers that it has become necessary to verify stock holdings in a department.

Duties of stock verifier.

- 241.** A stock verifier shall
- (a) compare stores ledger balances, bin card balances and inventory balances with the physical stock on hand;
  - (b) initiate an investigation into the reason for any discrepancy;
  - (c) assess the security and storage arrangements and the safeguards against loss, fraud and other irregularities;
  - (d) assess the management of stocks with special regard to overstocking, wastage and obsolescence;
  - (e) check and evaluate inventory holdings;
  - (f) identify unserviceable or obsolete stores;

- (g) supervise the disposal of condemned stores; and
- (h) carry out any other duties assigned to him by the Financial Secretary.

**242.** The Financial Secretary may arrange for stores held in a department to be verified by a stock verifier. Stock to be verified.

**243.** (1) The stock verifier shall report to the Financial Secretary on any Report of stock verifier.

- (a) discrepancy, defect, obsolescence or damage, or
- (b) deficiency in the arrangements for accounting, storage, security and other safeguards,

which have come to his notice during the stock verification.

(2) The Financial Secretary may on receipt of the stock verifier's report require the Accounting Officer concerned to account for any discrepancy, defect, damage or deficiency discovered by the stock verifier.

**244.** (1) An Accounting Officer shall arrange for stores under his control to be inspected at least twice a year. Inspection of stores.

(2) The inspecting officer shall report to the Accounting Officer any loss, leakage, damage, wastage, deterioration or irregularity observed in the course of his inspection.

(3) The Accounting Officer shall on receipt of the inspecting officer's report take immediate action to correct any defect, deficiency or irregularity reported.

### **PART 36 SURVEY OF STORES**

**245.** (1) The Financial Secretary may at any time appoint a board of survey to check allocated or unallocated stores held in any department. Appointment of board of survey.

(2) A board of survey shall consist of at least two persons, one of whom shall be designated by the Financial Secretary to be the chairman of the board.

(3) The Financial Secretary shall send copies of the letters of appointment of the members of a board of survey

- (a) to the Accounting Officer concerned; and
- (b) to the Auditor General .

(4) The Financial Secretary shall not appoint an officer of

- (a) the Audit Department, or
- (b) the department in which the survey it to be carried out,

to be a member of a board of survey.

Method of  
conducting  
surveys

**246.** (1) A survey of stores by a board of survey shall include a complete check of quantities of all stores on hand or in the process of conversion unless the letters of appointment of members of the board otherwise provide.

(2) A board shall

- (a) compare the quantities found by the board with the quantities shown in the stock ledger and bin cards; and
- (b) include in its survey report, details of any discrepancy found.

(3) Stores which appear to a board to be unserviceable or obsolete shall be entered on a form approved for that purpose by the Accountant General together with the board's recommendations for the condemnation or disposal of the stores.

(4) Stores which are found by a board to be in excess of the balances shown in the stores ledger shall be brought to account on a stores receipt voucher.

Report of board  
of survey.

**247.** (1) The chairman of a board of survey shall immediately after the completion of a survey submit to the Financial Secretary a report on the survey which shall be signed by him and the other members of the board.

(2) A copy of the report shall be sent

- (a) to the Accounting Officer concerned; and
- (b) to the Auditor General .

(3) A board of survey's report shall include

- (a) the opinion of the board on the condition and adequacy of stores and storage facilities; and

- (b) the opinion of the board on the effectiveness of
  - (i) security arrangements; and
  - (ii) safeguards against fire and deterioration;
- (c) a statement on any difficulties experienced by the board in carrying out its duties;
- (d) a list of unexplained surpluses and shortages together with any comments or remarks on each surplus or shortage which the board considers necessary;
- (e) a list of stores which in the opinion of the board are unserviceable or obsolete; and
- (f) a certificate that the procedure laid down in regulation 246 (method of conducting surveys) has been followed.

(4) The Financial Secretary may after considering the recommendations of a board of survey issue any directions he thinks appropriate.

(5) Within 3 months of any directions being given by the Financial Secretary, the Accounting Officer concerned shall report to the Financial Secretary the action taken as a result of the directions.

### **PART 37 CONDEMNATION AND DISPOSAL OF STORES**

**248.** (1) The Financial Secretary may, on the recommendation of

Appointment of board of condemnation.

- (a) an Accounting Officer, or
- (b) a stock verifier,

appoint a board of condemnation

- (d) to inspect stores which have been reported to be unserviceable or obsolete; and
- (e) to make recommendations for their disposal.

(2) A board of condemnation appointed by the Financial Secretary under subregulation (1) shall consist of

- (a) a stock verifier; or
- (b) at least two officers, one of whom shall be designated by the Financial Secretary to be the chairman of the board.

(3) The Financial Secretary shall not appoint to a board of condemnation an officer of the department responsible for stores to be condemned unless he is satisfied that technical considerations make it unavoidable to do so.

(4) The Financial Secretary shall not appoint an officer of the Audit Department to a board of condemnation.

(5) The Financial Secretary shall notify the Accounting Officer concerned of the appointment of a board of condemnation.

(6) The stock verifier or the chairman of the board of condemnation, as the case may be, shall notify the Accounting Officer concerned of the place and time of the inspection of the stores to be considered for condemnation.

(7) An officer appointed to serve on a board of condemnation

- (a) shall report immediately to the Financial Secretary if the officer is unable to serve on the board; and
- (b) shall give the reasons for his inability to serve.

Methods of conducting a board of condemnation.

**249.** (1) A board of condemnation shall inspect each item of the stores to be considered for condemnation.

(2) A board of condemnation shall

- (a) identify each item listed; and
- (b) determine whether or not the item is unserviceable or obsolete.

(3) The Accounting Officer concerned or any officer appointed by him shall be present during an inspection by a board of condemnation.

Report of a board of condemnation.

**250.** (1) The stock verifier or the chairman of a board of condemnation shall immediately after an inspection submit to the Financial Secretary a report signed by

- (a) the stock verifier or the chairman of the board; and
- (b) as the case may be, the other members of the board.

(2) A copy of the report shall be sent

- (a) to the Accounting Officer concerned; and
- (b) to the Auditor General .

(3) The report shall

- (a) identify the stores which in the opinion of the board should be condemned; and
- (b) include recommendations for the disposal of those stores.

(4) A board of condemnation shall report on any case of misuse, abnormal damage or deterioration or any other cause which in the opinion of the board has contributed to the unserviceable or obsolete condition of the stores inspected.

(5) The Financial Secretary may after considering the recommendations of a board of condemnation issue any directions he thinks appropriate.

**251.** (1) An Accounting Officer shall ensure that condemned stores authorised to be written off and destroyed or disposed of are destroyed or disposed of in the manner directed by the Financial Secretary.

Disposal of condemned stores.

(2) The Accounting Officer concerned shall appoint an officer or officers of his department to carry out the destruction or disposal of condemned stores.

(3) The stock verifier or a member of the board of condemnation shall witness the destruction or disposal of condemned stores.

(4) The Accounting Officer concerned shall prepare a list of the condemned stores destroyed or disposed of for submission to the Financial Secretary together with the following certificate

“I certify that the stores listed have been destroyed or disposed of by (method of destruction or disposal) in accordance with the Financial Secretary’s directions as given in (reference to authority) dated (date). The destruction or disposal was carried out in the presence of the witness who has signed below.

Signed  
Accounting Officer

Signed  
Witness

Name  
Designation  
Department  
Date

Name  
Designation  
Department  
Date”.

(5) A copy of the list of condemned stores together with the certificate shall be sent

- (a) to the Financial Secretary;
- (b) to the Auditor General ; and
- (c) to the Accountant General

Sale of  
condemned  
stores.

**252.** (1) If the Financial Secretary has, with the approval of the Minister, authorised condemned stores to be sold they may be sold

- (a) by public auction;
- (b) by public tender; or
- (c) in any other manner authorised by the Financial Secretary with the approval of the Minister.

Gift of  
condemned  
stores.

**253.** The Financial Secretary may, with the approval of the Minister, authorise condemned stores to be given to educational, scientific, cultural or charitable institutions or organisations.

Condemnation  
by Accounting  
Officer .

**254.** (1) Notwithstanding any other provision in these Regulations, but subject to subregulation (4), an Accounting Officer may condemn and dispose of small quantities of unexpendable stores which normally have a short life, such as glassware, china, cooking utensils, small tools, medical instruments, brushes and similar articles.

(2) The Accounting Officer shall submit a list of the items of stores condemned and dispose of, including the value of each item, to the Financial Secretary together with the following certificate:

“I certify that I have personally inspected the stores listed which have become unserviceable through fair wear and tear and that they have been disposed of by (method of destruction or disposals).

Signed  
Accounting Officer  
Name  
Designation

Department  
Date”.

(3) A copy of the list of stores destroyed or disposed of shall be sent

- (a) to the Auditor General ; and
- (b) to the Accountant General.

(4) In a financial year the value of stores condemned or disposed of under subregulation (1) shall not exceed

- (a) in the case of a single item, \$1,000; or
- (b) in total, \$5,000.

**255.** If the destruction, disposal, sale or gift of condemned stores has been authorised by the Financial Secretary or the Accounting Officer , a stores issue voucher shall be prepared by the officer in charge of stores before the stores are removed from stock. Accounting for stores destroyed or disposed of.

### **PART 38 LOSSES OF STORES**

**256.** In this Part, the term “loss” includes damage or deterioration arising other than from fair wear and tear. Definition of loss.

**257.** (1) An Accounting Officer shall report immediately to the Financial Secretary any loss of stores which occurs in his department. Initial report of loss.

(2) An initial report

- (a) shall be made in each instance whether or not restitution has been made; and
- (b) shall not be delayed to enable an investigation to be carried out or restitution to be sought.

**258.** An Accounting Officer shall Investigation of losses.

- (a) immediately investigate a loss of stores occurring in his department; and
- (b) if a criminal offence is suspected, immediately report the loss to police.

Final report of loss.

**259.** (1) An Accounting Officer shall, as soon as possible, report the result of an investigation into a loss to the Financial Secretary.

(2) The final report shall include

- (a) the nature of the loss and the quantity and book value of the stores involved;
- (b) the place and date of the loss;
- (c) the circumstances in which the loss occurred;
- (d) an opinion as to whether the loss was due to a fault in the accounting or store keeping system;
- (e) a statement on whether a criminal offence was involved;
- (f) the name and designation of any officer or officers responsible for the loss;
- (g) the reason why internal checks and controls failed to prevent the loss;
- (h) the measures taken or recommended to prevent a recurrence of a similar loss;
- (i) an account of any restitution or recovery of the loss;
- (j) advice on any action already taken against the officer responsible for the loss;
- (k) recommendations for any disciplinary or other action to be taken against the officer; and
- (l) a report by the Police Force, if applicable.

Write-off of losses.

**260.** The Financial Secretary may authorise the write-off of loss reported to him if he is satisfied that it is just and reasonable to do so.

Accounting for losses.

**261.** (1) If authority to write-off has been granted

- (a) a stores issue voucher shall be prepared for the lost stores; and
- (b) where the loss is the result of negligence or other irregularity, the value of the stores shall be charged against

an advance account in the name of the officer responsible for the loss.

### **PART 39 HANDING OVER OF STORES**

**262.** (1) If a storekeeper or other officer responsible for stores

Procedure for handing over of stores.

- (a) is going on leave, or
- (b) is being transferred, or
- (c) will be unable to carry out his duties for any reason,

the Accounting Officer responsible for the stores shall arrange for responsibility for the stores to be handed over to another officer.

(2) The procedure for handing over of stores is as follows:

- (a) the physical stock of stores shall be checked in detail by the incoming officer and by the outgoing officer and compared with the balances in the stores ledger or inventory;
- (b) the incoming officer and the outgoing officer shall sign a handing over certificate in a form approved by the Accountant General.

(3) The outgoing officer shall endorse a statement listing any deficiency or defect found during the handing over which shall be attached to the handing over certificate.

(4) The incoming officer shall submit the handing over certificate to the Accounting Officer immediately after it has been signed.

(5) The outgoing officer is responsible for any deficiency or defect reported at the handing over.

**263.** (1) If the outgoing officer

Procedure when outgoing officer is unable to attend.

- (a) is, for good reason, unable to attend the handing over, or

- (b) has been authorised by the Accounting Officer to leave his office before the handing over takes place,

the Accounting Officer shall apply to the Financial Secretary for a board of survey to be appointed to survey the stores to be handed over.

(2) The incoming officer shall

- (a) attend during the survey; and
- (b) sign the handing over certificate prepared and endorsed by the board of survey.

#### **PART 40 LOAN, HIRE AND SALE OF STORES**

Authority for loan or hire of stores.

**264.** (1) Stores shall not be issued on loan or hire otherwise than for the purposes of the Government except

- (a) with the authority of the Financial Secretary; or
- (b) in the case of the hire of plant and equipment, if an authorised procedure and standard hire charges are in operation.

(2) Any hiring out of stores shall be supported by an agreement

- (a) signed by the hirer; and
- (b) in a form approved for the purpose by the Attorney General.

Accounting for stores on loan or hire.

**265.** (1) The officer in charge of stores shall ensure that stores issue vouchers are prepared and signed by the borrower or hirer in respect of stores issued on loan or hire.

(2) Where stores issued on loan or hire are returned into store, they shall be accounted for on a stores receipt voucher.

Authority for sale of stores.

**266.** (1) The Financial Secretary may authorise the sale of stores with a ledger price not exceeding \$10,000, but stores with a ledger price exceeding that amount shall not be sold without the Minister's approval.

(2) Stores may be sold by

- (a) auction;
- (b) tender; or
- (c) in any other manner authorised by the Financial Secretary.

**267.** (1) The selling price of stores to be issued on sale shall be determined by taking the ledger price and adding a charge of not less than 33 $\frac{1}{3}$  % of that price for departmental costs. Accounting for stores issued on sale.

(2) An issue on sale shall not be made until the full selling price of the stores has been received.

(3) A store issue voucher shall be prepared for stores issued on sale.

#### **PART 41 STORAGE AND SECURITY OF STORES**

**268.** (1) Stores shall be secured against interference by unauthorised persons. Storage.

(2) An unauthorised person shall not be permitted to enter a storage area except in the presence of the storekeeper.

**269.** (1) Clothing and other stores susceptible to deterioration by damp or pest or other cause shall Precautions against deterioration or fire.

- (a) be examined regularly; and
- (b) be stored above floor level.

(2) If it is possible to do so, fluids in tins or drums shall be stored above ground level.

(3) Flammable stores and explosives shall be stored

- (a) in accordance with any legislation relating to those substances; or
- (b) in the absence of such legislation, in accordance with any instructions issued by the manufacturers of the stores.

**PART 42  
ACCIDENTS**

- Appointment of Accident Investigation Board.      **270.**      The Financial Secretary may appoint an Accident Investigation Board
- (a)      to enquire into the causes and costs of accidents that involve damage to any Government vehicle or plant; and
  - (b)      to assess the extent of any blame or negligence on the part of the drivers or operators responsible for, or in control of, such vehicle or plant.
- Accident reports.      **271.**      If an accident occurs that involves damage to any Government vehicle or plant, the driver or operator shall
- (a)      immediately complete an accident report; and
  - (b)      submit the report to his Accounting Officer .
- Assessment of damage.      **272.**      Where an Accounting Officer receives an accident report, he shall refer it to the officer in charge of the mechanical workshop or garage or, if neither is reasonably available, a private workshop or garage
- (a)      for the assessment of the damage sustained by the vehicle or plant; and
  - (b)      an estimate of
    - (i)      the cost of repair; or
    - (ii)     if the vehicle or plant is beyond repairs, the cost of a replacement.
- Report to be submitted to Accident Investigation Board.      **273.**      The Accounting Officer shall submit to the Accident Investigation Board
- (a)      the accident report;
  - (b)      the assessment made by the workshop or garage; and
  - (c)      any police report in respect of the accident.
- Proceedings by the Accident Investigation Board.      **274.** (1) The Accident Investigation Board may summon an officer to give evidence or an explanation concerning the accident.

- Officer
- (2) The Accident Investigation Board shall submit to the Accounting Officer
- (a) a report on its findings; and
  - (b) its recommendations on any action to be taken, including any action to be taken against the driver or operator of the Government vehicle or plant.

- 275.** (1) The Accounting Officer shall submit to the Financial Secretary
- Action to be taken.
- (a) the accident report; and
  - (b) the report of the Accident Investigation Board and its recommendations on the action to be taken.

(2) The driver or operator of the vehicle or plant may be surcharged in accordance with the Act.

**276.** If the Accident Investigation Board or Financial Secretary recommends that a claim be made against a person in respect of damages arising from an accident involving any Government vehicle or plant, the Accounting Officer shall

Claims by Government.

- (a) prepare the claim; and
- (b) obtain the approval of the Attorney General before making the claim.

**277.** If a claim is made against the Government in respect of damages arising from an accident involving any Government vehicle or plant, the claim shall be referred immediately to the Attorney General for advice on the action to be taken.

Claims against Government.

**278.** The Accounting Officer shall ensure that repairs to any vehicle or plant involved in an accident are carried out as soon as possible after an assessment has been made by the workshop or garage unless the Accounting Officer is advised not to do so by

Repairs to damaged plant or vehicle.

- (a) the Accident Investigation Board;
- (b) the Financial Secretary; or
- (c) the Attorney General.

**PART 43**  
**MISCELLANEOUS**

Miscellaneous.

**279.** (1) The Accountant General may approve such forms, including computer files, as may be necessary for the efficient working of these Regulations.

(2) The Accountant General may approve the use of computers to store any information that is required to be kept in accordance with these Regulations.

(3) Approval given under this regulation may be given subject to conditions that shall be complied with by the person to whom the approval is given.

Made by the Executive Council this 12<sup>th</sup> day of October, 2005.

SUZETTE VANTERPOOL,  
Clerk of the Executive Council.

**VIRGIN ISLANDS**

**STATUTORY INSTRUMENT 2007 NO. 28**

**PUBLIC FINANCE MANAGEMENT ACT, 2004  
(No. 2 of 2004)**

**Public Finance Management (Amendment) Regulations, 2007**

[Gazetted 24<sup>th</sup> May, 2007]

The Executive Council, on the advice of the Financial Secretary and in exercise of the powers conferred by section 44 of the Public Finance Management Act, 2004 (No. 2 of 2004), makes the following Regulations:

Citation.

**1.** These Regulations may be cited as the Public Finance Management (Amendment) Regulations, 2007.

Interpretation.  
S.I. No. 87 of  
2005

**2.** In these Regulations, “the principal Regulations” means the Public Finance Management Regulations, 2005.

Regulation 172  
amended.

**3.** Regulation 172(1) of the principal Regulations is amended

- (a) in paragraph (b) thereof by deleting the words “and up to” and “authority” and respectively substituting therefor the words “but does not exceed” and “approval”; and
- (b) in paragraph (c) thereof by deleting the words “and up to” and substituting therefor the words “but does not exceed”.

Regulation 181  
amended.

**4.** Regulation 181(2) of the principal Regulations is amended

- (a) in paragraph (c) by deleting the figure “\$50,000” and substituting therefor the figure “\$75,000”; and
- (b) in paragraph (d) by deleting the words “exceeds \$50,000” and up to \$75,000” and substituting therefor the words “exceeds \$75,000 but does not exceed \$100, 000”.

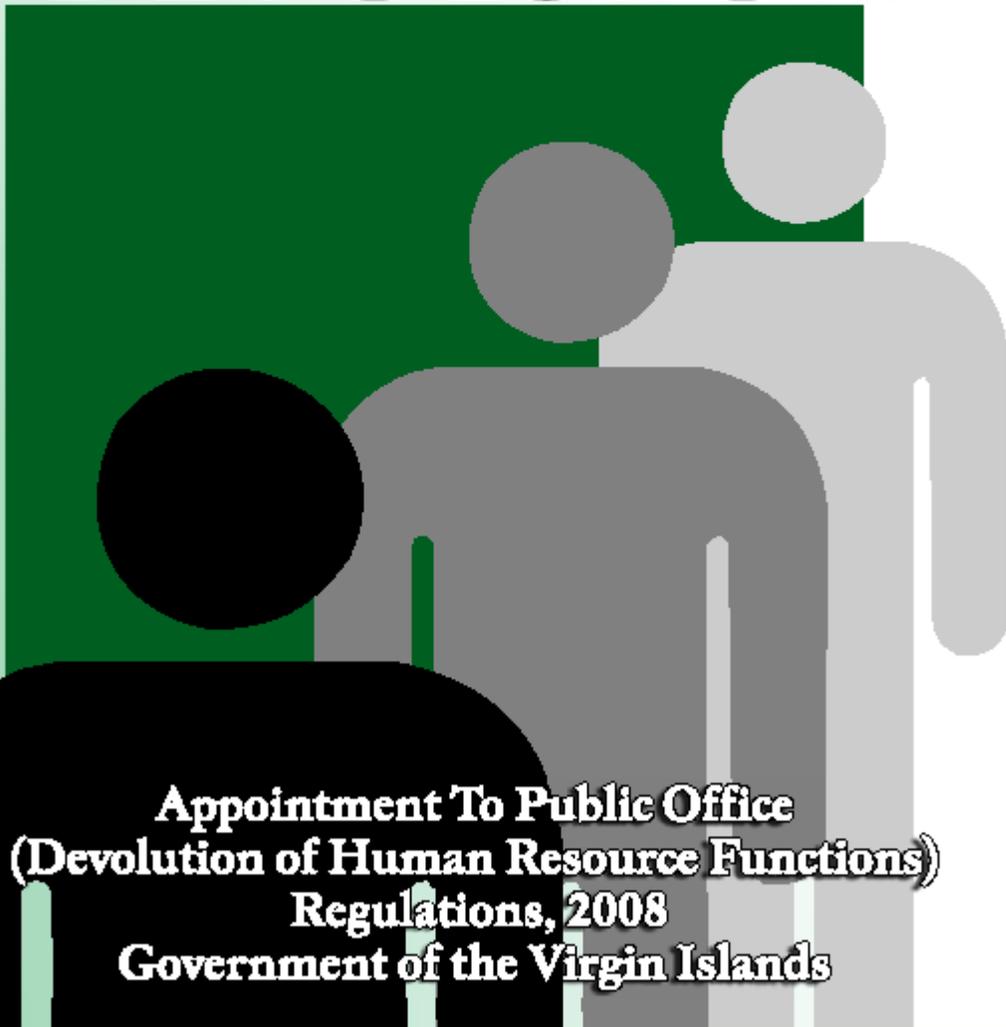
Made by the Executive Council this 24<sup>th</sup> day of May, 2007.

(Sgd.) NATALIE FAHIE-SMITH,  
Clerk of the Executive Council.



BRINGING HUMAN RESOURCE MANAGEMENT CLOSER TO YOU

# DEVOLUTION



**Appointment To Public Office  
(Devolution of Human Resource Functions)  
Regulations, 2008  
Government of the Virgin Islands**

**VIRGIN ISLANDS**

**APPOINTMENT TO PUBLIC OFFICE (DEVOLUTION OF HUMAN  
RESOURCE FUNCTIONS) REGULATIONS, 2008**

**ARRANGEMENT OF REGULATIONS**

*Regulations*

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**VIRGIN ISLANDS**

**STATUTORY INSTRUMENT 2008 NO. 19**

**VIRGIN ISLANDS CONSTITUTION ORDER, 2007  
(No. 1687 of 2007)**

**Appointment to Public Office (Devolution of Human Resource Functions)  
Regulations, 2008**

[Gazetted 20<sup>th</sup> March, 2008]

The Governor, in exercise of the power conferred by section 92 (8) of the Virgin Islands Constitution Order 2007, (U.K.S.I. 1678 of 2007), makes these Regulations.

**PRELIMINARY**

Citation.

**1.** These Regulations may be cited as the Appointment to Public Office (Devolution of Human Resource Functions) Regulations, 2008.

Interpretation.

**2.** In these Regulations unless the context otherwise requires

“acting appointment” means the temporary appointment of an officer to a higher office;

“agency” means a statutory body or a private sector or organisation;

“Agreement” means Devolution of Authority Agreement;

“appointment” means the conferment of an office of emolument in the Service upon a person;

“Authorised Office” means a designated public office to which some functions of the Governor have been delegated under regulation 4;

“Authorised Officer” means a person occupying an Authorised Office;

“Board” means a selection board established by an authorised officer pursuant to regulation 9(3) of these Regulations;

“chief administrator” means the chief executive officer of an agency;

“Commission” means the Public Service Commission;

“Commissioner of Police” means the Commissioner of Police appointed under section 11 (1) of the Police Act;

Cap. 165

“Constitution” means the Virgin Islands Constitution Order, 2007;

U.K. S.I. 2007  
No. 1678

“confirmed officer” means an officer confirmed in the officer’s appointment in the Service;

“contract employment” means employment based on an agreement which specifies the terms of the engagement;

“departmental post” means a post which is peculiar to a Ministry or department;

“Director” means the Director of Human Resources;

“filling a vacancy” means an appointment, re-employment, promotion or transfer of an officer to a vacant position;

“general post” means a post which is common to more than one public service Ministry or department;

“grade” means the salary grade or scale of an office;

“Government” means the Government of the Virgin Islands;

“head of department” means

(a) in relation to a central Ministry office, the permanent secretary of the Ministry, and

(b) in other cases, the officer charged with the responsibility for the management of the particular department;

“increment” means a progression in a salary scale or grade to a higher step, which an officer who performs satisfactorily may be awarded annually, where

the officer's work has been rated as satisfactory until the officer reaches the highest step;

“line manager” means an officer charged with the responsibility for directing and controlling the work and staff of a

(a) unit or division in a department, and

(b) department in a Ministry, except where the administrative head of that department is an Authorised Officer;

“office of emolument” means a pensionable or non-pensionable post which is shown under a personal emolument sub-head in the estimates;

“officer” means the holder of a public office or a person appointed to act in a public office, of the Service;

“pensionable post” means a post that entitles the holder of the post to a pension;

“Permanent Secretary” means the most senior public officer responsible for the administrative management of a Ministry;

“previous seniority” means an officer's senior post immediately before entering the current post;

“probation period” means

(a) in the case of an officer appointed to a post or promoted to a higher grade, a period of three months to one year subsequent to appointing or promoting the officer to the post, for purposes of assessing the officer's suitability for the post, or

(b) in the case of taking a corrective measure against an officer, a specified period within which the officer is assessed by an Authorised Officer to ascertain whether the officer has taken steps to rectify the situation which necessitated the taking of that corrective measure against the officer;

“public office” means

(a) an office of emolument in the public service;

- (b) any office of emolument under local Government council or authority in the Virgin Islands;

“public service” means the service of the Crown in a civil capacity in respect of the Government of the Virgin Islands;

“salary” means basic salary;

“salary conditions” means the salary conditions attached to a post;

“secondment” means an inter-agency transfer of an officer from  
(a) the Service, to a statutory body or a private sector organisation, or  
(b) a statutory body or a private sector organisation, to the Service for a specified period;

“Secretary” means secretary to the Commission;

“seniority” means the ranking order of a position in relation to another;

“seniority date” means the date on which an officer entered the current post or if the officer has suffered loss of seniority while holding that post, it means the date on which the officer is deemed to have entered the post; and

“Service” means the public service.

### **OBJECTS, APPOINTMENT AND EXERCISE OF DELEGATED POWERS BY AUTHORISED OFFICERS**

**3.** (1) The object of these Regulations is to enable the Governor to delegate some of the Governor’s powers under section 92 (1) of the Virgin Islands Constitution Order, 2007, to certain offices to be designated as Authorised Offices.

Objects and application.  
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(2) These Regulations apply to the

- (a) recruitment, selection and appointment of officers;
- (b) administration of disciplinary proceedings for minor offences committed by officers; and

- (c) development and implementation of career development and succession plans for officers.

(3) These Regulations apply to the preparation of a report on an officer's probation to the Commission for purposes of confirming the officer into the Service;

Non  
discrimination.

4. An Authorised Officer shall not discriminate in making a decision with respect to the appointment of a person or in recommending the promotion of an officer.

Delegation of  
powers by the  
Governor.

5. (1) The Governor delegates the Governor's powers under section 92 (1) of the Constitution to the following offices, designated as Authorised Offices:

- (a) Attorney General;
- (b) Cabinet Secretary;
- (c) Financial Secretary;
- (d) Permanent Secretaries; and
- (e) the Commissioner of Police.

(2) The terms and conditions of a delegation under subregulation (1) shall be contained in an Agreement between each Authorised Office and the Governor.

(3) The Agreement shall be signed by each Authorised Officer and the Governor.

(4) Each Authorised Officer shall in accordance with the Agreement, submit an annual report on the implementation of the devolution programme to the Director.

(5) The Director shall on receipt of an annual report, forward copies of the report with his or her observations and comments to the Deputy Governor and Cabinet.

(6) The exercise of powers vested in an Authorised Office is subject to the Constitution, General Orders, the Public Service Regulations, these Regulations and the Human Resources Management Policies, Procedures and Guidelines for the time being in force.

**6.** The Public Service Regulations, General Orders and the Human Resources Management Policies, Procedures and Guidelines referred to in regulation 5(4) shall, with necessary modifications and to an extent not expressly provided for under these Regulations, apply to the exercise of a power vested in an Authorised Office.

Application of Public Service Regulations, General Orders and Human Resources Management Policies, Procedures and Guidelines.

### **RECRUITMENT, SELECTION AND APPOINTMENT**

**7.** A line manager shall report to an Authorised Officer through the official communication channels, a vacancy occurring within an office under the management of the line manager.

Reporting of vacancies.

**8.** A candidate to be appointed to a post in the Service shall meet the minimum qualifications prescribed for that position.

Entry requirement.

**9.** (1) An Authorised Officer may advertise job vacancies internally, externally or both, for positions within the delegated grade.

Temporary filling of vacant position.

(2) Where a vacancy exists and it is not feasible to fill immediately through the normal channels of recruitment and selection, the Authorised Officer may make a temporary appointment on a month-to-month basis pending the outcome of the normal methods of appointment.

(3) A person may not be appointed on a month-to-month basis unless he or she meets the minimum qualifications of the post.

(4) A temporary month-to-month appointment may be renewed at the end of each month by mutual consent between the line manager and the appointee up to a maximum period of six months, after which a new request may be made to an Authorised Officer if the temporary appointment is to continue.

**10.** (1) An Authorised Officer may recruit, select and hire employees in the delegated grades.

Procedure for filling vacancies permanently.

(2) An advertisement to fill a vacant position shall be made in the Virgin Islands in a manner sufficient to bring it to the attention of persons who belong to the Virgin Islands.

(3) An Authorised Officer shall constitute a Selection Board on receiving an application from a job seeker for appointment to an advertised post.

(4) The Selection Board shall compile a shortlist of applicants, interview and select from the short list the best candidate for appointment by the Authorised Officer.

(5) An Authorised Officer shall appoint an officer to the Service based on merit and ability and an assessment of the relative suitability of the applicant to the position.

(6) For the purposes of this section “filling a vacancy” means the appointment, re-employment, promotion or transfer of an officer to an office including the renewal of an employment agreement of a contract officer.

**11.** (1) Subject to subregulation (2), a person appointed to a post in the Service shall be issued an appointment letter under the signature of the Authorised Officer. Letter of appointment.

(2) A person offered a position under subregulation (1) shall respond in writing to the Authorised Officer accepting the post on the terms specified in the letter offering the appointment.

(3) A person appointed to the Service shall produce a medical certificate of fitness completed by a Government Medical Officer, within one month of the date of the appointment.

(4) The appointment of a person may be revoked if the person fails to comply with subregulation (3).

Effective date of appointment.

**12.** The effective date of the appointment of an officer is the date the officer assumes duty.

Re-employment of officers.

**13.** An officer who has previously worked in the Service may be re-appointed to the Service if

(a) the officer left in good standing; or

- (b) during the period of the officer's absence from the Service, the officer did not engage in an activity which in the opinion of the Board is against the best interest of the Service.

**14.** (1) A person who is retired may be re-appointed on contract or on temporary basis with the approval of the Governor and the re-engagement may be made where Engagement on retirement.

- (a) the prospects of serving officers are not jeopardised; and
- (b) the vacancy cannot otherwise be filled immediately from within the Service.

(2) A retired person shall fulfil all the Service requirements to be considered for a post in the Service.

**15.** A person dismissed or removed from the Service for a criminal offence may only be re-appointed to the Service with the approval of the Governor. Dismissed officers.

### **PROBATIONARY APPOINTMENTS AND CONFIRMATIONS**

**16.** (1) An officer on being appointed to a pensionable post or on being promoted to a pensionable post may be placed on probation for a period of one year or as otherwise stated in the letter of appointment or promotion. Probationary period.

(2) A report on an officer's performance during probation shall be prepared by the officer's line manager in accordance with the Performance Management Programme and submitted by the line manager to the Authorised Officer.

(3) The Authorised Officer may be requested by the line manager to consider

- (a) recommending the confirmation of the appointment of an officer;
- (b) extending the period of probation of an officer by not more than three months;

- (c) reverting an officer to the officer's previous post, if appointed from within the Service;
- (d) terminating the appointment of an unconfirmed officer or recommend the termination of the appointment of a confirmed officer; or
- (e) promoting an unconfirmed officer, or promoting a confirmed officer after consultation with the Director.

(4) An Authorised Officer shall before considering a request under subregulation (3)(b), (c) or (d), ensure that the officer was informed of the unsatisfactory performance rating and the reasons for arriving at that rating and given the opportunity to make any statement in that regard.

Confirmation to the Service.

**17.** An Authorised Officer may submit to the Commission a written recommendation, requesting the confirmation of an officer into the Service, on satisfactory completion of the officer's probation period.

Consideration for shortening or extending of the probation period.

**18.** (1) The probation period of an officer who is appointed to an established post and who has temporarily served satisfactorily in a post in the same grade may be reduced by the period served temporarily in that grade.

(2) The probation period of an officer may be reduced if there is an urgent administrative need to confirm the officer and the officer has fulfilled other conditions required for confirmation.

(3) An Authorised Officer may extend an officer's probation period for a period of not more than three months and inform the Director of the extension.

Promotion.

**19.** (1) An Authorised Officer may, using guidelines provided by the Director, promote

- (a) an officer on probation in his or her Ministry or department; or
- (b) an officer in his or her Ministry or department after consultation with the Director, and forward a copy of the promotion letter to the Director.

(2) The Authorised Officer shall promote an officer based on the probation report submitted by the officer's line manager.

**20.** A promotion to a post shall be based on merit, ability and the relative suitability of the candidate for the appointment.

Promotion requirements.

**21.** Where two officers are equally suited to a post on the basis of qualifications and job performance, the most senior would be promoted.

Consideration of seniority.

**22.** (1) An Authorised Officer shall after consultation with the Director, direct the Director to issue a promotion letter to the officer.

Promotion and date of promotion.

(2) Unless the Authorised Officer otherwise directs, the effective date of promotion of an officer shall not be earlier than the date on which the vacancy occurs.

(3) The Governor may after consultation with the Commission, confirm the promotion of an officer and the officer shall be confirmed to the post from the date of his or her promotion.

(4) An officer who has acted in the higher grade from his or her present grade may make a statement to the Commission through an Authorised Officer, where it is indicated to the officer that the officer would not be confirmed to the higher grade.

**23.** (1) An Authorised Officer may make a request to the Director for an acting appointment, at least thirty days prior to the need for the appointment.

Acting appointments.

(2) Provisions relating to the promotion to a post of an officer in the Service shall be applied to the appointment of an officer in an acting position.

(3) An Authorised Officer may consider administrative expediency in appointing a person to an acting position if the replacement period is not more than three months.

**24.** An officer who is aggrieved by a decision made regarding his or her appointment or promotion by an Authorised Officer may appeal to the Commission and the Commission shall hear the appeal and make a recommendation to the Governor.

Appeal on appointment and promotion matters.

## **TRANSFERS, SECONDMENTS AND DEPARTURE FROM THE SERVICE**

Transfer and re-assignment of officers within a Ministry or a department.

**25.** (1) An Authorised Officer shall approve and initiate the transfer of staff within

- (a) the departments that fall under his or her Ministry; or
- (b) divisions that fall under his or her department.

(2) Where a transfer or re-assignment of an officer involves two Authorised officers, the Director may after consultation with the Commission, re-assign or transfer staff within the Service.

(3) An Authorised Officer shall notify the Director of any inter-departmental transfer within one month of the transfer.

(4) An officer who wishes to be transferred from one department to another within the same Ministry or one division to another within the same department may apply to the Authorised Officer through the line manager.

Transfer or re-assignment from one Ministry to another.

**26.** (1) An officer who is not confirmed into the Service may be transferred or re-assigned from one Ministry to another, by applying through his or her line manager to the Authorised Officer, for the transfer or re-assignment.

(2) An officer confirmed into the Service may be transferred or re-assigned from one Ministry to another by applying to the Commission through his or her line manager and the Authorised Officer, for the transfer.

Transfer of an officer.

**27.** (1) The Director may after consultation with an Authorised Officer, transfer an officer from a Ministry to another Ministry or from the office of one Authorised Officer to another.

(2) The Director may after consultation with the Commission and an Authorised Officer, transfer an officer from a Ministry to another Ministry or from the office of one Authorised Officer to another.

Appeal against transfer or re-assignment.

**28.** (1) An officer who objects to a transfer or re-assignment by an Authorised Officer may appeal against the transfer in accordance with the procedures for addressing grievances stated in the human resources policy for the time being in force.

**29.** A person employed by an agency may be seconded to the Service by the Governor after consultation with the Commission, and the secondment may involve a change of designation and duties. Secondment to the Service.

**30.** (1) An officer confirmed into the Service may be seconded to an agency by the Governor after consultation with the Commissioner and the secondment may involve a change of designation and duties. Secondment to an agency.

(2) A secondment of an officer may be initiated as an avenue for the development of the officer, where the avenue for development is provided by an external agency.

(3) A secondment of an officer to an agency pursuant to this regulation shall not be considered as a break in Service.

(4) An officer who accepts a request to be seconded to an agency without the prior approval of the Government shall be regarded as having resigned his or her office.

(5) A secondment of an officer made contrary to subregulation (1) is void.

**31.** (1) Where an agency requires the services of an officer, the agency may apply to the Director stating the type of assignment and category of staff required to fill the vacancy. Secondment requests.

(2) Where the Government requires the services of a person from an agency, the Director shall apply to the chief administrator of the agency stating the assignment and category of staff required to fill the vacancy.

(3) Where a secondment of a person employed by an agency is for the development of the person, a request for the secondment of the person to the Service may be made by the agency to the Director.

(4) The Director shall put the request for secondment before the Commission for the Commission's recommendation to the Governor for the secondment of the person.

**32.** A secondment agreement shall be concluded and signed by the Director, the person and the agency. Secondment agreement.

Conditions of secondment.

**33.** (1) A major disciplinary action against an officer on secondment to an agency may be taken by the Chief Administrator in consultation with the Director.

(2) A secondment shall be for a period of two years and may be extended up to a maximum period of five years with the approval of the Governor acting on the advice of the Commission.

(3) Where an officer fails or refuses to return from an agency at the end of a secondment period, the officer shall be deemed to have resigned from the Service.

Absence deemed as resignation.

**34.** An officer who absents himself or herself from duty for a continuous period of five days without reasonable excuse is deemed to have resigned from the Service, unless the officer proves to the satisfaction of the Authorised Officer that the officer's inability was due to an act of God.

Termination of permanent appointment.

**35.** An Authorised Officer may through the Commission, recommend to the Governor to terminate the service of a confirmed officer on the following grounds:

- (a) dismissal or removal as a result of disciplinary proceedings;
- (b) compulsory retirement upon attaining retirement age under the Pensions Act;
- (c) voluntary retirement under the Pensions Act;
- (d) retirement on medical grounds;
- (e) resignation;
- (f) retirement in the public interest; or
- (g) abolition of a post.

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Termination of temporary appointment.

**36.** An Authorised Officer may terminate the services of an officer on temporary appointment under the following circumstances:

- (a) the specified period of employment has come to an end;
- (b) the services are no longer needed;

- (c) where the officer's performance is unsatisfactory for continued employment;
- (d) in the public interest;
- (e) the officer is dismissed from the Service on disciplinary grounds;
- (f) medical grounds;
- (g) resignation; or
- (h) abolition of a post.

**37.** The Governor may after consultation with the Commission, terminate the service of an officer on contract in accordance with the terms of the contract. Termination of contract appointment.

**38.** A last day of service must be determined and stated in a letter of termination. Last day of service.

**39.** (1) An Authorised Officer may after consulting an officer, make recommendations stating reasons in writing that the officer be retired from the Service, where the officer employed temporarily, has attained twenty-five years of service but has not yet attained sixty years of age. Retirement on the recommendation of an Authorised Officer.

(2) The Commission shall advise the Governor after considering all the facts.

**40.** (1) An officer who wishes to resign from the Service shall give written notice to an Authorised Officer, indicating his or her proposed last working day. Resignation.

(2) An Officer who wishes to resign from the Service shall give notice of that intention as follows:

- (a) an officer who is on permanent and pensionable employment shall give not less than three months notice of his or her intention to resign;
- (b) an officer who is on probation or temporary appointment shall give not less than one month's notice of his or her intention to resign; and

- (c) an officer on contract shall resign in accordance with the terms of the officer's contract.

(3) An officer who resigns contrary to paragraphs (a) and (b) of this regulation shall, pay a month's salary in lieu of notice.

(4) The terms of an officer's contract as relates to payment in lieu of notice shall apply, where the officer is a contract officer and resigned contrary to subregulation (2)(c).

Termination by  
the Government

**41.** (1) The Government may terminate an officer's appointment after giving the officer a notice of that intention as follows:

- (a) an officer who is on permanent and pensionable employment shall be given not less than three months notice of the Government's intention to terminate;
- (b) an officer who is on probation or temporary appointment shall be given not less than one month's notice of the Government's intention to terminate; and
- (c) an officer on contract shall be given a notice of termination in accordance with the terms of the officer's contract.

(2) The Government shall pay one month's salary in lieu of notice, where the Government terminates an officer's appointment contrary to subregulation (1) (a) and (b).

(3) The Government shall pay salary in lieu of notice in accordance with the terms of an officer's contract as relates to payment in lieu, where the officer is a contract officer and the Government terminates the contract contrary to subregulation (1)(c).

Permission to  
resign could be  
withheld.

**42.** An officer's notice of resignation shall not be approved where

- (a) criminal or disciplinary proceedings, related to the officer's employment in the Service have been or are about to be instituted against the officer;
- (b) the officer is on interdiction;
- (c) the officer has not fulfilled the terms of an existing bond signed by the Government and the officer as between the Government and the officer; or
- (d) the officer is indebted to the Government unless the government and the officer has reached a settlement agreement.

**43.** An officer who resigns while on leave and without giving the required notice shall Resignation while on leave.

- (a) pay to Government one month's salary in lieu of notice; and
- (b) forfeit any cost of leave passage he or she is entitled to; and
- (c) refund any cost of leave passage granted to the officer and the officer's family.

**44.** An officer who resigns before completing a contract with the Government shall pay to the Government, penalties outlined in the contract. Payment of penalties by contract officer.

**45.** An officer who resigns in accordance with these Regulations shall be entitled to any severance award due to the officer under the Pensions Act. Effects of resignation. Cap. 161

**46.** An Authorised Officer shall forward a notice of resignation to the Director, the Auditor General and the Accountant General. Registration notification.

**47.** An officer who resigns without following the procedures relating to resignation shall be considered as Effects of failure to follow proper procedure for resignation.

- (a) having vacated the post and therefore severed relationship with the Service on the date on which he or she is to report for duty;

- (b) having forfeited all eligible leave and passage privileges; and
- (c) having forfeited any right to separation benefits.

Compulsory retirement.

**48.** (1) The Governor acting after consultation with the Commission may require an officer to retire from the Service

- (a) at any time after having served twenty-five years or at any time after attaining the age of sixty years of age, whichever comes first; or
- (b) in special cases, with the approval of the Secretary of State, at any time after attaining the age of fifty-five years.

(2) The Governor shall state reasons for requiring the retirement of a person who

- (a) is not yet sixty years but has served for twenty-five years; and
- (b) is being retired on a special case after attaining fifty-five years.

Voluntary retirement.

**49.** An Officer holding a pensionable post may retire from the Service at any time

- (a) after he or she has served twenty-five years in the service or after attaining the age of sixty years of age, whichever comes earlier;
- (b) in special cases, with the approval of the Secretary of State, on or after attaining the age of fifty-five years; or
- (c) in the case of transfer or secondment to another public service, on or after attaining the relevant age, which he or she is permitted by the law or regulations of the Service in which he or she is last employed to retire on pension or gratuity.

**50.** (1) An officer who wishes to retire voluntarily, shall write a letter to the Director through the appropriate Authorised Officer, one year before the date desired to retire, stating the intention and the grounds on which the retirement is sought.

Retirement procedure.

(2) An Authorised Officer shall not approve an application where criminal or disciplinary proceedings have been or are about to be instituted against the officer.

(3) An Authorised Officer shall forward, to the Director in December each year, a list of officers who have attained or will attain the age of sixty years before the end of the succeeding year.

Termination and terminal awards.

**51.** (1) Public Service appointments may be terminated and terminal awards granted in circumstances outlined in the Pensions Act.

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(2) Director shall in granting an application made under regulation 50 (1), state whether or not there is a special ground for departing from the general rule that the officer should be retired upon attaining the specified age of retirement.

## **DISCIPLINE AND DISCIPLINARY PROCEDURES**

**52.** (1) An Authorised Officer may discipline an officer who commits minor misconduct and he or she shall send a copy of the full proceedings to the Director for inclusion in the permanent record of the officer.

Discipline for minor offences.

(2) An Authorised Officer may initiate disciplinary proceedings for

- (a) minor misconduct by an officer who is not in a delegated grade; or
- (b) gross misconduct committed by an officer and forward to the Commission for further action, documentation on any investigation initiated .

Ultimate disciplinary authority.

**53.** (1) The Governor is the final disciplinary authority for all public officers.

(2) The Commission shall conduct disciplinary proceedings against an officer alleged to have committed gross misconduct referred to it by the Director, consequent to a report received from an Authorised Officer.

(3) The Commission shall make recommendations to the Governor for action.

Misconduct.

**54.** An act done by an officer without a reasonable cause amounts to misconduct, if it results in

(a) an act specified in regulations 55 and 56; or

(b) an imposition of a fine or surcharge, the amount of which shall be paid by instalments through a payroll deduction.

Minor misconduct. Schedule

**55.** An act specified in the first column of Schedule 1 constitutes minor misconduct by an officer and with respect to each act, attracts a corresponding penalty specified in that Schedule.

Gross misconduct.

**56.** An act specified in the first column of Schedule 2 constitutes gross misconduct by an officer and with respect to each act, attracts a corresponding penalty specified in that Schedule.

Types of penalties.

**57.** (1) Subject to regulation 55, the following penalties may be imposed for a minor misconduct or an unsatisfactory performance:

(a) reprimand in the form of a verbal warning;

(b) severe reprimand in the form of a written warning documented in the personnel file;

(c) a fine not exceeding three hundred dollars; or

(d) a suspension without pay not exceeding thirty days.

(2) Subject to regulation 56, the following penalties may be imposed with respect to gross misconduct and may only be imposed by the Governor through the Director, after consultation with the Commission:

- (a) surcharge for a financial or material loss to the Service;
- (b) suspension from duty without pay and allowances for a period not exceeding thirty days;
- (c) reduction in salary, which is a downward adjustment of salary in the salary grade attached to the post;
- (d) fine not exceeding one thousand dollars;
- (e) reduction in rank, which is a demotion to a lower grade with a reduction in salary;
- (f) removal, which is a termination of appointment with or without a reduction in retirement benefits where applicable; or
- (g) dismissal, which is a termination of appointment with forfeiture of retirement benefits where applicable.

(3) The following corrective measures may also be applied to either minor or gross misconduct:

- (a) mandatory training;
- (b) a referral to the Employee Assistance Programme;
- (c) probation; or
- (d) formal referral to the Employee Assistance Programme or rehabilitation or both.

**58.** Misconduct not covered under these Regulations shall be referred to the Commission for instructions, through the Director.

Misconduct not provided for.

Reporting disciplinary actions.

**59.** (1) An Authorised Officer shall recommend the initiation of disciplinary action as soon as it is considered necessary.

(2) Disciplinary sanctions must be reported in writing to the Director after disciplinary action has been taken.

Unsatisfactory performance.

**60.** Where an officer's work is unsatisfactory an appropriate verbal reprimand shall be given to the officer, specifying

- (a) the nature of the unsatisfactory performance;
- (b) the improvements or corrective measures that are required and recessing time frame; and
- (c) any further disciplinary action that may be taken if the improvement or correction required, is not made.

Establishment of investigative committees.

**61.** (1) An officer or a person who alleges misconduct of an officer may in writing report the alleged misconduct to the officer's Authorised Officer.

(2) An Authorised Officer shall on receipt of a report pursuant to subregulation (1), notify the officer against whom the allegation is made, in writing, and establish a committee comprising of a cross-section of officers to investigate the alleged misconduct.

(3) The investigation committee shall submit their findings to the Authorised Officer in the form of a report, indicating whether the alleged act constitutes misconduct and the type of misconduct.

(4) An Authorised Officer shall on receiving the report submitted pursuant to subregulation (3), take the following actions:

- (a) exonerate the officer, where the report indicates that the officer's act does not constitute a misconduct;
- (b) mete out the appropriate penalty, where the report indicates that the alleged act constitutes minor misconduct; or
- (c) forward the recommendation and full report of the investigation to the Commission, where the act constitutes gross misconduct.

(5) The Authorised Officer shall submit a report on the disciplinary proceedings to the Director, after meting out the appropriate punishment.

**62.** (1) Where a report on an investigation reveals that there are enough grounds for a criminal prosecution of an officer, an Authorised Officer shall, unless action has been taken or is about to be taken by the Commissioner of Police, submit a report through the Director to the Director of Public Prosecutions for further action.

Grounds for Criminal prosecutions.

(2) Where the Director of Public Prosecutions does not advise prosecution, the Authorised Officer may consider taking formal disciplinary action against the offending officer.

**63.** Where criminal proceedings are pending or are about to be instituted against an officer in court, disciplinary proceedings based on the criminal charges shall not be taken or continued until the conclusion of the criminal proceedings and the determination of any appeal.

Suspension of disciplinary proceedings.

**64.** Where an officer is convicted of an offence involving fraud or theft or sentenced to imprisonment, an Authorised Officer shall dismiss the officer and the dismissal shall take effect from the date of judgement by the court.

Dismissal on conviction.

**65.** (1) Where a report on an officer alleges gross misconduct, the Authorised Officer shall in his or her report to the Commission state the charge or charges against the officer.

Institution of formal proceedings.

(2) The Attorney General may be consulted for his or her advice and all criminal cases shall be handed over to the Director of Public Prosecutions.

(3) Where a charge has been made against an officer, a copy with a brief statement of the allegation shall be forwarded to the officer and the officer shall be invited by the Commission to state in writing within seven working days, any grounds on which he or she wishes to vindicate himself or herself.

(4) If the officer does not reply to the allegation by the date specified in the statement, it may be assumed that he or she does not wish to make a statement.

(5) If the officer submits a statement which in the opinion of the Commission does not absolve the officer from the allegation made against the officer, the Commission may make a recommendation to the Governor on the matter, and the Governor shall take a decision on the recommendation.

(6) An officer who is dissatisfied with a decision of the Governor consequent to a recommendation made by the Commission may appeal to the

Governor to establish a Tribunal to inquire into the alleged misconduct and submit a report to the Governor, and the Governor may establish the Tribunal.

(7) Where the matter involves a professional or technical issue, the Tribunal may at its own request or at the direction of the Governor be assisted by a professional or a technical officer.

(8) The investigative committee's report may not be used at or for the purpose of a disciplinary proceeding without the officer having been given a copy of the report within a reasonable time, for his or her examination.

(9) If during the inquiry the officer has not seen further documents which are to be offered in evidence, the Tribunal shall adjourn the inquiry to allow the officer adequate opportunity to examine the documents.

(10) Before the investigation begins, the Tribunal shall allow an officer to provide it with a list of persons who he or she wishes to call as witnesses on his or her behalf.

(11) An officer shall be present at the inquiry but if the officer is absent without reasonable cause then, at the discretion of the Tribunal, the inquiry may proceed without the officer.

Representation at  
Tribunal hearing.

**66.** An officer may have representation at a hearing including a lawyer and the prosecuting party may be represented by a lawyer.

Cross  
examination.

**67.** (1) An officer may during proceedings cross-examine witnesses personally or through his or her representative and he or she may also call witnesses to testify on his or her behalf.

(2) A full record of the evidence shall be kept in writing by a clerk appointed for the Tribunal.

(3) If in the course of an investigation, the Tribunal considers that grounds for additional charges have been disclosed, the Tribunal shall immediately inform the Commission, the Governor and the Authorised Officer.

(4) If the Commission or the Authorised Officer considers that additional charges be brought against an officer, then the same procedure as was adopted in making the original charges shall be followed.

(5) The Tribunal shall on completion of an inquiry, submit a written report of the inquiry and its advice on the report to the Governor, which report shall consist of:

- (a) a record of the evidence;
- (b) any documents or exhibits tendered in evidence;
- (c) the findings;
- (d) a conclusion; and
- (e) a recommendation.

(6) The Tribunal shall send copies of the report together with its advice on the report, to the Commission and the Authorised Officer.

(7) The Governor shall on receipt of the Tribunal's report, consider any finding and recommendation and when satisfied that each charge is established, decide which penalty to impose.

(8) An officer shall be informed in writing by the Tribunal whether the charges have been established and the punishment imposed on him or her.

**68.** (1) The Tribunal may summon witnesses but, if the Tribunal is convinced that the evidence of a witness or the presentation of an exhibit is necessary to their work and that there is proof that the person concerned may not voluntarily come forward to give evidence or produce the exhibit, it shall report that fact to the Governor and the Governor shall decide whether the Tribunal may proceed with its inquiry without that piece of evidence.

Attendance of witnesses.

(2) An officer who fails or refuses to comply with summons to testify under subregulation (1), is guilty of misconduct and is subject to disciplinary action.

(3) An officer required to appear before the Tribunal as a witness or to produce an exhibit shall be deemed by an Authorised Officer to be at post.

Registrar to  
inform Director  
of conviction.

**69.** (1) Where an officer is convicted of a criminal offence by a Court, the Registrar of the Court shall report that fact to the Commission and shall send a copy of the charges and the judgement, or on request, a copy of the entire proceedings, to the Director who shall in turn inform the appropriate Authorised Officer.

(2) If an officer appeals against the conviction, the Registrar of the Court shall report this and the outcome of the appeal to the Commission.

(3) If an appeal is upheld and the officer is acquitted, the officer shall resume his or her duties in the Service and receive any entitlements withheld which were due to him or her.

Interdiction.

**70.** Interdiction of an officer may be ordered by the Governor, where

- (a) the Governor considers that in the interest of the Service the officer should cease to exercise the power and functions of the office;
- (b) proceedings which may result in a major penalty are about to be initiated;
- (c) the officer is the subject of an investigation concerning the offence of fraud or moral turpitude, whether the offence is connected with the officer's normal work as an officer;
- (d) the officer is charged with a criminal offence; or
- (e) the officer's continued presence may jeopardise or influence the results of an investigation which concerns the officer or with respect to which the officer is connected.

Remuneration  
during  
interdiction.

**71.** (1) An officer who is interdicted shall be paid not less than half of his or her gross annual salary, if the officer is not indebted to the Government.

(2) The salary withheld from an officer shall be restored if the disciplinary proceedings did not result in the officer's dismissal or any other change the officer's employment status.

(3) If the disciplinary proceedings results in a charge other than a dismissal, the Commission may recommend that, a portion of the salary withheld or the salary withheld, be restored to the officer.

**72.** (1) Where interdiction is the result of a criminal investigation leading to prosecution, and the officer is convicted of a criminal offence involving fraud or theft, the officer shall immediately be dismissed from the Service and may forfeit any salary withheld. Summary action against officer on interdiction.

(2) An officer on interdiction shall, prior to the completion of a disciplinary proceeding or criminal investigation, not leave the Territory without the Governor's permission.

**73.** (1) An officer who is absent from duty without leave or reasonable excuse shall not be paid for the days he or she was absent. Absence from duty without permission.

**74.** Where an Authorised Officer is satisfied that an officer does not deserve an annual increment and that it is to be withheld on grounds of unsatisfactory performance, the Authorised Officer shall Withholding of increment for unsatisfactory performance.

(a) inform the officer in writing at least four months before the date on which the increment is due that the year's increment is denied and give reasons for the denial; and

(b) inform the Director that the increment is denied.

**75.** (1) An Authorised Officer acting on the recommendation of the Commission may suspend, defer or withhold an officer's increment in circumstances where Suspension of increment.

(a) disciplinary proceedings or criminal proceedings have been or are about to be instituted against the officer;

(b) the Authorised Officer has reason to believe that there may be grounds for withholding the increment but further investigation is required before a decision is reached; or

(c) the Authorised Officer has no information on the officer's performance and conduct to enable the Authorised Officer to determine whether the officer has earned the increment.

(2) An Authorised Officer shall inform the officer involved and the Director that the increment may be suspended and if a decision is not taken finally to withhold the increment, it shall be restored from the date it was due.

Removal on grounds of unsatisfactory job performance.

**76.** (1) If an Authorised Officer considers that an officer should be removed from the Service or reduced in rank because of unsatisfactory job performance, the Authorised Officer shall notify the officer in writing of his or her opinion of the officer's job performance and allow the officer to show cause in writing, why he or she should not be removed or reduced in rank.

(2) The Authorised Officer shall in the notice, furnish the officer with reasons for reaching the conclusion and specify a day on which the officer may submit a statement in his or her defence.

(3) The Authorised Officer may take a decision to removal the officer or reduce the officer's rank without a statement from the officer, if the officer fails to submit a statement by the date specified in the notice.

(4) The Authorised Officer may in consultation with the Commission order the removal or reduction in the rank of a confirmed officer

- (a) pursuant to subregulation (3); or
- (b) on receipt of the officer's statement and after a review of the officer's performance record.

Effective date of removal.

**77.** Where an officer is removed as an officer under these Regulations, the effective date of removal shall be the date after all earned leave entitlement is completed.

Premature termination of limited engagement.

**78.** (1) Where an officer is appointed on a temporary basis which allows for the termination by notice before the expiration of the stipulated period and the Authorised Officer considers that the appointment should be terminated, the Authorised Officer shall notify the officer in writing giving reasons for his or her intentions

(2) The notice shall require the officer to submit a written statement showing cause why his or her appointment should not be terminated and specifying the day on which the statement is to be submitted.

(3) The Authorised Officer may take a decision to terminate the officer's appointment without a statement from the officer, if the officer fails to submit a statement by the date specified in the notice.

(4) The Authorised Officer may make a decision as appropriate, on receipt of the officer's statement.

**79.** An officer may file a grievance arising from an administrative act or omission, commission or disciplinary action, alleging Grievance.

(a) a denial of a right to which he or she is justifiably entitled to ; or

(b) that he or she has not been treated fairly.

**80.** An officer may file a petition against the decision of an Authorised Officer or against perceived injustice suffered. Right of petition.

**81.** (1) An officer aggrieved for any cause under these Regulations or for breaches of his or her terms of employment, may in writing petition the appropriate Authorised Officer through his or her line manager and the Authorised Officer shall arrange an interview with the officer. Grievance procedure.

(2) The Authorised Officer may within five days from the date of receipt of a grievance appoint a committee to investigate the matter and make recommendations based on their findings.

(3) The Committee shall commence investigations from the date of their appointment and submit their findings to the Authorised Officer within five days from the date of their appointment.

(4) The officer may appear before the committee by himself or herself or by representation.

(5) The Authorised Officer shall base on the recommendations submitted by the committee, make a decision and have the issue resolved.

(6) The Authorised Officer shall give a copy of the recommendations to the aggrieved officer.

**82.** (1) A petition against the decision of an Authorised Officer may be made to the Commission within ten working days from the date of the decision. Petition against an Authorised Officer's decision.

(2) An officer who is not satisfied with the outcome of a petition may appeal to the Deputy Governor with further appeal to the Governor and the decision of the Governor is final.

(3) The appeal shall be filed through the Authorised Officer who made the decision and the Authorised Officer shall forward the petition together with a record of the proceedings, the findings and all other documents to the Commission.

(4) A petition against the decision of an Authorised Officer shall be served on the Secretary.

(5) Where a petition is against the decision of an Authorised Officer, the petitioner must, be given the record of the proceedings relating to the inquiry.

(6) A petition may be considered if it is made within ten days after a decision of the inquiry is communicated in writing to the aggrieved officer.

Stay of enforcement on consideration of a petition.

**83.** (1) The enforcement of the decision which is being petitioned against shall be suspended until the determination of the petition.

(2) The Secretary shall, on behalf of the Commission, keep a register of all disciplinary decisions made and actions taken on petitions.

## CODE OF CONDUCT AND WORK ETHICS

Receiving and giving of presents.

**84.** (1) An officer shall not in the course of his or her official duties, receive presents in any form which are likely to influence his or her decision but only receive compensation or reward for the performance of his or her official duties from Government.

(2) An officer shall not give presents to another officer as a means to influence that officer in matters in which he or she has an interest.

Public Officer acting as newspaper editor.

**85.** (1) An officer may not act as an editor or be in the management of any newspaper, magazine or periodical nor participate in media broadcast without the permission of the Governor given through an Authorised Officer.

(2) Sub-regulation (1) does not apply to an officer who may be officially required to edit any paper or subscribe to any publication by the Government.

(3) An officer shall obtain permission from an Authorised Officer before he or she makes a public talk or broadcast which may be offering an opinion on Government policies and programmes.

(4) Where permission is given, a determination shall be made as to the suitability of the subject matter.

**86.** An officer may not mount political platforms to make speeches, join demonstrations or in any way demonstrate openly his or her support for a political party or candidate. Officer and party politics.

**87.** A person who, in connection with an application for employment into the Service, promotion or any matter under these Regulations, wilfully gives to the Commission, an Authorised Officer or a body formed under the authority of the Commission, any information which he or she Giving false information.

- (a) knows to be false;
- (b) knows is misleading;
- (c) does not believe to be true; or
- (d) knows to be false or misleading by reason of the omission of any material;

commits an offence and is liable on summary conviction to a fine not exceeding one thousand dollars or to imprisonment for term not exceeding one year or both.

### **THE ROLE OF THE DIRECTOR AND THE PUBLIC SERVICE COMMISSION**

**88.(1)** Pursuant to section 92(8) of the Constitution, the Human Resources Department of the Service shall serve as the secretariat of the Commission and the Director shall be the Secretary to the Commission. Secretary to the Commission.

(2) The secretariat shall provide secretarial support services to the Commission.

(3) The Secretary shall keep or cause to be kept a record of the members present and the business transacted at each meeting of the Commission.

(4) The Commission shall confirm its minutes and decisions and shall forward same to the Governor within ten working days of the confirmation.

(5) A report from an Authorised Officer to the Commission shall be submitted to the Secretary who shall bring the matter to the attention of the Commission.

(6) The Commission shall advise the Governor on a matter brought before it under subregulation (5).

Functions of Director.

**89.** The Director shall develop, implement, monitor and update Human Resources Management policies, procedures and guidelines necessary to ensure a highly qualified, motivated and customer-oriented Service.

Career development plan.

**90.** An Authorised Officer shall in collaboration with the Director develop and prepare a career development plan and a succession plan for each post in the grades stated in the Agreement referred to in regulation 5.

Succession plan.

**91.** A succession plan shall provide details of career progression of each officer within a grade and provide a framework for the systematic development of employees in the various occupational categories in the Service.

Contents of succession plan.

**92.** (1) A succession plan shall

- (a) include a definition of the objective and overall responsibility of the job in the organisational structure;
- (b) state each grade level and corresponding salary range;
- (c) state a summary of the job description and degree of responsibility at each level or grade;
- (d) state the conditions for entry to and requirement for progression through each grade; and
- (e) state the procedure for promotion or granting of rewards for exceptional good performance.

(2) The conditions and requirements referred to in sub-regulation (1)(d) may include

- (a) the purpose or objective and the overall responsibility of the job;
- (b) the length of service required at each level before an officer becomes eligible for promotion to the next grade; and
- (c) the type and level of training required for an officer to progress into the next grade.

**93.** There shall be attached as an appendix to the succession plan, a training and development plan for each level in a grade specifying the Training and development plan.

- (a) type of training required;
- (b) purpose of the training;
- (c) scope of the training;
- (d) eligibility for a training programme;
- (e) suggested training providers and course duration;
- (f) type of qualification to be acquired on completion of training; and
- (g) bond to be executed by the officer and the Director prior the training.

**94.** An Authorised Officer shall revise and update the succession plans to meet the changing performance requirements and the development needs of each office within a grade. Update to the succession plan.

**95.** (1) An Authorised Officer shall submit the succession plan to the Director who shall approve it and forward it to the manager of the Training Division. Succession plan to be submitted to the Director.

(2) The manager of the Training Division shall ensure that training providers are contracted to provide the necessary training to staff.

**96.** A human resources manager of a Ministry or department shall liaise with the manager of the training division of the Human Resources Department, Training liaison.

and act as the human resources and training liaison officer for Ministry or department and shall ensure that training plans are executed.

Performance management programme.

**97.** (1) The Director may establish a programme to appraise the performance of an officer in terms of the officer's contribution to the success of a Ministry or department in accomplishing its goals and objectives.

(2) An Authorised Officer shall submit an annual staff performance appraisal report of each officer in his or her Ministry or department, to the Director.

(3) Failure of an Authorised Officer to comply with this regulation may result in disciplinary action against the Authorised Officer.

(4) An officer is eligible for a salary increment unless the officer's job performance is unsatisfactory.

Emolument salaries.

**98.** The salary of a post in the Service is determined through a job evaluation scheme.

Workman compensation. Cap. 302

**99.** The Workmen's Compensation Ordinance applies to an officer who sustains injury, illness or loses his or her life in the course of his or her employment.

Health.

**100.** An Authorised Officer shall ensure that employees' safety at the workplace is paramount.

**SCHEDULE 1**

[Regulation 55]

Acts constituting minor misconduct.

<b>NATURE OF MISCONDUCT</b>		<b>RANGE OF PENALTIES</b>		
		<i>First time misconduct</i>	<i>Second time misconduct</i>	<i>Third time misconduct</i>
<b>ABSENCE AND LEAVE</b>				
<b>1.</b>	Unexcused tardiness	Reprimand, severe reprimand, one to two days suspension.	Two to ten days suspension or a formal referral to EAP.	Ten days suspension to dismissal.
<b>2.</b>	Excessive unexcused tardiness	Severe reprimand or one to five days suspension.	Five to ten days suspension or a formal referral to EAP.	Ten days suspension to dismissal.
<b>3.</b>	Unauthorised absence up to, and including, five scheduled workdays and/or failure to follow leave procedures.	Severe reprimand or one to five days suspension.	Five to ten days suspension or a formal referral to EAP.	Dismissal.
<b>4.</b>	Unauthorised absence of five consecutive workdays.	Dismissal or mandatory resignation.		
<b>5.</b>	Unauthorised absence from the worksite while on duty.	Reprimand, severe reprimand, one to five days suspension,	Five to ten days suspension, a formal referral to EAP.	Dismissal.

		formal referral to EAP.		
6.	Improper use of sick leave or other leave.	Reprimand, severe reprimand, or one to five days suspension, formal referral to EAP.	Five to ten days suspension, formal referral to EAP.	Dismissal.
<b>ALCOHOL/DRUG OFFENCES</b>				
7.	Use of alcohol and illicit drugs while on Government premises or on duty.	Reprimand, severe reprimand, one to fourteen days suspension, a formal referral to EAP.	Fourteen to thirty days suspension or formal referral to EAP.	Dismissal.
8.	Reporting to work or being on duty under the influence of alcohol or illicit drugs to a degree that would interfere with proper performance of duties, would be a menace to safety, or would compromise the maintenance of discipline. (subject to appropriate testing)	Reprimand, severe reprimand, one to thirty days suspension, a formal referral to EAP. <i>(Dismissal may be warranted if personnel or property were endangered.)</i>	Fourteen days suspension, dismissal, or a referral to EAP.	Dismissal.
<b>CONTRACTING</b>				
9.	Unauthorised procurement contract unauthorised commitment or unauthorised services contract.	Reprimand, severe reprimand, one to seven days suspension.	One to seven days suspension or dismissal.	Dismissal.
10.	Disclosure of proprietary or source selection information regarding procurement, failure to follow	Reprimand, severe reprimand, one	One to ten days suspension or dismissal.	Dismissal.

	contract guidelines and policies.	to ten days suspension.		
<b>DISCRIMINATION AND MISCONDUCT OF A SEXUAL NATURE</b>				
<b>11.</b>	Making disparaging references or expressing a stereotypical view that has a detrimental effect or impact.	Reprimand, severe reprimand to ten days suspension mandatory training, or a formal referral to EAP.	Ten to thirty days suspension mandatory training, or a formal referral to EAP.	Dismissal.
<b>12.</b>	Sexual teasing, jokes, remarks, questions and behaviour that are inappropriate in the workplace.	Reprimand, severe reprimand, one to three days suspension, mandatory training or a formal referral to EAP.	Three to ten days suspension.	Ten days suspension or a dismissal.
<b>13.</b>	Sexually suggestive looks or gestures.	Reprimand, severe reprimand, three days suspension or a formal referral to EAP.	Three to ten days suspension.	Ten days suspension or dismissal.
<b>14.</b>	Sending letters, cards, email, or making telephone calls of an inappropriate or sexual nature.	Reprimand, severe reprimand to five days suspension, mandatory training, or a formal referral to EAP.	Five to fifteen days suspension or dismissal.	Fifteen days suspension or dismissal.

15.	Pressure for dates	Reprimand, severe reprimand, seven days suspension, mandatory training or a formal referral to EAP	Seven days suspension, mandatory training or a formal referral to EAP dismissal	Dismissal.
16	Posting, distributing, showing or viewing sexually explicit materials in the workplace.	One to ten days suspension plus dismissal from supervisory position; one to ten days suspension and a down grade plus dismissal from supervisory position; mandatory training; or a formal referral to EAP; or dismissal.	Ten to thirty days suspension, mandatory training or a formal referral to EAP.	Dismissal.
17.	Inappropriate physical touching of a non-erogenous body part of another person.	Reprimand, severe reprimand, one to fourteen days suspension.	Fourteen to thirty days suspension.	Dismissal.
18.	Inappropriate physical touching of a personal and private area of another person (to include breast, buttocks, or pelvic area)	Thirty days suspension, dismissal, mandatory training or a formal referral	Dismissal.	

		to EAP.		
<b>19.</b>	Promise of benefit in exchange for sexual favours or threat or act of reprisal for refusal to provide sexual favours.	Dismissal.		
<b>20.</b>	Act of retaliation against a complainant, representative, witness or other person involved in an investigation, proceeding, hearing or other process.	Reprimand, severe reprimand, one to ten days suspension, mandatory training or a formal referral to EAP.	Ten days suspension, mandatory training, formal referral to EAP or a dismissal.	Thirty days suspension or dismissal.
<b>DISORDERLY CONDUCT/VIOLENCE</b>				
<b>21.</b>	Unauthorised possession of a firearm while in or on Government owned or leased property.	Dismissal.		
<b>22.</b>	Unauthorised possession of a weapon while in or on Government owned or leased property.	Thirty days suspension or dismissal.	Dismissal.	
<b>23.</b>	Fighting, threatening another, or attempting to inflict or inflicting injury to another person; disregarding the safety of others.	Fourteen days suspension, a formal referral to EAP or dismissal.	Thirty days suspension, a formal referral to EAP or dismissal.	Dismissal.
<b>24.</b>	Intimidating, harassing, abusive, disorderly, disruptive or other inappropriate behaviour; unbecoming conduct; engaging in dangerous horseplay or any other inappropriate behaviour.	Reprimand, severe reprimand, one to fourteen days suspension a formal referral to EAP.	One to fourteen days suspension or a formal referral to EAP to dismissal.	Dismissal.
<b>25.</b>	Use of language, remarks or acts that are discourteous,	Reprimand, severe	One to fourteen days suspension	Three to ten days suspension

	discriminatory, insulting, abusive or obscene.	reprimand, one to fourteen days suspension or a formal referral to EAP.	or a formal referral to EAP.	or a formal referral to EAP.
<b>FALSE INFORMATION/FAILURE TO GIVE INFORMATION</b>				
26.	Making false, unfounded, disparaging, disrespectful, obscene, abusive or other inappropriate statements to, or about, others.	Reprimand, severe reprimand to one to fourteen days suspension or a formal referral to EAP.	Fourteen days suspension, a formal referral to EAP or dismissal.	Dismissal.
27.	Providing/making false, misleading, untruthful statements, or concealing material facts or pertinent information in connection with an official inquiry or investigation.	Ten days suspension or dismissal.	Thirty days suspension or dismissal.	Dismissal.
28.	Refusal or failure to give oral or written statements or testimony in connection with any official inquiry or investigation.	Ten days suspension or dismissal.	Thirty days suspension or dismissal.	Dismissal.
29.	Unauthorised recording or monitoring of telephone calls, conversations or meetings.	Reprimand, severe reprimand, ten days suspension	Ten days suspension or dismissal.	Dismissal.
30.	Loss of Government property, damage to Government property, or endangering of Government property.	Reprimand, severe reprimand or dismissal	Ten days suspension or dismissal	Dismissal.
31.	Actual or attempted theft or unauthorised possession of Government's property or another person's personal property.	Ten days suspension or dismissal.	Thirty days suspension or dismissal.	Dismissal.
32.	Forging, falsifying, mis-stating or misrepresenting information on Government records, documents, claims, etc., for oneself or another.	Five days suspension or dismissal.	Dismissal.	

33.	Misuse of Government time, property, personnel, information, funds or leased services (including but not limited to, computers and systems, fax machines, telephones, mail services, etc.).	Reprimand, severe reprimand or dismissal.	Ten days suspension or dismissal.	Dismissal
34.	Unauthorised disclosure or failure to safeguard information, documents or records.	Reprimand, severe reprimand or ten days suspension.	Ten days suspension or dismissal.	Thirty days suspension or dismissal.
<b>GENERAL CONDUCT</b>				
35.	Failure to carry out orders, directions, assignments, etc., given by a Manager or Supervisor.	Reprimand, severe reprimand, ten days suspension, or a formal referral to EAP.	Ten days suspension to dismissal or a formal referral to EAP.	Dismissal.
36.	Non-compliance or refusal to carry out orders, directions, assignments, etc., given by a Manager or Supervisor; defiance of authority.	Ten days suspension, dismissal, or a formal referral to EAP.	Thirty days suspension, dismissal, or a formal referral to EAP.	Dismissal.
37.	Canvassing, soliciting or peddling at work sites.	Reprimand, severe reprimand to five days suspension.	Five to fourteen days suspension, or a formal referral to EAP.	Fourteen days suspension or dismissal.
38.	Conducting personal/internet use for private and commercial purpose	Reprimand, severe reprimand, one to five days suspension.	Five to fourteen days suspension.	Fourteen days suspension or dismissal.
39.	Betting, gambling or promotion of gambling at the worksite.	Reprimand, severe reprimand, one to five days	Five to fourteen days suspension, or a formal	Fourteen days suspension or a formal referral to EAP to

		suspension, or a formal referral to EAP.	referral to EAP.	dismissal.
<b>40.</b>	Borrowing money or obtaining co-signatures and lending money for profit from an employee at the workplace.	Reprimand, severe reprimand to five days suspension, or a formal referral to EAP.	Five to fourteen days suspension, or a formal referral to EAP.	Fourteen days suspension or a formal referral to EAP to dismissal referral to EAP.
<b>41.</b>	Failure to honour valid debts or legal obligations	Reprimand, severe reprimand, or a formal referral to EAP.	Reprimand to five days suspension, or a formal referral to EAP.	Dismissal.
<b>42.</b>	Charging or receiving fees in connection with official duties; unauthorised financial interests; or unauthorised outside employment.	Reprimand, severe reprimand or dismissal.	Thirty days suspension or dismissal.	Dismissal.
<b>43.</b>	Unauthorised acceptance of gifts.	Reprimand, severe reprimand or dismissal.	Fourteen days suspension or dismissal.	Dismissal.
<b>44.</b>	Misuse or authorising the use of Government vehicles for functions other than for official purposes.	Thirty days suspension or dismissal.	Dismissal.	

**SCHEDULE 2**

[Regulation 56]

**GROSS MISCONDUCT**

Acts constituting gross misconduct.

NATURE OF MISCONDUCT		RANGE OF PENALTIES		
		<i>First time misconduct</i>	<i>Second time misconduct</i>	<i>Third time misconduct</i>
<b>1.</b>	General gross misconduct; criminal, infamous, immoral, perverted or disgraceful conduct on or off the job, which are in violation of the law.	Thirty days suspension, a referral to EAP, or dismissal.	Dismissal.	
<b>2. (a)</b>	On-duty or off-duty conduct that results in a conviction or guilty plea for child abuse, sexual molestation, incest, statutory rape, or other crime or offence involving a minor victim, for which a penalty of imprisonment can be imposed; or when other reasonable causes exist that the employee was involved in these activities. For the purpose of this offence, a plea of no contest shall be interpreted as synonymous with a conviction or guilty plea.	Dismissal. <i>(Note: On or off-duty conduct that results in a felony or misdemeanour indictment or warrant for arrest pending further court proceeding for these offences shall result in an indefinite suspension until the matter is</i>		

		<i>resolved.)</i>		
<b>(b)</b>	Criminal misconduct may include behaviours addressed elsewhere in this Schedule, such as acceptance of gifts or money, secret tape recording, etc. If the conduct is pursued through the criminal process, this offence and range of penalty should be utilised rather than the administrative offence and penalty range. For the purpose of this offence, a plea of no contest shall be interpreted as synonymous with a conviction or guilty plea. Further, the penalty for these offences shall not be deemed "mitigated" by a no contest plea or other plea arrangement, suspended sentence, parole in lieu of confinement, sentence limited to time served, probation or any other modification of penalty attached to the conviction or associated with the crime.	Thirty days suspension or dismissal  <i>(Note: On-duty or off-duty conduct that results in a felony or misdemeanour indictment or an arrest warrant pending further court proceedings. These offences shall result in an indefinite suspension until the matter is resolved.)</i>	Dismissal  <i>(Note: On-duty or off-duty conduct that results in a felony or misdemeanour indictment or an arrest warrant pending further court proceedings. These offences shall result in an indefinite suspension until the matter is resolved.)</i>	
<b>NEGLIGENT BEHAVIOUR</b>				
<b>3.</b>	Failure to perform duties due to sleeping or exhibiting a sleep-like state when the employee occupies a position where safety of personnel and property is a function of the employee's duties but where no personnel or property were endangered.	Reprimand, severe reprimand , ten days suspension, or a formal referral to EAP.	Ten to thirty days suspension or a formal referral to EAP.	Dismissal.
<b>4.</b>	Failure to perform duties due to sleeping or exhibiting a sleep-like state when the employee occupies a position where safety of personnel or property is a function of his/her duties and injuries or damages occurred.	Ten days suspension or a formal referral to EAP or dismissal.	Dismissal.	

5.	Negligent or careless work performance, including exhibiting behaviour that creates an environment where credibility is questioned; or inattention to duty.	Reprimand, severe reprimand, ten days suspension.	Ten to thirty days suspension.	Dismissal.
6.	Negligent or careless work performance that results in injury or risk of injury to either the individual involved or to others.	Ten days suspension or dismissal.	Dismissal.	
<b>POLICY VIOLATION</b>				
7.	Failure to report a violation of the law or policies.	Reprimand, severe reprimand, five days suspension.	Five to fourteen days suspension.	Suspension or dismissal.
8.	Concealing or covering up an act that violates Government's policies, laws or procedures.	Reprimand, severe reprimand, ten days suspension.	Ten days suspension to dismissal.	Dismissal.
9.	Failure or refusal by the appropriate authority to correct or rectify a practice or situation that violates Government's policies, laws or procedures.	Reprimand, severe reprimand, ten days suspension.	Ten days suspension or dismissal.	Dismissal.
10.	Failure or refusal by the appropriate authority to take action when the facts are known and a corrective measure is warranted.	Reprimand, severe reprimand, ten days suspension.	Ten days suspension or dismissal.	Dismissal.
<b>POLITICAL ACTIVITIES</b>				
11.	Violation of prohibited political activities.	Five days suspension or dismissal.	Fourteen days suspension or dismissal.	Dismissal.
12.	Subversive activities; engaging in or encouraging a strike, work stoppage/slowdown, sick out against the Government.	Dismissal.		

<b>RELATIONSHIP WITH THE PUBLIC</b>				
<b>13.</b>	Making unauthorised public statements.	Reprimand, severe reprimand to dismissal	Five days suspension or dismissal	Thirty days suspension or dismissal.
<b>SECURITY/SAFETY</b>				
<b>14.</b>	Violating or ignoring security regulations; or mishandling classified documents.	Reprimand, severe reprimand, five days suspension	Ten days suspension to dismissal.	Dismissal.
<b>15.</b>	Failure to carry, show or wear Government-issued identification card or credentials <u>as required</u> .	Reprimand, severe reprimand , five days suspension.	Five to fourteen days suspension.	Fourteen days suspension to Dismissal.
<b>16.</b>	Misuse of official identification or investigative credentials or other Government identification card.	Reprimand, severe reprimand, fourteen days suspension.	Fourteen days suspension to dismissal.	Dismissal.
<b>17.</b>	Failure to develop safety policies	Reprimand, severe reprimand, seven days suspension.	Severe reprimand to seven to ten days suspension.	Ten to fourteen days suspension or dismissal.
<b>18.</b>	Failure to implement safety policies	Severe reprimand or seven to ten days suspension.	Ten to thirty days suspension.	Dismissal.
<b>19.</b>	Failure to observe precautions for personal safety, such as failure to use safety equipment, failure to use available safety restraints when operating a motor vehicle on official Government business, or ignoring signs, posted rules, fire alarms, or written or verbal safety instructions or regulations.	Reprimand, severe reprimand, fourteen days suspension.	Fourteen to thirty days suspension.	Thirty days suspension or dismissal.
<b>20.</b>	Failure to report personal injury or	Reprimand,	Five to ten days	Ten days

	accident that occurred while operating Government-owned, or rented equipment.	severe reprimand, five days suspension.	suspension.	suspension or dismissal.
<b>21.</b>	Violation of the traffic regulations while driving a Government vehicle or a vehicle rented for official Government purposes; violation of traffic regulations while operating any vehicle while conducting Government business.	Reprimand, severe reprimand, five days suspension.	Five to fourteen days suspension.	Fourteen days suspension or dismissal.
<b>22.</b>	Failure to report an operational error or deviation as per established in the health and safety or security regulations.	Reprimand, severe reprimand, ten days suspension.	Ten to thirty days suspension.	Thirty days suspension or dismissal.

Made by the Governor this 28<sup>th</sup> day of February, 2008.

(Sgd.) DAVID PEAREY,  
Governor.

**VIRGIN ISLANDS**  
**SERVICE COMMISSIONS REGULATIONS, 2014**  
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**VIRGIN ISLANDS**

**STATUTORY INSTRUMENT 2014 NO. 48**

**SERVICE COMMISSIONS ACT, 2011  
(No. 8 of 2011)**

**Service Commissions Regulations, 2014**

[Gazetted 10<sup>th</sup> July, 2014]

The Governor, in exercise of the powers conferred by section 41 of the Service Commissions Act, 2011, (No. 8 of 2011), makes these Regulations.

**PART I  
PRELIMINARY**

Citation and commencement.

**1.** These Regulations may be cited as the Service Commissions Regulations, 2014 and shall come into force on the 15<sup>th</sup> July, 2014.

Interpretation.

**2.** In these Regulations unless the context otherwise requires

No. 8 of 2011.

“Act” means the Service Commissions Act, 2011;

“acting appointment” means the temporary appointment of an officer to a higher office whether or not that office is vacant;

“agency” means a statutory body or a private sector organisation;

“appointment” means the appointment of a person to a post in the Public Service;

“Authorised Officer” means a person to whom the functions of the Governor have been delegated under or pursuant to section 92(8) or 93(3) of the Constitution;

“Chairman” means the Chairman of a Commission and includes any person who temporarily acts as the Chairman of the Commission or any other member presiding at a meeting of the Commission;

“Chief Administrator” means the Chief Executive Officer of an agency;

No. 10 of 2004.

“Chief Education Officer” has the meaning assigned to it under section 2 of the Education Act;

“Commission” means the Public Service Commission, the Teaching Service Commission or the Judicial and Legal Services Commission;

“Constitution” means the Virgin Islands Constitution Order 2007;

U.K. S.I. 2007  
No. 1678

“Devolution Regulations” means the Appointment to Public Office (Devolution of Human Resource Functions) Regulations, 2008;

S.I. 2008 No.  
19

“Director” means the person holding or acting in the office of Director of Human Resources;

“filling a vacancy” has the meaning assigned to it under regulation 8;

“grade” means the salary grade or scale of an office;

“gross inefficiency” means habitual unsatisfactory performance;

“Head of Department” means an officer charged with the responsibility for the management of a particular Department;

“increment” means a progression in a salary grade or scale to a higher scale, which may be awarded to an officer who performs satisfactorily;

“Judicial and Legal Services Commission” means the Commission established under section 94 of the Constitution;

“line manager” means an officer charged with the responsibility for directing and controlling the work and staff of a

(a) unit or division in a Department; or

(b) department in a Ministry.

“medical practitioner” means a person registered as such under the Medical Act, 2000;

No. 4 of 2000

“member” means a person appointed to a Commission, and includes a temporary member;

“office” means a pensionable or non-pensionable post in the public service;

“officer” means a person who is appointed to an office in the public service and includes a person appointed to act in such office;

“pensions law” means the Pensions Act and any regulations made thereunder;

Cap. 161

“pensionable post” means a post that may entitle the holder of the post to a pension where eligible;

“Permanent Secretary” means a person who holds or acts in the office of Cabinet Secretary, Permanent Secretary or Financial Secretary;

“probationary period” means

- (a) a period of up to one year following the employment of a officer; or
- (b) a period of up to one year following the promotion of an officer;

for purposes of assessing the officer’s suitability for the post;

“promotion” means the advancement of an officer in rank or position;

“Public Service Commission” means the Commission established under section 91 of the Constitution;

“relevant Commission”, in relation to an office or officer, means the Commission that is responsible for the office or officer under or pursuant to section 92, 93 or 95 of the Constitution, as the case may be;

“relevant office”, in relation to a Commission, means an office in the public service for which the Commission is responsible under or pursuant to section 92, 93 or 95 of the Constitution, as the case may be;

“relevant officer”, in relation to a Commission, means a person who holds or acts in a relevant office;

“relevant service”, in relation to a Commission, means service in relevant offices;

“salary” means basic salary;

“salary conditions” means the salary conditions attached to a post;

“secondment” means the transfer of an officer from

- (a) the service, to an agency; or
- (b) an agency, to the service;

“Secretariat” means

- (a) in the case of the Public Service Commission, the Department of Human Resources;
- (b) in the case of the Teaching Service Commission, the Department of Education;

“Secretary” means

- (a) in the case of the Public Service Commission or the Teaching Service Commission, a person who holds or acts in the office of Secretary to that Commission; or
- (b) in the case of the Judicial and Legal Services Commission, the person who serves as Secretary to that Commission;

“seniority” means the ranking order of a position in relation to another or the date on which an officer entered the service;

“service” means the service of the Crown in a civil capacity in respect of the Government of the Virgin Islands;

“secondment” means the temporary transfer of an officer or employee for a specified period of time to or from one position to another position, within the public service or outside the public service;

“short-list” means a list of names candidates in a competition for a position, rated in order of suitability for that position;

“Teaching Service Commission” means the Commission established under section 93 of the Constitution.

**3. (1) The object of these Regulations is to ensure that**

Object and scope.

- (a) the employment, re-employment, promotions, transfers and deployment of all officers is carried out on the basis of merit;
- (b) the disciplining of officers and the disciplinary procedures are fair and transparent.

(2) These Regulations apply to all officers with the exception of those who are members of the Royal Virgin Islands Police Force and those falling within the devolved grades under the Devolution Regulations.

(3) These Regulations shall be read together with the Act and the Public Service Code.

(4) In these Regulations, a reference to a Permanent Secretary shall, with the necessary modifications be deemed, unless otherwise specified in any regulation, to include a reference to the Deputy Governor.

(5) Nothing in these Regulations shall be read so as to limit the Governor's powers under the Constitution.

## **PART II**

### **SECRETARIAT TO THE RELEVANT COMMISSION**

Advice to the  
Governor.

**4.** (1) Subject to the Constitution and the Act, the relevant Commission shall advise the Governor with respect to appointments, promotions, transfers and discipline of officers and termination of appointments.

(2) The relevant Commission shall not, unless directed by the Governor, give any such advice in relation to functions, which have been delegated to Authorised Officers under the Devolution Regulations.

Secretariat or  
Secretary.

**5.** (1) The Director shall act as a resource person and as the Secretariat of the Public Service Commission and shall ensure that efficient secretarial support is provided to that Commission by the Department of Human Resources.

(2) The Chief Education Officer shall act as a resource person and the Secretariat to the Teaching Service Commission and shall ensure that efficient secretarial support is provided to that Commission by the Department of Education.

(3) The person who serves as Secretary to the Judicial and Legal Services Commission shall act as a resource person to the Commission and shall ensure that efficient secretarial support is provided to that Commission.

(4) The Secretariat or Secretary shall

- (a) administer the Act and these Regulations;
- (b) provide the relevant Commission with information at its request and, carry out research required by that Commission to facilitate that Commission in its advisory role to the Governor;
- (c) implement the decisions and advice of the Commission;
- (d) provide direction, advice or assistance to Ministries and Departments in the application of human resources management policies, standards, regulations and procedures as relates to the functions of a Commission;

(e) fulfil any other responsibilities that the relevant Commission or Governor may assign.

(5) A Permanent Secretary or Head of Department who wishes to report any matter to the relevant Commission shall do so

(a) in the case of the Public Service Commission or the Teaching Service Commission, through the Secretariat which shall bring the matter to the attention of the relevant Commission; or

(b) in the case of the Judicial and Legal Services Commission, through the Secretary who shall bring the matter to the attention of that Commission.

(6) The relevant Commission shall advise the Governor on any matter brought to its attention pursuant to these Regulations.

### **PART III RECRUITMENT, APPOINTMENT, SELECTION AND TRANSFER**

**6.** Every application for first appointment to the public service shall be addressed to the Secretariat or Secretary.

Application for appointment.

**7.** (1) As soon as it is known that a vacancy will occur in a Ministry or Department, a Permanent Secretary or Head of Department shall report the vacancy to the Secretariat or Secretary.

Filling of vacancies.

(2) Where a vacancy exists for more than three months and no request has been made by the Permanent Secretary or Head of Department for the filling of that vacancy, the Secretariat or Secretary shall send to that Permanent Secretary or Head of Department a statement of existing vacancies within the Ministry or Department requesting early recommendations for the filling of those vacancies.

(3) Where a Permanent Secretary or Head of Department fails, without an explanation, to make recommendations pursuant to subregulation (2), the Secretary or Secretariat shall report that failure to the Governor.

**8.** (1) To be appointed to any post in the service an applicant shall

Entry requirements.

(a) submit an application and all supporting documents;

(b) meet the minimum qualifications specified for that position;

(c) undergo a medical examination pursuant to regulation 16;

(d) produce any other requirements relevant to the post that may be specified in the vacancy notice or job description.

(2) The relevant Commission shall consider only those applicants who have met the minimum qualifications based upon all relevant supporting documents.

(3) An applicant, who obtains employment in the service based on false or misleading information or who omits significant information on an application or other document submitted in obtaining employment, commits misconduct and shall be subject to disciplinary action including dismissal.

(4) For purposes of this regulation “supporting document” includes but is not limited to, certified copies of certificates of degrees or academic achievements, police clearance certificate, certified copy of photo identification, photo page of passport or reference letters.

Procedure for filling vacancies.

**9.** (1) For the purposes of these Regulation, “filling a vacancy” means the appointment, re-appointment, promotion or transfer of an officer to an office including the renewal of an employment agreement of a contract officer in an open and fair manner.

(2) A Permanent Secretary or Head of Department is responsible for knowing the staffing complement needed to efficiently and effectively carry out the mandate of his or her Ministry or Department and any staffing needs should be notified to the Secretariat or Secretary through the official communication channels.

(3) The Secretariat or Secretary may, whether in or outside the Territory and by any means, including by circular, give notice of a vacancy in the relevant service and, upon the closing date for application, shall transmit the applications received to the Permanent Secretary or Head of Department who notified the vacancy.

(4) Upon receipt of the applications, a Permanent Secretary or Head of Department shall prepare a shortlist of suitable candidates for interview and the list shall contain the names of at least two persons who, in the opinion of the Permanent Secretary or Head of Department, have the qualifications, skills, knowledge, and experience to be considered as suitable for the position.

(5) Where the Permanent Secretary or Head of Department is of the opinion that no candidate satisfies the requirements of the vacancy, the Permanent Secretary or Head of Department may request the Secretariat or Secretary to notify the vacancy again in accordance subregulation (3).

(6) The relevant Commission shall interview all shortlisted candidates using comparable interviewing methods and, in respect of each applicant shall consider

- (a) his or her educational qualifications or specialised training;
- (b) his or her ability to meet the specific requirements of the job;
- (c) any previous employment or experience in the public service or otherwise;
- (d) any referees presented by the applicant;
- (e) information provided by the applicant during the interview.

(7) The relevant Commission shall evaluate the results of the interview and the applicants' education, qualifications, experience and suitability for the post including reference checks and submit a recommendation to the Governor who shall make the appointment in accordance with the Constitution.

**10.** (1) Subject to sections 16 and 17 of the Act, the relevant Commission shall advise the Governor

Merit and ability.

- (a) on the appointment of persons to the service; and
- (b) the promotion or transfers of officers in the service,

based on merit and ability as well as experience, formal qualifications and seniority and an assessment of the relative suitability for the position of the person or officer.

(2) In making appointments, transfers or promotions, the relevant Commission shall consider candidates who are Belongers first if they are suitable to be so appointed, transferred or promoted.

**11.** (1) To assess the eligibility of persons for appointment, transfer or promotion within the public service, the Secretariat or Secretary may conduct such examinations as it considers necessary.

Examinations.

(2) The Secretariat or Secretary shall be responsible for the conduct of the examinations referred to under subregulation (1).

**12.** (1) An applicant with a criminal record may be considered for appointment to the service.

Candidates with criminal record.

(2) Where an applicant has a criminal record the relevant Commission shall consider

- (a) the nature and seriousness of the offence resulting in the conviction;
- (b) the number of convictions and whether any of them are considered as spent convictions under the relevant laws;
- (c) the relationship of any conviction to the job functions and responsibilities;
- (d) the employment record of the applicant following the conviction with respect to job responsibility and duration;
- (e) the relevance of the offence to the safety of other officers, clients, customers or property;
- (f) the length of time since the conviction occurred.

Re-appointment of officers.

**13.** (1) A person who previously worked in the service may be re-appointed to the service if

- (a) that person left in good standing;
- (b) during the period of the person's absence from the service, he or she did not engage in an activity, which in the opinion of the relevant Commission, is against the best interest of the service;

(2) Subject to subregulation (1), a person who retired from the service, may be re-appointed only where

- (a) the prospects of serving officers are not jeopardised;
- (b) the vacancy cannot otherwise be filled immediately;
- (c) he or she is certified to be medically fit for re-appointment,

and the additional period of service rendered by the retired officer shall not count towards pensionable service and the payment of the retired officer's pension shall be suspended during the period of re-appointment.

**14.** (1) Subject to subregulation (2) a person who was dismissed from the service may only be reappointed to the service with the approval of the Governor.

Dismissed officers.

(2) In considering the appointment of the person referred to under subregulation (1) the Governor shall consider

- (a) the record and reasons for dismissal;
- (b) the length of time since the dismissal occurred;
- (c) whether during the period of the person's absence from the service, the person did not engage in an activity, which in the opinion of the relevant Commission, is against the best interest of the service;
- (d) whether the prospects of serving officers are likely to be jeopardised.

**15.** (1) A person appointed to the service shall be offered the appointment in a letter stating the terms and conditions of the appointment and the letter shall be under the hand of the Director, Chief Education Officer or Secretary.

Offer of appointment.

(2) A person offered a position in the service shall not assume duty until a written response to accept the offer on the terms and conditions specified in the offer letter sent by the applicant is received by the Director, Chief Education Officer or Secretary, as the case may be.

(3) The Director, Chief Education Officer or Secretary shall withdraw the letter of offer with the terms and conditions if the person fails to respond within ten working days of receipt of the letter.

**16.** (1) A person applying for employment in the service shall when submitting their application also submit a medical certificate.

Medical Examination.

(2) For purposes of subregulation (1), the Director, Chief Education Officer or Secretary shall provide to the applicant a medical form to be used for purposes of obtaining a medical certificate.

(3) A medical examination shall include an assessment of the

- (a) physical systems (e.g. mobility, muscular, balance, aerobic fitness, co-ordination etc.);
- (b) sensory (e.g. vision and hearing);

(c) cognitive function; and

(d) mental wellbeing.

(4) A medical practitioner carrying out the examination shall attest to the fitness of that person, and any potential medical or physical limitations with respect to the job functions and responsibilities and shall classify the person as

(a) having no limitations, meaning the person is physically and medically capable of performing the full range of duties of the vacancy; or

(b) having limitations, meaning the persons has physical or medical limitations that may adversely affect the person's suitability for the vacancy.

(5) In considering candidates for appointment the relevant Commission shall take into account the medical certificate and the opinion of the medical practitioner.

(6) For purposes of this regulation, "medical practitioner"

(a) in the case of a candidate recruited locally, means a person registered as such under the Medical Act, 2000;

No. 4 of 2000

(b) in any other case means a person registered as a medical practitioner under the laws of the country or territory of recruitment.

Effective date of appointment.

**17.** (1) Unless the Governor otherwise directs, the effective date of the appointment of an officer is the date the officer assumes duty.

(2) If an officer is recruited from outside the territory, the effective date of appointment shall be the date of embarkation for the Virgin Islands.

Orientation of officers.

**18.** Persons appointed to the relevant service shall receive the appropriate orientation according to policies and procedures established by the Department of Human Resources.

Transfer of officers.

**19.** (1) An officer may be transferred from one Ministry or Department to another

(a) at the instance of the officer by applying through his or her line manager and the Permanent Secretary or Head of Department to the relevant Commission;

(b) at the instance of a Permanent Secretary or Head of Department, by applying to the relevant Commission, after notifying the officer in writing and giving reasons for the transfer.

(2) The Governor may on the advice of the relevant Commission, transfer an officer from one Ministry or Department to another Ministry or Department.

(3) An officer who objects to a transfer may appeal in accordance with the grievance procedure under Part VIII.

#### **PART IV PROBATIONARY APPOINTMENTS AND CONFIRMATIONS**

**20.** (1) The probationary period that an officer has to serve is as specified in section 20 of the Act.

Probationary period.

(2) Subject to subregulation (3), where an officer has served in an acting capacity for at least 6 months prior to a promotion to the same office in which the officer was acting, the period of probation may be reduced by the same period of service in the acting capacity unless the Commission otherwise directs.

(3) Where the promotion of an officer is not preceded by any acting appointment in that position, the period of probation shall be for the period as specified in section 20 of the Act.

(4) In calculating the period of service in an acting appointment for the purpose of this regulation, only continuous service of three months or more shall be considered towards shortening an officer's probationary period.

(5) A Permanent Secretary or Head of Department shall submit to the Director of Human Resources, two confidential reports on an officer on probation as follows:

(a) a first report, four months before the period of the probation ends;

(b) a final report, two months before the period of probation ends.

(6) The Director shall report to the relevant Commission whenever a Permanent Secretary or Head of Department fails to submit a confidential report on an officer on probation within the terms specified in this regulation.

(7) At the end of a period of probation of an officer, a Permanent Secretary or Head of Department, shall submit through the Director to the relevant Commission, a recommendation that the

- (a) officer be confirmed to the relevant service;
- (b) probationary period be extended, where applicable;
- (c) officer's service be terminated;
- (d) officer be transferred to an another post, if applicable;
- (e) officer revert to his or her former post, if available.

(8) If, after consideration of the final report of the Permanent Secretary or Head of Department, a relevant Commission is satisfied that the service of an officer on probation has been satisfactory, the relevant Commission shall advise the Governor, that the officer be confirmed to the relevant service and the effective date of confirmation shall be as specified in the letter of appointment.

(9) Before any recommendation is made for the extension of the period of probation of an officer, the Permanent Secretary or Head of Department shall inform the officer, in writing of his or her recommendation and of the specific reasons therefor and shall invite the officer to make any representation the officer may wish to make, in that regard.

(10) Before any recommendation is made for the termination of an officer the Permanent Secretary or Head of Department shall inform the officer, in writing of his or her recommendation and of the specific reasons therefor and shall invite the officer to make any representation the officer may wish to make, in that regard.

(11) Before any recommendation is made for the reversion of an officer to his or her former position the Permanent Secretary or Head of Department shall inform the officer, in writing of his or her recommendation and the specific reasons therefor and shall invite the officer to make any representation the officer may wish to make, in that regard.

(12) If, after the consideration of the final report of the Permanent Secretary or Head of Department, a relevant Commission is not satisfied that the service of an officer on probation has been satisfactory, the relevant Commission may advise the Governor to extend the period of probation for a further period or where applicable, that the officer's appointment be terminated in accordance with Section 23 of the Act.

Principles to be observed during probation.

**21.** (1) The following principles shall be observed for the treatment of officers during a period of probation:

- (a) an officer shall be given an opportunity to learn the work and be assessed on his or her performance;

- (b) an officer shall be afforded all possible facilities for acquiring experience in his or her duties;
- (c) an officer shall be subject to continual and sympathetic supervision;
- (d) so far as the exigencies of the service permit, an officer shall be assigned to duty only where such observation is possible;

(2) If a Permanent Secretary or Head of Department, during a period of probation of an officer, forms the opinion that the officer may not be suitable for confirmation to the position the Permanent Secretary or Head of Department shall, at once, inform the officer, in writing of that fact, and the Permanent Secretary or Head of Department shall give such assistance to enable the officer to improve his or her performance.

**22.** (1) The relevant Commission shall consider candidates for confirmation who

Confirmation to the service.

- (a) have performed satisfactorily as detailed and evidenced in the performance appraisal report relating to that officer;
- (b) have been medically assessed and certified by a medical practitioner to be in sound health;

and shall take into account any recommendations from the Permanent Secretary or Head of Department through the Director, Chief Education Officer or the Secretary.

(2) The Governor, after consultation with the relevant Commission, shall direct the Director, Chief Education Officer or the Secretary to notify the officer of his or her confirmation to the service with effect from the initial date of appointment.

(3) The medical assessment shall be in accordance with regulation 16.

**PART V  
PROMOTIONS AND ACTING APPOINTMENTS**

Promotion requirements.

**23.** Subject to section 17 of the Act, promotions in all cases shall be based on merit or ability, taking into account the experience, formal qualifications and seniority in the service, of the candidates for the appointment.

Consideration for promotion.

**24.** (1) The relevant Commission shall consider matters regarding the promotion of an officer on the recommendation of the Permanent Secretary or Head of Department who shall submit to the relevant Commission through the

Secretariat or Secretary, the officer's performance appraisal report and any relevant supporting documents.

(2) The period of probation on promotion of an officer shall be in accordance with section 20 of the Act.

Consideration of seniority.

**25.** (1) Where two officers being considered for promotion, are equally suited on the basis of qualifications and performance, a Commission's decision may be determined on the basis of seniority.

(2) The seniority of an officer shall be determined by the date of his or her appointment to the particular grade within the scale in which he or she is serving.

Promotion and date of promotion.

**26.** (1) The Governor shall direct the Director, Chief Education Officer or Secretary to notify, in writing, the officer of his or her promotion.

(2) Unless the Governor otherwise directs, the effective date of promotion of an officer shall not be earlier than the date on which the vacancy occurred.

(3) Where an officer is promoted from one Ministry or Department to another, the Permanent Secretary or Head of Department shall take immediate steps to ensure the release of such officer to assume duties in his or her new office.

Acting appointments.

**27.** (1) A Permanent Secretary or Head of Department shall make a request to the relevant Commission through the Secretariat or Secretary for an acting appointment, at least thirty days prior to the need for the acting appointment, whether as a prelude to a promotion or not.

(2) The provisions relating to the promotions of officers in the service shall apply with the necessary modifications, to the appointment of officers in an acting appointment.

(3) In making a recommendation under subregulation (1), a Permanent Secretary or Head of Department shall consider whether it is expedient to have an officer appointed to an acting position if the period for the acting appointment will not be for more than one month.

(4) An acting appointment as a prelude to a substantive appointment may not exceed one year, unless the Governor approves otherwise.

## PART VI

### SECONDMENT AND LEAVING THE SERVICE

**28.** (1) The secondment of an officer shall be in accordance with section 21 of the Act. Secondment.

(2) During the period of secondment, the officer shall be deemed to remain on the establishment of his or her ministry or department.

(3) An officer who accepts an offer of appointment outside the service to an agency without the prior approval of the Governor shall be regarded as having resigned his or her office.

**29.** (1) Where an agency requires the services of an officer, the agency may apply to the relevant Commission through the Director, Chief Education Officer or Secretary stating the type of assignment and category of staff required to fill the vacancy. Secondment requests.

(2) Where the Government requires the services of a person from an agency, the Director, Chief Education Officer or Secretary shall apply to the Chief Administrator of an agency stating the assignment and category of staff required to fill the vacancy.

(3) The Secretariat or Secretary shall put the request for secondment

(a) to the Permanent Secretary or Head of Department likely to be affected by the request and requesting them to indicate their support or otherwise on the release of the officer

(b) before the relevant Commission with supporting documents from the Permanent Secretary or Head of Department.

(4) The relevant Commission shall advise the Governor on the secondment of the officer or person after taking into account

(a) the interest of the service;

(b) the availability of a replacement who can perform the required duties in a satisfactory manner and that the officer's absence will not be adversely impacted; and

(c) the officer's length of service.

(5) A secondment agreement shall be concluded and signed by the

(a) representative of the Government;

- (b) representative of the agency; and
- (c) officer or person concerned.

Conditions of  
secondment.

**30.** (1) A secondment shall be for an agreed period and may be extended up to a maximum period of five years with the approval of the Governor acting on the advice of the relevant Commission.

(2) Upon secondment the salary of an officer shall be paid by the agency.

(3) On the return of an officer after the period of secondment has ended the salary range of that officer shall be the same as if that officer was not seconded.

(4) Where an officer fails or refuses to return from an agency at the end of a secondment period, the officer shall be deemed to have resigned from the service.

Termination of  
appointment.

**31.** The appointment of an officer may be terminated in accordance with section 23 of the Act.

Last day of  
service.

**32.** The last day of service of an officer shall be determined by the Secretariat or Secretary in a letter of termination.

Notice of  
resignation.

**33.** (1) An officer who wishes to resign from the service shall give written notice to the Director, Chief Education Officer or Secretary through the Permanent Secretary or Head of Department, specifying his or her proposed last working day.

(2) The notice under subregulation (1) shall be given as follows:

- (a) an officer who is on permanent and pensionable employment shall give not less than three months notice of his or her intention to resign;
- (b) an officer who is on probation or temporary appointment shall give not less than one month's notice of his or her intention to resign.

(3) An officer who resigns contrary to subregulation (2), shall pay to the Government a month's salary in lieu of notice.

(4) An officer on contract shall give notice of his or her intention to terminate his or her contract in accordance with the terms of the officer's contract.

(5) The terms of an officer's contract as it relates to payment in lieu of notice shall apply, where the officer is a contract officer and fails to give the requisite notice contrary to subregulation (4).

(6) The Director, Chief Education Officer or Secretary shall report all resignations or terminations immediately to the Auditor General.

**34.** (1) The Government, where it intends to terminate an officer's appointment, shall give the officer notice of that intention as follows:

Notice by  
Government.

- (a) an officer who is on permanent and pensionable employment shall be given not less than three months notice of the Government's intention to terminate;
- (b) an officer who is on probation or temporary appointment shall be given not less than one month's notice of the Government's intention to terminate; and
- (c) an officer on contract shall be given a notice of termination in accordance with the terms of the officer's contract.

(2) The Government shall pay one month's salary in lieu of notice, where the Government terminates an officer's appointment contrary to subregulation (1) (a) or (b).

(3) The Government shall pay salary in lieu of notice in accordance with the terms of an officer's contract as it relates to payment in lieu of notice, where the officer is a contract officer and the Government terminates the contract contrary to subregulation (1) (c).

(4) For the removal of doubt, this regulation does not include termination of employment by the Government following disciplinary proceedings.

**35.** An officer's resignation may not be accepted where

Resignation  
could be denied.

- (a) disciplinary proceedings, related to the officer's employment in the service have been or are about to be instituted against the officer;
- (b) the officer is on interdiction; and
- (c) the officer has not discharged any outstanding legal obligation to the Government unless the officer has entered into an agreement with the Government for the discharge of the legal obligation.

Resignation while on leave prohibited.

**36.** (1) An officer shall not resign whilst on leave.

(2) An officer who resigns whilst on leave shall

(a) pay to Government one month's pay;

(b) forfeit the remainder of his or her leave; if any.

Effects of failure to follow resignation procedure.

**37.** An officer who resigns without following the procedures relating to resignation shall be considered as having

(a) vacated the post and therefore severed the employment relationship with the service on the date on which he or she ceases to report for duty;

(b) forfeited all eligible leave; and

(c) forfeited any right to retirement benefits.

Retirement procedure.

**38.** (1) Subject to section 24 of the Act, an officer whether holding a pensionable or non-pensionable post shall retire from the service in accordance with the pensions law.

(2) An officer who wishes to retire may give up to one year written notice before the intended date of retirement, to the Director or Chief Education Officer through the Permanent Secretary or Head of Department, stating their intent to retire.

(3) The Permanent Secretary or Head of Department may recommend the request for retirement by the officer provided that disciplinary proceedings have not been or are not about to be instituted against the officer.

(4) The Permanent Secretary or Head of Department shall forward, to the Director or Chief Education Officer in December of each year, a list of all officers who are eligible for retirement before the end of the succeeding year.

(5) Where appropriate, in cases of retirement, the Permanent Secretary or Head of Department shall indicate whether an officer intending to retire should be dealt with in accordance with section 24 (2) of the Act.

Retirement benefits.

**39.** Retirement benefits shall be granted in accordance with the pensions law following the retirement of an officer.

**PART VII  
DISCIPLINE AND DISCIPLINARY PROCEDURES**

**40.** (1) The Governor is the final disciplinary authority for all officers.

Ultimate  
disciplinary  
authority.

(2) The relevant Commission shall conduct disciplinary proceedings against an officer alleged to have committed misconduct referred to it by the Director, Chief Education Officer or Secretary, consequent to a report received from a Permanent Secretary or Head of Department or otherwise.

(3) The relevant Commission shall after the completion of the disciplinary proceedings, advise the Governor for his or her decision on the appropriate penalty to be imposed.

(4) Where the relevant Commission is the Judicial and Legal Services Commission and, the relevant officer is a person holding the office of

- (a) Attorney General;
- (b) Director of Public Prosecutions;
- (c) Magistrate;

the provisions of section 3 (3) of the Act shall apply.

**41.** (1) An officer or a person who alleges misconduct by a Permanent Secretary or Head of Department may in writing, report the alleged misconduct to the Deputy Governor.

Reporting of  
alleged  
misconduct.

(2) The Deputy Governor shall on receipt of a report pursuant to subregulation (1), notify in writing the Permanent Secretary or Head of Department against whom the allegation is made, and shall

- (a) send the report together with any supporting documentation,
- (b) a recommendation as to whether or not disciplinary proceedings should be instituted

to the relevant Commission for its consideration.

(3) An officer or a person who alleges misconduct of an officer may, in writing report the alleged misconduct to the officer's Permanent Secretary or Head of Department.

(4) A Permanent Secretary or Head of Department shall on receipt of a report pursuant to subregulation (3), notify in writing, the officer against whom

the allegation is made, of the nature of the allegation, and shall, through the Director, Chief Education Officer or Secretary

- (a) send the report together with any supporting documentation,
- (b) make a recommendation as to whether or not disciplinary proceedings should be instituted

to the relevant Commission for its consideration.

(5) The Deputy Governor shall recommend the initiation of disciplinary proceedings for any misconduct by a Permanent Secretary or Head of Department as soon as it is considered necessary that such disciplinary action should be instituted by the relevant Commission.

(6) A Permanent Secretary or Head of Department through the Secretariat or Secretary shall recommend the initiation of disciplinary proceedings for any misconduct as soon as it is considered necessary that such disciplinary action should be instituted by the relevant Commission.

(7) After the completion of disciplinary proceedings taken against an officer the Secretariat or Secretary shall report to the Deputy Governor, Director or Chief Education Officer for communication to the Permanent Secretary, Head of Department or officer, as the case may be, the disciplinary penalties imposed on the officer.

Establishment of  
investigative  
committees.

**42.** (1) Where a relevant Commission receives a report on an officer pursuant to section 36 of the Act and these Regulations, the relevant Commission may establish an investigative committee comprising of a cross section of officers to investigate the alleged misconduct and to make a report to it.

(2) The relevant Commission may on receipt of a report pursuant to subregulation (1), where the report indicates that disciplinary proceedings should be instituted, notify in writing through the Secretariat or Secretary the officer to whom the allegation is made.

(3) The relevant Commission may institute disciplinary proceedings in accordance with regulation 43.

Institution of  
disciplinary  
proceedings.

**43.** (1) Where a relevant Commission receives a report on an officer pursuant to section 36 of the Act and these Regulations, considers that the report is sufficient to support the allegations being made against the officer, the relevant Commission shall commence disciplinary proceedings.

(2) Where an officer is charged, the Deputy Governor, Director, Chief Education Officer or Secretary, as the case may be, shall notify the officer in writing and provide a copy of the report, a brief statement of the allegations and

the charges and all evidence presented to the relevant Commission and the officer shall be invited by the relevant Commission to state in writing within seven working days, any grounds on which he or she wishes to exculpate himself or herself.

(3) If the statement provided by the officer does not exculpate the officer of the charges, the relevant Commission will proceed to hear the matter.

(4) Where the officer does not reply to the charges by the date specified in the notice, the relevant Commission shall assume that he or she does not wish to make a statement and shall therefore proceed to hear the matter.

(5) The officer shall be informed of the date, time and place of the hearing and may be represented, including being represented by a legal practitioner.

(6) An officer shall be present at the hearing but if the officer is absent without reasonable excuse then, at the discretion of the relevant Commission, the hearing may proceed without the officer.

(7) Before the hearing begins, the relevant Commission shall allow the officer to provide a list of persons who he or she wishes to call as witnesses on his or her behalf and the officer may during the hearing cross-examine personally or through his or her representative.

(8) The relevant Commission may summon witness and cross-examine witnesses.

(9) If the Deputy Governor, Permanent Secretary or Head of Department considers that additional charges should be brought against an officer, then the same procedure as was adopted in making the original charges shall be followed.

(10) The relevant Commission shall on completion of a hearing, submit to the Governor a written report which shall consist of

- (a) the record of the proceedings;
- (b) any documents or exhibits tendered in evidence;
- (c) its findings; and
- (d) advice on the penalty to be imposed in accordance with the Act and these Regulations.

(11) The Governor shall on receipt of the relevant Commission's report, consider any findings and advice and when satisfied that each charge is established he or she shall impose a penalty, as appropriate.

(12) An officer shall be informed of the Governor's decision in writing by the Director, Chief Education Officer or Secretary.

(13) An officer who is not satisfied with a decision of the Governor, may appeal the decision to the Governor within seven working days of receipt of the decision only if the officer has new evidence that is relevant to the case which he or she thinks may exculpate him or her.

(14) An officer summoned as a witness before a relevant Commission who fails or refuses to comply with a summons commits misconduct and may be subject to disciplinary action.

(15) Nothing in this regulation, shall limit the power of the Judicial and Legal Services Commission to regulate its own procedure.

Misconduct.

**44.** An act done by officer amounts to misconduct, if it is an act specified in regulation 46 or 47.

Unsatisfactory performance.

**45.** (1) Subject to section 23 of the Act, the Deputy Governor shall where the work of a Permanent Secretary or Head of Department is unsatisfactory give written notice to the Permanent Secretary or Head of Department specifying

- (a) the nature of the unsatisfactory performance;
- (b) the improvements or corrective measures that are required and time frame within which such improvements or corrective measures are to be made;
- (c) any disciplinary action that may be taken if the improvements or corrective measures required, are not made.

(2) Subject to section 23 of the Act, a Permanent Secretary or Head of Department shall, where an officer's work is unsatisfactory give written notice specifying

- (a) the nature of the unsatisfactory performance;
- (b) the improvements or corrective measures that are required and time frame within which such improvements or corrective measures are to be made;
- (c) any disciplinary action that may be taken if the improvements or corrective measures required, are not made.

(3) Based on the officer's history of performance, the Deputy Governor, Permanent Secretary or Head of Department, as the case may be

- (a) where he or she is of the opinion that the officer's unsatisfactory performance is related to the lack of competencies required for the job, may in an effort to improve the officer's performance, where feasible recommend that the officer undergoes training relevant to the competencies required for the position;
- (b) where he or she is of the opinion that the officer's unsatisfactory performance is related to a personal problem affecting the officer's job performance, may refer the officer to the Employee Assistance Programme;
- (c) where he or she is of the opinion, that the officer's unsatisfactory performance is not related to the lack of competencies required for the job or related to a personal problem, may recommend to the relevant Commission through the Secretariat or Secretary any of the following:
  - (i) withholding of increment;
  - (ii) demotion; or
  - (iii) termination.

(4) Where a notice given pursuant to this regulation indicates that the Deputy Governor, Permanent Secretary or Head of Department, as the case may be, will make a recommendation that the

- (a) officer's increment be withheld;
- (b) officer be demoted;
- (c) officer's employment be terminated,

such notice shall be given within seven working days from the date on which the appraisal was completed.

(5) The Deputy Governor, Permanent Secretary or Head of Department shall at the same time inform the Director, Chief Education Officer or Secretary of any action taken pursuant to this regulation.

**46.** (1) An act specified in Schedule 1 constitutes minor misconduct by an officer and with respect to each act, attracts a corresponding penalty specified in that Schedule.

Minor  
misconduct.  
Schedule 1

(2) The Governor may in consultation with the Director amend Schedule 1.

Gross misconduct. Schedule 2

**47.** (1) An act specified in Schedule 2 constitutes gross misconduct by an officer and with respect to each act, attracts a corresponding penalty specified in that Schedule.

(2) The Governor may, in consultation with the Director amend Schedule 2.

Types of penalties.

**48.** (1) Subject to section 34 of the Act, the following penalties may be imposed for minor misconduct:

- (a) reprimand in the form of a verbal warning;
- (b) severe reprimand in the form of a written warning documented in the officer's personal file;
- (c) suspension without pay for a period not exceeding thirty working days.
- (d) demotion, which is a reduction to a lower grade with a reduction in salary;
- (e) termination of appointment with or without a reduction in retirement benefits, where applicable;
- (f) dismissal.

(2) Subject to section 34 of the Act, the following penalties may be imposed for gross misconduct:

- (a) suspension from duty without pay for a period not exceeding thirty working days;
- (b) demotion, which is a reduction to a lower grade with a reduction in salary;
- (c) termination of appointment with or without a reduction in retirement benefits, where applicable;
- (d) dismissal.

(3) The following corrective measures may also be applied for either minor or gross misconduct:

- (a) mandatory training;
- (b) a referral to the Employee Assistance Programme;
- (c) probation;

- (d) a mandatory referral to the Employee Assistance Programme or rehabilitation or both.

**49.** Misconduct or misbehaviour not provided for under these Regulations shall be referred to the relevant Commission through the Secretariat or Secretary, so that the Commission may consider it and, if thought fit, commence appropriate disciplinary proceedings in accordance with regulation 43 with the necessary modifications to those provisions.

Misconduct not provided for.

**50.** (1) Where it appears from information received that an officer has committed a criminal act, a Permanent Secretary or Head of Department shall immediately report the matter to the Police and the Attorney General.

Reporting matters of a criminal nature.

(2) A report made pursuant to subregulation (1) shall also be made by the Permanent Secretary or Head of Department to the relevant Commission through the Secretariat or Secretary.

(3) Where the officer referred to in subregulation (1), is a Permanent Secretary or Head of Department, the Deputy Governor shall make the report to the Police and the Attorney General.

**51.** (1) An officer who is charged with a criminal offence punishable with imprisonment of three months or more shall report the charge without delay to the Secretariat or Secretary.

Director, Chief Education Officer to be informed of criminal charges and conviction.

(2) Where an officer is convicted of a criminal offence by a court, the appropriate officer of the court shall report that fact to the relevant Commission and shall send a copy of the charges and the judgement, or on request, a copy of the entire proceedings, to the Secretariat or Secretary.

(3) If an officer appeals against the conviction, the appropriate officer of the court shall report this and the outcome of the appeal to the relevant Commission, the Secretariat or Secretary.

(4) If an officer is acquitted, the appropriate officer of the court shall send a copy of the judgement to the relevant Commission and the relevant Commission may, if it considers it appropriate advise the Governor to reinstate the officer.

(5) For purposes of this regulation, “appropriate officer of the court” means the Registrar of the High Court or the Court Manager, as the case may be.

**52.** The interdiction of an officer pending disciplinary proceedings shall be carried out in accordance with section 30 of the Act.

Interdiction.

Suspension of increment pending proceedings.

**53.** (1) A relevant Commission may advise the Governor, to suspend or withhold an officer's increment where disciplinary proceedings or criminal proceedings have been or are about to be instituted against an officer.

(2) The Secretariat or Secretary shall inform the officer concerned that the increment may be suspended or withheld and if a decision is not taken finally to withhold the increment, it shall be restored from the date that it was due.

## **PART VIII MISCELLANEOUS**

**54.** The Department of Human Resources shall recommend to the Governor the terms and conditions of employment in the service.

**55.** (1) An officer may file a grievance arising from an administrative act, omission, or disciplinary action and the grievance may allege

(a) a denial of a right to which he or she is justifiably entitled to;

(b) that he or she has not been treated fairly; or

(c) or any other allegation which the officer may properly make.

(2) An officer may file a grievance in accordance with the Human Resources Policy on grievance.

**56.** The Workmen's Compensation Ordinance applies to an officer who sustains injury, illness or loses his or her life in the course of his or her employment.

**57.** A Permanent Secretary or Head of Department shall ensure compliance with existing legislation or regulations relating to health and safety in the workplace and develop procedures to be followed by officers within their particular work environment in the Ministry or Department.

**58.** On the day of assumption of duty and prior to executing his or her duties, Permanent Secretaries and Heads of Departments shall require the officer to take and sign an Oath or Affirmation of Office and Confidentiality as specified in Schedule 3.

Remuneration and other terms and conditions of employment .  
Grievance procedure.

Workmen's Compensation Ordinance. Cap. 302

Health and safety.

Oath of office and confidentiality.

Schedule 3

## SCHEDULE 1

[Regulation 46]

### MINOR MISCONDUCT

Acts Constituting Minor Misconduct.

NB – (a) *The Table of Misconducts and Penalties, contains a suggested range of misconducts and penalties. It is a guide to discipline, not a rigid standard. Deviations are allowable for a variety of reasons.*

(b) *Public officers in supervisory positions and those performing safety or security functions are generally expected to demonstrate a higher level of conscientiousness and integrity with respect to their employment. Accordingly, these officers may be subject to more severe levels of discipline for misconduct.*

(c) *A reference in this Schedule to “days” shall be construed as a reference to “working days.”*

<b>NATURE OF MISCONDUCT</b>		<b>RANGE OF PENALTIES</b>		
		<b>First time misconduct</b>	<b>Second time misconduct</b>	<b>Third time misconduct</b>
<b>ABSENCE AND LEAVE</b>				
<b>1.</b>	Unexcused tardiness.	Reprimand, Severe reprimand, A formal referral to EAP*.	Severe reprimand, Up to 5 days suspension, A formal referral to EAP*.	Up to 10 days suspension to Demotion.
<b>2.</b>	Unauthorised absence up to, and including, nine scheduled workdays and/or failure to follow leave procedures.	Severe reprimand, Up to 5 days suspension, A formal referral to EAP*.	Up to 5-10 days suspension, A formal referral to EAP*.	Demotion.
<b>3.</b>	Loafing and frequent unauthorised absences from duty during working hours.	Reprimand, Severe reprimand, Up to 5 days suspension, A formal referral to EAP*.	Severe reprimand, Up to 5 days suspension, A formal referral to EAP*.	Demotion.

NATURE OF MISCONDUCT		RANGE OF PENALTIES		
		First time misconduct	Second time misconduct	Third time misconduct
<b>ABSENCE AND LEAVE (cont)</b>				
<b>4.</b>	Improper use of sick leave or other leave.	Reprimand, Severe reprimand, Up to 5 days, A formal referral to EAP*.	Severe reprimand, Up to 5 days suspension, A formal referral to EAP*.	Demotion.
<b>CONTRACTING</b>				
<b>5.</b>	Unauthorised procurement or unauthorised contract for services.	Severe reprimand, Up to 5 days suspension, Surcharge.	Up to 10 days suspension, Surcharge, Demotion.	Surcharge, Dismissal.
<b>6.</b>	Unauthorised disclosure of any information regarding tenders or tender processes, failure to follow contract guidelines and policies.	Severe reprimand, Up to 5 days suspension, A formal referral to EAP*.	Up to 5 days suspension, Demotion.	Dismissal.

NATURE OF MISCONDUCT		RANGE OF PENALTIES		
		First time misconduct	Second time misconduct	Third time misconduct
<b>MISCONDUCT OF A SEXUAL NATURE</b>				
7.	Making disparaging, references or expressing a stereotypical view that has a detrimental effect or impact -	Reprimand, Severe reprimand, Up to 5 days suspension, a Formal referral to EAP*.	Up to 5 days suspension, A formal referral to EAP*.	Demotion.
		<u>Range of penalties if committed by a line manager</u>		
		Up to 5 days suspension, A formal referral to EAP*.	Demotion, A formal referral to EAP*.	Dismissal.
8.	Sexual teasing, jokes, remarks, questions and behaviour that are inappropriate in the workplace.	Reprimand, Severe reprimand, Up to 5 days suspension, A formal referral to EAP*.	Up to 5 days suspension and Formal referral to EAP*.	Demotion.
		<u>Range of penalties if committed by a line manager</u>		
		Up to 5 days suspension, A formal referral to EAP*.	Up to 10 days, A formal referral to EAP.	Demotion.

NATURE OF MISCONDUCT		RANGE OF PENALTIES		
		First time misconduct	Second time misconduct	Third time misconduct
<b>MISCONDUCT OF A SEXUAL NATURE (cont.)</b>				
<b>9.</b>	Sending letters, cards, email, or making telephone calls of an inappropriate or sexual nature.	Severe reprimand, Up to 3 days suspension, A formal referral to EAP*.	Up to 5 days suspension and A formal referral to EAP*.	Demotion.
		<u>Range of penalties if committed by a line manager</u>		
		Severe Reprimand, Up to 5 days suspension, A formal referral to EAP*.	Up to 10 days suspension, Demotion.	Up to 30 days suspension, or Dismissal.
<b>10.</b>	Pressure for dates	Severe reprimand, Up to 3 days suspension, A formal referral to EAP*.	Up to 5 days suspension, A formal referral to EAP*.	Demotion.
<b>11.</b>	Posting, distributing, showing or viewing sexually explicit materials in the workplace.	Up to 5 days suspension, A formal referral to EAP*.	Up to 10 days suspension, demotion, A formal referral to EAP*.	Dismissal.
<b>12.</b>	Inappropriate touching of a non-erogenous body part of another person.	Reprimand, Severe reprimand, Up to 3 days suspension, A formal referral to EAP*.	Severe reprimand, Up to 7 days suspension, A formal referral to EAP*.	Demotion.

NATURE OF MISCONDUCT		RANGE OF PENALTIES		
		First time misconduct	Second time misconduct	Third time misconduct
<b>DISORDERLY CONDUCT/VIOLENCE/MISBEHAVIOUR</b>				
13.	Intimidating, harassing, abusive, disorderly, disruptive or other inappropriate behaviour; unbecoming conduct; engaging in dangerous horseplay or any other inappropriate behaviour.	Reprimand, Severe reprimand, Up to 5 days suspension, A formal referral to EAP*.	Up to 10 days suspension, A formal referral to EAP*.	Demotion.
14.	Use of language, remarks or acts that are discourteous, discriminatory, insulting, abusive or obscene.	Reprimand, Severe reprimand, Up to 5 days suspension or A formal referral to EAP*.	Severe reprimand, Up to 10 days suspension, A formal referral to EAP*.	Up to 15 days suspension, A formal referral to EAP*, Demotion.
<b>UNAUTHORISED DISCLOSURE/UNAUTHORISED ACCESS TO CONFIDENTIAL/CLASSIFIED INFORMATION/DOCUMENTS</b>				
15.	Mishandling confidential/classified or documents.	Severe reprimand, Up to 5 days suspension. <i>(Demotion may be warranted based on the sensitivity and content of document.)</i>	Up to 10 days suspension. <i>(Demotion may be warranted based on the sensitivity and content of document.)</i>	Demotion. <i>(Dismissal may be warranted based on the sensitivity and content of document.)</i>
16.	Unauthorised disclosure or failure to safeguard and confidential information, documents or records.	Severe reprimand, Up to 5 days suspension. <i>(Demotion may be warranted based on the sensitivity and content of document.)</i>	Up to 10 days suspension, Demotion. <i>(Dismissal may be warranted based on the sensitivity and content of document.)</i>	Dismissal.

NATURE OF MISCONDUCT		RANGE OF PENALTIES		
		First time misconduct	Second time misconduct	Third time misconduct
<b>UNAUTHORISED DISCLOSURE/UNAUTHORISED ACCESS TO CONFIDENTIAL/CLASSIFIED INFORMATION/DOCUMENTS (cont.)</b>				
<b>17.</b>	Unauthorised recording or monitoring of telephone calls, conversations or meetings.	Severe reprimand, Up to 5 days suspension. <i>(Demotion may be warranted based on the sensitivity and nature or content.)</i>	Up to 10 days suspension or demotion. <i>(Dismissal may be warranted based on the sensitivity and nature or content.)</i>	Dismissal.
<b>SECURITY/SAFETY</b>				
<b>18.</b>	Violating or ignoring security regulations.	Reprimand, Severe reprimand.	Severe reprimand, Up to 5 days suspension.	Demotion.
<b>19.</b>	Failure to carry, show or wear Government-issued identification card or credentials <u>where required</u> .	Reprimand, Severe reprimand.	Severe reprimand, Up to 5 days suspension.	Demotion.
<b>20.</b>	Misuse of official identification or investigative credentials or other Government identification card.	Severe reprimand, Up to 5 days suspension. <i>(Dismissal may be warranted based on the outcome and impact from the misuse.)</i>	Up to 10 days suspension, Demotion. <i>(Dismissal may be warranted based on the outcome and impact from the misuse.)</i>	Demotion. <i>(Dismissal may be warranted based on the outcome and impact from the misuse.)</i>

NATURE OF MISCONDUCT		RANGE OF PENALTIES		
		First time misconduct	Second time misconduct	Third time misconduct
<b>SECURITY/SAFETY (cont.)</b>				
21.	Failure to observe precautions for personal safety, such as failure to use safety equipment, failure to use available safety restraints when operating a motor vehicle on official Government business, or ignoring signs, posted rules, fire alarms, or written or verbal safety instructions.	Reprimand, Severe reprimand, Up to 5 days suspension, A formal referral to EAP*.	Up to 10 days suspension, A formal referral to EAP*.	Demotion.
22.	Failure to report personal injury or accident that occurred while operating Government-owned, or rented equipment.	Reprimand, Severe reprimand, Up to 5 days suspension, Surcharge.	Severe reprimand, Up to 10 days suspension, Surcharge.	Surcharge, Demotion.
<b>FALSE INFORMATION/FAILURE TO GIVE INFORMATION</b>				
23.	Making false, unfounded, disparaging, disrespectful, obscene, abusive or other inappropriate statements to, or about, others.	Reprimand, Severe reprimand. a formal referral to EAP*.	Severe Reprimand, Up to 5 days suspension, A formal referral to EAP*, Dismissal.	Demotion.
24.	Unauthorised recording or monitoring of telephone calls, conversations or meetings.	Severe reprimand, Up to 10 days suspension, Dismissal.	Up to 30 days suspension, Dismissal.	Dismissal.

NATURE OF MISCONDUCT		RANGE OF PENALTIES		
		First time misconduct	Second time misconduct	Third time misconduct
<b>GENERAL CONDUCT</b>				
25.	Misuse of Government time, property, personnel, funds or leased services (including but not limited to, computers and systems, fax machines, telephones, mail services, etc.).	Reprimand, Severe reprimand, Up to 5 days suspension, Surcharge.	Severe reprimand, Up to 10 days suspension, Surcharge, Demotion.	Surcharge, Demotion.
26.	Loss of Government property, damage to Government property, or endangering of Government property.	Reprimand, Severe reprimand, Up to 5 days suspension, Surcharge.	Severe reprimand, Up to 5 days suspension, Surcharge, Demotion.	Demotion.
27.	Failure to carry out orders, directions, assignments, etc., given by a line manager.	Reprimand, Severe reprimand, Up to 5 days suspension, A formal referral to EAP*.	Severe reprimand, Up to 10 days suspension, Demotion, A formal referral to EAP*.	Demotion.
28.	Insubordination including non-compliance or refusal to carry out proper orders, directions, assignments, etc., given by a line manager; defiance of authority	Severe reprimand, Up to 5 days suspension, A formal referral to EAP*.	Up to 10 days suspension, A formal referral to EAP*, Demotion.	Demotion. <i>(Dismissal an option depending on the result of the failure the noncompliance or refusal.)</i>
29.	Negligent or careless work performance, including exhibiting behaviour that creates an environment; or inattention to duty.	Reprimand, Severe reprimand, Up to 5 days suspension, A formal referral to EAP*.	Severe reprimand, Up to 10 days suspension, A formal referral to EAP*, Demotion.	Demotion.

NATURE OF MISCONDUCT		RANGE OF PENALTIES		
		First time misconduct	Second time misconduct	Third time misconduct
<b>GENERAL CONDUCT (cont.)</b>				
30.	Betting, gambling or promotion of gambling at the worksite.	Severe reprimand, Up to 5 days suspension, A formal referral to EAP*.	Up to 10 days suspension, A formal referral to EAP*.	Demotion.
31.	Borrowing money and lending money for profit from other officers at the workplace.	Severe reprimand, Up to 5 days suspension, A formal referral to EAP*.	Up to 10 days suspension, A formal referral to EAP*, Demotion.	Demotion.
		<u>Range of penalties if committed by a line manager</u>		
		Severe reprimand, Up to 5 days suspension, A formal referral to EAP*.	Up to 10 days suspension, A formal referral to EAP*, Demotion.	Dismissal.
32.	Failure to report a violation of the law or policies.	Reprimand, Severe reprimand, Up to 5 days suspension.	Severe reprimand, Up to 10 days suspension. <i>(Demotion may be warranted based on the impact of the failure to report.)</i>	Demotion. <i>(Dismissal is a possibility based on the impact of the failure to report.)</i>

NATURE OF MISCONDUCT		RANGE OF PENALTIES		
		First time misconduct	Second time misconduct	Third time misconduct
<b>GENERAL CONDUCT (cont.)</b>				
33.	Concealing or covering up an act that violates Government's policies, laws or procedures.	Severe reprimand, Up to 10 days suspension.	Up to 15 days, Demotion. <i>(Dismissal may be warranted based on the impact of the failure to report.)</i>	Dismissal.
34.	Refusal by the line manager or supervisor to take action when the facts are known and a corrective measure is warranted.	Severe reprimand, Up to 10 days suspension, A formal referral to the EAP*.	Up to 15 days suspension, Demotion, A formal referral to EAP.	Demotion. <i>(Dismissal may be warranted based on the impact of the failure to take action.)</i>
35.	Unauthorised acceptance of gifts.	Reprimand, Severe reprimand.	Severe reprimand, Up to 5 days suspension.	Demotion.
36.	Making unauthorised public statements	Reprimand, Severe reprimand, Up to 5 days suspension. <i>(Dismissal may be warranted if detrimental or inimical to the Service.)</i>	Severe reprimand, Up to 10 days suspension. <i>(Dismissal may be warranted if detrimental or inimical to the Service.)</i>	Demotion. <i>(Dismissal may be warranted if detrimental or inimical to the Service.)</i>

\* Employee Assistance Programme. An officer may be formally referred to the Employee Assistance Programme at any time whilst considering the appropriate penalty to impose based on the officer's misconduct.

**SCHEDULE 2**

[Regulation 47]

**GROSS MISCONDUCT**

Acts Constituting Gross Misconduct.

NB (a) *The Table of Misconducts and Penalties, contains a suggested range of misconducts and penalties. It is a guide to discipline, not a rigid standard. Deviations are allowable for a variety of reasons.*

(b) *Public officers in supervisory positions and those performing safety or security functions are generally expected to demonstrate a higher level of conscientiousness and integrity with respect to their employment. Accordingly, these officers may be subject to more severe levels of discipline for misconduct.*

(c) *A reference in this Schedule to “days” shall be construed as a reference to “working days.”*

NATURE OF MISCONDUCT		RANGE OF PENALTIES	
		First time misconduct	Second time and subsequent misconduct
<b>GROSS MISCONDUCT</b>			
<b>1.</b>	Any conduct which is of a criminal nature shall be dealt with in accordance with the relevant provisions of the Act and these Regulations.		
<b>MISCONDUCT OF A SEXUAL NATURE</b>			
<b>2.</b>	Inappropriate touching of another person’s private parts (to include breasts, buttocks or pelvic area).	Up to 15 days suspension, A formal referral to EAP*.	Demotion, Dismissal.
		<u>Range of penalties if committed by a line manager</u>	
		Up to 30 days suspension, Demotion, A Formal referral to EAP.	Demotion, Dismissal.

NATURE OF MISCONDUCT		RANGE OF PENALTIES	
		First time misconduct	Second time and subsequent misconduct
<b>MISCONDUCT OF A SEXUAL NATURE (cont.)</b>			
<b>3.</b>	Promise of benefit in exchange for sexual favours or threat or act of reprisal for refusal to provide sexual favours.	Up to 15 days suspension, Demotion, A formal referral to EAP.	Demotion, Dismissal.
		<u>Range of penalties if committed by a line manager</u>	
		Up to 30 days suspension, A formal Referral to EAP*, Demotion.	Demotion, Dismissal.
<b>DISORDERLY CONDUCT/VIOLENCE</b>			
<b>4.</b>	Unauthorised possession of a firearm while on Government owned or leased property.	Up to 30 days suspension, A formal referral to EAP, Demotion.	Dismissal.
<b>5.</b>	Unauthorised possession of a weapon other than a firearm while on Government owned or leased property.	Up to 30 days suspension, A formal referral to EAP*, Demotion.	Dismissal.
<b>6.</b>	Fighting, threatening another, or attempting to inflict or inflicting injury to another person; disregarding the safety of others.	Up to 15 days suspension, A formal referral to EAP*, Demotion.	Up to 30 days suspension, Dismissal.

NATURE OF MISCONDUCT		RANGE OF PENALTIES	
		First time misconduct	Second time and subsequent misconduct
<b>ALCOHOL/DRUG OFFENCES</b>			
<b>7. (a)</b>	Use of alcohol while on Government premises or while on duty.	Up to 5 days suspension, A formal referral to EAP*, Demotion.	Up to 10 days suspension, Demotion, Dismissal.
<b>7. (b)</b>	Illegally possessing or using drugs while on Government premises or while on duty.	Up to 10 days suspension, A formal referral to EAP, Demotion.	Demotion, Dismissal.
<b>8. (a)</b>	Reporting to work or being on duty under the influence alcohol which results in unfitness to work.	Up to 10 days suspension, A formal referral to EAP*. <i>(Dismissal may be warranted if personnel or property were endangered or at risk.)</i>	Demotion, Dismissal.
<b>8. (b)</b>	Reporting to work or being on duty under the influence of illicit drugs. which results in unfitness to work.	Up to 10 days suspension, A formal referral to EAP, Demotion. <i>(Dismissal may be warranted if personnel or property were endangered or at risk.)</i>	Demotion, Dismissal.
<b>9.</b>	Positive drug or alcohol test resulting from a medical examination.	Up to 30 days suspension, Dismissal.	Dismissal.

NATURE OF MISCONDUCT		RANGE OF PENALTIES	
		First time misconduct	Second time and subsequent misconduct
<b>FALSE INFORMATION/FAILURE TO GIVE INFORMATION</b>			
10.	Providing/making false, misleading, untruthful statements, or concealing material facts or pertinent information in connection with an official inquiry or investigation.	Up to 30 days suspension, Demotion.	Dismissal.
11.	Refusal or failure to give oral or written statements or testimony in connection with any official inquiry or investigation.	Up to 30 days suspension, Demotion.	Dismissal.
12.	Forging, falsifying, mis-stating or misrepresenting information on Government records, documents, claims, etc., for oneself or another.	Up to 30 days suspension, Demotion	Demotion, Dismissal.
<b>CONTRACTING</b>			
13.	Disclosing or misusing confidential information or classified information officially known and made available to the public, to further private interests or give undue advantage to anyone, or to prejudice the public interest.	Up to 30 days suspension, Surcharge, Demotion.	Demotion, Dismissal.
14.	Directly or indirectly having pecuniary or proprietary interest in any transaction requiring the approval of his/her office.	Up to 30 days suspension, Demotion.	Dismissal.
15.	Owning, controlling, managing or accepting employment as an officer, employee, consultant, counsel, broker, agent, trustee or nominee in any private enterprise regulated, supervised or licensed by his/her office, unless authorised.	Up to 30 days suspension, Demotion.	Dismissal.

NATURE OF MISCONDUCT		RANGE OF PENALTIES	
		NATURE OF MISCONDUCT	RANGE OF PENALTIES
<b>CONTRACTING (cont.)</b>			
<b>16.</b>	Failure to resign from his/her position in the private business enterprise and/or failure to divest him/herself of his/her shareholdings or interest in a private business when a conflict of interest arises within the specified period	Up to 30 days suspension, Demotion.	Dismissal.
<b>GENERAL CONDUCT</b>			
<b>17.</b>	Act of retaliation against a complainant, representative, witness or other person involved in an investigation, proceeding, hearing or other process.	Severe reprimand, Up to 5 days suspension, A formal referral to EAP*. <i>(Dismissal may be warranted if detrimental or inimical to the Service.)</i>	Up to 10 days suspension, A formal referral to EAP*, Demotion. <i>(Dismissal may be warranted if detrimental or inimical to the Service.)</i>
<b>18.</b>	Unauthorised possession of Government's property or another person's personal property.	Up to 10 days suspension, A Formal referral to EAP, Demotion.	Dismissal.
<b>19.</b>	Charging or receiving fees in connection with official duties; unauthorised private interest activity.	Up to 30 days suspension or Demotion. <i>(Dismissal may be warranted if detrimental or inimical to the Service.)</i>	Dismissal.

NATURE OF MISCONDUCT		RANGE OF PENALTIES	
		First time misconduct	Second time and subsequent misconduct
<b>GENERAL CONDUCT (Cont.)</b>			
20.	Inefficiency and incompetence in the performance of official duties.	Up to 10 days suspension, Demotion.	Dismissal.
21.	Unauthorised absence of 10 consecutive workdays.	Dismissal.	
22.	Misuse or authorising the use of Government vehicles unoffical purposes.	Up to 10 days suspension, Demotion.	Dismissal.
<b>POLITICAL ACTIVITIES</b>			
23.	Participating in prohibited political activities(such as canvassing, wearing or displaying political affiliated material)	Up to 10 days suspension, Demotion.	Dismissal.
24.	Subversive activities	Demotion, Dismissal.	Dismissal.
25.	Participating in or encouraging a strike, work stoppage/slowdown, sick out against the Government contrary to the relevant laws. (Labour Code, Trade Unions Act (CAP.300))	Up to 10 days suspension, Dismissal.	Dismissal.

**\* Employee Assistance Programme. An officer may be formally referred to the Employee Assistance Programme at any time whilst considering the appropriate penalty to impose based on the officer's misconduct.**

**SCHEDULE 3**

[Regulation 58]

**OATH/AFFIRMATION OF OFFICE AND CONFIDENTIALITY**

**Oath/Affirmation of Office and Confidentiality for Members of a Commission**

I, \_\_\_\_\_ do hereby sincerely swear (or solemnly affirm) that I will faithfully and honestly execute the duties that devolve upon me by reason of my employment in the Public Service without fear or favour, affection or ill-will and that in execution of that office I will know, uphold and preserved the Constitution of the Virgin Islands.

I further sincerely swear (or solemnly affirm) that I will faithfully and honestly serve the public with integrity, impartiality, and with transparency and uphold the standards of the Public Services' Code of Conduct.

I, \_\_\_\_\_ do swear ( or solemnly affirm) that I will not directly reveal to any unauthorised person, disclose or make known any matters connected with my employment with the Government of the Virgin Islands or matters that come to my knowledge by reason of such employment, and that in all things, I will be a true and faithful Public Service.

So help me God (To be omitted in affirmation).

Sworn/Affirmed before me this \_\_\_ day of \_\_\_\_\_ 20\_\_ .

Made by the Governor this 3<sup>rd</sup> day of July, 2014.

(Sgd.) Boyd McCleary, CMG, CVO,  
Governor.

**VIRGIN ISLANDS**  
**EDUCATION REGULATIONS, 2016**  
**ARRANGEMENT OF REGULATIONS**

*Regulation*

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SCHEDULE

**VIRGIN ISLANDS**

**STATUTORY INSTRUMENT 2016 NO. 37**

**EDUCATION ACT, 2004  
(No. 10 of 2004)**

**EDUCATION REGULATIONS, 2016**

[Gazetted 26<sup>th</sup> May, 2016]

The Minister, with the approval of Cabinet and in exercise of the powers conferred by section 173 of the Education Act, 2004 (No. 10 of 2004), makes these Regulations.

**PART I  
PRELIMINARY**

- Citation.                   **1.**       These Regulations may be cited as the Education Regulations, 2016.
- Interpretation.           **2.**       In these Regulations, unless the context otherwise requires
- No. 10 of 2004           “Act” means the Education Act, 2004;
- “assisted private school” means any private school that is in receipt of assistance under the Act;
- “attainment targets” means in relation to a subject area, pursuant to section 152 of the Act, the attainment target established by the Minister by notice published in the *Gazette*;
- “Board of Management” means a Board appointed under sections 79, 80 or 82 of the Act;
- Cap. 178                   “controlled drug” has the meaning assigned to it in the Drugs (Prevention of Misuse) Act;
- “Department” means the Department of Education;
- “Director of Public Works” means the public officer holding such post in the Public Service of the Territory;

“directory information” means in relation to a student, the name, religious persuasion, telephone number or residential address of the student and his parent;

“gang” means a unit consisting of two or more persons and having identifiable leadership that on an ongoing basis regularly conspires and acts in concert mainly for criminal or disruptive purposes;

“individual educational plan” or “IEP” means a written programme for each student with special education needs;

“instructional time” means

- (a) the time during which students are under instruction or otherwise under the control or supervision of a teacher and includes recess and assembly; and
- (b) does not include time spent by the teacher in marking tests or examination papers, for grading and classifying students, when no students are present or under the supervision or control of the teacher;

“learning outcomes” means, in relation to a subject area, a statement describing the agreed basic depth and breadth of what a student should know and be able to do at the end of each key stage of education and the desirable attitudes that the student should be able to demonstrate or display at the end of each key stage of education;

“learning supports” means the provisions made for students with special needs conditions including learning difficulties, sensory challenges, communication deficiencies, mental health issues, physical problems, and/or disabilities;

“Management Authority” means

- (a) in relation to public schools, the Chief Education Officer or the School Management Committee; and
- (b) in relation to a private or assisted private school, the proprietor or the Board of Management;

“primary school” means a school or department of a school recognised by the Minister as providing full-time primary education;

“proprietor” in relation to a private or assisted private school means any person who maintains that school;

“school building” means a building used in connection with a school;

“school day” means any day that is within the school year other than

- (a) a Saturday, a Sunday or a public holiday; or
- (b) a working day that is within a major school vacation;

“School Management Committee” means a Committee appointed under section 66 of the Act;

“special needs” means the exceptional or unique requirements that are present as a result of a medical, physical, mental, emotional or developmental condition or disability, which must be met by special education;

“student” means a person of any age for whom primary or secondary education is provided under the Act and these Regulations.

Applicability.

- 3.** Except as provided otherwise, these Regulations shall apply
- (a) to the conduct, operations and management of every school;
  - (b) to the students enrolled in or admitted to schools and the parents of such students; and
  - (c) to the principals, deputy and assistant principals, teachers and other staff members of such schools.

**PART II**  
**SCHOOL YEAR, SCHOOL HOLIDAYS AND HOURS OF**  
**SCHOOL**

School year.

- 4. (1)** The school year shall
- (a) commence on the first day of September of one year and end on the thirty-first day of August the following year; and
  - (b) unless otherwise specified by the Minister, consist of not less than one hundred and ninety-five school days divided into three terms and three major

periods of school vacation as set out in Regulation 8.

(2) The principal shall ensure that instructional classes for his school in any school year shall commence not later than the date of the second Monday in the month of September in any calendar year and, unless otherwise specified by the Minister, shall end not later than the date of the second Monday in July in the following calendar year.

School day.

5. (1) Every school shall be in session every school day except during an interruption approved by

- (a) the Minister or the Management Authority acting on behalf of the Minister in the case of a public or assisted private school; or
- (b) the Management Authority in the case of a private school.

(2) The Management Authority shall immediately inform the Chief Education Officer of any interruption of school approved under subregulation (1) (b).

(3) Subject to these Regulations, the school day for a public

- (a) pre-primary school shall commence at 8:40 am and shall end at 3:00 pm with a period of one hour between for lunch; and
- (b) primary or secondary school shall commence at 8:40 am and shall end at 3:30 pm with a period of one hour between for lunch.

(4) Unless otherwise specified by the Minister, the school day shall comprise

- (a) two instructional sessions (referred to as “the morning session” and “the afternoon session” ) for pre-primary schools along with a break of approximately fifteen minutes in the morning session and a ten minute break in the afternoon session; and
- (b) two instructional sessions (referred to as “the morning session” and “the afternoon session” ) for primary schools along with a break of

approximately fifteen minutes in the morning session; and

- (c) five instructional periods for secondary schools along with a fifteen minute break at a given point throughout the day.

(5) Where the school day for a school consists of one instructional session that goes beyond the noon hour, there shall be a break of no less than twenty minutes within that session.

(6) Where a school does not meet the required one hundred and ninety-five school days within the regular time scheduled in the school timetable for the conduct of instructional sessions referred to in these Regulations, due to events organised by the Ministry or the Department, the school shall be exempted from making up such time.

(7) The Minister may direct that the aggregate scheduled instructional time for each class during a school day shall not be less than five hours.

Hours of instruction for private and assisted private schools.

6. (1) The Management Authority of a private school shall, prior to the commencement of the school year and subject to approval by the Minister, determine the commencement and ending of the morning and afternoon sessions in a school day in respect of the school.

- (2) There shall be
  - (a) scheduled instructional time of not less than five hours in each class on a school day; and
  - (b) a break of not less than fifteen minutes during the morning session on each school day,

but students in the Early Childhood Education section of a primary school (Kindergarten to Grade One) may be permitted a second break.

(3) The Minister may, on a written application by the Management Authority, approve in writing different instructional sessions and hours for the commencement of the sessions for assisted private schools.

(4) The application referred to in subregulation (3) shall be addressed to the Chief Education Officer and must contain such information as the Management Authority of the school and the Chief Education Officer may agree to.

Roll call and collective worship.

7. The principal shall ensure that morning assembly, collective worship and roll call shall be conducted within a period of not more than thirty minutes before the commencement of the first instructional session of any school day unless otherwise specified.

School vacations.

8. (1) The school year shall consist of three school terms and one major school vacation at the end of each school term (hereinafter referred to as the Christmas vacation, Easter vacation and Summer vacation respectively).

(2) The Christmas vacation shall commence and end on the dates fixed in each school year by the Minister, and shall consist of Christmas Day, New Year's Day and not less than five but not more than ten working days.

(3) The Easter vacation shall commence immediately after twelve weeks of instruction is completed in the second term and shall not be more than two weeks unless the Minister provides otherwise.

(4) The summer vacation shall commence not later than the second Monday in July and end on the thirty-first day of August in the year, unless the Minister provides otherwise.

**PART III  
RIGHTS AND RESPONSIBILITIES OF STUDENTS  
AND PARENTS**

Responsibilities of students and parents.

9. (1) Every student enrolled at a school shall
- (a) respect and obey these Regulations and the rules of the school and be subject to the discipline of the school;
  - (b) have respect for every person placed in authority over the student;
  - (c) assist in maintaining order and discipline at the school; and
  - (d) use his best endeavours to maintain and promote the objectives and the standards of the school.
- (2) The parent of a student shall

- (a) ensure that the student respects and obeys these Regulations and the rules of the school and be subject to the discipline of the school;
- (b) ensure that the student respects every person set in authority over the student; and
- (c) use his best endeavours to maintain and promote the objectives and the standards of the school.

Rights of students to be recognised.

**10.** The rights of a student pursuant to section 20 of the Act shall be considered as recognised if the student and the parent of such student are respected as human beings and treated as such by the principal, teachers and other students of the school.

Information on curriculum.

**11. (1)** Subject to these Regulations, the principal of a school shall on request provide a parent of a student enrolled in the school with a copy of the school curriculum or programme of studies organised into courses of study being offered to the student at each grade level.

(2) Where an alternate area of study is introduced for an area prescribed in a school curriculum, or a change or addition is made or introduced in accordance with the Act, the principal of the school shall inform the parents of the students affected of such alternative area of study, change or addition.

Written report.

**12. (1)** A parent of a student shall receive at least once every term, a written report respecting the progress and performance of the student signed by the principal or a teacher authorised by the principal.

(2) The report referred to in subregulation (1) must contain

- (a) a summary assessment of the achievement of the student in each subject, a record of attendance and tardiness, and a comment on the overall academic performance, ability and behaviour of the student as the teacher or principal considers noteworthy; and
- (b) in the last term of the school year, an indication of whether or not the student has been promoted to the next grade level.

Access to school policies.

**13.** The principal or a person authorised by the principal shall upon the request of a parent of a student make available to the parent written copies of the policies of the school respecting promotion, school safety, fund-raising, student discipline, student assignments and rewards,

Examination of  
student's education  
records.

and the system of education and other measures for assessment and evaluation of the achievement of students, as determined by the Chief Education Officer.

**14. (1)** A parent of a student enrolled in a school, upon a written request to the principal, is entitled to enter the school premises at any reasonable time to inspect and review the education records of the student required to be kept or otherwise kept by the school.

(2) The principal shall comply with a request for access to records under subregulation (1), within a reasonable time, but no more than thirty days after he has received the request.

(3) If circumstances prevent the parent from exercising the right to inspect and review the education records, the principal shall provide the parent with a copy of the education records requested or make such reasonable arrangements for the parent to inspect and review the education records requested.

(4) The principal, teacher or other person who has access to education records shall not destroy or cause to be destroyed any education records if there is an outstanding request to inspect and review such education records.

(5) Where the parent believes that the education records relating to the student contain information that is incorrect, misleading or in violation of the right of privacy of the student, the parent may ask the principal of the school to amend and correct the education records.

(6) A parent who wishes to make a request under subregulation (5) shall submit the grounds upon which the request is being made and any evidence in support of the grounds.

(7) Notwithstanding subregulations (5) and (6), the principal of a school may, upon a written request from the parent, give that parent an opportunity to have a hearing to challenge the content of the educational records of the student.

(8) Where a request is made under subregulation (5) or (7) to amend or correct an education record, the principal of a school shall, in writing, inform the parent of his decision respecting such request.

(9) Where the principal of a school refuses to amend or correct the education record and the parent is informed of the decision in writing under subregulation (8), the provisions of section 23 (6) and (7) of the Act shall apply *mutatis mutandis*.

Display of school calendar.

**15. (1)** A principal shall at the commencement of the school year display the school calendar on the school notice board.

(2) A principal may, at the commencement of the school year or at such reasonable time, provide a parent of a student enrolled at the school with a copy of the school calendar prepared in accordance with regulation 71 (2).

Communication between parents and teachers.

**16. (1)** Notwithstanding the provisions of these Regulations, a parent of a student enrolled at a school shall use his best endeavours to maintain frequent communication with the school in relation to the academic progress and behaviour of the student.

(2) Without limiting the generality of subregulation (1), parents are encouraged to meet teachers at such times as the school may arrange and make available for such purposes.

Right respecting religious observance.

**17.** The parent of a student may object to participation by the student in religious observances or instructions in a public school or assisted private school if such objection is stated in writing, dated and signed by the parent.

Non-disclosure of student information.

**18. (1)** Subject to this regulation, a principal, teacher or other person having access to the education records of a student shall not disclose information from the education records of a student without the consent of the parent.

(2) Subject to subregulation (4), where a parent requires information from the education records of the student to be disclosed to another person, the parent shall provide a signed and dated written consent in that regard.

(3) The written consent under subregulation (2) shall

- (a) specify the information that may be disclosed;
- (b) state the purpose for the disclosure; and
- (c) identify the person or category of persons to whom the disclosure can be made.

(4) A principal shall upon a written request disclose information from the education records of a student if the disclosure

- (a) is to an official of the school whom the principal has determined to have a legitimate educational interest for which the disclosure is necessary;
- (b) is to the principal of another school where the student seeks or intends to enrol;
- (c) is in connection with financial aid for which the student has applied or which the student has received if the information is necessary to determine eligibility for the aid, the amount of the aid, the conditions for the aid or to enforce the terms and conditions for the aid;
- (d) is to an organisation conducting studies for or on behalf of a school or other educational institution to develop, validate or administer predictive or diagnostic tests or to improve instructions;
- (e) is to an accrediting body to carry out its accrediting functions;
- (f) is to a person in order to comply with a decision of a court of competent jurisdiction;
- (g) is to a person in connection with a health or safety emergency if knowledge of the information is necessary to protect the health or safety of the student or other person;
- (h) is information that the school has designated as directory information to a person determined to have a legitimate interest;
- (i) is to a police officer conducting a criminal investigation in which the student is a suspect.

(5) A principal shall, in respect of students enrolled in the school, maintain a record of every request for personal information from the education records of each student.

(6) The record referred to in subregulation (5) shall, for each request or disclosure, contain

- (a) the parties who received or requested the information; and

- (b) the legitimate interests that the parties have in requesting or obtaining the information.
- (7) Nothing in this regulation shall be construed as prohibiting
- (a) the principal of a school from including in the education records of a student appropriate information concerning disciplinary action taken against the student for conduct that posed a significant risk to the safety or well-being of that student, other students or other members of the school community; or
  - (b) the disclosure of information referred to in paragraph (a) to any teacher or school official whom the school determines to have a legitimate educational interest in the behaviour of the student.

Consent to search.

**19. (1)** Subject to subregulation (2) and regulation 38 (3), where a student is eighteen years of age or older, the rights accorded to, and the consent required of, a parent under the Act and these Regulations shall transfer from the parent to the student who has attained the age of eighteen years.

(2) The consent given by a parent of a student to conduct searches of the student pursuant to the Act and these Regulations shall continue to operate as if that consent were given from the beginning by the student who has attained the age of eighteen years.

#### **PART IV STUDENT COUNCILS AND PARENT TEACHER ASSOCIATIONS**

Student councils.

**20. (1)** Every public and assisted private secondary school shall have a Student Council whose constitution shall be determined by the specific requirements and circumstances of the school.

(2) A person who is not enrolled or admitted as a student of a school is not eligible to membership in the Student Council of the school.

(3) Every Student Council shall elect an executive body from among its members when it exceeds eleven persons.

(4) The constitution of the Student Council of a school shall be submitted to the principal of the school for ratification.

(5) There shall be, in respect of the Student Council of a school, a teacher advisor who shall be a member of the staff of the school.

(6) The meetings of the Student Council may be scheduled on the school timetable.

(7) The frequency of the meetings referred to in subregulation (6) shall be agreed upon between the principal and the executive of the Student Council.

(8) Unscheduled extraordinary meetings may be held with the permission of the principal.

(9) In considering school rules and policies, including issues meriting suspension of students, the Student Council shall be invited by the principal to make a contribution on behalf of the students.

(10) The Student Council shall present the views of the student body to the principal for consideration.

(11) The principal of a school shall, through the Student Council, ensure that opportunities are given for students enrolled at the school to evaluate their teachers and programmes of study.

(12) Subject to this regulation, a Student Council shall determine its rules of procedure.

National  
Student Council  
and its  
responsibilities.

**21. (1)** There shall be a National Student Council made up of not more than two delegates from every Student Council in the Virgin Islands.

(2) The Minister, in consultation with the Chief Education Officer, shall appoint an education officer to represent the Ministry on the National Student Council.

(3) The National Student Council shall have one representative on the National Text-Book Committee.

(4) The Ministry shall mobilise students of the National Student Council to assist in educational projects.

Parent Teacher  
Associations.

**22. (1)** Every Parent Teacher Association at each school shall comprise parents of students currently registered at the school, the principal and teachers of the school and parents of past students with particular expertise who are willing to serve.

(2) The principal of a school shall take the initiative to encourage the formation of a Parent Teacher Association.

(3) The duties and responsibilities of the Parent Teacher Association shall be determined by the specific requirements of the school.

National  
Council of  
Parent Teacher  
Associations.

**23.** (1) The Minister shall encourage the formation of a National Council of Parent Teacher Associations.

(2) The objectives of the National Council of Parent Teacher Associations shall be to

- (a) provide a forum for the discussion of matters of national importance;
- (b) facilitate the implementation of school educational policies within the schools;
- (c) monitor the preservation of standards in the public education system;
- (d) serve as a communication link between parents and the Ministry through the Chief Education Officer.

(3) The National Council of Parent Teacher Associations shall consist of one representative of every Parent Teacher Association.

(4) There shall be an executive body of the Council consisting of not more than fifteen persons elected from among its members and shall determine its rules of procedure.

#### **PART V ENFORCEMENT OF COMPULSORY SCHOOL ATTENDANCE**

Enrolment and  
registration.

**24.** (1) A child who attains the age of five years within six months of the school year in which enrolment is requested shall be eligible to be enrolled in and admitted to a primary school for that school year.

(2) Notwithstanding subregulation (1), a child who has previously been enrolled in a school having an education programme equivalent to a primary or secondary grade in the education programme of the Virgin Islands and has received regular assessment from the school shall be admitted to the appropriate grade as determined by the Chief Education Officer.

(3) Subject to these Regulations, where a child is eligible for admission to a school as a student

Schedule

- (a) the parent shall make an application in Form A set out in the Schedule for enrolment and admission to the school; and
- (b) the student shall not be refused admission to the school except on the grounds that accommodation for that student in that school is not available, or on such other ground as the Minister may approve.

(4) The Chief Education Officer or a person designated by the Chief Education Officer shall discuss with parents of students to be enrolled at the school the provisions of the Act and these Regulations respecting school admission and attendance.

(5) The parent of the student is required to signify on the application form that the provisions of the Act and these Regulations respecting school admission and attendance were discussed with him and that the parent understood what was discussed.

(6) Where the student has previously attended another school, the principal of the school enrolling that student may request the parent and the student to briefly indicate in writing whether or not the student has

- (a) any special need, condition or exceptional performance;
- (b) any past, current or pending disciplinary action;
- (c) any history of behavioural and emotional problems;
- (d) any fees due and owing to the other school;
- (e) any health conditions affecting the student's educational needs.

(7) Where a student is admitted to a school the principal shall cause the name of the student to be entered in the Admission Register and class register required to be kept at the school with such particulars as may be required.

Particulars to be provided with application for enrolment.

**25. (1)** During the application process, the parent or guardian of the student or other responsible person, as the case may be, shall furnish the Department with the following particulars:

- (a) the name of the student;
- (b) the date of application;
- (c) the date of birth of the student, proved by the birth certificate of the student;
- (d) the address of the student;
- (e) the religious persuasion of the student;
- (f) the name, address, occupation and telephone number of the parents;
- (g) immunisation records as proved by a health certificate or a certificate of exemption from immunisation pursuant to regulation 27 (5);
- (h) any known conditions affecting the student's educational needs;
- (i) where applicable, the name of the last school attended and a transfer letter from the principal of that school;
- (j) the date the student left the school referred to in paragraph (i) and the grade reached by the student at the date of leaving;
- (k) where applicable, the particulars referred to in regulation 24 (6).

(2) Notwithstanding subregulation (1) (g), a child in respect of whom admission is sought to a primary school without immunisation records or a certificate of exemption, may be considered for admission if the parent presents a medical certificate indicating that the child has suffered or is suffering from a disease that makes immunisation inadvisable or detrimental.

(3) Where there is a change in the information submitted upon enrolment, the parent or the student shall promptly notify the principal of that change.

**26. (1)** Students who have completed primary education shall matriculate to a public or assisted private secondary school.

Admission.

(2) The Department shall not register more than the number of students determined by space and standards for classrooms as specified by the Ministry through the Chief Education Officer.

(3) No arrangement shall be made between or among schools for automatic entry of students into the system of public education.

(4) Subject to the directions of the Minister, a principal shall in considering applications for admission of children to a public or assisted private secondary school, as far as is practicable, give priority to children of persons resident in the area of the school.

(5) The principal of a primary school may not admit a child to the school unless the principal

(a) verifies the age of the child by reference to the birth certificate of the child bearing the name of the child or such other authentic and credible documentary evidence; and

(b) subject to regulations 25 (2) and 27 (5), is satisfied on the evidence of the immunisation records referred to in regulation 25 (1) (g) that the child is immunised against Tuberculosis, Diphtheria, Pertussis, Tetanus, Hepatitis B, Haemophilus influenzae type B and Meningitis, Poliomyelitis, Measles, Mumps and Rubella.

Persons entitled to be admitted.

**27. (1)** Subject to these Regulations, a child is entitled to be admitted as a student of a school, if that child is

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(a) a child of a person who belongs to the Virgin Islands pursuant to section 2 (2) of the Constitution of the Virgin Islands;

(b) a child of a Foreign or Commonwealth Diplomat or Consular Officer serving in the Virgin Islands;

(c) a child of a person employed in the Virgin Islands by an overseas or regional organisation in which the Government of the Virgin Islands participates;

(d) a child of a person to whom a Certificate of Residence has been granted under the Immigration and Passport Act;

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- (e) a child of a person employed in the service of the Government of the Virgin Islands;
- (f) a child of a serving member of any of her Majesty's Forces on duty in the Virgin Islands;
- (g) a child of a person employed in the service of any Commonwealth country engaged in official duties in the Virgin Islands;
- (h) a child of a person who is ordinarily resident in the Virgin Islands.

(2) A person desirous of bringing a child into the Territory for admission to a school shall

- (a) settle the child's status with the Department of Immigration; and
- (b) contact the Ministry to inquire whether a place is available in a school for the accommodation of the child and about such other matters as might be necessary for the admission of the child into a school.

(3) A parent who conscientiously believes that immunisation by vaccination as required under this regulation is contrary to his personal, philosophical or religious beliefs, may apply not to have his child immunised by filing with the Chief Education Officer an affidavit to that effect and the Chief Education Officer shall immediately submit a copy of the affidavit to the Chief Medical Officer for his consideration and recommendation.

(4) Where the Chief Medical Officer receives a copy of the application made under subregulation (3) and the child is located outside the Territory the Chief Medical Officer may require that medical tests be done before making a recommendation under subregulation (5).

(5) A child on whose behalf an application is made under subregulation (3) is exempt from the requirement to be immunised if

- (a) the Chief Medical Officer recommends such exemption to the Chief Education Officer; and

- (b) the parent making the application receives from the Ministry a certificate of exemption as a conscientious objector on the child's behalf.

(6) Subject to these Regulations, a person who is aggrieved by the decision of a principal to refuse admission of a child may, in writing appeal to the Education Appeal Tribunal, against that decision and the Tribunal shall dispose of the appeal within twenty-one days of the date of the hearing.

(7) For the purposes of this regulation

“ordinarily resident” means that the person has resided in the Virgin Islands for a period of not less than three years immediately preceding the date of the application to admit his child into a school, and that

- (i) the number of days on which he was absent from the Virgin Islands in that three year period does not exceed two hundred and seventy days;
- (ii) the number of days he was absent from the Virgin Islands in the period of twelve months immediately preceding the date of the application does not exceed ninety days; and
- (iii) he was not, at any time during the relevant period of three years, in breach of the immigration laws of the Virgin Islands.

(8) Notwithstanding the definition of “ordinarily resident”, a person shall be deemed to be ordinarily resident in the Virgin Islands where he proves to the satisfaction of the Chief Immigration Officer that he had been absent from the Virgin Islands on the grounds of illness, study, Government service or service in the armed forces of Her Majesty's Government.

Dates and times for enrolment and registration.

**28.** A principal of a school shall, not less than one month prior to the end of the school year, inform the public of the dates for registration and enrolment respecting new admissions to the school.

**29. (1)** Subject to the Act and this regulation, a parent shall ensure that his child, who has attained the compulsory school age, attends school on every school day.

(2) A student shall not be required to attend school and the parent of the student shall not be required to cause the student to attend school if

- (a) any of the requirements mentioned in section 39 (1) of the Act is satisfied; or
- (b) the student is temporarily unable to attend school by reason of an unavoidable cause, and evidence of that fact is provided by the parent or, at the request of a parent, a doctor.

(3) If there is an outbreak in the Territory of a disease referred to in regulation 26 (5) (b), the Minister, on the recommendation of the Chief Medical Officer, shall direct the principal of a school to exclude from attendance at school a child who is not immunised against the disease and to notify the parents of all the children at the school of the outbreak.

(4) Before making a recommendation under subregulation (3), the Chief Medical Officer shall take into consideration such factors as

- (a) the degree to which the outbreak is a threat to a school;
- (b) the likelihood for a child at the school who is not immunised against the disease to be infected as a result of an outbreak of the disease;
- (c) whether a child at the school who is not immunised against the disease presents a danger to the wider school population;
- (d) the availability of control and prevention measures to manage the outbreak; and
- (e) the exact location of the outbreak in the Territory and the likelihood of it being contained in that location until the incubation period of the disease expires.

(5) The parent of a child who has been excluded from attendance at a school as a result of an outbreak shall not return his child to the school

- (a) unless he receives notification from the school that the disease no longer poses a threat; or
- (b) he gets the child immunised and presents to the principal of the school the appropriate immunisation records as proved by a health certificate regarding the child.

(6) The principal shall not allow a child who has been excluded from attendance at school as a result of an outbreak to return to the school until

- (a) the incubation period of the disease expires and the disease no longer poses a threat as shall be indicated by notice in writing by the Chief Medical Officer; or
- (b) appropriate immunisation records as proved by a health certificate regarding the child are presented to the principal.

(7) Where the principal is notified in accordance with subregulation (6) (a) he shall notify the parents of that child that the outbreak no longer poses a threat.

(8) Except as otherwise provided, a student who is absent from school, when the school is in session, shall upon his return to the school furnish the principal through the class teacher in the case of

- (a) a student who is under eighteen years, a written excuse signed by the parent of the student;
- (b) a student who is eighteen years of age or older, a written excuse signed by the student.

(9) A principal shall not retain a student in a public or assisted private secondary school after the end of the school year in which the student shall have reached the age of nineteen years.

(10) Notwithstanding subregulation (9), a student who wishes to be in school for a further period of one year after attaining the age of

nineteen years may make a written request to the Chief Education Officer for permission to do so setting out the reason for his request.

(11) If the Chief Education Officer is satisfied, on a request made under subregulation (10), that it is desirable to allow a student a further period at school, the Chief Education Officer may grant permission in writing allowing a student a further period not exceeding two years to complete his studies at the school.

(12) Before granting the request referred to in subregulation (10), the Chief Education Officer shall consult the principal of the school.

Attendance registers.

**30. (1)** A principal shall ensure that separate attendance registers are kept in respect of teachers and students and the registers shall be available for inspection by an education officer, a member of the Management Authority, the Chief Education Officer or such other person entitled to inspect the registers.

(2) At the commencement of each school year, the name of every student on the roll of the school shall be entered in the attendance register in alphabetical order of surnames according to gender.

Marking of attendance register.

**31. (1)** The roll shall be called and recorded in the attendance register at the beginning of each session.

(2) Attendance shall not be recorded for any student until his attendance has been duly noted and entered in the attendance register.

(3) The classroom teacher shall, every day and in the manner prescribed by the principal, mark the attendance register in respect of that class so as to indicate the students who are present (lateness to be noted), absent (excused or unexcused), sick or suspended.

(4) Where the school day is divided into two instructional sessions, there shall be two markings of the registers to be done in blue or black ink as follows:

(a) a first marking, at the commencement of the morning session; and

(b) a second marking, at the commencement of the afternoon session.

Schools' duties upon student's failure to attend school.

**32. (1)** Where a student fails to attend school without a valid excuse, the principal of the school shall

- (a) in the case of one unexcused absence within one month during the current school year, inform the parent of the student in writing or by telephone of the unexcused absence and of the potential consequences of additional unexcused absences;
- (b) in the case of two or more unexcused absences within one month during the current school year
  - (i) where practicable, schedule a meeting with the parent of the student and the student at a reasonably convenient time for the purpose of discussing the causes of such absences; and
  - (ii) take such steps as the principal considers necessary to eliminate or reduce the absences of the student.

(2) The principal shall report the non-attendance of the student to the relevant school attendance counsellor or education officer as the case may be who shall act in accordance with the provisions of the Act or these Regulations.

(3) Where a student is absent for the whole of a term, the principal shall, subject to subregulation (4), cause the name of the student to be deleted from the attendance register if it is known to the principal that the student has

- (a) gone into employment or wilfully stayed away from school; or
- (b) been admitted to a correctional institution or into another educational institution.

(4) Under subregulation (3), where the student is of compulsory school age, the principal shall consult with the Chief Education Officer before deleting the name of the student from the attendance register.

(5) Where a student whose name has been deleted from the attendance register of a school pursuant to subregulation (3) makes an application in writing for re-admission, the principal

- (a) shall, subject to these Regulations, admit the student if the student is of compulsory school age; or

(b) in any other case, may admit the student.

(6) For the purposes of this regulation, an “unexcused absence” means that the student

(a) has failed to attend the majority of hours or periods in an average school day; and

(b) has not satisfied the statutory requirement for excused absences.

Timetable.

**33. (1)** A principal shall

(a) ensure that a school master timetable and timetable for each class in the school are prepared and ready for implementation from the first day of school in every school year;

(b) ensure that the timetables referred to in paragraph (a) are arranged with due regard to the necessity for recreation or intra-curricula activities;

(c) not later than five days after the first day of the school year furnish the Chief Education Officer with a copy of the timetables for approval.

(2) Subject to these Regulations, the Chief Education Officer or an education officer designated by the Chief Education Officer shall approve the timetables referred to in subregulation (1) with such modifications or recommendations as may be necessary.

(3) Except as otherwise provided, the Chief Education Officer shall ensure that the instructional time allotted on the timetable of

(a) a secondary school to a core subject is not less than three hours per week;

(b) a primary school to a core subject is not less than five hours per week.

(4) Where it is found that the time scheduled for a subject in a timetable is inconsistent with these Regulations or the recommendations of the National Curriculum, the Chief Education Officer or an education officer designated by him shall

- (a) in writing inform the principal of the relevant school of the inconsistency; and
- (b) take such steps so as to address that inconsistency.

(5) The principal shall cause the approved timetables to be posted prominently and conspicuously on the premises of the school.

(6) Notwithstanding the provisions of this regulation, the Minister may approve instructional time of such duration for students receiving special education as the Minister may consider necessary in the circumstances.

Transfer.

**34. (1)** After the commencement of these Regulations, every school shall with the approval of the Minister and subject to section 33 of the Act adopt a policy establishing rational, fair and equitable standards for acceptance and rejection of applications for transfer to the school.

(2) Without prejudice to the generality of subregulation (1), a school shall on an application for transfer release a student to another school that agrees to accept the student if

- (a) a financial, educational, safety, or health condition affecting the student would likely be reasonably improved as a result of the transfer;
- (b) the other school is more accessible to the parent's place of work or place of residence; or
- (c) there is a special hardship or detrimental condition affecting the student that needs to be resolved.

Schedule

(3) A parent of a student or a student who is eighteen years of age or older may request or apply for a transfer in Form B set out in the Schedule

- (a) from the school where the student is enrolled to another school; or
- (b) to a school from a home education programme.

(4) An applicant for a transfer must include in his application the following information

- (a) the name of the student;

- (b) the date of birth of the student;
- (c) the reason for the transfer;
- (d) in the case of a student under eighteen years, evidence of a parent of the student having approved or requested the transfer;
- (e) a statement regarding the conduct of the student;
- (f) a brief statement of the performance of the student;
- (g) the signature of an authorised education officer;
- (h) the signature of the principal of the transferring school; and
- (i) the official stamp of the transferring school.

(5) A principal accepting applications for transfer from students previously attending another school or from students receiving home education shall

- (a) consider all applications equally; and
- (b) provide to each applicant written notification of the acceptance or rejection of the application.

(6) A student attending a public or assisted private secondary school who or whose parent seeks a transfer for him from that school to another school may be accepted or transferred subject to such conditions as may be imposed.

(7) A principal shall not without cause fail to honour a request for a transfer made pursuant to this regulation.

(8) A principal may reject an application by a student for transfer if

- (a) the disciplinary records of the student indicate a history of gang membership, crimes, violent or disruptive behaviour; or
- (b) the student has been suspended from school for more than ten consecutive days or expelled from school.

Children requiring special education.

(9) Where the principal rejects the application for a transfer, he shall provide the applicant with the reason for the rejection.

**35.** (1) When a child attains the compulsory school age and there is reasonable grounds to believe that the child is in need of special education, the parent shall in writing inform the Chief Education Officer of such need.

(2) Where it is determined while attending school that a student requires learning supports, the principal of the school shall inform the Chief Education Officer in writing of such need.

(3) A determination made under subregulation (2) may be as a result of, but not limited to the following:

- (a) a failure to be promoted;
- (b) general failure to develop academically;
- (c) repeated behavioural problems;
- (d) emotional instability;
- (e) physical conditions; or
- (f) failure to get along with others.

(4) When there is information that a student has a need for learning supports and where an evaluation was not conducted, the Chief Education Officer shall ensure that one is done so that where possible the reasons for the supports as well as the forms of supports can be determined, and documented.

(5) An IEP for students requiring learning supports shall be developed by a team of the following persons, using a standard form:

- (a) the parent or guardian of the student;
- (b) the student, where necessary;
- (c) the teacher; and
- (d) any other persons with the appropriate expertise, as may be necessary.

(6) The IEP shall be developed using the following steps:

- (a) the student is evaluated with the input of all relevant stakeholders;
- (b) the need for learning supports clearly identified;
- (c) IEP team meeting is scheduled;
- (d) written IEP is developed, learning supports are provided;
- (e) progress is measured and reports provided to parents;
- (f) IEP is reviewed;
- (g) the student is re-evaluated and plan modified as may be necessary; and
- (h) the process is repeated until there is a change in the status of the student.

(7) The IEP must include:

- (a) the student's name;
- (b) the parents or guardian name;
- (c) contact information for the parent or guardian and student, including a physical address;
- (d) team members names;
- (e) team leader or coordinator;
- (f) short and long term objectives;
- (g) instructional methods;
- (h) list of resources;
- (i) date for review; and
- (j) the assessment methods with accommodation required to measure to student progress.

(8) The principal shall be responsible for ensuring that the IEP is developed and reviewed twice each term, by the team, before Mid-term and at the end of the term.

(9) The IEP shall be part of the student's permanent records and shall move with him through the grades.

(10) The principal is responsible for ensuring that an alternate method of testing or accommodation is provided where it is supported by documentation in the IEP.

(11) Assessment accommodations

(a) should be similar to the classroom so that the student is familiar with the accommodation before using it in a formal testing situation; and

(b) may include presentation accommodations, response accommodations, setting accommodations, and time or scheduling accommodations.

(12) Notwithstanding subregulation (10), alternate testing or accommodation cannot be provided for examinations and tasks, when the student clearly lacks the prerequisite skills or when the alternate testing or accommodation simply provides advantages to the student.

(13) Where a child requires learning supports, it shall be the parent's responsibility to ensure that child is taken to the location where such supports are provided, when this is within an island.

**PART VI  
DISCIPLINE, SUSPENSION AND EXPULSION OF STUDENTS**

Duty of school respecting discipline.

**36. (1)** Every principal and teacher employed at a school shall

(a) ensure the establishment and enforcement of the student disciplinary policy and rules of the school; and

(b) institute ways to observe and monitor violent incidents committed by students enrolled at the school.

(2) Subject to the provisions of these Regulations, every principal and teacher shall while in and out of school use such measures

- (a) to promote and maintain a high level of discipline among students; and
- (b) to set examples in matters of respect for constituted authority, commitment to duty, punctuality, regularity, and exemplary conduct and mode of dress.

(3) In the exercise of discipline or administration of punishment, principals and teachers shall respect the rights of students to be heard in their defence and to be treated with impartiality.

Student disciplinary policy.

**37.** The student disciplinary policy of a public or assisted private school shall be based on

- (a) such rules as the Minister in consultation with the Chief Education Officer may prescribe pursuant to section 54 (1) of the Act;
- (b) the rules approved by the Chief Education Officer pursuant to section 54 (5) of the Act;
- (c) the following principles:
  - (i) discipline is an integral part of education and teaches and promotes the development of integrity, accountability, personal ethics and self-management;
  - (ii) discipline must be fair, equitable and consistent with the goals of education;
  - (iii) suspension and expulsion are acceptable components of discipline administered in the school;
  - (iv) the disciplinary policy must be established or formulated with the participation of the Parent Teacher Association and Student Council of the school;
  - (v) the disciplinary policy must outline appropriate procedures and responses to be used with students;

Searches and actions relating to students involved with drugs etc.

- (vi) the disciplinary policy must be consistently enforced, but must be flexible enough to provide for reasonable adjustment in various circumstances.

**38. (1)** A principal of a school shall ensure that a parent of a student enrolled in or admitted to the school signs a consent form empowering the principal or an authorised person to search the student so as to prevent the entry of controlled drugs, weapons and other prohibited articles or substances of any kind into a school or on the premises of the school.

(2) The parent of every child seeking admission for the child to a school shall signify in writing his consent for the child to be searched by the principal or an authorised person.

(3) Every student who is eighteen years of age or older seeking a transfer to a school shall signify in writing his consent to be searched by the principal or an authorised person.

(4) Where the principal or an authorised person has reasonable grounds to suspect that a student enrolled at the school has on the premises in his possession or on his person a weapon, any controlled drug or other prohibited article or substance, the principal or an authorised person may stop and search the student.

(5) The principal shall ensure that a student is searched by an authorised person having the same gender as the student and that the search is conducted in the presence of at least one other adult person.

(6) Where a controlled drug or other prohibited article or substance is found in the control, custody or possession of a student enrolled at a school, the principal of the school shall

- (a) inform a school security officer and, subject to these Regulations, communicate the information to the parent of the student and to the Chief Education Officer;
- (b) suspend the student pending an investigation into the matter; and
- (c) ensure that the student receives professional counselling.

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(7) Where the principal has reasonable grounds to suspect that a student is a drug user, whether on the school premises or otherwise, or is a drug dealer on the school premises, the principal shall, subject to these Regulations and the Education (Student Code of Conduct) Rules, take such measures so as to ensure that the student is punished or receives professional counselling, or both.

(8) A student who has been disciplined for a controlled drug-related offence at one school shall only be transferred to another school on professional advice and with the agreement of the principals involved.

(9) For the purpose of this regulation, “authorised person” means a police officer, a security officer, a member of staff, or a person authorised by the Chief Education Officer.

Patrols and professional counselling.

**39.** (1) The Chief Education Officer shall, in collaboration with the principal and the police, ensure that

- (a) regular patrols of the premises of a public or assisted private school are conducted; and
- (b) the relevant school is immediately provided with copies of any report made, or is otherwise informed of any action taken in respect of the patrols.

(2) The Chief Education Officer may, in collaboration with the relevant principal, the relevant officers of the Department of Education and the Ministry of Health, provide professional counselling for a student who breaches the provisions of Part V and this Part of these Regulations.

Parents responsible for behaviour of student.

**40.** Subject to the provisions of the Act and these Regulations, the parents of a student enrolled at a school shall be responsible for the conduct of the student and shall co-operate with the school in promoting and maintaining discipline in and out of school.

Withdrawal or expulsion for misbehaviour.

**41.** (1) Subject to these Regulations, a parent of a student or a relevant teacher or principal shall take such action as may be necessary to ensure that a student completes primary and secondary education without interruption.

(2) The principal of a public or assisted private school may in writing

- (a) request a parent of a student to withdraw the student from the school for reason of misbehaviour; or

- (b) recommend to the Chief Education Officer the expulsion of a student from the school for reason of misbehaviour.

(3) A principal shall, when making a request for withdrawal or recommendation for expulsion of a student from the school, ensure that he satisfies the requirements of the Act and these Regulations and the school's rules and policy respecting withdrawal and in particular a principal shall ensure that

- (a) he is entitled to make the request or recommendation;
- (b) the name and age of the student and the nature of the problem that has given rise to the request for withdrawal or recommendation for expulsion is clearly stated;
- (c) the student who is the subject of the request for withdrawal or recommendation for expulsion and the parent of the student are given adequate warning in writing of the behaviour of the student before a request is made for withdrawal or recommendation for expulsion;
- (d) he has discussed the withdrawal or recommendation for expulsion of the student with the parent and student;
- (e) the student who is the subject of the request for withdrawal or recommendation for expulsion has been given an opportunity to be heard;
- (f) he has secured the approval of the Chief Education Officer before withdrawal of the student becomes effective; and
- (g) he has complied with the recommendation or advice, if any, of the Minister.

(4) A parent or student aggrieved by a decision made under this regulation may, subject to Part 10 of the Act, appeal against the decision to the Education Appeal Tribunal.

Investigations and notification by principal.

**42. (1)** A principal of a public or assisted private school shall

- (a) research and investigate the circumstances surrounding any misconduct that would result in suspension or expulsion of a student from school before suspending or recommending the expulsion of the student; and
- (b) facilitate any investigation respecting the misconduct referred to in paragraph (a) that the Chief Education Officer may direct.

(2) Where a student has been suspended or recommended for expulsion, the principal shall within two days of the suspension or recommendation for expulsion forward a full written report respecting the suspension or recommendation for expulsion to the Chief Education Officer and the parent of the student clearly outlining

- (a) the reason or reasons for the suspension or recommendation for expulsion; and
- (b) the results of any investigation conducted pursuant to this regulation.

(3) Where a student is on suspension and an external or school leaving examination in relation to the student is scheduled to be held during the period of suspension, the principal shall permit the student on the school premises in a designated location to write the external or school leaving examination.

Actions by principal respecting gangs.

**43. (1)** For the purposes of this regulation, “undesirable conduct or behavioural patterns that may reasonably be associated with a gang” includes habitual use of offensive language, consumption of alcoholic beverage, involvement in the use of a controlled drug, disrespect for authority and involvement in criminal behaviour in or outside the school premises.

(2) A student shall not display or participate in the display of undesirable conduct or behavioural patterns that may reasonably be associated with a gang.

(3) Subject to these Regulations, the principal of a school may refuse admission to a student, or may suspend or recommend the expulsion of a student

- (a) whose conduct, mode of dress, symbols or other undesirable conduct or behavioural pattern may reasonably be associated with a gang; or

(b) where the undesirable conduct or behavioural patterns referred to in paragraph (a) give rise to a reasonable suspicion that the student belongs to a gang or is involved in gang related activities.

(4) The principal shall, before taking any of the actions referred to in subregulation (3), discuss the undesirable conduct or behavioural pattern necessitating the action with the student and the parent of the student.

(5) Where a student after repeated counselling and warnings continues to display such undesirable conduct or behavioural patterns, the principal may suspend the student from the school or where necessary contact the police.

(6) Where there is no change in behaviour at the end of the period of suspension, the principal after consultation with the Chief Education Officer shall request the parent to permanently withdraw the student from the school, pursuant to these Regulations and the Education (Student Code of Conduct) Rules.

(7) Where a parent fails or refuses to withdraw a student after a request for withdrawal has been made pursuant to subregulation (6), the principal shall recommend to the Chief Education Officer the expulsion of the student.

Approval by Chief Education Officer.

**44.** A student who has been expelled or withdrawn from a public or assisted private school shall not be re-admitted to that school or admitted to any other public or assisted private school without the approval of the Chief Education Officer.

External examinations.

**45. (1)** A school shall be directly responsible to furnish to the local registrar of examinations such information as may be required for the registration for examinations of the student enrolled at the school.

(2) The principal of a public or assisted private secondary school shall not later than the eighth week of the first term in a school year

(a) inform the students preparing to write external examinations during the school year and the parent of such students of the regulations in respect of the administration of the external examinations; and

- (b) convene a meeting with the parents and students referred to in paragraph (a) to discuss the regulations referred to in paragraph (a).

(3) Where a student registered to write external examinations is expelled from a school immediately prior to the date of the commencement of the examinations, the regulations governing the external examinations shall apply.

## **PART VII ADMINISTRATION AND OPERATION OF SCHOOLS**

Management of schools.

**46.** (1) The Management Authority of a school shall be accountable and responsible to the Minister.

(2) The Management Authority of a school shall ensure that

- (a) the school buildings and class rooms are of a satisfactory standard
  - (i) in the case of a public school to the Minister;
  - (ii) in the case of a private or assisted private school to the Minister through the Chief Education Officer;
- (b) the grounds adjoining the school building shall be suitable for the purpose of recreation, where feasible, for the students attending the school;
- (c) the boundaries of the school grounds are established and properly secured;
- (d) a sufficient supply of drinking water is provided with suitable arrangements for the use of the water by students and teachers;
- (e) the school is provided with separate toilets for teachers and students;
- (f) there are separate toilets provided for male and female members of the school community;

- (g) the toilets are constructed and maintained to the satisfaction of the Chief Environmental Health Officer;
- (h) the school is provided with all the requisite furniture and equipment;
- (i) the school building is kept in a state of good repair and proper sanitary condition in accordance with the guidelines set out in the maintenance manual, referred to in regulation 58;
- (j) provision is made for repair and inspection of the school plant;
- (k) provision is made for inspection and verification of all records and registers required to be kept by the principal; and
- (l) the school complies with any other requirements that the Minister through the Chief Education Officer may from time to time direct.

(4) Where recommendations in respect of the management and operations of a private or assisted private school are required to be made under the Act and these Regulations to the Ministry, the Management Authority of the school shall in writing address such recommendations to the Chief Education Officer.

(5) The Management Authority shall not discriminate against persons with regard to appointment, training, employment or discipline on the grounds of politics, religion or any other beliefs that do not adversely affect the rights of any other persons in the school.

(6) The Management Authority of a school shall recognise the rights of the representative body of teachers to represent their respective members at the school.

(7) In discharging its responsibilities, the Management Authority shall take into consideration the various documents used in the governance of the teaching service including the collective agreement with the representative body of the teachers and where applicable, the Teaching Service Commission Regulations and Public Service Commission Regulations.

Management Authority.

**47.** (1) Where a Management Authority is appointed in respect of a public or assisted private school every appointment to the Management Authority shall be published in the *Gazette*.

(2) The Management Authority of a school

(a) shall be responsible for the administration of the institution for which it has been appointed without infringing upon the duties and responsibilities of the principal; and

(b) shall recognise the rights of the representative body of teachers to represent their members at the school.

(3) Any member of the Management Authority may, in the exercise of his functions and duties, visit the school during normal school hours on giving prior notice to the principal.

(4) The Management Authority shall not discriminate against persons with regard to appointment, training, employment or discipline on the grounds of politics, religion or any other beliefs that do not adversely affect the rights of any other person in the school.

(5) In discharging its responsibilities, the Management Authority of a school shall

(a) make such recommendations, as are required to be made under the Act and these Regulations, to the Chief Education Officer;

(b) where applicable, take into consideration the various documents used in the governance and regulation of the teaching profession including

(i) regulations respecting discipline; and

(ii) such collective agreement with the representative body of teachers.

(6) In the exercise of its responsibilities under the Act and these Regulations, the Management Authority of a school shall give due consideration to the political, religious, moral, and such other beliefs of persons in the school as long as such beliefs do not adversely affect the rights of other persons in the school.

Records to be kept.

**48.** (1) The principal of a public or assisted private school shall keep in such form as the Chief Education Officer may approve

- (a) a proper record of official papers including copies of the records required to be kept in respect of every teacher;
  - (b) a register of students;
  - (c) attendance registers for students;
  - (d) attendance registers for teachers and other staff members;
  - (e) a log book, diary or ledger;
  - (f) subject to these Regulations, a cumulative record of every student of the school;
  - (g) a copy of the current school timetable;
  - (h) a copy of the Education Act and any Regulations made under that Act;
  - (i) an inventory of the equipment, furniture, books and other materials;
  - (j) a book for recording punishments for breaches of these Regulations, the Education (Student Code of Conduct) Rules and other rules of the school and for recording any action taken by the school in respect of those breaches; and
  - (k) such other records as the Chief Education Officer may require to be kept.
- (2) The principal shall
- (a) keep separate the records of a teacher from the records of every other teacher required to be kept in subregulation (1) (a); and
  - (b) record in the log book referred to in subregulation (1) (e) every significant event occurring in the daily life of the school.

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Custody and inspection of records.

**49. (1)** Every register, book or other official document or record required to be kept by a public or assisted private school under the Act and these Regulations shall

- (a) be kept in a secure place on the premises of the school; and
- (b) be opened for inspection at all reasonable times during school hours by
  - (i) any member of the Board of Management;
  - (ii) the Permanent Secretary;
  - (iii) the Chief Education Officer; or
  - (iv) a person acting under the authority of the Permanent Secretary or the Chief Education Officer.

(2) For the purposes of security, an electronic version of every register, book or other official document referred to in subregulation (1) shall be kept in a secure place.

Register of students.

**50. (1)** The principal of a school shall, as regards each student enrolled and admitted in the school, cause to be entered in the register of students the following particulars:

- (a) the index number, full name and date of birth of the student;
- (b) the date of admission of the student at the school;
- (c) the name and address of the parent(s);
- (d) the name of the last educational institution (if any) that the student attended and the last date of attendance at that institution;
- (e) the date on which the student ceased to be a student at the school in respect of which the record is kept; and
- (f) the particulars mentioned in section 32 (2) and (3) of the Act.

(2) The accumulative record or information of the students shall be kept

- (a) in permanent hard copy; and

- (b) where an electronic management information system has been introduced, in electronic form, supported by hard copy.

**51. (1)** The Chief Education Officer shall ensure that effective arrangements are made for grade level and ability instruction in accordance with the provisions of the Act.

(2) A principal shall

- (a) be responsible for ensuring that the administration of the instruction programme is performed in accordance with the Act and these Regulations and the National Curriculum;
- (b) be responsible for ensuring that instruction is tied to the students' environmental and life experiences;
- (c) be responsible for ensuring that instruction optimises the development of the students' critical thinking and problem solving skills; and
- (d) be responsible for ensuring that the quality of instruction at all grade level is of a high standard and aims at significantly improving student engagement and achievement and adequately preparing them for the next grade level.

(3) A teacher shall

- (a) be responsible for effective curriculum mapping that promotes critical thinking and active teaching and learning and high levels of student achievement through discovery, investigation, analysis, synthesis, problem solving and evaluation methods;
- (b) be responsible for effective lesson plan design and delivery that promotes critical thinking and active teaching and learning and high levels of student achievement through discovery, investigation, analysis, synthesis, problem solving and evaluation methods;
- (c) employ instructional and classroom management strategies that are in keeping with research-based practice;

- (d) ensure that each student is consistently provided with the best possible instructional opportunity to fully develop in the intellectual, emotional, social, spiritual and physical realms; and
- (e) be responsible for working collaboratively with peers and parents to help assure that each student succeeds educationally and in life.

Guidance  
Counsellors.

**52.** (1) Every school shall have on staff an appropriate number of qualified guidance counsellors.

(2) For the purposes of subregulation (1), an “appropriate number of qualified guidance counsellors” means a ratio of two hundred students to one guidance counsellor.

### **PART VIII CLOSURE AND DISCONTINUANCE OF SCHOOLS AND GRANTS TO ASSISTED PRIVATE SCHOOLS**

Minister may  
direct closure of  
schools.

**53.** (1) The Minister may direct the temporary or permanent closure of a school, if any of the conditions set out in section 36 of the Act have occurred and in the case of

- (a) an assisted private school, if such school does not operate in accordance with the terms of any agreement made in accordance with the Act; or
- (b) a private school, if the permit granted in respect of the private school is revoked pursuant to regulation 65.

(2) The Minister may, on the advice of the Chief Education Officer, cause a school to be closed if the Minister is satisfied that

- (a) the school building is structurally unsafe or dilapidated;
- (b) the school plant is unsanitary and dangerous to health;
- (c) an evacuation or transfer of the population from the area in which the school is located has been effected;

- (d) there is a natural disaster, enemy action, or widespread civil commotion or any other sufficient reason that renders it inadvisable to allow the school to remain open;
- (e) the school is operating in a manner contrary to public welfare;
- (f) the practices and operation of the school are not compatible with national educational goals; or
- (g) in the case of a private school, the school does not provide instructions to its students to a standard that would ensure a reasonable proportion of the students to succeed in recognised public examinations.

(3) The Minister shall not cause a school to be closed pursuant to subregulation (2) (a) unless the Director of Public Works or a competent engineer submits a report referred to in regulation 59 stating that the school building is structurally unsafe or dilapidated.

(4) Where a public or assisted private school is closed temporarily or permanently pursuant to this regulation, the Management Authority and principal of the school shall deliver to the Minister through the Chief Education Officer copies of such records of the institution as the Minister may require.

Notice of intention to discontinue private or assisted private schools.

**54.(1)** Except as otherwise provided in the Act or these Regulations, the Management Authority of a private or assisted private school may not discontinue such a school unless the Management Authority of the school gives the Minister not less than six months notice in writing, or such shorter notice as the Minister may accept, of the intention to discontinue the school.

(2) Where notice of intention to discontinue a school under this regulation is given to the Minister in accordance with subregulation (1), or where such intention otherwise comes to the knowledge of the Minister, the Minister may take such steps as the Minister considers necessary for the continuance of the education of the students in the event of the discontinuance of the school.

Grants to assisted private schools.

**55.(1)** The Minister may grant annually to an assisted private school such sums of money as circumstances may permit.

(2) Money granted pursuant to subregulation (1) shall

- (a) not be disbursed without the authorisation in writing of the Permanent Secretary; and
- (b) be used by the assisted private school exclusively for the purpose for which it is granted.

(3) Where money granted to an assisted private school is misappropriated, the Minister may

- (a) discontinue future grants to the school;
- (b) reduce by the amount misappropriated any future grants made to the school.

Withdrawal of grants.

**56. (1)** The Permanent Secretary may, on the advice of the Chief Education Officer, after consultation with the Management Authority of an assisted private school withdraw public funds from the assisted private school if

- (a) the school fails to comply with any of the provisions of the Act or of these Regulations;
- (b) the Chief Education Officer has reason to believe that
  - (i) the school does not operate in accordance with the terms of an agreement made in accordance with the Act;
  - (ii) the school building is structurally unsafe or in a state of disrepair;
  - (iii) the school does not provide instructions to the standard that would ensure a reasonable proportion of the students at the school to succeed in recognised public examinations;
  - (iv) a school building is not maintained in a proper sanitary condition and in all respects is unfit for the purposes of a school.

(2) Where the assisted private school is permanently closed

- (a) money forming part of the grant that has been disbursed to that school and which is not spent as at the date of closure of that school shall from such

date be deemed a debt due and payable to the Ministry;

- (b) the Permanent Secretary shall
  - (i) not disburse or authorise the disbursement of any grant or part thereof referred to in regulation 55 to the school;
  - (ii) recover from the Management Authority of the assisted private school such money referred to in paragraph (a).

**PART IX  
SCHOOL BUILDINGS AND OTHER RELATED  
ENVIRONMENTAL STANDARDS AND REQUIREMENTS**

Standards  
respecting  
buildings and  
facilities.

**57. (1)** The Management Authority of a school shall ensure that at all times the necessary facilities are provided for the school.

(2) The school buildings, premises and facilities of every school shall conform to standards and satisfy the conditions determined by the Minister and the laws relating to standards of buildings for public use.

(3) The Minister, subject to the advice of the Director of Public Works and the Chief Physical Planner, may from time to time make such decisions relating to specifications, plans, sites, and methods of construction and equipment of school buildings as may, in the opinion of the Minister, be appropriate to the requirements of the level of education that the buildings are intended to support.

(4) The Management Authority of a school shall ensure that every school building constructed before, on or after the date of the commencement of these Regulations is

- (a) at all times maintained in proper sanitary condition and repair in accordance with the approved standards; and
- (b) in all respects, fit for the purpose of a school to the satisfaction of the Minister.

(5) Where a school plant is not maintained in a sanitary condition and repair, or does not fit the purpose of the school to the

satisfaction of the Minister, the Minister may, after consultation with the Management Authority order the school to be closed.

School plant maintenance manual.

**58. (1)** Not later than twelve months after the commencement of these Regulations, the Management Authority of a school shall cause to be prepared and issued to the school a maintenance manual in respect of the school plant.

(2) The maintenance manual must contain and list separately the maintenance activities that must be performed daily, weekly, monthly, quarterly or annually.

(3) The principal may, with the approval of the Management Authority, designate such competent persons who shall from time to time inspect the school plant or any part thereof in order that defects in the school plant may be detected at a very early stage.

(4) Where a teacher employed at a school or a student of the school detects any noticeable defect in the school plant or part of the school plant, the teacher or student, as the case may be, shall report such defect to the principal.

Inspection of school plant for defects.

**59. (1)** The Management Authority of a school shall, for the purpose of detecting structural, electrical or other defects, cause an inspection of the school plant to be made annually or at such times as may be specified in the school plant maintenance manual or from time to time as circumstances may require.

(2) Every inspection referred to in subregulation (1) shall be made by a competent person and every school shall be kept open at all times during school hours for the carrying out of such inspection.

(3) Where an inspection is carried out under subregulation (1), the person conducting the inspection shall within fifteen working days of the conduct of the inspection prepare a report of the inspection and submit a copy of the report

- (a) in the case of a public school to the Management Authority and the principal of the relevant school;
- (b) in the case of any other school, to the Management Authority, the Chief Education Officer and the principal of the relevant school.

(4) The report referred to in subregulation (3) shall specify the defects (if any) observed and such recommendations and actions as may be necessary to deal with the defects.

Use of public  
school buildings.

**60.** (1) The Chief Education Officer shall, not later than six months after the commencement of these Regulations, cause to be prepared guidelines respecting the use of school buildings, premises and facilities of public schools for purposes other than the purposes of the public school.

(2) The guidelines referred to in subregulation (1) must contain a statement setting out the mandatory conditions that must be satisfied.

(3) Without prejudice to the generality of subregulation (2)

- (a) every application for permission to use the buildings, or premises must be made to the Chief Education Officer through the principal of the public school;
- (b) the Management Authority of the public school may charge such fees as it considers fit, but no fees may be charged for the use of the school by the Government, or a Department, Division or Unit of the Government;
- (c) the applicant shall pay the expenses arising from any loss or damage caused to the building, the furniture and fixtures in connection with the use of the premises and where a deposit was requested that deposit may be forfeited;
- (d) the fees under paragraph (b) do not include expenses arising from any loss or damage under paragraph (c);
- (e) the applicant shall
  - (i) be responsible for the cleaning of the school buildings, premises and facilities;
  - (ii) ensure that the school building is ready for school use before the next school day; and

- (iii) comply with such other conditions as the Chief Education Officer may consider necessary.

(4) The Chief Education Officer shall, within ten days of preparation of the guidelines referred to in subregulation (1), furnish every principal of a public school with a copy of such guidelines.

(5) Except with the written approval of the Chief Education Officer, after consultation with the principal, a school building of a public school may not be used for any purpose other than a purpose of the school.

(6) Subject to these Regulations, the Government may use a public school building or its premises for such purposes as may be required by the Government.

(7) A person who is desirous of using the school building, premises or facilities for an event or purpose shall make an application in writing, not later than thirty days prior to the date of the holding of the event, to the Chief Education Officer for the use of the school building, premises or facilities.

(8) Subject to subregulation (9), the Chief Education Officer may on a written application issue a permit in Form C set out in the Schedule to an applicant to use the school buildings, premises or facilities of a public school for

Schedule

- (a) any religious, charitable, educational, recreational, social or civic purpose; or
- (b) the purpose of a political meeting.

(9) Where the buildings of a public school are owned by a religious denomination, the buildings or premises may not be used for any purpose, without the approval of that religious denomination.

(10) Where the Chief Education Officer issues a permit for the use of the school buildings, premises or facilities under this regulation, the Chief Education Officer shall as soon as practicable forward a copy of the permission to the principal of the public school.

(11) The principal of a school may, where he considers it appropriate, seek the assistance of the police in relation to the holding of activities involving members of the public.

Use of open flames prohibited.

**61. (1)** The principal of a school shall not allow any fire or open flame inside a school building except a fire or open flame emitted by a stove, a Bunsen burner, an alcoholic lamp or such other like device required to be used in instructional classes.

(2) Where a barbecue grill or fire is to be used on the premises of the school, the principal shall ensure that the barbecue grill or fire shall be kept at a reasonable distance from the school buildings and outside the reach of students.

(3) The principal of a school shall ensure that electrical connections and extensions and the installation of electrical equipment at and for the school shall be done by a certified electrician.

(4) Except as provided under these Regulations, a person may not on the premises of the school use or possess match bombs or other like incendiary devices that pose a threat to the safety, security and discipline of the students and other persons in the school.

#### **PART X PRIVATE SCHOOLS**

Registration.

Schedule

**62. (1)** An application for a permit to establish a private school or to continue to operate an existing private school shall be made in Form D set out in the Schedule and shall contain the following:

- (a) the name and address of
  - (i) the school and the applicant, if the applicant is not the school;
  - (ii) the proprietor;
  - (iii) the principal;
  - (iv) the person to whom correspondence on matters relating to the school are to be sent;
  - (v) the proprietor or owner of the building in which the business of the school is carried on and the type of tenancy that is applicable;
- (b) the number of students who will be admitted to the school having regard to the age and gender of those students for whom there is accommodation at the school;

- (c) the number of teachers presently employed, or to be employed, at the school and their educational qualifications, and the number that will be employed and their educational qualifications;
- (d) a description of the building referred to in paragraph (a) (v) and its grounds;
- (e) evidence of the need for the school in the community;
- (f) the aims and objectives of the school;
- (g) a statement respecting the philosophy, outcomes, content, scope, and sequence of each subject offered or to be offered at the school;
- (h) an outline of instructional strategies to be used;
- (i) the number of instructors for each subject;
- (j) the list of major learning resources for each subject approved by the proprietor of the school;
- (k) an outline of the evaluation strategies and procedures;
- (l) the fees to be charged;
- (m) the time at which the school day commences and ends including break and lunch periods;
- (n) the subjects and language of instruction and the level to which those subjects are to be taught and the examinations to be taken;
- (o) a description of the accommodation provided, including the number of classrooms, recreation rooms, and separate lavatories for male and female teachers and male and female students, water supply, canteen facilities, and safety measures.

(2) The application shall be accompanied by a non-refundable fee of five hundred dollars.

Display of permit.

**63. (1)** Where a permit is issued to an applicant to operate a private school under section 106 of the Act, the permit holder shall administer and

operate the private school in accordance with the Act, these Regulations and such conditions as the Minister may stipulate in the permit.

- (2) The holder of a permit shall
  - (a) ensure that the permit signed by the Chief Education Officer and the Minister is prominently and conspicuously displayed at all times at the school;
  - (b) keep available at the private school, a copy of the Act, these Regulations and a copy of the permit.

Renewal of permit.

**64. (1)** For the purposes of section 112 (2) of the Act, a permit holder who wishes to renew his permit shall apply in writing to the Minister for such renewal not less than six months before the expiry date of his permit and such applicant shall furnish the information prescribed in regulation 62.

(2) The Minister may in writing request any permit holder who is seeking a renewal under subregulation (1) to furnish him with any register, record, book or relevant document, and the permit holder shall furnish the documents within the time stipulated in the written request.

Revocation of permit.

**65. (1)** Where the Minister has reasonable grounds to believe that a permit holder does not, or fails to operate or manage a private school in accordance with the provisions of regulation 63 (1), the Minister may give the permit holder notice of such failures and such reasonable time as the Minister considers necessary to remedy the failures.

(2) Where after the expiry of the time referred to in subregulation (1) the permit holder fails, or is unable to remedy the failures within the time, the Minister may, subject to subregulation (3), revoke the permit.

(3) The Minister shall not revoke a permit to operate a private school unless the Minister gives a reasonable time to the permit holder to explain why the permit should not be revoked.

Private School Register.

**66.** The Chief Education Officer shall enter in the Private School Register referred to under section 104 (1) of the Act the following particulars as regards each private school issued a permit and registered

- (a) the particulars required to be stated in a permit under section 110 of the Act;

- (b) the name and particulars of the principal of the private school;
- (c) the day the permit is issued;
- (d) the particulars of any notice served on the proprietor of the private school under section 117 of the Act;
- (e) the particulars of any modification, transfer or revocation of the permit or cancellation of the registration of the private school;
- (f) the particulars of any conviction of a permit holder for breach of the Act or these Regulations.

**PART XI**  
**PROFESSIONAL DUTIES AND RESPONSIBILITIES OF**  
**TEACHERS AND PRINCIPALS**

Responsibility  
to observe  
Regulations and  
rules.

**67. (1)** Every teacher employed at a school and other staff members shall

- (a) conform to these Regulations and the rules of the school;
- (b) support the principal in maintaining and enforcing these Regulations and the rules of the school;
- (c) obey the lawful instructions and directions of the principal and such other person who may be placed in authority over the teacher including the deputy principal, the assistant principal and the head of department;
- (d) as soon as practicable, communicate to the principal any abuses or impropriety respecting the Act, these Regulations and the school rules.

(2) Where a teacher employed at a school or other staff member has reasonable grounds to believe that misconduct, abuse or impropriety respecting the provisions of the Act, these Regulations or school rules has occurred, the teacher or staff members shall, as soon as practicable, communicate that belief to the principal.

(3) The principal may investigate or cause an investigation to be conducted in respect of any communication received pursuant to subregulation (2).

(4) The principal of a public school or assisted private school may, in writing, bring a case of misconduct, abuse or impropriety, which has been investigated, to the notice of the Chief Education Officer within such time as the urgency of the case requires.

(5) The Chief Education Officer shall

- (a) co-operate with, and provide support to, the principal of a school in the effort to promote the efficiency of the school; and
- (b) cause to be made such inquiry into any allegation of misconduct, abuse or impropriety notified to him in accordance with this regulation.

Rights and professional duties of teachers.

**68. (1)** A teacher shall, in respect of the enjoyment of the rights set out in section 144 of the Act, have

- (a) the right to appeal to the Teaching Service Commission, in accordance with the Public Service Commission Regulations appeal procedure, where disciplinary action has been recommended by the principal, Chief Education Officer or the Permanent Secretary against him;
- (b) the right to institute legal action against any person on a matter arising out of the execution of his duties, on condition that permission is first sought and received from the Teaching Service Commission to proceed with the action;
- (c) the right to be given legal representation by the Ministry in a civil or criminal proceeding arising out of the execution of his duties;
- (d) the right to lodge a report to the Ministry against a fellow teacher, the principal of the school, the deputy principal, the assistant principal, the Chief Education Officer or other official of the Ministry, a member of the public on any matter arising out of the execution of his professional duties.

(2) As regards the exercise of the professional duties set out in section 146 of the Act, it shall be the duty of a teacher employed at a public or assisted private school to

- (a) report to the principal, or in the absence of the principal, the deputy principal or the assistant principal, any unauthorised activity such as the unauthorised presence of persons on the premises of the school that appears likely to disrupt or threaten the safety or security of school personnel or property;
- (b) attend instructional planning sessions or other school related activities as may be determined by the principal, the Chief Education Officer or any such persons authorised by the Chief Education Officer;
- (c) seek, in the prescribed form and through the principal, the permission of the Chief Education Officer to travel overseas;
- (d) make adequate preparation for each school day including the preparation of the work to be done in his class and teaching of such subjects as may be assigned to him;
- (e) comply with the policy guidelines referred to in regulation 69;
- (f) participate in extra-curricula activities of the school.

Development of  
policy  
guidelines.

**69. (1)** Every school shall prepare and adhere to a written statement of the policies and procedures to be used by the principal and staff in relation to disciplining of students enrolled at the school, promotion, graduation, school safety, school trips and fund-raising.

(2) Every teacher employed at a public or assisted private school shall assist the school in developing and preparing the policy guidelines and procedures of the school respecting student discipline, promotion, graduation, school safety, school trips and fund-raising.

(3) A teacher employed at a school may participate in preparing a written statement respecting the system of instruction and techniques respecting assessment and evaluation of students at the school.

(4) A written statement of the policies and procedures referred to in this regulation and the school rules made under the Act shall not come into effect unless approved in writing by the Chief Education Officer.

Learning  
outcomes.

**70. (1)** A principal shall make available to a student of the school and his parent the expected learning outcomes to be met at the end of a grade or division in the school by the end of the first term of each school year.

(2) A principal of a school shall develop special assistance programmes for students who do not or who the school has reason to believe would not meet some of the expected learning outcomes at the end of a grade or division in the school.

(3) Where the principal determines that a student has not or would not be able to meet the expected learning outcomes of his grade or division, the principal shall recommend to the parent that the student undergoes relevant remedial work in a special assistance programme referred to in subregulation (2).

School  
calendar.

**71. (1)** The Ministry shall circulate an annual Calendar of Activities at the beginning of the school year for public or assisted private schools, on which shall be indicated the dates of the beginning and ending of instructional sessions for each year, the dates for school vacations and school holidays and other relevant activities.

(2) The principal shall, before the commencement of a school year, develop and prepare a calendar for the school year on which shall be indicated

- (a) the beginning and ending of each term during the school year;
- (b) the school vacation periods for the school year;
- (c) the dates for the end of term examinations and other major school examinations;
- (d) the proposed dates for the commencement and ending of external examinations;
- (e) the dates for school annual graduation and other major ceremonies;
- (f) the dates for the submission of applications for admission to the school;

- (g) the dates for activities respecting the professional development of members of staff, and
- (h) such other academic and non-academic activities for the school year.

(3) The principal of every school shall, not later than the last day of the sixth week of the first term of every school year, forward a copy of the school calendar to the Chief Education Officer.

Teaching and learning plans.

**72.** (1) A teacher shall develop and prepare appropriate teaching and learning plans for each subject and class as may be assigned to him to teach in any school year.

(2) Except as otherwise provided, every teacher shall present the teaching and learning plans developed and prepared pursuant to this regulation to the principal at such times as the principal may consider necessary.

Annual reports.

**73.** (1) Every class teacher shall prepare and submit to the principal of the school an annual report in respect of each student in his class during the school year as regards the promotion and entitlement of the student to awards and receipt of awards.

(2) The class teacher shall in the preparation of the annual report consult with such members of the staff as he considers necessary and information received during such consultations shall be confidential.

- (3) The principal of a public or assisted private school shall
  - (a) in such form as the Chief Education Officer may prescribe prepare an annual report in respect of the management and operations of the school for each school year; and
  - (b) not later than the last day of the sixth week of the first term of the school year immediately following the school year referred to in paragraph (a), forward a copy of the annual report to the Chief Education Officer.

Conflict of interest.

**74.** (1) Every teacher shall arrange his private interests in a manner that will prevent a conflict of interest in the discharge of his professional duties.

(2) Without prejudice to the generality of subregulation (1), a teacher in the discharge of his professional duties

- (a) shall perform his duties and functions impartially, responsibly, diligently, efficiently and with integrity;
- (b) shall not for his personal use solicit or accept directly or indirectly a fee, gift or benefit from a person or organisation that has dealings with the school;
- (c) shall not use or benefit from the use of the property or services of the school except in the course of performance of his duties and functions and otherwise only to the extent that a member of the public may use or benefit from such property or services.

Dress code for teachers and principals.

75. (1) Every teacher and principal shall, in relation to dress

- (a) respect the acceptable standard in relation to dress code;
- (b) set the acceptable standard that students ought to emulate;
- (c) be neat, modest and well-groomed; and
- (d) not wear garments that allow undue exposure.

(2) Subject to subregulation (6), the principal of a school

- (a) shall ensure that every teacher employed at the school respects the acceptable standard in relation to dress code; and
- (b) shall not permit a teacher while at work during the school hours to wear a T-shirt as the outer clothing, jeans, slippers, head covering, or sleeveless shirts.

(3) Where a teacher reports to work and is dressed in a manner contrary to this regulation, the principal shall not permit the teacher to teach and that teacher shall be permitted to return home for a change of dress.

(4) Where a teacher persists in disregarding the acceptable dress code, the principal shall in writing report the matter to the Chief

Education Officer who may refer the matter to the Teaching Service Commission for disciplinary action.

(5) Where a principal of a school makes a report under subregulation (4), the principal shall not later than twenty four hours after the making of the report deliver or cause a copy of such report to be delivered to the teacher concerned.

(6) Notwithstanding subregulations (1) and (2), the principal may allow the wearing of jeans, head coverings or T-shirts in special circumstances or for specific school activities, events or functions.

Duties of  
deputy principal  
of secondary  
schools.

**76. (1)** Subject to the approval of the Permanent Secretary, a deputy principal of a public or assisted private secondary school shall be appointed on the recommendation of the principal, who shall provide supporting information to the Permanent Secretary.

(2) A deputy principal of a public or assisted private secondary school shall

- (a) in the absence or inability of the principal of the school to function, perform the functions of the principal;
- (b) assist the principal of the school
  - (i) with the discipline of students;
  - (ii) in the administration and organisation of the school and the activities of the school; and
  - (iii) in preparing a roster for the supervision of students when a teacher is absent or the timetable is interrupted for any reason;
- (c) advise the principal of the school on academic policies and discipline of students;
- (d) prepare the staff duty list as may be required;
- (e) oversee the arrangements required to be made in respect of internal and external examinations arrangements as regards the timetable, preparation of facilities, inspection and storage of internal papers, invigilation, delivery of answer papers to the appropriate persons, and such other related activities;

- (f) teach such classes and subjects and undertake such other duties as the principal of the school may assign to him.

Heads of departments of secondary schools.

**77.** A head of department of a public or assisted private secondary school shall in addition to his other teaching duties

- (a) develop or assist in developing the curriculum in respect of the subjects within the portfolio of his department;
- (b) advise the principal of the school on the choice of textbooks and other educational or instructional material and equipment;
- (c) arrange and conduct such departmental meetings as may be necessary;
- (d) advise the members of his department on the choice or methods of teaching in relation to a subject within the department;
- (e) assist the principal of the school on matters relating to recruitment and training of staff for the department;
- (f) conduct staff development activities as may be required.

## **PART XII GENERAL**

Mode of dress of students.  
S.I. No. 24 of 2006

**78. (1)** Subject to the Act, these Regulations and the Education (Student Code of Conduct) Rules, the mode of dress in relation to school attendance of students enrolled in a school shall be determined by the school and set out in the rules of the school.

(2) Every principal of a public or assisted private school shall consult with the Chief Education Officer in determining the uniforms to be used by the students at the school.

Records.

**79. (1)** The principal of a school shall, in respect of students at the school, keep for inspection by the Minister or the Chief Education Officer, or any other person authorised in writing by the Minister or the Chief

Education Officer, the following records which shall be kept in electronic and permanent hard copy:

- (a) an admission register of students;
- (b) an attendance register of students;
- (c) mid-term, term and annual progress reports respecting students;
- (d) a log book or diary;
- (e) a visitors' book;
- (f) subject curriculum;
- (g) schemes of work books and daily lesson plans;
- (h) an inventory book in which shall be recorded school books and other school material as may be supplied to a student;
- (i) a punishment record;
- (j) an inventory of all furniture and other school equipment.

(2) The principal of a school shall, in such form as the Management Authority of the school may direct, keep and maintain a permanent record of every student enrolled in or admitted to the school in respect of

- (a) the name, address and telephone number of the student;
- (b) the attendance record and academic performance of the student;
- (c) the grade completed by the student; and
- (d) the year in which the student graduated or otherwise left the school.

(3) For the purposes of this regulation "punishment record" means a book or an electronic record for recording actions taken by the school against students for misconduct.

Awards and graduations.

**80.** The principal of a public or assisted private school may hold an annual prize-giving or graduation ceremony, the date of which shall be determined by the principal after consultation with the Chief Education Officer or, where applicable, the Management Authority of the school.

Books, teaching aids and materials.

**81. (1)** The Minister, in consultation with the Chief Education Officer shall, utilising a participatory approach involving teachers, curriculum officers and subject specialists at all levels, prescribe the text books to be used during a four year period.

(2) Subject to the provisions of the Act, the Ministry, in consultation with the Chief Education Officer, shall from time to time

- (a) issue the core booklist for schools;
- (b) provide to each public school teaching aids, materials, supplies and other equipment; and
- (c) supply, repair and maintain equipment,

as may be required to conduct the prescribed school programme in classrooms, school libraries, laboratories, art rooms and such other area in which the school programme or portion of the programme is conducted.

(3) Any teaching aids, materials, supplies and equipment

- (a) that is referred to in subregulation (2) (b);
- (b) that is given by an individual, non-governmental organisation, agency or company from the private sector,

shall be the property of the Ministry and shall be for the use of the students enrolled in the school.

(4) A person may not sell, buy, rent, trade in or destroy in any way whatsoever any book, teaching aid, supplies, materials or related material provided under this regulation.

Organisation of fund-raising activities.

**82. (1)** Except as approved in writing by the Chief Education Officer or as may be otherwise provided, every school activity organised by a public or assisted private school in which students of the school are required to participate shall

- (a) in the case of a primary school, end at or before 7:00 p.m.; and
- (b) in the case of a secondary school, end not later than 8:00 p.m.

(2) Every planning committee respecting any fund-raising activity organised by the staff, student or Parent Teacher Association shall comprise at least the principal or a member of staff of at least five years standing as a teacher designated by the principal.

(3) The principal of a school shall, not less than one month prior to the submission of the proposals respecting a fund-raising activity for approval by the Management Authority of the school, discuss such proposals with the Chief Education Officer.

(4) The school shall ensure that invitations to a fund-raising activity to be held pursuant to these Regulations are by tickets or such other form of document so as not to exceed the permitted capacity of the venue to be used for the holding of the activity, function or event.

(5) Where a fund-raising activity involves

- (a) the entire student body of the school, the teachers employed at that school shall attend in order to assist in the supervision of the students;
- (b) the participation of both male and female students but not the entire student body of the school, teachers of both genders where practicable shall attend the activity.

No. 1 of 1997

(6) Subject to section 301 of the Criminal Code, 1997, every ticket or sheet in relation to a raffle, sponsored walk or such other fund-raising activity or any other document issued by the school in relation to a fund-raising activity shall bear the stamp of the school, which shall be authenticated by the signature of the principal of the school.

(7) The school shall ensure that students do not during school hours frequent public places to solicit sponsorship or to conduct any fund-raising activity.

(8) The principal of a school shall ensure that, not later than one month after the holding of a fund-raising activity by the school, a financial statement in respect of the fund-raising activity is presented in

such form as the Management Authority may prescribe to the staff and Parent Teacher Association of the school.

Alcoholic beverages and other items prohibited.

**83.** (1) A person, being on the premises of a school shall not sell, buy, trade in or consume any alcoholic beverage.

(2) A person shall not, at the venue where a fund-raising activity is held under these Regulations, sell or serve drinks in a glass container or bottle.

(3) The principal of a school shall ensure that alcoholic beverages are not sold, bought, served, consumed or brought on the school premises during the staging of any function organised for and on behalf of the school by the staff, Parent Teachers Association or such other group affiliated to or associated with the school.

(4) A teacher who participates in any school activity involving students shall, for the duration of that activity and while in the presence of the students, refrain from

(a) smoking any substance; or

(b) drinking any alcoholic beverage.

(5) The principal of a school shall discourage students from selling their personal items during any fund-raising activity.

Fees.

**84.** (1) Subject to subregulation (2), a principal of a public or assisted private school, with the approval of the Minister, may charge and collect fees to cover expenses incurred in the administration of the school.

(2) The proprietor of a private or assisted private school shall not increase fees or charge new fees without the approval of the Minister.

(3) Where a proprietor of a private or assisted private school intends to increase the fees at the school, after receiving approval from the Minister, the proprietor of the school shall give at least one term's notice in writing to the Ministry and to the parents of the students of his intention to increase the fees respecting the school.

(4) The principal of a public or assisted private school shall, in establishing the quantum of any fee to be charged or collected, adopt rules for waiving and reducing the fee in cases of a student whose parents, by reason of their low income or financial status, would have difficulty in paying the entire amount of such fee.

Complaints and investigations.

- (5) Notwithstanding the provisions of this regulation
  - (a) where a student or parent of the student requires a copy of a document in the control and possession of the school, the principal of the school shall, where practicable, furnish a copy of the document at a cost not greater than the cost of printing the copy of the document;
  - (b) the principal of a public or assisted private school may, on the basis of a resolution adopted at a General Meeting of the Parent Teachers Association called for the purpose of increasing fees charged and collected by the school and supported by a majority vote of members present and voting, increase such fees.

**85. (1)** Where a teacher, principal, education officer, parent or student who is eighteen years of age or older has reason to believe that a person other than the Chief Education Officer has acted in a manner contrary to the Act or these Regulations, the teacher, principal, education officer, parent or student may file a written complaint with the Chief Education Officer regarding the act.

(2) The complaint filed must contain the reasons that caused the complainant to believe that the contravention complained of under subregulation (1) has occurred.

(3) Subject to subregulations (5) and (6), the Chief Education Officer shall, within two weeks from the date of receipt of the complaint and upon giving notice in writing to

- (a) the complainant; and
- (b) the person against whom the complaint is filed,

cause an investigation to be conducted of the alleged violation that is the subject of the complaint.

(4) The notice referred to in subregulation (3) must contain the substance of the alleged violation and a request to the person referred to in paragraph (b) of that subregulation for a written response to the complaint.

(5) The Chief Education Officer shall not initiate an investigation under this regulation

- (a) if the complaint is not in writing;

- (b) if the complaint is not filed within thirty days immediately after the date of the alleged violation or of the date that the complainant knew or reasonable should have known of the alleged violation; and
- (c) unless he is satisfied that the complainant has made the necessary efforts to have the matter that is the subject of the complaint resolved by the relevant school or education officer as the case may be.

(6) The procedure set out in the Teaching Service Commission Regulations and Public Service Commission Regulations for the conduct of an investigation respecting misconduct by public officers shall apply *mutatis mutandis* in the case of an investigation under these Regulations.

Appeals.

**86.** Subject to provisions in these Regulations respecting appeals to the Education Appeal Tribunal, every appeal of a decision made under the Act or these Regulations shall be in writing and addressed to the secretary of the Tribunal and filed any time within fourteen days

- (a) after the date of the decision; or
- (b) of the date that the appellant knew or reasonably should have known of the decision.

Revocation.  
S.I. 20 /1987

**87.** The Education Regulations, 1987 are revoked.

**SCHEDULE**

[Regulation 24 (3) (a)]

**FORM A**

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**STUDENT ENROLMENT APPLICATION FORM**

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1.	Full name of student											
2.	Date of birth (to be accompanied with valid birth certificate of the student)											
3.	Residence of the student											
4.	Full name of parent											
5.	Residence of parent											
6.	Occupation of parent											
7.	Telephone number(s) of parent											
8.	Religious persuasion of the student											
9.	Immunisation records as proved by a health certificate, a certificate of exemption from immunisation, or a medical certificate											
10.	Any disabilities or conditions affecting the student's educational needs											
11.	Name of last school attended and the transfer letter from the principal of that school (where applicable)											
12.	Date student left last school (where applicable)											
13.	The grade reached by the student at the date of leaving (where applicable)											
14.	Reason for transfer (transfer student only)											
15.	Indicate (where applicable) whether the student has any:  (a) history of placement in special education (b) past, current or pending disciplinary action (c) history of undesirable, violent or disruptive conduct or behaviour (d) fees due and owing to the other school (e) health conditions affecting the student's educational needs	<table border="0"> <tr> <td><input type="checkbox"/> Yes</td> <td><input type="checkbox"/> No</td> </tr> </table> <p>If yes, give details</p>	<input type="checkbox"/> Yes	<input type="checkbox"/> No								
<input type="checkbox"/> Yes	<input type="checkbox"/> No											
<input type="checkbox"/> Yes	<input type="checkbox"/> No											
<input type="checkbox"/> Yes	<input type="checkbox"/> No											
<input type="checkbox"/> Yes	<input type="checkbox"/> No											
<input type="checkbox"/> Yes	<input type="checkbox"/> No											
16.	Date of registration											
17.	Parent's signature											
18.	Date of application											
19.	Principal's signature											

This form is to be completed in triplicate and a copy for each of the following:

- One copy for parent     
  One copy for school     
  One copy for Chief Education Officer

**FORM B****SCHOOL TRANSFER APPLICATION FORM**

I \_\_\_\_\_ wish to apply for a transfer in favour of \_\_\_\_\_.  
(name of parent) (name of student)

1.	Full name of student	
2.	Date of birth of student	
3.	Current school/home based education	
4.	Evidence of parent of the student having approved or requested the transfer (where student under eighteen years)	
5.	A statement regarding conduct of student	
6.	A statement of the student's academic performance	
7.	Transfer school	
8.	Reason(s) for seeking transfer	
9.	Signature of principal of transferring school	
10.	Signature of authorised education officer	
11.	Official stamp of transferring school	

\_\_\_\_\_  
Signature of applicant

\_\_\_\_\_  
Date

**FORM C**

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**FORM OF PERMIT TO USE PUBLIC SCHOOL BUILDINGS, PREMISES OR FACILITIES**

1. Permission is hereby given to \_\_\_\_\_ to use the  
(Hereinafter referred to as the applicant)  
building, premises or facilities of the \_\_\_\_\_  
(Name of School)  
situated at \_\_\_\_\_, subject to the Education Act and  
Regulations made under the Act.
2. The applicant is permitted to use the building, premises or facilities of the school for the purpose of -
- (a) Meeting
  - (b) Workshop/Conference
  - (c) Wedding
  - (d) Fair
  - (e) Bar-B-Q
  - (f) Other function (Specify) \_\_\_\_\_
3. This permit is issued subject to the following terms and conditions:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
4. This permit is valid for a period of: \_\_\_\_\_
5. Expiry Date: \_\_\_\_\_





Telephone No(s): \_\_\_\_\_ Fax No: \_\_\_\_\_

Email address: \_\_\_\_\_

8. Name(s) of owner of school building: \_\_\_\_\_

Address of owner of school building: \_\_\_\_\_

**School Property**

9 Type of ownership - (Tick appropriate box)  
 Sole Ownership       Joint Tenancy       Tenancy in Common

10. Address and description of the location where school is to be established:

\_\_\_\_\_  
\_\_\_\_\_  
(Description to include approximate size of the school premises)

**Information on School**

11. Evidence of the need for the school in the community: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

12. The aims and objectives of the school: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

13. Short and concise statements respecting the following- the philosophy, outcomes, content, scope and sequence of each subject offered or to be offered at the school (School Curriculum or Programme to be attached):

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

14. Outline of the evaluation strategies used or to be used: \_\_\_\_\_

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15. Number of instructors/teachers for each subject: \_\_\_\_\_

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16. List of major learning resources for each subject: \_\_\_\_\_

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17. An outline of the evaluation methods and procedure adopted or to be adopted at the school: \_\_\_\_\_

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18. Allotment of time during school day -

**Primary School**

Commencement of school day: \_\_\_\_\_

Break time(s): \_\_\_\_\_

Lunch time: \_\_\_\_\_

End of school day: \_\_\_\_\_

**Secondary School**

Commencement of school day: \_\_\_\_\_

Break time(s): \_\_\_\_\_

Lunch time: \_\_\_\_\_

End of school day: \_\_\_\_\_

19. Subjects and Examinations -

**Primary School**

Language of instruction: \_\_\_\_\_

Subjects taught or to be taught	Level
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

Type(s) of examination taken or to be taken \_\_\_\_\_ at what level examination taken or to be taken \_\_\_\_\_.

**Secondary School**

Language of instruction: \_\_\_\_\_

Subjects taught or to be taught	Level
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

Type(s) of examination taken or to be taken \_\_\_\_\_ at what level examination taken or to be taken \_\_\_\_\_.

20. Description of the accommodation provided or to be provided -

- (a) Number of classrooms: \_\_\_\_\_
- (b) Number of recreational rooms: \_\_\_\_\_
- (c) Number of lavatories: \_\_\_\_\_

<b>Teachers</b>	<b>Students</b>
Male _____	Male _____
Female _____	Female _____

21. Means of maintaining discipline: \_\_\_\_\_  
(Attach rules of conduct discipline)

**Background of Proprietor & Principal**

22. Has the Proprietor, within the last three years preceding the application, ever -

- (a) been convicted of an offence under the Act: \_\_\_\_\_
- (b) pleaded guilty to an offence under the Act: \_\_\_\_\_
- (c) been convicted of a criminal offence committed in relation to the operation of a private school: \_\_\_\_\_

If yes, state particulars, as follows –

Place: \_\_\_\_\_  
Offence: \_\_\_\_\_  
Date: \_\_\_\_\_  
Sentence: \_\_\_\_\_

23. Has the principal, within the last three years preceding the application, ever -

- (a) been convicted of an offence under the Act: \_\_\_\_\_
- (b) pleaded guilty to an offence under the Act: \_\_\_\_\_
- (c) been convicted of a criminal offence committed in relation to the operation of a private school: \_\_\_\_\_.

If yes, state particulars, as follows -

Place: \_\_\_\_\_  
Offence: \_\_\_\_\_  
Date: \_\_\_\_\_  
Sentence: \_\_\_\_\_

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**For OFFICIAL USE ONLY**

- Application No: \_\_\_\_\_
- Fee of five hundred dollars received: \_\_\_\_\_
- Date Received: \_\_\_\_\_, 20 .
- Approved  Rejected
- Permit valid to: \_\_\_\_\_, 20 .

Comments: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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Minister of Education

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Date

Made by the Minister this 12<sup>th</sup> day of May, 2016.

(Sgd.) Myron V. Walwyn  
Minister for Education and Culture.

**VIRGIN ISLANDS**  
**PUBLIC FINANCE MANAGEMENT (AMENDMENT) REGULATIONS,**  
**2020**

**ARRANGEMENT OF REGULATIONS**

*Regulation*

1. Citation.
2. Regulation 170 amended.

**VIRGIN ISLANDS**

**STATUTORY INSTRUMENT 2020 NO. 110**

**PUBLIC FINANCE MANAGEMENT ACT, 2004  
(No. 2 of 2004)**

**Public Finance Management (Amendment) Regulations, 2020**

[Gazetted 24<sup>th</sup> September, 2020]

The Cabinet, on the advice of the Financial Secretary and in exercise of the powers conferred by section 44 of the Public Finance Management Act, 2004 (No. 2 of 2004), makes the following Regulations:

Citation.

1. These Regulations may be cited as the Public Finance Management (Amendment) Regulations, 2020.

Regulation 170 amended.  
S.I. No. 87 of 2005

2. Regulation 170 of the Public Finance Management Regulations, 2005 is amended by deleting sub-regulation (2) and substituting with the following sub-regulations;

“(2) Goods or services shall be procured by tender where the value of the goods or services exceeds \$100,000.

(3) Cabinet may dispense with the tender process in respect of the procurement of goods and services under subsection (1) where

U.K S.I 2007  
No. 1678.

(a) a period of public emergency has been declared pursuant to section 27 of the Virgin Islands Constitution Order, 2007;

CAP 194.  
No. 10 of 2014  
No. 2 of 2013

(b) there exists a health emergency of local, regional or international concern in the territory, such as an epidemic or a pandemic, and health measures under the Public Health Act, the Quarantine Act, 2014 the Infectious Disease (Notification) Act or any other related enactment are or may be enforced; or

(c) any other exceptional circumstances arises,

and the procurement of such goods or services by way of the tender process would in the determination of Cabinet be inimical to the public interest if such goods or services are procured.

(4) The tender process shall only be dispensed with for the duration of the emergencies stipulated under subregulation 3(a) and (b).

(5) Where the tender process is dispensed with under subregulation (3), Cabinet may require the procurement of the goods and services to be limited to local contractors.”

Made by Cabinet this 24<sup>th</sup> day of September, 2020.

(Sgd.) Sandra Ward,  
Cabinet Secretary.

2009 No. 1379

CARIBBEAN AND NORTH ATLANTIC TERRITORIES

# The Cayman Islands Constitution Order 2009

*Made - - - - - 10th June 2009*

*Laid before Parliament 17th June 2009*

*Coming into force in accordance with section 1(2)*



£10.50

2009 No. 1379

**CARIBBEAN AND NORTH ATLANTIC TERRITORIES**

**The Cayman Islands Constitution Order 2009**

*Made* - - - - - *10th June 2009*

*Laid before Parliament* *17th June 2009*

*Coming into force in accordance with section 1(2)*

At the Court at Buckingham Palace, the 10th day of June 2009

Present,

The Queen's Most Excellent Majesty in Council

Her Majesty, in exercise of the powers conferred upon Her by sections 5 and 7 of the West Indies Act 1962(a) and of all other powers enabling Her to do so, is pleased, by and with the advice of Her Privy Council, to order, and it is ordered, as follows:

**Citation and commencement**

1.—(1) This Order may be cited as the Cayman Islands Constitution Order 2009.

(2) This Order shall come into force on such day as the Governor, acting in his or her discretion, shall appoint by proclamation published in a Government Notice.

**Interpretation**

2.—(1) In this Order—

“the appointed day” means the day appointed by the Governor under section 1(2);

“the Constitution” means the Constitution set out in Schedule 2;

“the former Constitution” means the Constitution established by the Cayman Islands (Constitution) Order 1972(b);

“the Legislative Assembly” means the Legislative Assembly established by the Constitution;

“the former Legislative Assembly” means the Legislative Assembly established by the former Constitution.

(2) Section 124 of the Constitution shall apply for the purposes of interpreting sections 1 to 9 of this Order and otherwise in relation to them as it applies for the purposes of interpreting and in relation to the Constitution.

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(a) 1962 c.19.

(b) S.I. 1972/1101, amended by S.I. 1984/126, 1987/2199, 1992/226, 1993/3143, 2003/1515, 2004/2029, 2004/2673, 2008/3127.

### **Revocations**

3. The instruments specified in Schedule 1 are revoked with effect from the appointed day.

### **Establishment of Constitution**

4.—(1) Subject to subsections (2), (3), (4) and (5), Schedule 2 shall have effect as the Constitution of the Cayman Islands from the appointed day.

(2) Part I of the Constitution shall have effect from the day three years after the appointed day; but section 6(2) and (3) of the Constitution shall have effect from the day four years after the appointed day.

(3) Until the Legislative Assembly is next dissolved after the appointed day—

(a) section 44(1)(b) of the Constitution shall have effect as if the reference to “six other Ministers” were a reference to “four other Ministers”;

(b) section 44(2) of the Constitution shall have no effect;

(c) section 60(1)(b) of the Constitution shall have effect as if the reference to “eighteen elected members” were a reference to “fifteen elected members”;

(d) section 60(2) of the Constitution shall have no effect.

(4) Until the Judicial and Legal Services Commission has been constituted in accordance with section 105 of the Constitution, power to make appointments to the offices to which section 106 of the Constitution applies shall vest in the Governor, acting in his or her discretion.

(5) Until a person has been appointed to the office of Director of Public Prosecutions in accordance with section 106 of the Constitution or subsection (4) of this section, section 57 of the Constitution shall have effect as if the references to the Director of Public Prosecutions were references to the Attorney General.

### **Existing laws**

5.—(1) Subject to this section, the existing laws shall have effect on and after the appointed day as if they had been made in pursuance of the Constitution and shall be read and construed with such modifications, adaptations, qualifications and exceptions as may be necessary to bring them into conformity with the Constitution.

(2) The Legislature may by law make such amendments to any existing law as appear to it to be necessary or expedient for bringing that law into conformity with the Constitution or otherwise for giving effect to the Constitution; and any existing law shall have effect accordingly from such day, not being earlier than the appointed day, as may be specified in the law made by the Legislature.

(3) In this section “existing laws” means laws and instruments (other than Acts of Parliament of the United Kingdom and instruments made under them) having effect as part of the law of the Cayman Islands immediately before the appointed day.

### **Existing offices and officers**

6.—(1) Any office (except that of Chief Secretary) established by or under the former Constitution and existing immediately before the appointed day shall on and after that day, so far as is consistent with the Constitution, continue as if it had been established by or under the Constitution.

(2) Any person who immediately before the appointed day holds or is acting in any office continued by virtue of subsection (1) shall, on and after that day, continue to hold or act in that office as if he or she had been appointed to hold or act in it in accordance with or under the Constitution.

(3) Any person to whom subsection (2) applies who, before the appointed day, has made any oath required to be made before assuming the functions of his or her office shall be deemed to have made any like oath so required by the Constitution or any other law.

(4) The person who, immediately before the appointed day, holds the office of Leader of Government Business shall, on and after that day, hold the office of Premier in accordance with the Constitution.

### **Legislative Assembly**

7.—(1) Any person (except the Chief Secretary and the Financial Secretary) who immediately before the appointed day is a member of the former Legislative Assembly shall on that day become a member of the Legislative Assembly, shall be deemed to have complied with section 60(3) of the Constitution, and shall hold his or her seat in accordance with the Constitution.

(2) The Standing Orders of the former Legislative Assembly as in force immediately before the appointed day shall, except as may be otherwise provided under section 71 of the Constitution, have effect on and after that day as if they had been made under that section, but they shall be read and construed with such modifications, adaptations, qualifications and exceptions as may be necessary to bring them into conformity with the Constitution.

(3) The Governor shall dissolve the Legislative Assembly not later than the expiration of four years from the date when the former Legislative Assembly first met after the last general election before the appointed day.

### **Electoral districts**

8.—(1) As soon as practicable after the appointed day, and before the Legislative Assembly is dissolved in accordance with section 7(3), the Governor shall appoint an Electoral Boundary Commission in accordance with section 88 of the Constitution.

(2) The Commission so appointed shall, as soon as practicable and in accordance with section 89 of the Constitution, review the electoral district boundaries and submit a report to the Governor and the Legislative Assembly containing its recommendations for changes in the boundaries of the electoral districts with a view to the Legislative Assembly consisting of eighteen elected members.

### **Pending legal proceedings**

9.—(1) Any cause, matter or appeal pending before the Grand Court or any appeal or application pending before the Court of Appeal immediately before the appointed day may, on and after that day, be continued, determined or appealed against as if such cause, matter or appeal had been instituted or was pending before the Grand Court, or such appeal or application made to the Court of Appeal, as the case may be, as those courts are respectively constituted by the Constitution.

(2) Any decree or order of the Grand Court or the Court of Appeal given or made before the appointed day, in so far as it has not been fully executed or enforced, may be executed or enforced on or after that day as if it were a decree or order of the Grand Court or the Court of Appeal, as the case may be, as those courts are respectively constituted by the Constitution.

(3) Any matter pending immediately before the appointed day before a tribunal appointed under section 49J(4) of the former Constitution may, on and after that day, be continued and reported upon as if the former Constitution were still in force, and after the tribunal has reported, section 96 of the Constitution shall have effect as if the matter had been referred to and considered by the Judicial and Legal Services Commission and as if the report of the tribunal were a report of the Judicial and Legal Services Commission under that section.

(4) Any judge of the Grand Court who immediately before the appointed day is suspended pursuant to section 49J(6) of the former Constitution shall, on and after that day, remain suspended from performing the functions of his or her office unless the Governor, acting in his or her discretion, revokes the suspension; but the suspension shall in any case cease to have effect—

- (a) if the tribunal appointed under section 49J(4) of the former Constitution advises the Governor that he or she should not request that the question of the removal of the judge be referred by Her Majesty to the Judicial Committee of Her Majesty's Privy Council; or

- (b) if the Judicial Committee advises Her Majesty that the judge ought not to be removed from office.

*Judith Simpson*  
Clerk of the Privy Council

## SCHEDULE 1

### Revocations

- The Cayman Islands (Constitution) Order 1972 (S.I. 1972/1101)  
The Cayman Islands (Constitution) (Amendment) Order 1984 (S.I.1984/126)  
The Cayman Islands (Constitution) (Amendment) Order 1987 (S.I. 1987/2199)  
The Cayman Islands (Constitution) (Amendment) Order 1992 (S.I. 1992/226)  
The Cayman Islands (Constitution) (Amendment) Order 1993 (S.I. 1993/3143)  
The Cayman Islands (Constitution) (Amendment) Order 2003 (S.I. 2003/1515)  
The Cayman Islands (Constitution) (Amendment) Order 2004 (S.I. 2004/2029)  
The Cayman Islands (Constitution) (Amendment No.2) Order 2004 (S.I. 2004/2673)  
The Cayman Islands (Constitution) (Amendment) Order 2008 (S.I. 2008/3127)  
The Instructions issued under the Royal Sign Manual and Signet to the Governor of the Cayman Islands on 26th July 1972

## SCHEDULE 2

### The Constitution of the Cayman Islands

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SCHEDULE TO THE CONSTITUTION  
FORMS OF OATHS AND AFFIRMATIONS

THE CONSTITUTION OF THE CAYMAN ISLANDS

The people of the Cayman Islands, recalling the events that have shaped their history and made them what they are, and acknowledging their distinct history, culture and Christian heritage and its enduring influence and contribution in shaping the spiritual, moral and social values that have guided their development and brought peace, prosperity and stability to those islands, through the vision, forbearance, and leadership of their people, who are loyal to Her Majesty the Queen;

Affirm their intention to be—

- A God-fearing country based on traditional Christian values, tolerant of other religions and beliefs.
- A country with open, responsible and accountable government, that includes a working partnership with the private sector and continuing beneficial ties with the United Kingdom.
- A country in which religion finds its expression in moral living and social justice.
- A caring community based on mutual respect for all individuals and their basic human rights.
- A country committed to the democratic values of human dignity, equality and freedom.
- A community that practises honest and open dialogue to ensure mutual understanding and social harmony.
- A safe, secure and law-abiding community.
- A country that is free from crime and drug abuse.
- A country with an education system that identifies and develops on a continuing basis the abilities of each person, allowing them to reach their full potential and productivity.
- A community that encourages and prepares young people to assume leadership roles.
- A country that provides a comprehensive healthcare system.
- A community protective of traditional Caymanian heritage and the family unit.
- A country that honours the sacrifice of its seafaring men who left the shores of the Islands to enhance the quality of life of their people, and in doing so established themselves amongst the finest within the global maritime community of that time and through their remittances, endeavours and experiences built the foundations of the Cayman Islands' modern economy.
- A country that honours and acknowledges the important contribution of Caymanian women who during the absence of the seafaring men of the Islands managed the affairs of their homes, businesses and communities and passed on the values and traditions of the Islands' people.
- A country with a vibrant diversified economy, which provides full employment.
- A country that makes optimal use of modern technology.
- A country that manages growth and maintains prosperity, while protecting its social and natural environment.
- A country that respects, protects and defends its environment and natural resources as the basis of its existence.
- A country that fosters the highest standards of integrity in the dealings of the private and public sectors.

- A country with an immigration system that protects Caymanians, gives security to long-term residents and welcomes legitimate visitors and workers.
- A country that plays its full part in the region and in the international community.

Now, therefore, the following provisions shall have effect as the Constitution of the Cayman Islands.

## PART I

### BILL OF RIGHTS, FREEDOMS AND RESPONSIBILITIES

#### **Guarantee of Rights, Freedoms and Responsibilities**

Whereas all peoples have the right of self-determination and by virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development and may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit and international law;

1.—(1) This Bill of Rights, Freedoms and Responsibilities is a cornerstone of democracy in the Cayman Islands.

(2) This Part of the Constitution—

- (a) recognises the distinct history, culture, Christian values and socio-economic framework of the Cayman Islands and it affirms the rule of law and the democratic values of human dignity, equality and freedom;
- (b) confirms or creates certain responsibilities of the government and corresponding rights of every person against the government; and
- (c) does not affect, directly or indirectly, rights against anyone other than the government except as expressly stated.

(3) In this Part “government” shall include public officials (as defined in section 28) and the Legislature, but shall not include the courts (except in respect of sections 5, 7, 19 and 23 to 27 inclusive).

#### **Life**

2.—(1) Everyone’s right to life shall be protected by law.

(2) No person shall intentionally be deprived of his or her life.

(3) A person shall not be regarded as having been deprived of his or her life in contravention of this section if he or she dies as a result of the use, to such extent and in such circumstances as are permitted by law, of such force as is absolutely necessary—

- (a) for the defence of any person from violence;
- (b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;
- (c) for the purpose of suppressing a riot, insurrection or mutiny;

or if he or she dies as a result of a lawful act of war.

#### **Torture and inhuman treatment**

3. No person shall be subjected to torture or inhuman or degrading treatment or punishment.

#### **Slavery or forced or compulsory labour**

4.—(1) No person shall be held in slavery or servitude.

- (2) No person shall be required to perform forced or compulsory labour.
- (3) For the purposes of this section, forced or compulsory labour does not include—
- (a) any labour required in consequence of the sentence or order of a court;
  - (b) any labour required of a member of a disciplined force in pursuance of his or her duties as such or, in the case of conscientious objectors, labour that they are required to perform in place of such service;
  - (c) labour required of any person while he or she is lawfully detained that is reasonably necessary in the interests of hygiene or for the maintenance of the place in which he or she is detained; or
  - (d) any labour required during a period of public emergency or in the event of any other emergency or calamity that threatens the life or well-being of the community, to the extent that the requiring of such labour is reasonably justifiable, in the circumstances of any situation arising or existing during that period or as a result of that other emergency or calamity, for the purpose of dealing with that situation.

### Personal liberty

- 5.—(1) No one shall be deprived by government of liberty and security of the person.
- (2) The right to liberty does not extend to the following measures taken in relation to a person in accordance with a procedure prescribed by law—
- (a) in execution of the sentence or order of a court, whether in the Cayman Islands or elsewhere, in respect of a criminal offence under any law of which he or she has been convicted or in consequence of his or her unfitness to plead to a criminal charge;
  - (b) in execution of an order of a court punishing him or her for contempt of that court or of another court;
  - (c) in execution of the order of a court made in order to secure the fulfilment of any obligation imposed on him or her by law; but no person shall be deprived of his or her liberty merely on the ground of inability to fulfil a contractual obligation;
  - (d) for the purpose of bringing him or her before a court in execution of the order of a court;
  - (e) on reasonable suspicion that he or she has committed, is committing or is about to commit a criminal offence under any law;
  - (f) in the case of a minor, under the order of a court or with the consent of his or her parent or guardian, for the purpose of his or her education or welfare;
  - (g) for the purpose of preventing the spread of an infectious or contagious disease;
  - (h) in the case of a person who is, or is reasonably suspected to be, of unsound mind, addicted to drugs or alcohol, or a vagrant, for the purpose of his or her care or treatment or the protection of the community;
  - (i) for the purpose of preventing the unlawful entry of that person into the Cayman Islands, or for the purpose of effecting the expulsion, extradition or other lawful removal of that person from the Cayman Islands, or for the purpose of restricting that person while he or she is being conveyed through the Cayman Islands in the course of his or her extradition or removal as a convicted person from one country to another;
  - (j) in execution of the order of a court detaining a person charged with a criminal offence in respect of whom a special verdict has been returned that he or she was guilty of the act or omission charged but was insane when he or she did the act or made the omission.
- (3) Any person who is arrested or detained has the right to remain silent and shall be informed promptly, in a language that he or she understands, of the reason for his or her arrest or detention.
- (4) Any person who is arrested or detained shall have the right, at any stage and at his or her own expense, to retain and instruct without delay a legal practitioner of his or her own choice, and to hold private communication with him or her, and in the case of a minor he or she shall also be afforded a reasonable opportunity of communication with his or her parents or guardian; but when

a person arrested or detained is unable to retain a legal practitioner of his or her own choice or be represented by a legal practitioner at the public expense in accordance with section 7(2)(d), he or she may be represented, and hold private communication with, such person as the court may approve.

(5) Any person who is arrested or detained—

- (a) for the purpose of bringing him or her before a court in the execution of the order of a court; or
- (b) on reasonable suspicion of his or her having committed, or being about to commit, a criminal offence,

and who is not released, shall be brought promptly before a court; and if any person arrested or detained in such a case as is mentioned in subsection (2)(e) is not tried within a reasonable time he or she shall (without prejudice to any further proceedings that may be brought against him or her) be released either unconditionally or on reasonable conditions, including in particular such conditions as are reasonably necessary to ensure that he or she appears at a later date for trial or for proceedings preliminary to trial, and such conditions may include bail.

(6) Any person who is deprived of his or her liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his or her detention shall be decided speedily by a court and his or her release ordered if the detention is not lawful, and he or she shall be entitled to compensation if unlawfully arrested or detained; but a judicial officer or an officer of a court or a police officer acting in pursuance of the order of a judicial officer shall not be personally liable to pay compensation under this subsection in respect of anything done by him or her in good faith in the discharge of the functions of his or her office, and any liability to pay any such compensation in respect of that thing shall be a liability of the Crown.

#### **Treatment of prisoners**

6.—(1) All persons deprived of their liberty (in this section referred to as “prisoners”) have the right to be treated with humanity and with respect for the inherent dignity of the human person.

(2) Save where the interests of defence, public safety, public order, public morality, public health or the administration of justice otherwise require, unconvicted prisoners shall be segregated from convicted prisoners; and every unconvicted prisoner shall be entitled to be treated in a manner appropriate as an unconvicted person.

(3) Juvenile prisoners shall be segregated from adult prisoners and every juvenile prisoner shall be treated in a manner appropriate to his or her age and legal status and, if he or she is an unconvicted prisoner and unless he or she is earlier released, shall have any criminal proceedings against him or her pursued with the greatest possible expedition.

#### **Fair trial**

7.—(1) Everyone has the right to a fair and public hearing in the determination of his or her legal rights and obligations by an independent and impartial court within a reasonable time.

(2) Everyone charged with a criminal offence has the following minimum rights—

- (a) to be presumed innocent until proved guilty according to law;
- (b) to be informed promptly, in a language which he or she understands and in detail, of the nature and cause of the accusation against him or her;
- (c) to have adequate time and the facilities for the preparation of his or her defence;
- (d) to defend himself or herself in person or through legal assistance of his or her own choosing or, if he or she has not sufficient means to pay for legal assistance and the interests of justice so require, through a legal representative at public expense provided through an established public legal aid scheme as prescribed by law;
- (e) to examine or have examined witnesses against him or her and to obtain the attendance and examination of witnesses on his or her behalf under the same conditions as witnesses against him or her;

- (f) to have the free assistance of an interpreter if he or she cannot understand or speak the language used in court;

and, except with his or her own consent, the trial shall not take place in his or her absence, unless he or she so behaves in the court as to render the continuance of the proceedings in his or her presence impracticable and the court has ordered him or her to be removed and the trial to proceed in his or her absence, or unless, having had reasonable notice of the hearing and of the nature of the offence charged, he or she is voluntarily absent from the proceedings.

(3) When a person is tried for any criminal offence, the accused person or any person authorised by him or her shall, if he or she so requires and subject to payment of such reasonable fee as may be prescribed by law, be given within a reasonable time after judgment a copy for the use of the accused person of any record of the proceedings made by or on behalf of the court.

(4) No person who shows that he or she has been tried by a competent court for a criminal offence and either convicted or acquitted shall again be tried for that offence or for any other criminal offence of which he or she could have been convicted at the trial for that offence, save on the order of a superior court in the course of appeal or review proceedings relating to the conviction or acquittal.

(5) No person shall be tried for a criminal offence if he or she shows that he or she has been lawfully pardoned for that offence.

(6) No person who is tried for a criminal offence shall be compelled to give evidence at the trial.

(7) Every person who has been convicted by a court of a criminal offence shall have the right to appeal to a superior court against his or her conviction or his or her sentence or both as may be prescribed by law; but—

(a) nothing in any law shall be held to contravene this subsection—

- (i) to the extent that it precludes an appeal by a person against his or her conviction of an offence if he or she pleaded guilty to that offence at his or her trial; or
- (ii) to the extent that it makes reasonable provision with respect to the grounds on which any such appeal may be made or with respect to the practice and procedure to be observed in relation to the making, hearing and disposal of any such appeal; and

(b) this subsection shall not apply in relation to the conviction of a person by a superior court, or in relation to his or her sentence on such conviction, if he or she was convicted by that court on an appeal against his or her acquittal by a lower court.

(8) When a person has, by a final decision of a court, been convicted of a criminal offence and, subsequently, on the ground that a newly-disclosed fact shows that there has been a miscarriage of justice his or her conviction has been quashed or he or she has been pardoned, he or she shall be compensated out of public funds for any punishment that he or she has suffered as a result of the conviction unless it is proved that the non-disclosure in time of that fact was wholly or partly his or her fault.

(9) All proceedings instituted in any court for the determination of the existence or extent of any civil right or obligation, including the announcement of the decision of the court, shall be held in public.

(10) Nothing in subsection (1) or (9) shall prevent the court from excluding from the proceedings persons other than the parties to them and their legal representatives to such extent as the court—

- (a) may be empowered by law to do and may consider necessary or expedient in circumstances where publicity would prejudice the interests of justice, or in interlocutory proceedings, or in the interests of public morality, the welfare of minors or the protection of commercial confidence or of the private lives of persons concerned in the proceedings; or
- (b) may be empowered or required by law to do in the interests of defence, public safety, or public order.

(11) Nothing in any law or done under its authority shall be held to contravene—

- (a) subsection (2)(a), to the extent that the law in question imposes on any person charged with a criminal offence the burden of proving particular facts;
- (b) subsection (2)(e), to the extent that the law in question imposes conditions that must be satisfied if witnesses called to testify on behalf of an accused person are to be paid their expenses out of public funds;
- (c) subsection (4), to the extent that the law in question authorises a court to try a member of a disciplined force for a criminal offence notwithstanding any trial and conviction or acquittal of that member under the disciplinary law of that force, save that any court so trying such a member and convicting him or her shall in sentencing him or her to any punishment take into account any punishment imposed on him or her under that disciplinary law.

(12) In this section, "legal representative" means a person entitled to practise in the Cayman Islands as an attorney-at-law.

#### **No punishment without law**

8.—(1) No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national or international law at the time when it was committed; nor shall a heavier penalty be imposed than the one that was applicable at the time the criminal offence was committed.

(2) This section shall not prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of law recognised by civilised nations.

#### **Private and family life**

9.—(1) Government shall respect every person's private and family life, his or her home and his or her correspondence.

(2) Except with his or her own consent or as permitted under subsection (3), no person shall be subjected to the search of his or her person or his or her property or the entry of persons on his or her premises.

(3) Nothing in any law or done under its authority shall be held to contravene this section to the extent that it is reasonably justifiable in a democratic society—

- (a) in the interests of defence, public safety, public order, public morality, public health, town and country planning, or the development or utilisation of any other property in such a manner as to promote the public benefit;
- (b) for the purpose of protecting the rights and freedoms of other persons;
- (c) to enable an agent of the Government or a public body established by law to enter on the premises of any person in order to inspect those premises or anything on them for the purpose of any tax, rate or due or in order to carry out work connected with any property that is lawfully on those premises and that belongs to the Government or that public body;
- (d) to authorise, for the purpose of enforcing the judgment or order of a court, the search of any person or property by order of a court or the entry on any premises by such order; or
- (e) to regulate the right to enter or remain in the Cayman Islands.

#### **Conscience and religion**

10.—(1) No person shall be hindered by government in the enjoyment of his or her freedom of conscience.

(2) Freedom of conscience includes freedom of thought and of religion or religious denomination; freedom to change his or her religion, religious denomination or belief; and freedom, either alone or in community with others, both in public and in private, to manifest and

propagate his or her religion or belief in worship, teaching, practice, observance and day of worship.

(3) Except with his or her consent or, in the case of a minor, the consent of his or her parent or guardian, no person attending any place of education shall be required to receive religious instruction or to take part in or attend any religious ceremony or observance that relates to a religion other than his or her own.

(4) No religious community or denomination shall be prevented from or hindered in providing religious instruction for persons of that community or denomination in the course of any education provided by that community or denomination whether or not that community or denomination is in receipt of any government subsidy, grant or other form of financial assistance designed to meet, in whole or in part, the cost of such education; and this right includes the right of any school or community educational institution to impose requirements on employment, admission or curriculum-design necessary to maintain the religious ethos of that school or institution, subject to applicable employment laws in force.

(5) No person shall be compelled to take any oath which is contrary to his or her religion or belief or to take any oath in a manner which is contrary to his or her religion or belief.

(6) Nothing in any law or done under its authority shall be held to contravene this section to the extent that it is reasonably justifiable in a democratic society—

- (a) in the interests of defence, public safety, public order, public morality or public health; or
- (b) for the purpose of protecting the rights and freedoms of other persons, including the right to observe and practise any religion or belief without the unsolicited intervention of adherents of any other religion or belief.

(7) If a court's determination of any question arising under this Part might affect the exercise by a religious organisation (itself or its members collectively) of the right to freedom of conscience as protected by this section, it must have particular regard to the importance of that right.

### **Expression**

11.—(1) No person shall be hindered by government in the enjoyment of his or her freedom of expression, which includes freedom to hold opinions and to receive and impart ideas and information without interference, and freedom from interference with his or her correspondence or other means of communication.

(2) Nothing in any law or done under its authority shall be held to contravene this section to the extent that it is reasonably justifiable in a democratic society—

- (a) in the interests of defence, public safety, public order, public morality or public health;
- (b) for the purpose of protecting the rights, reputations and freedoms of other persons or the private lives of persons concerned in legal proceedings, preventing the disclosure of information received in confidence, maintaining the authority and independence of the courts, or regulating telecommunications, posts, broadcasting or other means of communication, or public shows or entertainments; or
- (c) for the imposition of restrictions on public officers in the interests of the proper performance of their functions.

### **Assembly and association**

12.—(1) No person shall be hindered by government in the enjoyment of his or her freedom of peaceful assembly and association, that is to say, his or her right to assemble freely and associate with other persons and in particular to form or belong to political parties or to form or belong to trade unions or other associations for the protection of his or her interests.

(2) Nothing in any law or done under its authority shall be held to contravene this section to the extent that it is reasonably justifiable in a democratic society—

- (a) in the interests of defence, public safety, public order, public morality or public health;
- (b) for the purpose of protecting the rights and freedoms of other persons; or

- (c) for the imposition of restrictions on public officers in the interests of the proper performance of their functions.

### **Movement**

13.—(1) No person shall be hindered by government in the enjoyment of his or her freedom of movement, that is to say, the right to move freely throughout the Cayman Islands, the right to reside in any part of the Cayman Islands, the right to enter the Cayman Islands, the right to leave the Cayman Islands and immunity from expulsion from the Cayman Islands.

(2) Nothing in any law or done under its authority shall be held to contravene this section to the extent that the law in question makes provision—

- (a) for the imposition of restrictions on the movement or residence within the Cayman Islands or on the right to leave the Cayman Islands of persons generally or any class of persons that are reasonably justifiable in a democratic society—
    - (i) in the interests of defence, public safety, public order, public morality or public health; or
    - (ii) for the purpose of protecting the rights and freedoms of other persons;
  - (b) for the removal of a person from the Cayman Islands to be tried or punished in some other country for a criminal offence under the law of that country or to undergo imprisonment in some other country in execution of the sentence of a court in respect of a criminal offence under the law of the Cayman Islands of which he or she has been convicted;
  - (c) for the imposition of restrictions on the movement or residence within the Cayman Islands or the right to leave the Cayman Islands of public officers that are reasonably required for the purpose of ensuring the proper performance of their functions;
  - (d) for the imposition of restrictions on any person who is not a Caymanian or a permanent resident; but—
    - (i) no restriction may be imposed by virtue only of this paragraph on the right of any such person, so long as he or she is lawfully present in the Cayman Islands, to move freely throughout the Cayman Islands and to reside anywhere in the Cayman Islands;
    - (ii) no restriction may be imposed by virtue only of this paragraph on the right of any such person to leave the Cayman Islands; and
    - (iii) no such person shall be liable, by virtue only of this paragraph, to be expelled from the Cayman Islands unless the requirements specified in subsection (3) are satisfied;
  - (e) for the imposition of restrictions on the acquisition or use by any person of land or other property in the Cayman Islands;
  - (f) for the imposition of restrictions, by order of a court, on the movement or residence within the Cayman Islands of any person or on any person's right to leave the Cayman Islands either in consequence of his or her having been found guilty of a criminal offence under the law of the Cayman Islands or for the purpose of ensuring a fair trial or that he or she appears before a court at a later date for trial or for proceedings relating to his or her extradition or lawful removal from the Cayman Islands; or
  - (g) for the imposition of restrictions on the right of any person to leave the Cayman Islands that are reasonably justifiable in a democratic society in order to secure the fulfilment of any obligation imposed on that person by law.
- (3) The requirements to be satisfied for the purposes of subsection (2)(d)(iii) are as follows—
- (a) the decision to expel that person is taken by an authority, in a manner and on grounds prescribed by law;
  - (b) that person has the right to submit reasons against his or her expulsion to a competent authority prescribed by law;
  - (c) that person has the right, save where a court has recommended his or her deportation, to have his or her case reviewed by a competent authority prescribed by law; and

- (d) that person has the right to be represented for the purposes of paragraphs (b) and (c) before the competent authority or some other person or authority designated by the competent authority;

but paragraphs (b), (c) and (d) shall not apply where the interests of defence, public safety or public order so require.

(4) Any restriction on a person's freedom of movement which is involved in his or her lawful detention shall not be held to contravene this section.

(5) In this section "permanent resident" has the meaning ascribed to it in the laws of the Cayman Islands for the time being in force.

### **Marriage**

14.—(1) Government shall respect the right of every unmarried man and woman of marriageable age (as determined by law) freely to marry a person of the opposite sex and found a family.

(2) No person shall be compelled to marry without his or her free and full consent.

(3) Nothing in any law or done under its authority shall be held to contravene subsection (1) to the extent that the law makes provision that is reasonably justifiable in a democratic society—

- (a) in the interests of public order, public morality or public health;
- (b) for regulating, in the public interest, the procedures and modalities of marriage; or
- (c) for protecting the rights and freedoms of others.

(4) Spouses shall be entitled to equal rights and shall be subject to equal responsibilities as between themselves and as regards their children both during and after marriage, but this equality of rights and responsibilities shall be subject to such arrangements or measures as may be agreed, or as may be ordered by a court, in the interests of their children.

### **Property**

15.—(1) Government shall not interfere in the peaceful enjoyment of any person's property and shall not compulsorily take possession of any person's property, or compulsorily acquire an interest in or right over any person's property of any description, except in accordance with law and where—

- (a) the interference, taking of possession or acquisition is necessary or expedient in the interests of defence, public safety, public order, public morality, public health, town and country planning or the development or utilisation of any property in such manner as to promote the public benefit or the economic well-being of the community; and
- (b) there is reasonable justification for the causing of any hardship that may result to any person having an interest in or right over the property; and
- (c) provision is made by a law applicable to that interference, taking of possession or acquisition—
  - (i) for the prompt payment of adequate compensation; and
  - (ii) securing to any person having an interest in or right over the property a right of access to the Grand Court, whether direct or on appeal from any other authority, for the determination of his or her interest or right, the legality of the interference with, taking of possession or acquisition of the property, interest or right, and the amount of any compensation to which he or she is entitled, and for the purpose of obtaining prompt payment of that compensation; and
  - (iii) giving to any party to proceedings in the Grand Court relating to such a claim the same rights of appeal as are accorded generally to parties to civil proceedings in that Court sitting as a court of original jurisdiction.

(2) Nothing in any law or done under its authority shall be held to contravene subsection (1)—

- (a) to the extent that the law in question makes provision for the interference with, taking of possession or acquisition of any property, interest or right—
  - (i) in satisfaction of any tax, rate or due;
  - (ii) by way of penalty for breach of any law or forfeiture in consequence of a breach of any law;
  - (iii) as an incident of a lease, tenancy, mortgage, charge, bill of sale, pledge or contract;
  - (iv) by way of taking of a sample for the purposes of any law;
  - (v) where the property consists of an animal, on its being found trespassing or straying;
  - (vi) in the execution of judgments or orders of a court;
  - (vii) by reason of its being in a dilapidated or dangerous state or injurious to the health of human beings, animals or plants;
  - (viii) in consequence of any law with respect to prescription or the limitation of actions; or
  - (ix) for so long only as may be necessary for the purposes of any examination, investigation, trial or inquiry, or, in the case of land, for the purposes of carrying out on it work of reclamation, drainage, soil conservation or the conservation of other natural resources or work relating to agricultural development or improvement (being work relating to such development or improvement that the owner or occupier of the land has been required, and has, without reasonable and lawful excuse, refused or failed to carry out),

except so far as that provision of law or, as the case may be, the thing done under its authority is shown not to be reasonably justifiable in a democratic society; or

- (b) to the extent that the law in question makes provision for the taking of possession or acquisition of any of the following property (including an interest in or right over property), that is to say—
  - (i) enemy property;
  - (ii) property of a person who has died, a person of unsound mind or a minor, for the purpose of its administration for the benefit of the persons entitled to the beneficial interest in it;
  - (iii) property of a person adjudged bankrupt or a body corporate in liquidation, for the purpose of its administration for the benefit of the creditors of the bankrupt or body corporate and, subject thereto, for the benefit of other persons entitled to the beneficial interest in the property; or
  - (iv) property subject to a trust, for the purpose of vesting the property in persons appointed as trustees under the instrument creating the trust or by a court or, by order of a court, for the purpose of giving effect to the trust.

(3) Nothing in any law or done under its authority shall be held to contravene subsection (1) to the extent that the law in question makes provision for the interference with or compulsory taking of possession in the public interest of any property, or the compulsory acquisition in the public interest of any interest in or right over property, where that property, interest or right is held by a body corporate established by law for public purposes in which no moneys have been invested other than moneys provided from public funds.

#### **Non-discrimination**

16.—(1) Subject to subsections (3), (4), (5) and (6), government shall not treat any person in a discriminatory manner in respect of the rights under this Part of the Constitution.

(2) In this section, “discriminatory” means affording different and unjustifiable treatment to different persons on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, age, mental or physical disability, property, birth or other status.

(3) No law or decision of any public official shall contravene this section if it has an objective and reasonable justification and is reasonably proportionate to its aim in the interests of defence, public safety, public order, public morality or public health.

(4) Subsection (1) shall not apply to any law so far as that law makes provision—

- (a) for the appropriation of revenues or other funds of the Cayman Islands or for the imposition of taxation (including the levying of fees for the grants of licences);
- (b) with respect to the entry into or exclusion from, or the employment, engaging in any business or profession, movement or residence within, the Cayman Islands of persons who are not Caymanian;
- (c) for the application, in the case of persons of any such description of grounds as is mentioned in subsection (2) (or of persons connected with such persons), of the law with respect to adoption, marriage, divorce, burial, devolution of property on death or other like matters that is the personal law applicable to persons of that description; or
- (d) whereby persons of any such description of grounds as is mentioned in subsection (2) may be subjected to any disability or restriction or may be accorded any privilege or advantage which, having regard to its nature and to special circumstances pertaining to those persons or to persons of any other such description, is objectively and reasonably justifiable in a democratic society and there is a reasonable proportionality between the means employed and the purpose sought to be realised.

(5) Nothing in any law shall be held to contravene subsection (1) to the extent that it requires a person to be a Caymanian, or to possess any other qualification (not being a qualification specifically relating to any such description of grounds as is mentioned in subsection (2)) in order to be eligible for appointment to any office in the public service or in a disciplined force or any office in the service of a local government authority or of a body corporate established directly by any law for public purposes.

(6) Subsection (1) shall not apply to anything which is expressly or by necessary implication authorised to be done by any such provision of law as is referred to in subsection (3), (4) or (5).

(7) Subsection (1) is without prejudice to any restriction on the rights and freedoms guaranteed by section 9, 10, 11, 12, 13 or 14 if that restriction would, in accordance with that section, be a restriction authorised for the purposes of that section on the ground that—

- (a) the provision by or under which it is imposed is reasonably required in the interests of a matter, or for the purpose, specified in that section; and
- (b) the provision and the restriction imposed under it are reasonably justifiable in a democratic society.

### **Protection of children**

**17.—**(1) In addition to the provisions of this Part which afford protection to children, the Legislature shall enact laws to provide every child and young person under the age of eighteen (referred to in this section as a “child”) with such facilities as would aid their growth and development, and to ensure that every child has the right—

- (a) to a name from birth;
- (b) to family care or parental care, or to appropriate alternative care when removed from the family environment;
- (c) to basic nutrition, shelter, basic health care services and social services;
- (d) to be protected from maltreatment, neglect, abuse or degradation;
- (e) to be protected from exploitative labour practices;
- (f) not to be required or permitted to perform work or provide services that—
  - (i) are inappropriate for a child of that age; or
  - (ii) place at risk the child’s well-being, education, physical or mental health or spiritual, moral or social development;

- (g) not to be detained except as a measure of last resort, in which case, in addition to the rights a child enjoys under sections 5 and 22, the child may be detained only for the shortest appropriate period of time, and shall be treated in a manner and kept in conditions that take account of his or her age;
- (h) to have a legal practitioner assigned to the child by the Government, and at public expense, in civil proceedings affecting the child, if substantial injustice would result; and
- (i) not to be used directly in armed conflict, and to be protected in times of armed conflict.

(2) In implementing subsection (1), the Legislature shall proceed on the basis that a child's best interests are of paramount importance in every matter concerning the child.

#### **Protection of the environment**

18.—(1) Government shall, in all its decisions, have due regard to the need to foster and protect an environment that is not harmful to the health or well-being of present and future generations, while promoting justifiable economic and social development.

(2) To this end government should adopt reasonable legislative and other measures to protect the heritage and wildlife and the land and sea biodiversity of the Cayman Islands that—

- (a) limit pollution and ecological degradation;
- (b) promote conservation and biodiversity; and
- (c) secure ecologically sustainable development and use of natural resources.

#### **Lawful administrative action**

19.—(1) All decisions and acts of public officials must be lawful, rational, proportionate and procedurally fair.

(2) Every person whose interests have been adversely affected by such a decision or act has the right to request and be given written reasons for that decision or act.

#### **Education**

20.—(1) This section is without prejudice to section 10.

(2) Government shall seek reasonably to achieve the progressive realisation, within available resources, of providing every child with primary and secondary education which shall, subject to subsection (3), be free.

(3) Every person who is the parent or legal guardian of a child shall be entitled to have his or her child (of whatever age) educated, at his or her own expense unless a law otherwise provides, in a private school (that is to say, a school other than one established by a public authority) and, in such a school, to ensure the religious and moral education of his or her child in accordance with his or her own convictions.

(4) Nothing contained in any law or done under its authority shall be held to contravene subsection (3) to the extent that it is reasonably justifiable in a democratic society and to the extent that the law makes provision requiring private schools, as a condition of their being allowed to operate and on terms no more onerous than are applicable to schools established by a public authority, to satisfy—

- (a) such minimum educational standards (including standards relating to the qualifications of teaching staff and other staff) as may be prescribed by or under any law; and
- (b) such minimum standards imposed in the interests of public order, public morality or public health as may be so prescribed.

#### **Public emergencies**

21.—(1) A period of public emergency may be declared by the Governor, by proclamation published in the manner provided in subsection (2), when—

- (a) the well-being or security of the Cayman Islands is threatened by war, invasion, general insurrection, public disorder, natural disaster or other public emergency; and
- (b) the declaration is considered necessary by the Governor to maintain or restore peace and order.

(2) A proclamation shall be taken to be published if it is published in a Government Notice or in a newspaper published in the Cayman Islands, or if it is posted in prominent public places or announced on the radio.

(3) Without prejudice to the power of the Legislature to make laws under this Constitution, during a period of public emergency the Governor may make such regulations for the Cayman Islands as appear to him or her to be necessary or expedient for securing the public safety, the defence of the Cayman Islands or the maintenance of public order, or for maintaining supplies and services essential to the life of the community.

(4) Regulations made under subsection (3) shall—

- (a) have effect only prospectively;
- (b) have effect, subject to this section, notwithstanding the provisions of any other law in force in the Cayman Islands or any rule of law having effect in the Islands;
- (c) unless previously revoked, expire at the end of the period of public emergency during which they were made unless provision for their continuance in force (with or without modification) is made by the Legislature.

(5) Nothing in any law or done under its authority shall be held to be inconsistent with or in contravention of section 5, section 7 or any provision of sections 9 to 16 (inclusive) to the extent that the law in question authorises the taking during any period of public emergency of measures that are reasonably justifiable for dealing with the situation that exists in the Cayman Islands during that period.

(6) Before exercising any function under subsection (1) or (3) or under any law enacted by the Legislature to like effect, the Governor shall consult the Cabinet or, if that is not practicable in the circumstances, the Premier; but if in the judgement of the Governor it is impracticable for him or her to consult either the Cabinet or the Premier, the function shall be exercised by the Governor acting in his or her discretion.

(7) Where the Governor has consulted the Cabinet or the Premier under subsection (6), the Governor shall not be obliged to act in accordance with any advice given to him or her.

(8) Where any proclamation of emergency has been made by the Governor under subsection (1), a copy of the proclamation shall as soon as practicable be laid before and debated in the Legislative Assembly; and if the Assembly is not due to meet within five days of the making of that proclamation it shall meet within that period or as soon as practicable thereafter.

(9) A proclamation of emergency shall, unless it is sooner revoked by the Governor, cease to be in force at the expiration of a period of fourteen days beginning on the date on which it was made or such longer period as may be provided under subsection (10), but without prejudice to the making of another proclamation of emergency at or before the end of that period.

(10) If at any time while a proclamation of emergency is in force (including any time while it is in force by virtue of this subsection) a resolution is passed by the Legislative Assembly approving its continuation in force for a further period not exceeding three months, beginning on the date on which it would otherwise expire, the proclamation shall, if not sooner revoked, continue in force for that further period.

(11) Nothing in this section or in any emergency regulations shall be construed to preclude the Legislative Assembly from—

- (a) meeting whenever practicable in accordance with its Standing Orders; and
- (b) directing that reports relating to the emergency, including the implementation of any emergency regulations, be prepared and presented in such manner and within such periods to the Legislative Assembly as the Assembly may determine.

### **Protection of persons detained under emergency laws**

22.—(1) When a person is detained by virtue of any law in relation to a period of public emergency the following provisions shall apply—

- (a) notification shall, not more than ten days after the commencement of his or her detention, be published in a public place (and thereafter as soon as possible in a Government Notice) stating that he or she has been detained and giving particulars of the provision of law by virtue of which his or her detention is authorised;
- (b) he or she shall (if not sooner released), as soon as reasonably practicable and in any case not more than four days after the commencement of his or her detention, be informed, in a language that he or she understands, of the grounds on which he or she is detained and furnished with a written statement;
- (c) his or her case shall, not more than 30 days after the commencement of his or her detention and thereafter during the detention at intervals of not more than three months, be reviewed by an independent and impartial tribunal established by law and presided over by a person appointed by the Chief Justice;
- (d) he or she shall be afforded reasonable opportunity to consult a legal practitioner of his or her own choice and to hold private communication with him or her; and
- (e) he or she shall, at the hearing of his or her case by the tribunal appointed for its review, be permitted to appear in person or by a legal practitioner of his or her own choice.

(2) For the purposes of subsection (1)(d) and (e), if the detained person is unable to retain a legal practitioner of his or her own choice, the tribunal may approve such person as it deems fit to make representations to it; but nothing in subsection (1)(d) or (e) shall be construed as entitling a detained person to legal representation at public expense.

(3) On any review by a tribunal of the case of a detained person under this section, the tribunal may make recommendations concerning the necessity or expediency of continuing his or her detention to the authority by which it was ordered but, unless it is otherwise provided by law, that authority shall not be obliged to act in accordance with any such recommendations.

### **Declaration of incompatibility**

23.—(1) If in any legal proceedings primary legislation is found to be incompatible with this Part, the court must make a declaration recording that the legislation is incompatible with the relevant section or sections of the Bill of Rights and the nature of that incompatibility.

(2) A declaration of incompatibility made under subsection (1) shall not constitute repugnancy to this Order and shall not affect the continuation in force and operation of the legislation or section or sections in question.

(3) In the event of a declaration of incompatibility made under subsection (1), the Legislature shall decide how to remedy the incompatibility.

### **Duty of public officials**

24. It is unlawful for a public official to make a decision or to act in a way that is incompatible with the Bill of Rights unless the public official is required or authorised to do so by primary legislation, in which case the legislation shall be declared incompatible with the Bill of Rights and the nature of that incompatibility shall be specified.

### **Interpretive obligation**

25. In any case where the compatibility of primary or subordinate legislation with the Bill of Rights is unclear or ambiguous, such legislation must, so far as it is possible to do so, be read and given effect in a way which is compatible with the rights set out in this Part.

## **Enforcement of rights and freedoms**

26.—(1) Any person may apply to the Grand Court to claim that government has breached or threatened his or her rights and freedoms under the Bill of Rights and the Grand Court shall determine such an application fairly and within a reasonable time.

(2) If, in any proceedings in any court established in the Cayman Islands other than the Grand Court or the Court of Appeal, any issue arises as to the interpretation of the Bill of Rights, the court in which the question has arisen shall refer the question to the Grand Court if it is in its opinion necessary for the issue to be determined.

(3) An appeal shall lie as of right to the Court of Appeal from any final determination of any issue by the Grand Court under the Bill of Rights, and an appeal shall lie as of right from the Court of Appeal to Her Majesty in Council; but no appeal shall lie from a determination by the Grand Court under this section dismissing an application on the ground that it is frivolous or vexatious.

(4) Proceedings under subsection (1) shall be commenced within one year of the decision or act that is claimed to breach the Bill of Rights, or from the date on which such decision or act could reasonably have been known to the complainant; but the Grand Court shall extend time on application by the complainant where such an extension would in the opinion of the Court be in the interests of justice.

(5) Nothing in this section adversely affects the ability of courts to manage their own procedure to ensure that cases are dealt with justly, fairly and expeditiously, including their ability to dismiss applications that are vexatious or unreasonable.

## **Remedies**

27.—(1) In relation to any decision or act of a public official which the court finds is (or would be) unlawful, it may grant such relief or remedy, or make such order, within its powers as it considers just and appropriate.

(2) No award of damages is to be made unless, taking account of all the circumstances of the case, including—

- (a) any other relief or remedy granted, or order made, in relation to the act in question (by that or any other court); and
- (b) the consequences of any decision (of that or any other court) in respect of that act,

the court is satisfied that the award is necessary to afford just satisfaction to the person in whose favour it is made.

## **Interpretation of the Bill of Rights**

28. In this Part—

“act” includes a failure to act but excludes a failure to introduce before the Legislative Assembly, or for the Legislature to enact, primary legislation;

“Caymanian” has the meaning ascribed to it in the laws of the Cayman Islands for the time being in force;

“contravene” in relation to any requirement includes failure to comply with that requirement, and cognate expressions shall be construed accordingly;

“court” includes tribunal;

“disciplined force” means—

- (a) a naval, military or air force;
- (b) any police force or prison service in the Cayman Islands;

“member” of a disciplined force is a person who, under the law regulating the discipline of that force, is subject to that discipline;

“minor” means a person who has not attained the age of eighteen years or such other age as may be prescribed for this purpose by any law;

“primary legislation” means a Law enacted by the Legislature;

“public official”—

- (c) includes a public or governmental body, including any statutory body or company or association in which the Cayman Islands has an interest and which performs a public function or duty;
- (d) includes any organisation or person carrying out a public function or duty, including the Governor, except where the nature of their act is private;
- (e) unless otherwise stated, excludes private schools (whether or not in receipt of government funding, subsidy or other assistance), churches, the Legislature and the courts.

## PART II

### THE GOVERNOR

#### **The office of Governor**

29. There shall be a Governor of the Cayman Islands who shall be appointed by Her Majesty and shall hold office during Her Majesty’s pleasure.

#### **Oaths to be taken by the Governor**

30. Before assuming the functions of his or her office, the person appointed to be Governor shall make oaths of allegiance and for the due execution of his or her office before the Chief Justice in the forms set out in the Schedule to this Constitution.

#### **Functions of the Governor**

31.—(1) The Governor shall have such functions as are prescribed by this Constitution and any other law, and such other functions as Her Majesty may from time to time be pleased to assign to him or her in exercise of the Royal prerogative.

(2) The Governor shall exercise his or her functions in accordance with this Constitution and any other law and, subject thereto, in accordance with such instructions (if any) as may be addressed to the Governor by or on behalf of Her Majesty.

(3) In the exercise of his or her functions under subsection (2), the Governor shall endeavour to promote good governance and to act in the best interests of the Cayman Islands so far as such interests are consistent with the interests of the United Kingdom.

(4) Notwithstanding the jurisdiction of the courts in respect of functions exercised by the Governor, the question of whether or not the Governor has in any matter complied with any instructions addressed to him or her by or on behalf of Her Majesty shall not be inquired into in any court.

#### **Exercise of the Governor’s functions**

32.—(1) Subject to subsection (2), the Governor shall consult with the Cabinet in the exercise of all functions conferred on him or her by this Constitution or any other law, insofar as it is reasonably practicable to do so and unless the matter is not materially significant such as to require consultation.

(2) The Governor shall not be obliged to consult with the Cabinet in the exercise of—

- (a) any function conferred by this Constitution which the Governor is empowered to exercise in his or her discretion or judgement or in pursuance of instructions addressed to him or her by or on behalf of Her Majesty;
- (b) any function conferred by this Constitution or any other law which the Governor is empowered or directed, either expressly or by necessary implication, to exercise without

consulting the Cabinet or to exercise on the recommendation or advice of, or after consultation with, any person or authority other than the Cabinet; or

- (c) the special responsibilities of the Governor set out in section 55, other than external affairs.

(3) The Governor shall keep the Cabinet informed concerning the general conduct of all matters for which he or she is responsible, and of any matters that in his or her judgement may involve the economic or financial interests of the Cayman Islands or the enactment of laws under this Constitution.

(4) Where the Governor is by this Constitution or any other law directed to exercise any function after consultation with any person or authority other than the Cabinet he or she shall not be obliged to exercise that function in accordance with the advice of that person or authority.

(5) Where the Governor is by this Constitution or any other law directed to exercise any function in accordance with the recommendation or advice of, or after consultation with, any person or authority, the question of whether or not he or she has so exercised that function shall not be inquired into in any court.

#### **The Governor may act contrary to the advice of the Cabinet**

33.—(1) Subject to subsection (2), in any case where the Governor is required to consult with the Cabinet he or she shall act in accordance with the advice given to him or her by the Cabinet.

(2) The Governor may act against the advice given to him or her by the Cabinet—

- (a) if he or she is instructed to do so by Her Majesty through a Secretary of State; or  
(b) if, in his or her judgement, such advice would adversely affect any of the special responsibilities of the Governor set out in section 55.

(3) Whenever the Governor acts otherwise than in accordance with the advice given to him or her by the Cabinet, his or her reasons shall be recorded in the minutes, and any member of the Cabinet may require that there be recorded in the minutes the grounds of any advice or opinion which he or she may have given on the question.

#### **The office of Deputy Governor**

34.—(1) There shall be a Deputy Governor who shall be such person as Her Majesty may designate as such by instructions given through a Secretary of State and who shall hold office during Her Majesty's pleasure.

(2) A person shall not be designated as Deputy Governor unless—

- (a) he or she is a Caymanian; and  
(b) he or she holds or has held a senior position in the public service and is still eligible to hold public office.

(3) For the purposes of subsection (2), "senior position in the public service" means head of department or head of a statutory authority or Government-owned company or above.

(4) The Deputy Governor shall have such functions as (subject to this Constitution and any other law) may be delegated to him or her by the Governor, acting in his or her discretion.

(5) Under the authority of the Governor, the Deputy Governor shall be head of the civil service.

#### **Acting Governor**

35.—(1) During any period when the office of Governor is vacant or the Governor is absent from the Cayman Islands or is for any other reason unable to perform the functions of his or her office, those functions shall be assumed and performed by—

- (a) the Deputy Governor; or  
(b) if the office of Deputy Governor is vacant or the Deputy Governor is absent from the Cayman Islands or is for any other reason unable to perform those functions, such public

officer, being a Caymanian, as Her Majesty may designate by instructions given through a Secretary of State ("the person designated").

(2) Before assuming the functions of the office of Governor, the Deputy Governor or the person designated shall make the oaths directed by section 30 to be made by the Governor.

(3) The Deputy Governor shall cease to perform the functions of the office of Governor after the Governor has notified him or her that he or she is about to resume or assume those functions, and the person designated shall cease to perform those functions after the Governor or Deputy Governor has so notified him or her.

(4) The Governor or the Deputy Governor shall not, for the purposes of this section, be regarded as absent from the Cayman Islands or as unable to perform the functions of his or her office—

- (a) by reason that he or she is in passage from one part of the Cayman Islands to another; or
- (b) at any time when there is a subsisting appointment under section 36.

(5) In this section, "Governor" means the person holding the office of Governor, and "Deputy Governor" means the person holding the office of Deputy Governor.

### **Temporary exercise of certain functions of the Governor**

36.—(1) Whenever the Governor—

- (a) has occasion to be absent from Grand Cayman but not from the Cayman Islands;
- (b) intends to be absent from the Cayman Islands for a short period; or
- (c) is suffering from any illness which he or she believes will be of short duration,

the Governor may, acting in his or her discretion and by instrument under the public seal, appoint the Deputy Governor (or if the Deputy Governor is not available any other public officer in the Cayman Islands who is a Caymanian) during such absence or illness to perform on his or her behalf such of the functions of the office of Governor as may be specified in the instrument.

(2) The power and authority of the Governor shall not be affected by an appointment under this section, and a person so appointed shall comply with such instructions as the Governor, acting in his or her discretion, may from time to time address to him or her; but the question of whether or not that person has in any matter complied with any such instructions shall not be inquired into in any court.

(3) A person appointed under this section shall hold that appointment for such period as may be specified in the instrument by which he or she is appointed, and the appointment may be revoked at any time by Her Majesty by instructions given through a Secretary of State or by the Governor, acting in his or her discretion.

### **Emoluments, personal staff and expenditure of the Governor**

37.—(1) The Governor shall receive such emoluments as may for the time being be fixed by a Secretary of State by directions in writing, and those emoluments are hereby charged on and shall be paid out of the revenues of the Cayman Islands.

(2) A law enacted by the Legislature may prescribe the offices that are to constitute the personal staff of the Governor, the salaries and allowances that are to be paid to the members of that staff and the other sums that are to be paid in respect of the expenditure attaching to the office of Governor; but no such law shall apply to such members of the personal staff of the Governor as are recruited and paid under the authority of a Secretary of State.

(3) Any salaries, allowances or other sums prescribed under subsection (2) are hereby charged on and shall be paid out of the revenues of the Cayman Islands.

### **Powers to dispose of land**

38. Subject to any law for the time being in force in the Cayman Islands, the Governor or any person duly authorised by him or her in writing under his or her hand may, in Her Majesty's name

and on Her Majesty's behalf, make and execute under the public seal grants and dispositions of any land or other immovable property within the Cayman Islands that may be lawfully granted or disposed of by Her Majesty.

#### **Powers of pardon, etc.**

39.—(1) The Governor may, in Her Majesty's name and on Her Majesty's behalf—

- (a) grant to any person concerned in or convicted of any offence against any law in force in the Cayman Islands a pardon, either free or subject to lawful conditions;
- (b) grant to any person a respite, either indefinite or for a specified period, from the execution of any sentence passed on that person for such an offence;
- (c) substitute a less severe form of punishment for that imposed by any sentence for such an offence; or
- (d) remit the whole or any part of any sentence passed for such an offence or any penalty or forfeiture otherwise due to Her Majesty on account of such an offence.

(2) In the exercise of his or her powers under this section the Governor shall consult the Committee established by section 40, but he or she shall decide whether to exercise any of those powers in any case in his or her discretion, whether the members of the Committee concur in his or her decision or otherwise.

#### **Advisory Committee on the Prerogative of Mercy**

40.—(1) There shall be in and for the Cayman Islands an Advisory Committee on the Prerogative of Mercy, which shall consist of the Attorney General, the Chief Medical Officer and four other members, of which two shall be appointed by the Governor acting after consultation with the Premier and two shall be appointed by the Governor acting after consultation with the Leader of the Opposition.

(2) The Committee shall not be summoned except by the authority of the Governor, acting in his or her discretion; and the Governor shall preside at all meetings of the Committee.

(3) No business shall be transacted at any meeting of the Committee unless there are at least three members present, of whom one shall be the Attorney General.

(4) The office as a member of the Committee of any member appointed by the Governor under subsection (1) shall become vacant if the Governor, acting after consultation with the Premier and the Leader of the Opposition, revokes his or her appointment as a member of the Committee.

(5) Subject to subsection (3), the Committee shall not be disqualified for the transaction of business by reason of any vacancy in its membership, and the validity of the transaction of any business by the Committee shall not be affected by reason only of the fact that some person who was not entitled to do so took part in the proceedings.

(6) Subject to this section the Committee may regulate its own proceedings.

#### **Public seal**

41. The Governor shall keep and use the public seal for sealing all things that should pass that seal.

#### **Constitution of offices**

42. Subject to this Constitution and any other law, the Governor, in Her Majesty's name and on Her Majesty's behalf, may constitute offices for the Cayman Islands.

## PART III

### THE EXECUTIVE

#### Executive authority

43.—(1) The executive authority of the Cayman Islands is vested in Her Majesty.

(2) Subject to this Constitution, the executive authority of the Cayman Islands shall be exercised on behalf of Her Majesty by the Government, consisting of the Governor as Her Majesty's representative and the Cabinet, either directly or through public officers.

(3) Nothing in this section shall preclude persons or authorities other than the Government from exercising such functions as are or may be conferred on them by any law.

#### The Cabinet

44.—(1) There shall be a Cabinet in and for the Cayman Islands, which shall consist of—

- (a) a Premier appointed by the Governor in accordance with section 49(2) or (3);
- (b) six other Ministers, one of whom shall be Deputy Premier, appointed by the Governor, acting in accordance with the advice of the Premier, from among the elected members of the Legislative Assembly; and
- (c) the Deputy Governor and the Attorney General, *ex officio*.

(2) The number of Ministers referred to in subsection (1) may be increased by a law made pursuant to section 60(2) which increases the number of elected members of the Legislative Assembly; but in no circumstances may the number of Ministers exceed two-fifths of the total number of elected members of the Assembly.

(3) The Cabinet shall have responsibility for the formulation of policy, including directing the implementation of such policy, insofar as it relates to every aspect of government except those matters for which the Governor has special responsibility under section 55, and the Cabinet shall be collectively responsible to the Legislative Assembly for such policies and their implementation.

(4) Subject to this Constitution, the Cabinet shall determine its own procedures for the conduct of its business.

#### Meetings of the Cabinet

45.—(1) The Cabinet shall meet regularly at such times as its rules and procedures may prescribe, and shall also meet whenever the Premier, or the Governor, acting in his or her discretion, so requests.

(2) Upon receiving such a request, the Cabinet Secretary shall summon the Cabinet.

#### Proceedings in and quorum of the Cabinet

46.—(1) The Governor shall, so far as is practicable, attend and preside at meetings of the Cabinet.

(2) In the absence of the Governor from any meeting of the Cabinet, the Cabinet shall be chaired by the Premier or, in the absence of the Premier, the Deputy Premier.

(3) The Governor and the Premier shall together set the agenda for every meeting of the Cabinet, and each shall be entitled to inscribe items on the agenda.

(4) A quorum for any meeting of the Cabinet is a majority of Ministers.

(5) Subject to subsection (4), the Cabinet shall not be disqualified for the transaction of business by reason of any vacancy in its membership (including any vacancy not filled when the Cabinet is first constituted or is reconstituted at any time) and the validity of the transaction of business in the Cabinet shall not be affected by reason only of the fact that some person who was not entitled to do so took part in the proceedings.

(6) The Deputy Governor and the Attorney General shall not be entitled to vote in the Cabinet.

#### **Attendance of persons at meetings**

47.—(1) The person presiding over any meeting of the Cabinet may summon any public officer or invite any other person to a meeting of the Cabinet whenever the business before the Cabinet renders the presence of that officer or other person desirable.

(2) If the presence of any person summoned or invited under subsection (1) is objected to by any member of the Cabinet, the person shall only attend the meeting to which he or she has been summoned or invited with the agreement of the Cabinet.

(3) Where an electoral district is not represented in the Cabinet, the member or members of the Legislative Assembly representing that district shall be entitled to attend a meeting convened by the Cabinet once every three months for the purpose of—

- (a) making representations with respect to matters affecting their district; and
- (b) making budgetary representations when the Annual Plan and Estimates are being developed.

#### **Cabinet Secretary**

48.—(1) There shall be—

- (a) a Cabinet Office, which shall be an office in the Government; and
- (b) a Cabinet Secretary, whose office shall be a public office, who shall be a person who is a Caymanian and who shall be appointed by the Governor, acting after consultation with the Premier.

(2) The Cabinet Secretary shall have charge of the Cabinet Office.

(3) The responsibilities of the Cabinet Secretary shall include—

- (a) providing frank and politically neutral advice to the Governor, the Cabinet and the Premier on matters of policy;
- (b) co-ordinating the development and implementation of policy between departments and ministerial portfolios and across the wider Government sector to ensure that Government policy is developed coherently;
- (c) providing for administrative and secretarial support for the Cabinet and the Premier in order to allow high-quality and effective government;
- (d) arranging the business for, and keeping the minutes of, the meetings of the Cabinet or any Cabinet committee and conveying the conclusions reached at the meetings to the appropriate person or authority;

and the Cabinet Secretary shall have such other functions as the Governor, acting after consultation with the Premier, may from time to time direct.

(4) The Cabinet Secretary shall also—

- (a) transmit copies of all papers submitted for consideration by the Cabinet or any Cabinet committee to the Governor and all members of the Cabinet;
- (b) inform the Governor and all members of the Cabinet of the summoning of any meeting of the Cabinet or any Cabinet committee and of the matters to be discussed at any meeting of the Cabinet or any Cabinet committee; and
- (c) furnish the Governor and all members of the Cabinet, as soon as practicable after each meeting of the Cabinet or any Cabinet committee, with a copy of the confirmed minutes of the previous meeting showing the matters discussed and the conclusions reached at the meeting.

### **Appointment of the Premier and other Ministers**

49.—(1) The Premier shall be appointed by the Governor as follows.

(2) Where a political party gains a majority of the seats of elected members of the Legislative Assembly, the Governor shall appoint as Premier the elected member of the Assembly recommended by a majority of the elected members who are members of that party.

(3) If no political party gains such a majority or if no recommendation is made under subsection (2), the Speaker shall cause a ballot to be held among the elected members of the Legislative Assembly to determine which elected member commands the support of the majority of such members, and shall record the vote of each member voting; and, where such a ballot is held, the Governor shall appoint as Premier the elected member who obtains a majority of the votes of the elected members.

(4) Notwithstanding subsections (2) and (3), the Governor shall not appoint as Premier a person who has held office as Premier during two consecutive parliamentary terms unless at least one parliamentary term has expired since he or she last held that office; and for the purposes of this subsection a parliamentary term shall be deemed to be a period commencing when the Legislative Assembly first meets after being constituted under this Constitution or after its dissolution at any time, and terminating when the Assembly is next dissolved.

(5) After his or her appointment, the Premier shall advise the Governor to appoint the other Ministers.

(6) Appointments of the Premier and the other Ministers shall be made by the Governor by instrument under the public seal.

(7) If occasion arises for making an appointment of any Minister between a dissolution of the Legislative Assembly and the polling in the next following general election, a person who was an elected member of the Assembly immediately before the dissolution may be appointed as a Minister.

(8) The Governor shall without delay report to Her Majesty through a Secretary of State every appointment made under this section.

(9) The members of the Cabinet shall each, before assuming the functions of his or her office, make before the Governor oaths of allegiance and for the due execution of his or her office in the forms set out in the Schedule to this Constitution.

(10) The Governor and the Premier shall confer on a regular basis and the Premier shall brief and keep the Governor fully informed about the policies of the Government and the public affairs of the Cayman Islands.

### **Functions of the Premier**

50. The Premier shall have such functions as are conferred on him or her by or under this Constitution, and shall exercise those functions in accordance with this Constitution and any other law and in the best interests of the Cayman Islands.

### **Tenure of office of the Premier**

51.—(1) The Governor shall, by instrument under the public seal, revoke the appointment of the Premier if a motion that the Legislative Assembly should declare a lack of confidence in the Government receives the affirmative votes of not less than two-thirds of the elected members of the Assembly; but before so revoking the Premier's appointment, the Governor shall consult the Premier and may, acting in his or her discretion, dissolve the Assembly instead of revoking the appointment.

(2) The Premier shall vacate his or her office if, after the polling in a general election, the Governor, acting in his or her discretion, informs him or her that he or she is about to appoint another person as Premier.

### **Tenure of office of Ministers**

52.—(1) Any Minister shall vacate his or her office—

- (a) if he or she ceases to be a member of the Legislative Assembly for any reason other than its dissolution;
- (b) if he or she is not a member of the Assembly when it first meets after a general election;
- (c) if he or she resigns his or her office by writing under his or her hand addressed to the Governor; or
- (d) if he or she is absent from the Cayman Islands or absent from three consecutive meetings of the Cabinet without—
  - (i) in the case of the Premier, having given the Governor prior notice of such absence; or
  - (ii) in the case of any other Minister, having obtained written permission for such absence from the Governor, acting in accordance with the advice of the Premier.

(2) A Minister other than the Premier shall also vacate his or her office if—

- (a) the Premier vacates his or her office; or
- (b) his or her appointment is revoked by the Governor, acting in accordance with the advice of the Premier, by instrument under the public seal.

### **Performance of functions of Ministers in certain events**

53.—(1) If the Premier is unable, due to illness or absence from the Cayman Islands, to perform the functions of his or her office, the Governor shall authorise the Deputy Premier to perform those functions; and in the absence or illness of the Deputy Premier, the Governor shall authorise another Minister to perform those functions, acting in accordance with the advice of the Premier or, if it is impracticable to obtain the advice of the Premier, acting in his or her discretion but after consulting the Cabinet.

(2) Whenever a Minister other than the Premier is unable, by reason of illness or absence from the Cayman Islands or absence from his or her duties on leave, to perform the functions of his or her office, the Governor, acting in accordance with the advice of the Premier, may—

- (a) appoint a person who is an elected member of the Legislative Assembly to be a temporary Minister; or
- (b) assign responsibility for the performance of the functions of that Minister to another Minister (including the Premier),

and may specify the period for which such person shall be a temporary Minister or for which such other Minister shall perform the functions of that Minister.

(3) If occasion arises for making an appointment under subsection (2)(a) between a dissolution of the Legislative Assembly and the next following general election, subsection (2) shall have effect for the purpose as if the Assembly had not been dissolved.

(4) Subject to this Constitution—

- (a) a temporary Minister shall hold office; and
- (b) a Minister assigned to perform the functions of another Minister shall perform those functions,

until the expiry of the period specified under subsection (2) or, where no period was so specified, until he or she is notified by the Governor in writing that he or she shall cease to hold that office or to perform those functions.

(5) Any authorisation, appointment or assignment under this section shall be made by the Governor by instrument under the public seal, and may be revoked in like manner.

### **Allocation of responsibilities to Ministers**

54.—(1) The Governor, acting in accordance with the advice of the Premier, shall by directions in writing—

- (a) charge any Minister with responsibility for the conduct (subject to this Constitution and any other law) of any business of the Government including responsibility for the administration of any department of government;
- (b) designate the style by which any Minister so charged shall be known,

but a Minister shall be charged with responsibility for finance.

(2) If the persons appointed as Ministers do not include an elected member of the Legislative Assembly representing Cayman Brac and Little Cayman, the Minister with responsibility for District Administration should ensure that the District Commissioner liaises with the members of the Assembly representing Cayman Brac and Little Cayman.

(3) Nothing in this section shall empower the Governor to confer on any Minister authority to exercise any function that is conferred by this Constitution or any other law on any person or authority other than a Minister.

(4) Without prejudice to the generality of subsection (3), except for the purpose of submitting questions relating to such matters to the Cabinet and conducting business relating to such matters in the Legislative Assembly, a Minister shall not be charged under this section with responsibility for—

- (a) any matter for which the Governor, acting in his or her discretion, is responsible under section 55;
- (b) the discharge by the courts of their judicial functions;
- (c) the initiation, conduct and discontinuance of criminal proceedings; or
- (d) the audit of the accounts of the Cayman Islands or any authority or office of the Government or of the courts.

(5) Ministers shall be collectively responsible to the Legislative Assembly with respect to any matter for which a Minister is responsible under this section.

(6) A Minister charged under subsection (1) with responsibility for the conduct of any business of the Government may be assisted in the discharge of that responsibility by a board, committee or other similar body consisting wholly or partly of persons who are not public officers and established by a law made under this Constitution or by directions in writing given by the Minister concerned; and any such body shall have such advisory, consultative and administrative functions as may be conferred on it by such a law or directions, but, in exercising any such functions, the body shall be subject to the directions of the Minister concerned.

(7) Where a Minister has been charged under subsection (1) with responsibility for the administration of any department of government, the Minister shall (subject to this Constitution and any other law) exercise general direction and control over the department, and, subject to such direction and control, the department shall be under the supervision of a public officer; but two or more departments of government may be placed under the supervision of one public officer.

(8) The Governor, acting in his or her discretion, may at any time call for any official papers or seek any official information or advice available to a Minister with respect to a matter for which that Minister is responsible under this section.

### **Special responsibilities of the Governor**

55.—(1) The Governor shall be responsible for the conduct, subject to this Constitution and any other law, of any business of the Government with respect to the following matters—

- (a) defence;
- (b) external affairs, subject to subsections (3) and (4);
- (c) internal security including the police, without prejudice to section 58;

- (d) the appointment (including the appointment on promotion or transfer, appointment on contract and appointment to act in an office) of any person to any public office, the suspension, termination of employment, dismissal or retirement of any public officer or taking of disciplinary action in respect of such an officer, the application to any public officer of the terms or conditions of employment of the public service (including salary scales, allowances, leave, passages and pensions) for which financial provision has been made, and the organisation of the public service to the extent that it does not involve new financial provision.

(2) The Governor, acting after consultation with the Premier, may assign or delegate to any member of the Cabinet, by instrument in writing and on such terms and conditions as he or she may impose, responsibility for the conduct on behalf of the Governor of any business in the Legislative Assembly with respect to any of the matters listed in subsection (1).

(3) The Governor shall not enter, agree or give final approval to any international agreement, treaty or instrument that would affect internal policy or require implementation by legislation in the Cayman Islands without first obtaining the agreement of the Cabinet, unless instructed otherwise by a Secretary of State.

(4) The Governor shall, acting after consultation with the Premier, assign or delegate to the Premier or another Minister, by instrument in writing and on the terms and conditions set out in subsection (5), responsibility for the conduct of external affairs insofar as they relate to any matters falling within the portfolios of Ministers, including—

- (a) the Caribbean Community, the Association of Caribbean States, the United Nations Economic Commission for Latin America and the Caribbean, or any other Caribbean regional organisation or institution;
- (b) other Caribbean regional affairs relating specifically to issues that are of interest to or affect the Cayman Islands;
- (c) tourism and tourism-related matters;
- (d) taxation and the regulation of finance and financial services; and
- (e) European Union matters directly affecting the Cayman Islands.

(5) The terms and conditions referred to in subsection (4) are the following—

- (a) separate authority shall be required from or on behalf of a Secretary of State for the commencement of formal negotiation and the conclusion of any treaty or other international agreement by the Government;
- (b) no political declaration, understanding or arrangement in the field of foreign policy shall be signed or supported in the name of the Government without the prior approval of a Secretary of State;
- (c) a formal invitation to a member of government or Head of State of another country to visit the Cayman Islands shall not be issued without prior consultation with the Governor;
- (d) the costs of any activities in pursuance of subsection (4) shall be borne by the Government;
- (e) the Premier or other Minister shall keep the Governor fully informed of any activities in pursuance of subsection (4);
- (f) the Premier or other Minister shall provide the Governor on request all papers and information, including the text of any instrument under negotiation, available to the Premier or other Minister with respect to any activities in pursuance of subsection (4); and
- (g) any directions given by the Governor on any matter which in his or her judgement might affect defence or security shall be complied with.

(6) In the event of any disagreement regarding the exercise of any authority delegated or assigned under subsection (4), the matter shall be referred to a Secretary of State whose decision on the matter shall be final and whose directions shall be complied with.

(7) The Governor may, by directions in writing and with the prior approval of a Secretary of State, delegate or assign such other matters relating to external affairs to the Premier or another Minister designated by the Premier as the Governor thinks fit on such conditions as he or she may impose.

#### **Attorney General**

56.—(1) There shall be an Attorney General of the Cayman Islands, whose office shall be a public office and who shall be appointed in accordance with section 106.

(2) The Attorney General shall be the principal legal adviser to the Government and the Legislative Assembly.

#### **Director of Public Prosecutions**

57.—(1) There shall be a Director of Public Prosecutions for the Cayman Islands, whose office shall be a public office and who shall be appointed in accordance with section 106.

(2) The Director of Public Prosecutions shall have power, in any case in which he or she considers it desirable to do so—

- (a) to institute and undertake criminal proceedings against any person before any court in respect of any offence against any law in force in the Cayman Islands;
- (b) to take over and continue any such criminal proceedings that have been instituted by any other person or authority; and
- (c) to discontinue at any stage before judgment is delivered any such criminal proceedings instituted or undertaken by himself or herself or any other person or authority.

(3) The powers of the Director of Public Prosecutions under subsection (2) may be exercised by him or her in person or by officers subordinate to him or her acting under and in accordance with his or her general or special instructions.

(4) The powers conferred on the Director of Public Prosecutions by subsection (2)(b) and (c) shall be vested in him or her to the exclusion of any other person or authority; but where any other person or authority has instituted criminal proceedings, nothing in this subsection shall prevent the withdrawal of those proceedings by or at the instance of that person or authority at any stage before the person against whom the proceedings have been instituted has been charged before the court.

(5) For the purposes of this section, any appeal from any determination in any criminal proceedings before any court, or any case stated or question of law reserved for the purpose of any such proceedings, to any other court or to Her Majesty in Council shall be deemed to be part of those proceedings.

(6) In the exercise of the powers conferred on him or her by this section, the Director of Public Prosecutions shall not be subject to the direction or control of any other person or authority.

#### **National Security Council**

58.—(1) There shall be in and for the Cayman Islands a National Security Council which shall consist of—

- (a) the Governor, as Chairman;
- (b) the Premier;
- (c) two other Ministers appointed in writing by the Governor, acting in accordance with the advice of the Premier;
- (d) the Leader of the Opposition or his or her designate;
- (e) two persons representative of civil society appointed in writing by the Governor, acting after consultation with the Premier and the Leader of the Opposition;
- (f) the Deputy Governor, *ex officio*;

- (g) the Attorney General, *ex officio*; and
- (h) the Commissioner of Police, *ex officio*.

(2) A Minister appointed under subsection (1)(c) shall vacate his or her seat on the National Security Council if—

- (a) his or her office becomes vacant under section 52; or
- (b) the Governor so directs in writing, acting in accordance with the advice of the Premier.

(3) A person appointed under subsection (1)(e) may be appointed for a period of up to two years, and may be reappointed.

(4) The National Security Council shall advise the Governor on matters relating to internal security, with the exception of operational and staffing matters, and the Governor shall be obliged to act in accordance with the advice of the Council, unless he or she considers that giving effect to the advice would adversely affect Her Majesty's interest (whether in respect of the United Kingdom or the Cayman Islands); and where the Governor has acted otherwise than in accordance with the advice of the Council, he or she shall report to the Council at its next meeting.

(5) The Commissioner of Police shall—

- (a) provide regular briefings to the National Security Council on matters of internal security, including the police force save insofar as to do so would prejudice current operations;
- (b) have responsibility for the day to day operation of the police force and shall report regularly on such operation to the Governor; and
- (c) inform the Premier of any significant security developments in the Cayman Islands, including the occurrence of any significant criminal activity.

(6) Before assuming office each member of the National Security Council shall sign a declaration that he or she will not disclose to any other person, without the permission of the Governor, information acquired as a member of the Council; and, without prejudice to any other penalties that may be imposed under any other law, the Governor, acting in his or her discretion, may by published directions in writing exclude from the activities of the Council, or revoke the membership of the Council of, any member who breaches such a declaration.

(7) Where the Governor has good reason to believe that there has been a breach by a member of the declaration made pursuant to subsection (6), the Governor, acting in his or her discretion, may suspend from the activities of the Council that member while the question of a breach is being investigated; and any such investigation shall be concluded expeditiously.

(8) The National Security Council may invite any person or summon any public officer to attend and participate in, or provide briefings to, the Council on the areas of their work bearing on internal security.

(9) The Governor, acting in his or her discretion, may summon a meeting of the National Security Council whenever he or she considers it desirable to do so, and the Governor shall summon such a meeting whenever the Premier so requests.

(10) Subject to this section, the National Security Council may regulate its own procedure.

(11) The Cabinet Secretary shall be the Secretary to the National Security Council.

## PART IV

### THE LEGISLATURE

#### **Composition of the Legislature and power to make laws**

59.—(1) There shall be a Legislature of the Cayman Islands which shall consist of Her Majesty and a Legislative Assembly.

(2) Subject to this Constitution, the Legislature may make laws for the peace, order and good government of the Cayman Islands.

## The Legislative Assembly

60.—(1) The Legislative Assembly shall consist of—

- (a) the Speaker;
- (b) eighteen elected members, who shall be persons qualified for election in accordance with this Constitution and elected in the manner provided for in a law enacted for the purposes of section 93; and
- (c) the Deputy Governor and the Attorney General, *ex officio*.

(2) A law made under section 59(2) may increase the number of elected members of the Legislative Assembly; but no such law shall come into force—

- (a) unless an order by the Governor providing for the electoral districts and their boundaries to take account of the additional elected members in accordance with section 89 has been made; and
- (b) until the dissolution of the Legislative Assembly next following the enactment of such law.

(3) No member of the Legislative Assembly shall be permitted to take part in the proceedings of the Assembly, other than proceedings necessary for the purposes of this subsection or the election of a Speaker, until he or she has made and subscribed before the Assembly oaths of allegiance and for the due execution of his or her office in the forms set out in the Schedule to this Constitution.

## Qualifications for elected membership of the Legislative Assembly

61.—(1) Subject to section 62, a person shall be qualified to be elected as a member of the Legislative Assembly if, and shall not be qualified to be so elected unless—

- (a) he or she is a Caymanian; and
- (b) he or she has attained the age of 21 years; and
- (c) he or she is, at the date of his or her nomination for election, domiciled and resident in the Cayman Islands; and
- (d) he or she is a qualified citizen; and either
- (e) he or she was born in the Cayman Islands, or was born outside the Cayman Islands in the circumstances mentioned in subsection (2)(b), has resided in the Cayman Islands for a period of not less than seven years immediately preceding the date of his or her nomination for election and, subject to subsection (3), the number of days on which he or she was absent from the Cayman Islands in that period does not exceed 400; or
- (f) if he or she was born outside the Cayman Islands, has resided in the Cayman Islands for a period or periods amounting to not less than fifteen years out of the twenty years immediately preceding the date of his or her nomination for election, and, subject to subsection (3), in the seven years immediately preceding the date of his or her nomination for election the number of days on which he or she was absent from the Cayman Islands does not exceed 400.

(2) For the purposes of subsection (1)(d), a qualified citizen is a British overseas territories citizen by virtue of a connection with the Cayman Islands, who either—

- (a) at the date of his or her nomination for election possesses no other citizenship and is pursuing no claim to any other citizenship for which he or she may be eligible; or
- (b) was born outside the Cayman Islands, has or had at least one parent or grandparent who was born in the Cayman Islands and is a Caymanian (or if deceased would if alive have been a Caymanian at the date of nomination for election), and who at the date of his or her nomination for election possesses no other citizenship save for any right he or she may have to some other citizenship by virtue of his or her birth outside the Cayman Islands;

and in this subsection the words "other citizenship" do not include British citizenship acquired by virtue of the British Overseas Territories Act 2002(a).

(3) In ascertaining whether a person has been absent from the Cayman Islands for the purposes of subsection (1)(e) or (f), any period of absence by reason of the following shall be disregarded—

- (a) the performance of duty on behalf of the Government;
- (b) attendance as a student at any educational establishment;
- (c) attendance as a patient at any hospital, clinic or other medical institution;
- (d) employment as a seaman aboard an ocean-going vessel; or
- (e) employment as a crew member on any aircraft.

#### **Disqualifications for elected membership**

62.—(1) No person shall be qualified to be elected as a member of the Legislative Assembly who—

- (a) is, by virtue of his or her own act, under any acknowledgement of allegiance, obedience or adherence to a foreign power or state;
- (b) holds, or is acting in, any public office;
- (c) has been adjudged or otherwise declared bankrupt under any law in force in any part of the Commonwealth or the United States of America and has not been discharged;
- (d) is a person certified to be insane or otherwise adjudged to be of unsound mind under any law in force in the Cayman Islands;
- (e) subject to subsection (2), is serving or has served a sentence of imprisonment (by whatever name called) exceeding twelve months imposed on him or her by a court in any country or substituted by competent authority for some other sentence imposed on him or her by such a court, or is under such a sentence of imprisonment the execution of which has been suspended, or has been convicted by any court in any country of an offence involving dishonesty;
- (f) is disqualified for election by any law in force in the Cayman Islands by reason of his or her holding, or acting in, any office the functions of which involve—
  - (i) any responsibility for, or in connection with, the conduct of any election; or
  - (ii) any responsibility for the compilation or revision of any electoral register;
- (g) is a party to, or a partner in a firm or a director or manager of a company which is a party to, any contract with the Government for or on account of the public service and has not, within the period of one month immediately preceding the date of an election in which he or she is a candidate, caused to be published a Government Notice setting out the nature of such contract and his or her interest, or the interest of any such firm or company, in it; or
- (h) is disqualified for membership of the Assembly by any law in force in the Cayman Islands relating to offences connected with elections.

(2) For the purposes of subsection (1)(e) and section 63(g)—

- (a) where a person is serving two or more sentences of imprisonment that are required to be served consecutively he or she shall, throughout the whole time during which he or she so serves, be regarded as serving a sentence exceeding twelve months if (but not unless) any one of those sentences exceeds that term; and
- (b) no account shall be taken of a sentence of imprisonment imposed as an alternative to or in default of the payment of a fine.

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(a) 2002 c.8.

### **Tenure of office of elected members**

63. The seat of an elected member of the Legislative Assembly shall become vacant—

- (a) upon a dissolution of the Assembly;
- (b) if he or she is absent from the sittings of the Assembly for such period and in such circumstances as may be prescribed in the Standing Orders of the Assembly;
- (c) if he or she ceases to be a Caymanian;
- (d) if he or she ceases to be resident in the Cayman Islands;
- (e) if he or she resigns his or her seat by writing under his or her hand addressed to the Governor;
- (f) if he or she becomes a party to any contract with the Government for or on account of the public service, or if any firm in which he or she is a partner or any company of which he or she is a director or manager becomes a party to any such contract, or if he or she becomes a partner in a firm or a director or manager of a company which is a party to any such contract; but if in the circumstances it appears to it to be just to do so, the Assembly may exempt any elected member from vacating his or her seat under this paragraph if the member, before or as soon as practicable after becoming a party to the contract, or before or as soon as practicable after becoming otherwise interested in the contract (whether as a partner in a firm or as a director or manager of a company), discloses to the Assembly or, if that is impracticable, to the Clerk of the Assembly the nature of the contract and his or her interest or the interest of the firm or company in it; or
- (g) subject to section 64, if any circumstances arise that, if he or she were not a member of the Assembly, would cause him or her to be disqualified for election to it by virtue of any provision of section 62(1) other than paragraph (g).

### **Delay in vacation of seat to allow for an appeal**

64.—(1) If circumstances such as are referred to in section 63(g) arise because a member is adjudged or declared bankrupt, is certified insane or adjudged of unsound mind, is under sentence of imprisonment, is convicted of an offence involving dishonesty or is convicted of an offence relating to elections, and it is open to the member to appeal against the decision (either with or without the leave of a court or other authority), he or she shall forthwith cease to perform his or her functions as a member of the Legislative Assembly, but, subject to subsection (2), he or she shall not vacate his or her seat until the expiration of a period of 30 days thereafter; but the Governor may, at the request of the member, extend that period to enable the member to pursue any appeal against the decision, save that extensions of time exceeding in the aggregate 150 days shall not be given without the approval of the Assembly.

(2) If, on the determination of any appeal, such circumstances as aforesaid continue to exist and no further appeal is open to the member, or if for any reason, including the refusal of leave to appeal or the expiration of any time for entering an appeal, it ceases to be open to the member to appeal, he or she shall forthwith vacate his or her seat.

(3) If at any time before the member vacates his or her seat such circumstances as aforesaid cease to exist, his or her seat shall not become vacant on the expiration of the period referred to in subsection (1) and he or she may resume the performance of his or her functions as a member.

### **Speaker and Deputy Speaker**

65.—(1) At the first sitting of the Legislative Assembly after a general election, and as soon as practicable after a vacancy occurs in the relevant office otherwise than on a dissolution of the Assembly, the elected members of the Assembly shall by a majority vote elect—

- (a) a Speaker from among the elected members of the Assembly, or persons who are qualified to be elected as members of the Assembly, other than Ministers; and
- (b) a Deputy Speaker from among the elected members of the Assembly other than Ministers;

and the election of the Speaker and the Deputy Speaker shall take precedence over any other business of the Assembly.

- (2) A person shall vacate the office of Speaker or Deputy Speaker—
- (a) upon a dissolution of the Legislative Assembly;
  - (b) if he or she informs the Assembly, by writing addressed to the Assembly and received by the Clerk of the Assembly, that he or she resigns his or her office;
  - (c) in any circumstances which, in the case of the Speaker, would cause him or her to vacate his or her seat as, or if he or she were, a member of the Assembly, or, in the case of the Deputy Speaker, if he or she ceases to be an elected member of the Assembly;
  - (d) if, on the date of his or her election as Speaker or Deputy Speaker, he or she is a party to, or a partner in a firm or a director or manager of a company which is a party to, any contract with the Government or if, on any date after such election he or she or a firm in which he or she is a partner or a company of which he or she is a director or manager becomes a party to any such contract or he or she becomes a partner in a firm or a director or manager of a company which is a party to any such contract, and he or she does not, before the expiration of 30 days from the date in question, disclose to the Assembly or, if that is impracticable, to the Clerk of the Assembly in writing the nature of such contract and his or her interest, or the interest of such a firm or company, in it and the Assembly does not exempt him or her from vacating his or her office under this paragraph;
  - (e) if he or she becomes a Minister; or
  - (f) on the passing, by the votes of two-thirds of the elected members of the Assembly, of a motion expressing no confidence in him or her as Speaker or Deputy Speaker, as the case may be.

(3) If the office of Speaker or Deputy Speaker becomes vacant, the Legislative Assembly shall elect another Speaker or Deputy Speaker fulfilling the requirements of subsection (1)(a) and (b).

#### **Determination of questions as to membership of the Legislative Assembly**

66.—(1) Any question whether a person has been validly elected as a member of the Legislative Assembly, or whether an elected member of the Assembly has vacated his or her seat in it, shall be determined by the Grand Court, whose decision shall be final and not subject to any appeal.

(2) An application to the Grand Court for the determination of any question whether a person has been validly elected as a member of the Legislative Assembly may be made by—

- (a) a person who voted or had the right to vote at the election to which the application relates;
- (b) a person claiming to have had the right to be returned at such election;
- (c) a person alleging himself or herself to have been a candidate at such election; or
- (d) the Attorney General.

(3) An application to the Grand Court for the determination of any question whether an elected member of the Legislative Assembly has vacated his or her seat in it may be made by—

- (a) any elected member of the Assembly; or
- (b) the Attorney General.

(4) If any application referred to in subsection (2) or (3) is made by a person other than the Attorney General, the Attorney General may intervene and may then appear or be represented in the proceedings.

(5) A law enacted by the Legislature may make provision with respect to—

- (a) the time within which, the circumstances and manner in which and the imposition of conditions under which, any application may be made to the Grand Court for the determination of any question under this section;
- (b) the powers, practice and procedure of the Grand Court in relation to any such application.

(6) In the exercise of the powers conferred on him or her by this section and section 67, the Attorney General shall not be subject to the direction or control of any other person or authority.

#### **Penalty for sitting or voting in the Legislative Assembly when unqualified**

67.—(1) Any person who sits or votes in the Legislative Assembly knowing or having reasonable grounds for knowing that he or she is not entitled to do so shall be liable to a penalty not exceeding 500 dollars for each day on which he or she so sits or votes.

(2) Any such penalty shall be recoverable as a debt by civil action in the Grand Court at the suit of the Attorney General.

#### **Leader of the Opposition**

68.—(1) There shall be a Leader of the Opposition who shall be appointed by the Governor.

(2) The Governor shall appoint as the Leader of the Opposition—

- (a) the elected member of the Legislative Assembly recommended by a majority of the elected members of the Assembly who are members of any opposition political party whose numerical strength in the Assembly is greater than that of any other opposition political party;
- (b) if it appears to the Governor that there is no such party but that there is an elected member of the Assembly who would be acceptable as Leader of the Opposition to a majority of the members of the Assembly in opposition to the Government, that member; or
- (c) if it appears to the Governor that there is no such person, then the Governor shall appoint as Leader of the Opposition that person who in his or her opinion would be acceptable to the greatest number of members of the Assembly in opposition to the Government.

(3) If at any time between the polling in a general election and the next following dissolution of the Legislative Assembly the Governor is satisfied that, if the office of the Leader of the Opposition were then vacant, he or she would appoint to that office a person other than the person then holding it, the Governor shall revoke the appointment of the Leader of the Opposition.

(4) The office of the Leader of the Opposition shall also become vacant—

- (a) if for any reason other than a dissolution of the Legislative Assembly the holder of that office ceases to be a member of the Assembly;
- (b) when the Assembly first meets after a general election;
- (c) if the holder of that office becomes a member of the Cabinet; or
- (d) if the holder of that office resigns it by writing under his or her hand addressed to the Governor.

(5) The Governor, acting in accordance with the advice of the Leader of the Opposition, shall appoint a Deputy Leader of the Opposition from among the elected members of the Legislative Assembly in opposition to the Government.

(6) The office of Deputy Leader of the Opposition shall become vacant—

- (a) if his or her appointment is revoked by the Governor, acting in accordance with the advice of the Leader of the Opposition; or
- (b) in any of the circumstances specified in subsection (4)(a), (b), (c) and (d).

(7) In this section “opposition political party” includes a group of members of the Legislative Assembly in opposition to the Government who are prepared to support one of their number as their leader.

#### **Power to provide for a referendum**

69. A law enacted by the Legislature may make provision to hold a referendum amongst persons registered as electors in accordance with section 90, on a matter or matters of national importance,

when so resolved by the majority of the elected members of the Assembly; but the question of whether the Cayman Islands should seek any amendment to this Constitution that may result in their independence shall be deemed to be a matter of national importance.

#### **People-initiated referendums**

70.—(1) Without prejudice to section 69, a law enacted by the Legislature shall make provision to hold a referendum amongst persons registered as electors in accordance with section 90 on a matter or matters of national importance that do not contravene any part of the Bill of Rights or any other part of this Constitution.

(2) Before a referendum under this section may be held—

- (a) there shall be presented to the Cabinet a petition signed by not less than 25 per cent of persons registered as electors in accordance with section 90;
- (b) the Cabinet shall settle the wording of a referendum question or questions within a reasonable time period as prescribed by law; and
- (c) the Cabinet shall make a determination on the date the referendum shall be held in a manner prescribed by law.

(3) Subject to this Constitution, a referendum under this section shall be binding on the Government and the Legislature if assented to by more than 50 per cent of persons registered as electors in accordance with section 90.

#### **Standing Orders and committees**

71.—(1) Subject to this Constitution, the Legislative Assembly may from time to time make, amend and revoke Standing Orders for the regulation and orderly conduct of its own proceedings and the dispatch of business, and for the passing, intituling and numbering of Bills and for their presentation to the Governor for assent; but no such Standing Orders or amendment or revocation of them shall have effect unless they have been approved by the Governor.

(2) Standing Orders must provide for fair procedures, adequate notice of Bills and motions, and a sufficient opportunity for members of the Legislative Assembly (including opposition members) to speak and otherwise participate in the proceedings of the Assembly.

(3) Standing Orders shall not be suspended or revoked without good reason.

(4) In any matter not provided for in Standing Orders, resort shall be had to the usage and practice of the House of Commons of the United Kingdom, which shall be followed as far as the same may be applicable to the Legislative Assembly and not inconsistent with Standing Orders nor with the practice of the Assembly.

(5) In cases of doubt, Standing Orders shall be interpreted in the light of the relevant usage and practice of the House of Commons, but no restriction which the House of Commons has introduced by standing order after the making of such Standing Orders shall be deemed to extend to the Legislative Assembly or its members until the Assembly has by Standing Orders provided for such restriction.

(6) Standing Orders shall make provision for the establishment of a Finance Committee of the Legislative Assembly to consider in detail the estimates of revenue and expenditure of the Cayman Islands laid before the Assembly by the Minister responsible for finance, and to examine and consider all financial Bills and such other matters relating to the finances of the Cayman Islands as may from time to time be referred to it by the Assembly and to report on them to the Assembly.

(7) The Finance Committee shall consist of all the elected members of the Legislative Assembly and shall be chaired by the Minister responsible for finance.

(8) Standing Orders may also establish one or more other standing committees of the Legislative Assembly, each of which may be charged with responsibility for monitoring the conduct of business of the Government for which responsibility has been assigned to a Minister under section 54.

(9) The composition of all such standing committees shall, so far as possible, reflect proportionately the numerical strength of all political parties or groups making up the elected membership of the Legislative Assembly.

(10) Any standing committee so established shall have power to summon any Minister, the Deputy Governor, the Attorney General or any public officer of a department of Government for which a Minister is responsible to appear before it, and to require any Minister or other person so summoned to answer questions and provide information about the conduct of business of the Government by the Minister or department concerned or, as the case may be, by the Deputy Governor or the Attorney General, and to report on its activities to the Legislative Assembly.

#### **Presiding in the Legislative Assembly**

72. At sittings of the Legislative Assembly there shall preside—

- (a) the Speaker; or
- (b) in the absence of the Speaker, the Deputy Speaker; or
- (c) in the absence of the Speaker and the Deputy Speaker, such one of the elected members other than a Minister as may be elected by the elected members.

#### **The Legislative Assembly may transact business notwithstanding vacancies**

73. The Legislative Assembly shall not be disqualified for the transaction of business by reason of any vacancy in its membership (including any vacancy not filled when the Assembly is first constituted or is reconstituted at any time) and any proceedings in it shall be valid even though some person who was not entitled to do so sat or voted in the Assembly or otherwise took part in those proceedings.

#### **Quorum**

74.—(1) If at any sitting of the Legislative Assembly a quorum is not present and any member of the Assembly who is present objects on that account to the transaction of business and, after such interval as may be prescribed in Standing Orders, the person presiding at the sitting ascertains that a quorum is still not present, he or she shall adjourn the Assembly.

(2) For the purposes of this section a quorum shall consist of a majority of the elected members of the Legislative Assembly in addition to the person presiding.

#### **Voting**

75.—(1) Save as otherwise provided in this Constitution, all questions proposed for decision in the Legislative Assembly shall be determined by a majority of votes of the members present and voting.

(2) The Speaker or other member presiding shall not vote unless on any question the votes are equally divided, in which case he or she shall have and exercise a casting vote.

(3) The Deputy Governor and the Attorney General shall not be entitled to vote.

#### **Summoning of persons to assist the Legislative Assembly**

76. The Speaker or other person presiding may, when in his or her opinion the business before the Legislative Assembly makes it desirable, summon any person to a meeting of the Assembly even though that person is not a member of the Assembly.

#### **Introduction of Bills**

77.—(1) Subject to this Constitution and Standing Orders, any member may introduce any Bill or propose any motion for debate in, or may present any petition to, the Legislative Assembly, and the same shall be debated and disposed of according to Standing Orders.

(2) Standing Orders shall require that, except in a case of emergency, every Bill introduced by the Government shall be published at least 21 days before the commencement of the meeting at which it is scheduled to be introduced.

(3) Except on the recommendation of the Minister responsible for finance, the Legislative Assembly shall not—

- (a) proceed upon any Bill (including any amendment to a Bill) which, in the opinion of the Speaker, makes provision for imposing or increasing any tax, for imposing or increasing any charge on the revenues or other funds of the Cayman Islands, for altering any such charge otherwise than by reducing it, or for compounding or remitting any debt due to the Cayman Islands;
- (b) except in the case of a motion proposing a resolution under section 69, proceed upon any motion (including any amendment to a motion) the effect of which, in the opinion of the person presiding in the Assembly, is that provision would be made for any of the purposes aforesaid; or
- (c) receive any petition which, in the opinion of the person presiding in the Assembly, requests that provision be made for any of the purposes aforesaid.

#### **Assent to Bills**

78.—(1) A Bill shall not become a law until—

- (a) the Governor has assented to it in Her Majesty's name and on Her Majesty's behalf and has signed it in token of his or her assent; or
- (b) Her Majesty has given Her assent to it through a Secretary of State and the Governor has signified Her assent by proclamation.

(2) When a Bill is presented to the Governor for his or her assent, he or she shall, subject to this Constitution and any instructions addressed to him or her by Her Majesty through a Secretary of State, declare that he or she assents or refuses to assent to it or that he or she reserves the Bill for the signification of Her Majesty's pleasure; but, unless he or she has been authorised by a Secretary of State to assent to it, the Governor shall reserve for the signification of Her Majesty's pleasure any Bill which appears to him or her, acting in his or her discretion—

- (a) to be in any way repugnant to, or inconsistent with, this Constitution;
- (b) to determine or regulate the privileges, immunities or powers of the Legislative Assembly or of its members;
- (c) to be inconsistent with any obligation of Her Majesty or of Her Majesty's Government in the United Kingdom towards any other State or any international organisation;
- (d) to be likely to prejudice the Royal prerogative;
- (e) to affect any matter for which the Governor is responsible under section 55; or
- (f) to affect the integrity or independence of the public service or of the administration of justice.

(3) Before refusing assent to any Bill, the Governor shall explain to the members of the Legislative Assembly why he or she proposes to do so, if necessary in confidence, and shall allow those members the opportunity to submit their views on the matter in writing to a Secretary of State.

#### **Return of Bills by the Governor**

79.—(1) Where the Governor decides to return any Bill to the Legislative Assembly when it is presented for his or her assent, he or she shall do so within 60 days of receiving it, transmitting with it any amendments which he or she may recommend and the reasons for them, and the Assembly shall consider such recommendation.

(2) The Governor shall inform the Speaker as soon as practicable that he or she intends to return a Bill in pursuance of subsection (1).

### **Disallowance of laws**

80.—(1) Any law assented to by the Governor may be disallowed by Her Majesty through a Secretary of State; but no law shall be disallowed until the expiration of a reasonable period notified by a Secretary of State to the Governor with an explanation of the difficulties perceived by the Secretary of State, and the Governor shall forthwith advise the Speaker of that period and those difficulties in order to give the Legislative Assembly an opportunity to reconsider the law in question.

(2) Whenever any law has been disallowed by Her Majesty the Governor shall cause notice of such disallowance to be published by Government Notice and the law shall be annulled with effect from the date of such publication.

(3) Section 16(1) of the Interpretation Act 1978(a) shall apply to the annulment of any law under this section as it applies to the repeal of an Act of Parliament, save that any enactment repealed or amended by or in pursuance of that law shall have effect as from the date of the annulment as if that law had not been made.

### **Governor's reserved power**

81. If the Governor considers that the enactment of legislation is necessary or desirable with respect to or in the interests of any matter for which he or she is responsible under section 55 but, after consultation with the Premier, it appears to the Governor that the Cabinet is unwilling to support the introduction into the Legislative Assembly of a Bill for the purpose or that the Assembly is unlikely to pass a Bill introduced into it for the purpose, the Governor may, with the prior approval of a Secretary of State, cause a Bill for the purpose to be published in a Government Notice and may (notwithstanding that the Bill has not been passed by the Assembly) assent to it on behalf of Her Majesty; but the Bill shall be so published for at least 21 days prior to assent unless the Governor certifies by writing under his or her hand that the matter is too urgent to permit such delay in the giving of assent and so informs a Secretary of State.

### **Privileges of the Legislative Assembly and its members**

82. A law made under this Constitution may determine and regulate the privileges, immunities and powers of the Legislative Assembly and its members, but no such privileges, immunities or powers shall exceed those of the House of Commons of the United Kingdom or of its members.

### **Sessions of the Legislative Assembly**

83.—(1) Subject to this Constitution, the sessions of the Legislative Assembly shall be held at such places and begin at such times as the Governor may from time to time by proclamation appoint.

(2) There shall be at least one session of the Legislative Assembly in every calendar year.

### **Prorogation and dissolution**

84.—(1) The Governor, acting after consultation with the Premier, and by proclamation, may prorogue the Legislative Assembly, and shall do so annually.

(2) The Governor, acting after consultation with the Premier, may at any time, by proclamation, dissolve the Legislative Assembly.

(3) The Governor shall dissolve the Legislative Assembly at the expiration of four years from the date when the Assembly first meets after any general election unless it has been sooner dissolved pursuant to this Constitution.

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(a) 1978 c.30.

### **Recalling dissolved Legislative Assembly**

85. If, between a dissolution of the Legislative Assembly and the date on which the next ensuing general election is held, a matter arises of a nature and urgency which in the opinion of the Governor makes it necessary for the Assembly to be recalled, the Governor may, acting after consultation with the Premier, summon the Assembly that has been dissolved and that Assembly shall thereupon be deemed (except for the purposes of section 86(1)) not to have been dissolved, but shall be deemed (except as aforesaid) to be dissolved on the date on which the next ensuing general election is held.

### **General elections and bye-elections**

86.—(1) A general election of members of the Legislative Assembly shall be held at such time within two months after every dissolution of the Assembly as the Governor shall appoint by proclamation published in a Government Notice.

(2) Whenever any person vacates his or her seat as a member of the Legislative Assembly for any reason other than its dissolution, an election to fill the vacancy shall be held within two months after the occurrence of the vacancy, unless the Assembly is sooner dissolved or the date on which the Assembly must be dissolved under section 84(3) is less than four months after the occurrence of the vacancy.

### **Public Accounts Committee**

87.—(1) There shall be a Public Accounts Committee of the Legislative Assembly with power and responsibility to examine the public accounts of the Cayman Islands and the accounts and financial dealings of all authorities, offices and departments of Government, of all courts, and of all Government-owned companies.

(2) The members of the Committee, and any person authorised by it to act on its behalf, shall have access to all books, records, reports and other documents relating to the accounts referred to in subsection (1).

(3) The Committee shall receive reports from the Auditor General as provided in section 114(7).

(4) The Committee shall be re-elected as soon as practicable after the Legislative Assembly first meets following a general election.

### **Electoral Boundary Commission**

88.—(1) An Electoral Boundary Commission shall be appointed from time to time at such time as the Governor, acting after consultation with the Premier and the Leader of the Opposition, may determine; but—

- (a) the first such Commission shall be appointed as soon as practicable after the date of commencement of this Constitution; and
- (b) each subsequent Commission shall be appointed not later than eight years after the last Commission submitted its report under section 89.

(2) An Electoral Boundary Commission shall consist of—

- (a) a Chairman who shall be appointed by the Governor, acting in his or her discretion;
- (b) one member appointed by the Governor, acting in accordance with the advice of the Premier; and
- (c) one member appointed by the Governor, acting in accordance with the advice of the Leader of the Opposition.

(3) A person shall not be qualified to be appointed as the Chairman of an Electoral Boundary Commission if he or she is a member of the Legislative Assembly or a public officer.

(4) The Chairman of an Electoral Boundary Commission shall vacate his or her office—

- (a) on the day following the date of submission under section 89 of the report of the Commission;
  - (b) if he or she becomes a member of the Legislative Assembly or a public officer; or
  - (c) if the Governor, acting in his or her discretion, directs that he or she shall be removed from office for inability to discharge the functions of that office (whether arising from infirmity of body or mind or any other cause) or for misbehaviour.
- (5) Any other member of an Electoral Boundary Commission shall vacate his or her office—
- (a) on the day following the date of submission under section 89 of the report of the Commission; or
  - (b) if his or her appointment is revoked by the Governor, acting, in the case of a member appointed under subsection (2)(b), in accordance with the advice of the Premier or, in the case of a member appointed under subsection (2)(c), in accordance with the advice of the Leader of the Opposition.
- (6) An Electoral Boundary Commission may regulate its own procedure and, with the consent of the Governor, confer powers and impose duties on any public officer or on any authority of the Government for the purpose of the discharge of its functions.
- (7) For the purpose of the discharge of its functions, an Electoral Boundary Commission shall invite views from members of the public and may seek such advice as it considers appropriate.
- (8) An Electoral Boundary Commission may act notwithstanding any vacancy in its membership (including any vacancy not filled when appointments of members are first made) and its proceedings shall be valid even though some person who was not entitled to do so took part in them, but any decision of the Commission shall require the concurrence of not less than two members of the Commission.
- (9) In the exercise of its functions under this Constitution, an Electoral Boundary Commission shall not be subject to the direction or control of any other person or authority.

#### **Review and alteration of electoral district boundaries**

**89.**—(1) An Electoral Boundary Commission shall, as soon as practicable after its appointment, review the boundaries of the electoral districts into which the Cayman Islands are divided and, taking into account the changes or proposed changes, if any, in the number of electoral districts or of elected members of the Legislative Assembly, shall submit a report to the Governor and the Legislative Assembly containing its recommendations for any changes in the number and boundaries of the electoral districts.

- (2) In preparing its report under this section the Commission shall—
- (a) take no account of the racial distribution of electors within the Cayman Islands;
  - (b) take into account the natural boundaries within the Cayman Islands;
  - (c) have regard to existing electoral districts; and
  - (d) subject to the foregoing provisions of this subsection, ensure that—
    - (i) so far as reasonably practicable, across all electoral districts there will be an equal ratio between the number of elected members of the Legislative Assembly representing each electoral district and the number of persons qualified to be registered as electors under section 90 in that district; but
    - (ii) Cayman Brac and Little Cayman shall (between these two islands) at all times return at least two members to the Legislative Assembly.

(3) As soon as may be after the Commission has submitted a report under subsection (1), the Premier shall lay before the Legislative Assembly for its approval the draft of an order by the Governor for giving effect, whether with or without modifications, to the recommendations contained in the report, and that draft may make provision for any matters which appear to the Premier to be incidental to or consequential upon the other provisions of the draft.

(4) Where any draft order laid under this section would give effect to any such recommendations with modifications, the Premier shall lay before the Legislative Assembly together with the draft a statement of the reasons for the modifications.

(5) If the motion for the approval of any draft order laid under this section is rejected by the Legislative Assembly or is withdrawn by leave of the Assembly, an amended draft shall be laid without undue delay by the Premier before the Assembly.

(6) If any draft order laid under this section is approved by resolution of the Legislative Assembly, the Premier shall submit it to the Governor who shall make an order (which shall be published in a Government Notice) in terms of the draft; and that order shall come into force for the determination of the boundaries of the electoral districts to which it relates upon the next dissolution of the Assembly after it is made.

(7) The question of the validity of any order by the Governor purporting to be made under this section and reciting that a draft of the order has been approved by the Legislative Assembly shall not be inquired into in any court.

### **Qualifications of electors**

**90.**—(1) Subject to section 91, a person shall be entitled to be registered as an elector in one electoral district only, but he or she shall not be entitled to be registered as an elector for elections to the Legislative Assembly unless—

- (a) he or she was, on the day immediately preceding the date of commencement of this Constitution, entitled to be registered as an elector; or
- (b) he or she—
  - (i) is a Caymanian; and
  - (ii) has attained the age of eighteen years; and
  - (iii) is resident in the Cayman Islands at the date of registration; and
  - (iv) has been resident in the Cayman Islands for a period or periods amounting to not less than two years out of the four years immediately preceding the date of registration;or
- (c) on the day of the issue of a writ ordering an election, he or she is otherwise qualified under paragraph (b) but has not attained the age of eighteen years, but he or she will attain that age on or before the polling day at the election.

(2) Any period of absence for any of the purposes specified in section 61(3) shall be disregarded in determining whether a person is or has been resident in the Cayman Islands for the purposes of this section.

### **Disqualifications of electors**

**91.**—(1) A person shall not be entitled to be registered as an elector in any electoral district who—

- (a) subject to subsection (2), is serving a sentence of imprisonment (by whatever name called) exceeding twelve months imposed on him or her by a court in any country or substituted by competent authority for some other sentence imposed on him or her by such a court, or is under such a sentence of imprisonment the execution of which has been suspended;
- (b) is a person certified to be insane or otherwise adjudged to be of unsound mind under any law in force in the Cayman Islands; or
- (c) is disqualified for registration as an elector by any law in force in the Cayman Islands relating to offences connected with elections.

(2) For the purposes of subsection (1)(a)—

- (a) where a person is serving two or more sentences of imprisonment that are required to be served consecutively he or she shall, throughout the whole time during which he or she so

serves, be regarded as serving a sentence exceeding twelve months if (but not unless) any one of those sentences exceeds that term;

- (b) no account shall be taken of a sentence of imprisonment imposed as an alternative to or in default of the payment of a fine; and
- (c) no account shall be taken of a sentence of imprisonment imposed by a court outside the Cayman Islands other than a sentence on conviction of an offence constituted by conduct which, if it occurred within the Cayman Islands, would constitute an offence punishable under the law of the Cayman Islands by imprisonment of twelve months or any greater punishment.

#### **Right to vote at elections**

92.—(1) Any person who is registered as an elector in an electoral district shall, while so registered, be entitled to vote at any election in that district for an elected member of the Legislative Assembly, unless he or she is prohibited from so voting by any law in force in the Cayman Islands—

- (a) because he or she is a returning officer; or
- (b) because he or she has been concerned in any offence connected with elections.

(2) No person shall vote at any election in any electoral district who—

- (a) is not registered as an elector in that district;
- (b) has voted in another electoral district at the same election; or
- (c) is for any reason unable to attend to vote in person (except so far as it may be provided by law that such persons may vote).

#### **Law as to elections**

93. Subject to this Constitution, a law enacted by the Legislature may provide for the election of members of the Legislative Assembly, including (without prejudice to the generality of the foregoing power) the following matters—

- (a) the registration of electors;
- (b) the ascertainment of the qualifications of electors and of candidates for election;
- (c) the division of the Cayman Islands into electoral districts for the purpose of elections;
- (d) the holding of elections;
- (e) the determination of any question whether any person has been validly elected as a member of the Assembly or whether the seat of any elected member in the Assembly has become vacant;
- (f) the definition and trial of offences connected with elections and the imposition of penalties for them, including the disqualification for membership of the Assembly, or for registration as an elector, or for voting at elections, of any person concerned in any such offence; and
- (g) the disqualification for election as members of the Assembly of persons holding or acting in any office the functions of which involve any responsibility for, or in connection with, the conduct of any election or the compilation or revision of any electoral register.

PART V  
THE JUDICATURE

The Grand Court

**Constitution and jurisdiction of the Grand Court**

94.—(1) There shall be a Grand Court for the Cayman Islands which shall be a superior Court of Record and shall have such jurisdiction and powers as may be conferred on it by this Constitution and any other law.

(2) The Court shall have and use a seal bearing the style of the Court and a device approved by the Chief Justice.

**Composition of the Grand Court**

95.—(1) The judges of the Grand Court shall be a Chief Justice and such number of other judges (if any) as may be prescribed by a law made under this Constitution; but the office of a judge shall not, without his or her consent, be abolished during his or her continuance in office.

(2) The judges of the Grand Court shall be persons holding such qualifications for appointment as a judge of the Grand Court as may be prescribed by a law enacted by the Legislature; but a person who has been appointed as a judge of the Grand Court may continue in office notwithstanding any subsequent variation in the qualifications so prescribed.

(3) All the judges of the Grand Court, including the Chief Justice, shall be appointed by the Governor by instrument under the public seal in accordance with section 106.

(4) It shall be lawful for a person qualified for appointment as a judge of the Grand Court to be so appointed (regardless of his or her age) for such term as may be specified in the instrument of appointment, and section 96 shall have effect in relation to any person so appointed as if he or she would attain the retiring age applicable to that office on the day on which the specified term expires.

(5) The emoluments and allowances of a judge of the Grand Court shall be prescribed by law and shall be charged on the revenues of the Cayman Islands, and the emoluments and allowances of a judge shall not, without his or her consent, be reduced during his or her continuance in office.

(6) The Chief Justice shall be the head of the judiciary of the Cayman Islands.

(7) The Chief Justice shall have responsibility for and management of all matters arising in judicature, including responsibility—

- (a) for representing the views of the judiciary to the Government and the Legislative Assembly, including, where appropriate, through the Attorney General;
- (b) for the maintenance of appropriate arrangements for the welfare, training and guidance of the judiciary within available resources;
- (c) subject to paragraph (d), for the maintenance of appropriate arrangements for the deployment of the judiciary and the allocation of work within courts;
- (d) after consultation with the President of the Court of Appeal who shall be responsible for the allocation of work within the Court of Appeal, for the maintenance of appropriate arrangements for the work of that court.

**Tenure of office of judges of the Grand Court**

96.—(1) Subject to this section and section 95(4), a judge of the Grand Court shall vacate his or her office when he or she attains the age of 65 years; but—

- (a) the Governor may permit a judge who attains the age of 65 years to continue in office until he or she has attained such later age, not exceeding the age of 70 years, as may have been agreed between that judge and the Governor following the recommendation of the Judicial and Legal Services Commission;

- (b) a judge who has attained the age at which he or she would otherwise vacate office under this subsection may continue in office for such period as may be necessary to enable him or her to deliver judgment or to do any other thing in relation to any proceeding commenced before him or her before he or she attained that age.

(2) A judge of the Grand Court may be removed from office only for inability to discharge the functions of his or her office (whether arising from infirmity of body or mind or any other cause) or for misbehaviour, and shall not be so removed except in accordance with subsection (3).

(3) A judge of the Grand Court shall be removed from office by the Governor by instrument under the public seal if the question of the removal of that judge from office has, at the request of the Governor made in pursuance of subsection (4), been referred by Her Majesty to the Judicial Committee of Her Majesty's Privy Council under section 4 of the Judicial Committee Act 1833(a) or any other enactment enabling Her Majesty in that behalf, and the Judicial Committee has advised Her Majesty that the judge ought to be removed from office for inability as aforesaid or misbehaviour.

(4) If the Governor considers that the question of removing a judge of the Grand Court from office for inability as aforesaid or misbehaviour ought to be investigated, then—

- (a) the Governor shall refer the matter to the Judicial and Legal Services Commission;
- (b) the Judicial and Legal Services Commission shall inquire into the matter and report on the facts of it to the Governor and advise the Governor whether he or she should request that the question of the removal of that judge should be referred by Her Majesty to the Judicial Committee; and
- (c) if the Judicial and Legal Services Commission so advises, the Governor shall request that the question should be referred accordingly.

(5) The Commissions of Inquiry Law as in force on the date of commencement of this Constitution shall, subject to this section, apply as nearly as may be in relation to the Judicial and Legal Services Commission conducting inquiries under subsection (4) or, as the context may require, to the members of that Commission as it applies in relation to Commissions or Commissioners appointed under that Law.

(6) If the question of removing a judge of the Grand Court from office has been referred to the Judicial and Legal Services Commission under subsection (4), the Governor may suspend the judge from performing the functions of his or her office, and any such suspension may at any time be revoked by the Governor, and shall in any case cease to have effect—

- (a) if the Judicial and Legal Services Commission advises the Governor that he or she should not request that the question of the removal of the judge be referred by Her Majesty to the Judicial Committee; or
- (b) if the Judicial Committee advises Her Majesty that the judge ought not to be removed from office.

(7) The powers conferred on the Governor by this section shall be exercised by the Governor acting in his or her discretion.

#### **Acting judges of the Grand Court**

97.—(1) If the office of Chief Justice is vacant, or if the holder of it is for any reason unable to perform the functions of that office, then, until some other person has been appointed to, and has assumed the functions of, that office, or until the holder of that office has resumed those functions, as the case may be, such one of the other judges of the Grand Court or such other person qualified for appointment as a judge of the Grand Court as the Governor, acting in accordance with section 106, may appoint for that purpose shall act in that office.

(2) If the office of a judge of the Grand Court other than the Chief Justice is vacant, or if any such judge is acting as Chief Justice or is for any reason unable to perform the functions of his or

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(a) 1833 c.41.

her office, the Governor, acting in accordance with section 106, may appoint a person qualified for appointment as a judge of the Grand Court to act as such a judge.

(3) A person may be appointed under subsection (1) or (2) even though he or she has attained the age of 65 years.

(4) Any person appointed under this section to act as a judge of the Grand Court shall, unless he or she is removed from office under section 96, continue so to act for the period of his or her appointment or, if no such period is specified, until his or her appointment is revoked by the Governor, acting in his or her discretion; but a person whose appointment so to act has expired or been revoked may, with the permission of the Governor, acting in his or her discretion, continue so to act for such period as may be necessary to enable him or her to deliver judgment or to do any other thing in relation to any proceeding previously commenced before him or her.

#### **Oaths to be taken by judges of the Grand Court**

98. Before assuming the functions of his or her office, every judge of the Grand Court shall make and subscribe before the Governor, or some other person authorised for that purpose by the Governor, acting in his or her discretion, oaths of allegiance and for the due execution of judicial office in the forms set out in the Schedule to this Constitution.

### **The Court of Appeal**

#### **Constitution and jurisdiction of the Court of Appeal**

99.—(1) There shall be a Court of Appeal for the Cayman Islands which shall be a superior Court of Record and shall have jurisdiction and powers to hear and determine such appeals from the Grand Court as may be prescribed by this Constitution or any other law.

(2) The Court of Appeal shall, subject to this Constitution and any other law, have all the powers and jurisdiction that are possessed by the Grand Court under any law in force in the Cayman Islands; and decisions of the Court of Appeal in respect of any appeal from the Grand Court shall, subject as aforesaid, be enforced in the Cayman Islands in the same way as decisions of that Court.

(3) Subsection (1) shall not apply to appeals relating to any matter in respect of which this Constitution or any other law provides that the decision of the Grand Court is to be final.

(4) The Court of Appeal shall have and use a seal bearing the style of the Court and a device approved by the President.

#### **Composition of the Court of Appeal**

100.—(1) The judges of the Court of Appeal shall be a President and not less than two Justices of Appeal.

(2) The judges of the Court of Appeal shall be appointed by the Governor by instrument under the public seal in accordance with section 106; but the office of a judge shall not, without his or her consent, be abolished during his or her continuance in office.

(3) A person shall be qualified to be appointed as a judge of the Court of Appeal if, and shall not be qualified to be so appointed unless, he or she holds or has held high judicial office.

(4) A judge of the Grand Court may exercise any of the powers of a single judge of the Court of Appeal to such extent as a law enacted by the Legislature may prescribe.

#### **Tenure of office of judges of the Court of Appeal**

101.—(1) The judges of the Court of Appeal shall be appointed for such period as may be specified in their respective instruments of appointment; but a person whose appointment as a judge of the Court of Appeal has expired may, with the permission of the Governor, acting in his or her discretion, continue in office for such period as may be necessary to enable him or her to

deliver judgment or to do any other thing in relation to any proceeding previously commenced before him or her.

(2) A judge of the Court of Appeal may be removed from office only for inability to discharge the functions of his or her office (whether arising from infirmity of body or mind or any other cause) or for misbehaviour, and shall not be so removed except in accordance with subsection (3).

(3) A judge of the Court of Appeal shall be removed from office by the Governor by instrument under the public seal if the question of the removal of that judge from office has, at the request of the Governor made in pursuance of subsection (4), been referred by Her Majesty to the Judicial Committee of Her Majesty's Privy Council under section 4 of the Judicial Committee Act 1833 or any other enactment enabling Her Majesty in that behalf, and the Judicial Committee has advised Her Majesty that the judge ought to be removed from office for inability as aforesaid or misbehaviour.

(4) If the Governor considers that the question of removing a judge of the Court of Appeal from office for inability as aforesaid or misbehaviour ought to be investigated, then—

- (a) the Governor shall refer the matter to the Judicial and Legal Services Commission;
- (b) the Judicial and Legal Services Commission shall inquire into the matter and report on the facts of it to the Governor and advise the Governor whether he or she should request that the question of the removal of that judge should be referred by Her Majesty to the Judicial Committee; and
- (c) if the Judicial and Legal Services Commission so advises, the Governor shall request that the question should be referred accordingly.

(5) The Commissions of Inquiry Law as in force on the date of commencement of this Constitution shall, subject to this section, apply as nearly as may be in relation to the Judicial and Legal Services Commission conducting inquiries under subsection (4) or, as the context may require, to the members of that Commission as it applies to Commissions or Commissioners appointed under that Law.

(6) If the question of removing a judge of the Court of Appeal from office has been referred to the Judicial and Legal Services Commission under subsection (4), the Governor may suspend the judge from performing the functions of his or her office, and any such suspension may at any time be revoked by the Governor, and shall in any case cease to have effect—

- (a) if the Judicial and Legal Services Commission advises the Governor that he or she should not request that the question of the removal of the judge from office should be referred by Her Majesty to the Judicial Committee; or
- (b) if the Judicial Committee advises Her Majesty that the judge ought not to be removed from office.

(7) The powers conferred on the Governor by this section shall be exercised by the Governor acting in his or her discretion.

#### **Acting judges of the Court of Appeal**

**102.—**(1) If the office of the President of the Court of Appeal is vacant, or if the holder of it is for any reason unable to perform the functions of that office, then, until some other person has been appointed to, and has assumed the functions of, that office or until the holder of it has resumed those functions, as the case may be, such one of the Justices of Appeal or such other person qualified for appointment as a judge of the Court of Appeal as the Governor, acting in accordance with section 106, may appoint for that purpose shall act in the office of the President.

(2) If the office of a Justice of Appeal is vacant, or if any Justice of Appeal is acting as the President or is for any reason unable to perform the functions of his or her office, the Governor, acting in accordance with section 106, may appoint a person qualified for appointment as a judge of the Court of Appeal to act as a Justice of Appeal.

(3) Any person appointed under this section to act as a Justice of Appeal shall, unless he or she is removed from office under section 101, continue so to act for the period of his or her appointment or, if no such period is specified, until his or her appointment is revoked by the

Governor, acting in his or her discretion; but a person whose appointment so to act has expired or been revoked may, with the permission of the Governor, acting in his or her discretion, continue so to act for such period as may be necessary to enable him or her to deliver judgment or to do any other thing in relation to any proceeding previously commenced before him or her.

#### **Oaths to be taken by judges of the Court of Appeal**

103. Before assuming the functions of his or her office every judge of the Court of Appeal shall make and subscribe before the Governor, or some other person authorised for that purpose by the Governor, acting in his or her discretion, oaths of allegiance and for the due execution of judicial office in the forms set out in the Schedule to this Constitution.

#### **Other matters**

#### **Subordinate courts**

104.—(1) A law enacted by the Legislature may establish courts subordinate to the Grand Court.

(2) The Grand Court shall have jurisdiction to supervise the proceedings before any subordinate court and may make such orders, issue such process and give such directions as it may consider appropriate for the purpose of ensuring that justice is duly administered by any such courts.

#### **Judicial and Legal Services Commission**

105.—(1) There shall be in and for the Cayman Islands a Judicial and Legal Services Commission which shall consist of—

- (a) a Chairman and one other member, neither of whom shall be a lawyer, appointed by the Governor, acting after consultation with the Premier and the Leader of the Opposition;
- (b) the President of the Court of Appeal, *ex officio*;
- (c) a person appointed by the Governor, acting in his or her discretion, who holds or has held high judicial office in the Cayman Islands and has recent personal knowledge of the courts in the Cayman Islands;
- (d) two persons appointed by the Governor, acting in his or her discretion, who hold or have held high judicial office in a Commonwealth country or Ireland, but do not currently hold such office in the Cayman Islands; and
- (e) two attorneys-at-law qualified to practise in the Cayman Islands, one with experience in Government service and one with experience in private practice, appointed by the Governor, acting after consultation with representatives of legal professional organisations in the Cayman Islands and, where appropriate, the Attorney General.

(2) No person shall be qualified to be appointed to the Judicial and Legal Services Commission if he or she is a member of, or a candidate for election to, the Legislative Assembly or (except for appointment under subsection (1)(e)) holds or is acting in any public office.

(3) The office of a member of the Judicial and Legal Services Commission shall become vacant—

- (a) at the expiration of five years from the date of his or her appointment or such earlier time as may be specified in the instrument by which he or she was appointed;
- (b) if he or she resigns office by writing under his or her hand addressed to the Governor;
- (c) if he or she becomes a member of, or a candidate for election to, the Legislative Assembly, or (except for a member appointed under subsection (1)(e)) is appointed to or to act in any public office; or
- (d) if the Governor, acting in his or her discretion, directs that he or she shall be removed from office for inability to discharge the functions of that office (whether arising from infirmity of body or mind or any other cause) or for misbehaviour.

(4) If the office of a member of the Judicial and Legal Services Commission becomes vacant or if such a member is for any reason unable to perform the functions of that office, the Governor, acting in accordance with subsection (1) for the appointment of that member, may appoint another suitably qualified person to that office for the unexpired term of the previous holder of the office or until the holder of the office is able to resume his or her functions.

(5) Any decision of the Judicial and Legal Services Commission shall require the concurrence of not less than five members of the Commission, and the Commission shall take its decisions in such form and manner as it may determine; but any decision relating to the appointment of the President of the Court of Appeal or the Chief Justice shall require the concurrence of at least two members of the Commission who have judicial experience.

(6) In the exercise of their functions, the Judicial and Legal Services Commission and its members shall not be subject to the direction or control of any other person or authority.

(7) The Judicial and Legal Services Commission may regulate its own procedure, which may include meeting by teleconference or other electronic means of communication.

### **Functions of Judicial and Legal Services Commission**

**106.**—(1) Power to make appointments to the offices to which this section applies, and to remove and to exercise disciplinary control over persons holding or acting in such offices, shall vest in the Governor, acting in accordance with the advice of the Judicial and Legal Services Commission; but the Governor, acting in his or her discretion, may act otherwise than in accordance with that advice if he or she determines that compliance with that advice would prejudice Her Majesty's service.

(2) Before exercising the powers vested in the Governor by subsection (1) the Governor may, acting in his or her discretion, once refer the advice of the Judicial and Legal Services Commission back to the Commission for reconsideration by it.

(3) If the Judicial and Legal Services Commission, having reconsidered its original advice under subsection (2), substitutes for it different advice, subsection (2) shall apply to that different advice as it applies to the original advice.

(4) This section applies to the offices of—

- (a) Chief Justice and other judge of the Grand Court;
- (b) President of the Court of Appeal and other judge of the Court of Appeal;
- (c) Attorney General;
- (d) Director of Public Prosecutions;
- (e) Magistrate;
- (f) such other offices in the public service, for appointment to which persons are required to possess legal qualifications, as may be prescribed by any law enacted by the Legislature.

(5) No member of the Judicial and Legal Services Commission shall participate in any proceedings of the Commission which affect him or her personally.

(6) In cases where the Judicial and Legal Services Commission conducts an inquiry under section 96(4) or 101(4), the President of the Court of Appeal and any current judge of the Grand Court who is a member of the Commission shall not participate in that inquiry other than as a witness.

(7) A person holding the office of Attorney General, Director of Public Prosecutions or Magistrate may only be removed from office for inability to discharge the functions of his or her office (whether arising from infirmity of body or mind or any other cause) or for misbehaviour.

(8) Where the issue of the removal from office of any person holding one of the offices mentioned in subsection (4)(c), (d), (e) or (f) has been referred to the Judicial and Legal Services Commission, the Governor may, acting after consultation with the Commission, suspend that person from performing the functions of his or her office pending the outcome of the referral.

(9) Any suspension, removal or disciplinary action taken under this section shall be carried out in accordance with the highest appropriate standards of procedural fairness.

- (10) The Judicial and Legal Services Commission shall—
- (a) draw up a code of conduct for the judiciary and a procedure for dealing with complaints; and
  - (b) have such other functions as may be conferred on it by a law enacted by the Legislature.
- (11) Subject to subsection (6), this section is without prejudice to sections 96 and 101.

#### **Judicial administration**

107. The Legislature and the Cabinet shall uphold the rule of law and judicial independence, and shall ensure that adequate funds are provided to support the judicial administration in the Cayman Islands.

## **PART VI**

### **THE PUBLIC SERVICE**

#### **Overriding duty of public officers**

108. Subject to this Constitution, all public officers must—
- (a) act in accordance with the best interests of the Cayman Islands and not in their own private interests; and
  - (b) implement Government policy to the best of their ability and in accordance with the directions given to them by the Cabinet or other responsible person or authority.

#### **Appointment, etc., of public officers**

109.—(1) Power to make appointments to public offices, and to transfer, remove or exercise disciplinary control over persons holding or acting in such offices, is, subject to this Constitution, vested in the Governor acting in his or her discretion.

(2) Subject to subsections (3) and (4), the Governor, acting in his or her discretion, may by regulations delegate, to such extent and subject to such conditions as may be specified in the regulations, the powers vested in him or her by subsection (1) to such public officers as may be specified.

(3) Subject to subsection (4), a law enacted by the Legislature may provide for the powers vested in the Governor by subsection (1) to be exercised by public officers subordinate to the Governor, and may enable the Governor to delegate those powers to such public officers in his or her discretion.

(4) No regulations made under subsection (2) shall delegate any powers vested in the Governor in relation to the offices of Financial Secretary, Commissioner of Police, Auditor General, Information Commissioner, Complaints Commissioner or to any office to which section 106 applies, and no law enacted by the Legislature may provide for any person or authority other than the Governor to exercise those powers.

#### **Applicability of pensions law**

110.—(1) The law applicable to the grant and payment to any officer, or to his or her widow or widower, children, dependants or personal representatives, of any pension, gratuity or other like allowance (in this section referred to as “an award”) in respect of the service of that officer in a public office shall be that in force on the relevant day or any later law not less favourable to the person concerned.

- (2) For the purposes of this section the relevant day is—
- (a) in relation to an award granted before the appointed day, the day on which the award was granted;

- (b) in relation to an award granted or to be granted on or after the appointed day to or in respect of a person who was a public officer before that day, the day immediately before that day;
- (c) in relation to an award granted or to be granted to or in respect of a person who first becomes a public officer on or after the appointed day, the day on which he or she becomes a public officer.

(3) In subsection (2) “the appointed day” means the date of commencement of this Constitution.

(4) For the purposes of this section, insofar as the law applicable to an award depends on the option of the person to or in respect of whom it is granted or to be granted, the law for which he or she opts shall be taken to be more favourable to him or her than any other law for which he or she might have opted.

(5) Where any sum is required for the payment of an award and no, or insufficient, provision has been made for it under a law made by the Legislature, that sum shall be charged on and paid out of the revenues of the Cayman Islands.

## PART VII

### FINANCE

#### Revenue and Expenditure

111.—(1) The Legislature shall have the authority to levy or change the rates of revenue unless otherwise provided by law.

(2) All Government expenses, assets and the incurrence of liabilities shall require appropriation by the Legislature, unless otherwise provided by law.

(3) A law enacted by the Legislature shall govern the operation of the Government’s financial system and processes.

#### Reporting

112.—(1) At least one report annually shall be made to the Legislative Assembly on the Government’s financial performance and fiscal position.

(2) The content, timing and process for financial reporting and the agencies that are to report to the Legislative Assembly shall be prescribed by law.

#### Public debt

113.—(1) Total Government borrowing shall not exceed an amount for which the sum of—

- (a) total interest payments;
- (b) total other debt servicing expenses, including arrangement fees and sinking fund expenses; and
- (c) total principal or amortised debt repayments,

for a financial year is more than a percentage of Government revenue set out in law and agreed with a Secretary of State (calculated using generally accepted accounting practice) for that financial year.

(2) Subject to this Constitution, a law enacted by the Legislature may provide for a higher percentage for a limited period where a matter arises of a nature or urgency which in the opinion of the Cabinet makes it necessary to do so.

(3) For the purposes of this section, “Government borrowing” means borrowing in the name of the Government regardless of whether repayments are made directly by the Government or by a public or governmental body (including any statutory body, company or association).

### **Auditor General**

114.—(1) There shall be an Auditor General whose office shall be a public office, and power to make appointments to the office of Auditor General, and to remove or exercise disciplinary control over any person holding or acting in that office, is vested in the Governor, acting in his or her discretion.

(2) The Auditor General may be removed from office only for inability to discharge the functions of his or her office (whether arising from infirmity of body or mind or any other cause) or for misbehaviour.

(3) The Auditor General shall have the power and responsibility to audit the public accounts of the Cayman Islands and the accounts and financial dealings of all authorities, offices and departments of Government and of all courts, and the power to undertake value for money investigations in respect of the activities of such authorities, offices and departments.

(4) The Auditor General, and any person authorised by him or her to act on his or her behalf, shall have access to all books, records, reports and other documents relating to the accounts referred to in subsection (3).

(5) The functions of the Auditor General and the accountability of that post and the Audit Office shall be further prescribed by law.

(6) In the exercise of his or her functions, the Auditor General (and any person acting on his or her behalf in the exercise of those functions) shall not be subject to the direction or control of any other person or authority, save that the Auditor General is answerable to the Public Accounts Committee of the Legislative Assembly and must attend upon the Committee at its request.

(7) The Auditor General shall submit reports on his or her activities to the Public Accounts Committee of the Legislative Assembly at least twice every year and as requested by the Committee.

### **Financial Secretary**

115. There shall be a Financial Secretary who shall be the principal adviser to the Minister responsible for finance, and whose office shall be a public office.

## **PART VIII**

### **INSTITUTIONS SUPPORTING DEMOCRACY**

#### **Human Rights Commission**

116.—(1) There shall be in and for the Cayman Islands a Human Rights Commission (referred to in this section as “the Commission”).

(2) The Commission’s primary responsibility shall be promoting understanding and observance of human rights in the Cayman Islands.

(3) The Commission shall consist of a Chairman and four other members appointed by the Governor, acting after consultation with the Premier and the Leader of the Opposition, at least two of whom shall be experienced lawyers.

(4) In the exercise of their functions, the Commission and its members shall not be subject to the direction or control of any other person or authority.

(5) The Commission shall replace the Human Rights Committee.

(6) The Commission shall have power to—

- (a) receive and investigate complaints of breaches or infringements of any right or freedom contained in the Bill of Rights or international human rights treaties that have been extended to the Cayman Islands, and investigate such possible breaches or infringements on its own initiative;

- (b) provide advice to persons who consider that their rights or freedoms have been infringed;
- (c) provide a forum for dealing with complaints by mediation or conciliation or by making recommendations;
- (d) issue guidance on procedures for dealing with any complaints of breaches or infringements of rights and freedoms;
- (e) contribute to public education about human rights;
- (f) issue reports relating to human rights issues on its own initiative;
- (g) undertake such other functions, for the purpose of fulfilling its primary responsibility under subsection (2), as may be conferred on it by a law enacted by the Legislature.

(7) The Commission shall have no power to—

- (a) represent or provide representation to parties to litigation;
- (b) act in a judicial capacity or make binding determinations as to whether any right or freedom contained in the Bill of Rights or any international human rights treaty or instrument has been breached;
- (c) compel any person to do anything against his or her will;

but any public official to which the Commission addresses a recommendation must respond in writing within a reasonable time, and such responses shall be published by the Commission unless there is a good reason to withhold publication.

(8) The Commission shall make an annual report to the Legislative Assembly about its activities.

(9) Further provision relating to the establishment and operation of the Commission may be made by the Legislature, but such legislation shall not derogate from any provision of this section.

(10) Nothing contained in or done pursuant to this section or any law made under subsection (9) shall—

- (a) oblige a person to refer any complaint of a breach or infringement of any right or freedom referred to in the Bill of Rights to the Commission; or
- (b) prevent a person from seeking redress directly from the Grand Court in relation to any breach or infringement of a right or freedom referred to in the Bill of Rights, and the fact that such person had previously sought the assistance of the Commission with respect to such breach or infringement shall not prejudice any legal action.

#### **Commission for Standards in Public Life**

**117.**—(1) There shall be in and for the Cayman Islands a Commission for Standards in Public Life (referred to in this section as “the Commission”).

(2) The Commission shall consist of a Chairman and not less than two nor more than four other members, who shall be appointed by the Governor, acting after consultation with the Premier and the Leader of the Opposition, and who shall be people of the highest integrity with knowledge of practice in the private or public sector.

(3) At least one member of the Commission shall be a chartered or certified accountant of at least ten years’ experience.

(4) At least one member of the Commission shall be a legal practitioner who has practised in the Commonwealth for at least ten years.

(5) A person shall not be appointed as a member of the Commission if—

- (a) he or she is a member of the Legislative Assembly;
- (b) he or she holds, or has at any time during the preceding three years held, a public office;
- (c) he or she has at any time during the preceding five years held office in a political party; or
- (d) he or she is not a Caymanian.

(6) The office of a member of the Commission shall become vacant—

- (a) at the expiration of four years from the date of his or her appointment;
- (b) if the member is absent from three consecutive meetings of the Commission, unless the absence is approved by the Governor;
- (c) if the member resigns office by writing under his or her hand addressed to the Governor;
- (d) if the member is removed from office by the Governor for inability to discharge the functions of his or her office (whether arising from infirmity of body or mind or any other cause) or for misbehaviour; or
- (e) if the member with his or her consent is nominated for election to the Legislative Assembly or is appointed to any public office.

(7) If the office of a member of the Commission is vacant or a member is for any reason unable to perform the functions of his or her office, the Governor, acting in accordance with subsection (2), may appoint a person who is qualified for appointment as a member of the Commission to act as a member of the Commission, and any person so appointed shall, subject to subsection (6), continue so to act until the expiration of his or her term of office.

(8) In the exercise of their functions, the Commission and its members shall not be subject to the direction or control of any other person or authority.

(9) The functions of the Commission shall be—

- (a) to assist in the setting of the highest standards of integrity and competence in public life in order to ensure the prevention of corruption or conflicts of interest;
- (b) to monitor standards of ethical conduct in the Legislative Assembly, the Cabinet, and on the part of public authorities and public officers;
- (c) to supervise the operation of registers of interest and to investigate breaches of established standards;
- (d) to review and establish procedures for awarding public contracts;
- (e) to review and establish procedures for appointing members to public authorities, and the terms of their appointment;
- (f) to recommend codes of conduct to prevent any Minister, public authority or public officer employing their power for any personal benefit or advantage, and to recommend legislation to provide appropriate sanctions;
- (g) to report to the Legislative Assembly at regular intervals, and at least every six months; and
- (h) to exercise such other functions as may be prescribed by a law enacted by the Legislature.

### **Constitutional Commission**

118.—(1) There shall be in and for the Cayman Islands a Constitutional Commission.

(2) The Constitutional Commission shall consist of a Chairman and two other members appointed by the Governor, acting after consultation with the Premier and the Leader of the Opposition, at least one of whom shall be an experienced lawyer.

(3) The functions of the Constitutional Commission shall be—

- (a) to advise the Government on questions concerning constitutional status and development in the Cayman Islands;
- (b) to publish reports, discussion papers, information papers and other documents on constitutional matters affecting the Cayman Islands;
- (c) to promote understanding and awareness of this Constitution and its values; and
- (d) to exercise such other functions as may be prescribed by a law enacted by the Legislature.

(4) In the exercise of their functions, the Constitutional Commission and its members shall not be subject to the direction or control of any other person or authority.

(5) Subject to this Constitution, further provision relating to the establishment and operation of the Constitutional Commission may be made by the Legislature.

### **Advisory District Councils**

119. Subject to this Constitution, a law enacted by the Legislature shall provide for the establishment, functions and jurisdiction of Councils for each electoral district to operate as advisory bodies to the elected members of the Legislative Assembly.

### **Complaints Commissioner**

120.—(1) Subject to this Constitution, a law enacted by the Legislature may make provision for the office, functions and jurisdiction of a Complaints Commissioner, otherwise called an Ombudsman.

(2) The Complaints Commissioner shall be appointed by the Governor, acting after consultation with the Premier and the Leader of the Opposition, by instrument under the public seal.

(3) No person shall be qualified to be appointed as Complaints Commissioner if he or she is or has been within the preceding three years—

- (a) an elected member of the Legislative Assembly; or
- (b) the holder of any office in any political party.

(4) The office of the Complaints Commissioner shall become vacant—

- (a) at the expiration of the period specified in the instrument by which he or she was appointed;
- (b) if he or she resigns office by writing under his or her hand addressed to the Governor;
- (c) if he or she becomes an elected member of the Legislative Assembly or the holder of any office in any political party; or
- (d) if the Governor, acting in his or her discretion, directs that he or she shall be removed from office for inability to discharge the functions of the office (whether arising from infirmity of body or mind or any other cause) or for misbehaviour, or for contravention of subsection (5).

(5) Subject to such exceptions as the Governor, acting in his or her discretion, may authorise by directions in writing, the Complaints Commissioner shall not hold any other office of emolument either in the public service or otherwise nor engage in any occupation for reward other than the duties of his or her office.

(6) In the exercise of his or her functions, the Complaints Commissioner shall not be subject to the direction or control of any other person or authority.

### **Register of Interests**

121.—(1) There shall be for the Cayman Islands a Register of Interests, which shall be maintained by the Commission for Standards in Public Life.

(2) It shall be the duty of any person to whom this section applies to declare to the Commission for Standards in Public Life, for entry in the Register of Interests, such interests, assets, income and liabilities of that person, or of any other person connected with him or her, as may be prescribed by law.

(3) A person shall make a declaration under subsection (2) upon assuming the functions of his or her office and at such intervals thereafter (being no longer than twelve months) as may be prescribed by law.

(4) This section applies to all members of the Legislative Assembly and the holders of such other offices (except that of the Governor) as may be prescribed by law.

(5) A law enacted by the Legislature shall make provision for giving effect to this section, including the sanctions which may be imposed for a failure to comply with subsection (2) or (3) and, notwithstanding any provision of Part IV of this Constitution, the sanctions which may be imposed may include the suspension of a member of the Legislative Assembly from sitting in it for such period as may be prescribed in such a law.

## **Freedom of information**

122. A law enacted by the Legislature shall provide for a right of access to information held by public authorities, for the conditions for the exercise of that right, and for restrictions and exceptions to that right in the interests of the security of the Cayman Islands or the United Kingdom, public safety, public order, public morality or the rights or interests of individuals.

## **PART IX MISCELLANEOUS**

### **Official language of the Cayman Islands**

123. The official language of the Cayman Islands is English.

### **Interpretation**

124.—(1) In this Constitution, unless it is otherwise provided or required by the context—

“Assembly” means the Legislative Assembly;

“Bill of Rights” means the Bill of Rights, Freedoms and Responsibilities set out in Part I of this Constitution;

“Caymanian” has the meaning ascribed to it in the laws of the Cayman Islands for the time being in force;

“Court of Appeal” means the court established by section 99;

“functions” includes jurisdiction, powers and duties;

“Government” means the Government of the Cayman Islands;

“Government Notice” means a Cayman Islands Government Notice;

“Governor” means the person for the time being holding the office of Governor of the Cayman Islands, and includes any person for the time being lawfully performing the functions of that office and, to the extent to which a person appointed under section 36 is authorised to act (but except where the word “Governor” appears in that section), that person;

“Grand Court” means the court established by section 94;

“high judicial office” means the office of judge of a court having unlimited jurisdiction in civil and criminal matters in some part of the Commonwealth or in Ireland or a court having jurisdiction in appeals from such a court;

“Judicial and Legal Services Commission” means the Commission established by section 105;

“law” includes any instrument having the force of law made in exercise of a power conferred by law;

“Leader of the Opposition” means a Leader of the Opposition appointed under section 68;

“Legislature” means the Legislature established by section 59(1);

“Minister” means a member of the Cabinet who is appointed as the Premier or other Minister;

“oath” includes affirmation;

“political party” means a group of persons who have united to contest election for membership of the Legislative Assembly;

“Premier” means a Premier appointed under section 49;

“public office” means, subject to subsection (2), an office of emolument in the public service;

“public officer” means the holder of any public office, and includes a person appointed to act in any public office;

“the public service” means the service of the Crown in a civil capacity in respect of the government of the Cayman Islands;

“session” means the meetings of the Legislative Assembly commencing when the Assembly first meets after being constituted under this Constitution, or after its prorogation or dissolution at any time, and terminating when the Assembly is prorogued or is dissolved without having been prorogued;

“sitting” means a period during which the Legislative Assembly is sitting continuously without adjournment and includes any period during which the Assembly is in committee.

(2) For the purposes of this Constitution, references to public offices shall not be construed as including—

- (a) references to the office of Speaker, Deputy Speaker or elected member of the Legislative Assembly, Premier or other Minister, or Leader of the Opposition;
- (b) except in section 110, references to the office of judge of the Grand Court or the Court of Appeal;
- (c) references to a member of the Judicial and Legal Services Commission, the Human Rights Commission, the Commission for Standards in Public Life, the Constitutional Commission, an Electoral Boundary Commission, or the Advisory Committee on the Prerogative of Mercy, or to the Complaints Commissioner;
- (d) references to any office the holder of which is declared by any law in force in the Cayman Islands not to be disqualified for election as a member of the Assembly,

and a person shall not be considered as holding a public office by reason only that he or she is in receipt of a pension or other like allowance in respect of service under the Crown.

(3) Any person who has vacated his or her seat in any body, or has vacated any office established by this Constitution, may, if qualified, again be appointed or elected as a member of that body or to that office, as the case may be, from time to time.

(4) A reference in this Constitution to the holder of an office by the term designating his or her office shall be construed as a reference to any person for the time being acting in that office or otherwise lawfully performing the functions of that office.

(5) Without prejudice to subsection (4)—

- (a) where the holder of any office constituted by or under this Constitution is on leave of absence pending the relinquishment of that office, the person or authority having power to make appointments to that office may appoint another person to it; and
- (b) where two or more persons concurrently hold the same office by virtue of paragraph (a), the person last appointed shall in respect of any function conferred on the holder of that office be deemed to be the sole holder of it.

(6) Any power conferred by this Constitution to make any proclamation, rules, regulations or order or to give any directions shall be construed as including a power exercisable in like manner to amend or revoke any such proclamation, rules, regulations, order or directions.

(7) Where a person is required by this Constitution to make an oath he or she shall, if he or she so desires, be permitted to comply with that requirement by making an affirmation in accordance with the Schedule to this Constitution.

(8) For the purposes of this Constitution, the resignation of a member of any body or the holder of any office established by it that is required to be addressed to any person shall, unless otherwise expressly provided, be deemed to have effect from the time at which it is received by that person.

(9) For the purposes of this Constitution, a person shall not be regarded as absent from the Cayman Islands or as unable to perform any of his or her functions under it by reason only that he or she is in passage between any one of the Cayman Islands and another or from one part of any Island to another part.

#### **Power reserved to Her Majesty**

125. There is reserved to Her Majesty full power to make laws for the peace, order and good government of the Cayman Islands.

**SCHEDULE TO THE CONSTITUTION**  
**FORMS OF OATHS AND AFFIRMATIONS**

**126. Oath of Allegiance**

I.....do swear that I will be faithful and bear true allegiance to Her Majesty Queen Elizabeth the Second, Her Heirs and Successors, according to law. So help me God.

**127. Oath for due execution of office**

I.....do swear that I will well and truly serve Her Majesty Queen Elizabeth the Second, Her Heirs and Successors, and the people of the Cayman Islands in the office of (here insert the description of the office). So help me God.

**128. Oath for due execution of judicial office**

I.....do swear that I will well and truly serve Her Majesty Queen Elizabeth the Second, Her Heirs and Successors, and the people of the Cayman Islands in the office of (here insert the description of the office) and that I will do right to all manner of people according to the law without fear or favour, affection or ill-will. So help me God.

**129. Affirmations**

In the forms above respectively set forth, for the word "swear" there shall be substituted the words "solemnly and sincerely affirm and declare", and the words "So help me God" shall be omitted.

## EXPLANATORY NOTE

*(This note is not part of the Order)*

This Order establishes a new Constitution for the Cayman Islands, to replace the Constitution of 1972. The new Constitution includes, for the first time, a Bill of Rights setting out the fundamental rights and freedoms of the individual and provisions for their enforcement. It provides for a Governor as Her Majesty's representative in the Islands, and for a Premier and other Ministers who form a Cabinet together with the Deputy Governor and the Attorney General. It provides for an elected Legislative Assembly, which together with Her Majesty forms the Legislature. It provides for a Grand Court and a Court of Appeal as superior courts, and a Judicial and Legal Services Commission to advise on judicial and senior legal appointments. Provision is also made for a Human Rights Commission, a Commission for Standards in Public Life, and a Constitutional Commission. A new National Security Council is established, as is the new office of Director of Public Prosecutions. Provision is also made for the public service, public finance, a Complaints Commissioner, a Register of Interests, and freedom of information.

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# CHARTER OF THE UNITED NATIONS

AND

## STATUTE OF THE INTERNATIONAL COURT OF JUSTICE



SAN FRANCISCO · 1945

# CHARTER OF THE UNITED NATIONS

## WE THE PEOPLES OF THE UNITED NATIONS DETERMINED

to save succeeding generations from the scourge of war, which twice in our lifetime has brought untold sorrow to mankind, and

to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small, and

to establish conditions under which justice and respect for the obligations arising from treaties and other sources of international law can be maintained, and

to promote social progress and better standards of life in larger freedom,

## AND FOR THESE ENDS

to practice tolerance and live together in peace with one another as good neighbors, and

to unite our strength to maintain international peace and security, and

to ensure, by the acceptance of principles and the institution of methods, that armed force shall not be used, save in the common interest, and

to employ international machinery for the promotion of the economic and social advancement of all peoples,

## HAVE RESOLVED TO COMBINE OUR EFFORTS TO ACCOMPLISH THESE AIMS.

Accordingly, our respective Governments, through representatives assembled in the city of San Francisco, who have exhibited their full powers found to be in good and due form, have agreed to the present Charter of the United Nations and do hereby establish an international organization to be known as the United Nations.

## CHAPTER I

### PURPOSES AND PRINCIPLES

#### *Article 1*

The Purposes of the United Nations are:

1. To maintain international peace and security, and to that end: to take effective collective measures for the prevention and removal of threats to the peace, and for the suppression of acts of aggression or other breaches of the peace, and to bring about by peaceful means, and in conformity with the principles of justice and international law, adjustment or settlement of international disputes or situations which might lead to a breach of the peace;
2. To develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, and to take other appropriate measures to strengthen universal peace;
3. To achieve international cooperation in solving international problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion; and
4. To be a center for harmonizing the actions of nations in the attainment of these common ends.

#### *Article 2*

The Organization and its Members, in pursuit of the Purposes stated in Article 1, shall act in accordance with the following Principles.

1. The Organization is based on the principle of the sovereign equality of all its Members.
2. All Members, in order to ensure to all of them the rights and benefits resulting from membership, shall fulfil in good faith the obligations assumed by them in accordance with the present Charter.
3. All Members shall settle their international

disputes by peaceful means in such a manner that international peace and security, and justice, are not endangered.

4. All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations.

5. All Members shall give the United Nations every assistance in any action it takes in accordance with the present Charter, and shall refrain from giving assistance to any state against which the United Nations is taking preventive or enforcement action.

6. The Organization shall ensure that states which are not Members of the United Nations act in accordance with these Principles so far as may be necessary for the maintenance of international peace and security.

7. Nothing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state or shall require the Members to submit such matters to settlement under the present Charter; but this principle shall not prejudice the application of enforcement measures under Chapter VII.

## CHAPTER II

### MEMBERSHIP

#### *Article 3*

The original Members of the United Nations shall be the states which, having participated in the United Nations Conference on International Organization at San Francisco, or having previously signed the Declaration by United Nations of January 1, 1942, sign the present Charter and ratify it in accordance with Article 110.

#### *Article 4*

1. Membership in the United Nations is open to all other peace-loving states which accept the obligations contained in the present Charter and, in the judgment of the Organization, are able and willing to carry out these obligations.

2. The admission of any such state to membership in the United Nations will be effected by a decision of the General Assembly upon the recommendation of the Security Council.

#### *Article 5*

A Member of the United Nations against which preventive or enforcement action has been taken by the Security Council may be suspended from the exercise of the rights and privileges of membership by the General Assembly upon the recommendation of the Security Council. The exercise of these rights and privileges may be restored by the Security Council.

#### *Article 6*

A Member of the United Nations which has persistently violated the Principles contained in the present Charter may be expelled from the Organization by the General Assembly upon the recommendation of the Security Council.

### CHAPTER III

#### ORGANS

##### *Article 7*

1. There are established as the principal organs of the United Nations: a General Assembly, a Security Council, an Economic and Social Council, a Trusteeship Council, an International Court of Justice, and a Secretariat.

2. Such subsidiary organs as may be found necessary may be established in accordance with the present Charter.

#### *Article 8*

The United Nations shall place no restrictions on the eligibility of men and women to participate in any capacity and under conditions of equality in its principal and subsidiary organs.

### CHAPTER IV

#### THE GENERAL ASSEMBLY

##### *Composition*

##### *Article 9*

1. The General Assembly shall consist of all the Members of the United Nations.

2. Each Member shall have not more than five representatives in the General Assembly.

##### *Functions and Powers*

##### *Article 10*

The General Assembly may discuss any questions or any matters within the scope of the present Charter or relating to the powers and functions of any organs provided for in the present Charter, and, except as provided in Article 12, may make recommendations to the Members of the United Nations or to the Security Council or to both on any such questions or matters.

##### *Article 11*

1. The General Assembly may consider the general principles of cooperation in the maintenance of international peace and security, including the principles governing disarmament and the regulation of armaments, and may make recommendations with regard to such principles to the Members or to the Security Council or to both.

2. The General Assembly may discuss any questions relating to the maintenance of international peace and security brought before it by any Member of the United Nations, or by the Security Council, or by a state which is not a

Member of the United Nations in accordance with Article 35, paragraph 2, and, except as provided in Article 12, may make recommendations with regard to any such questions to the state or states concerned or to the Security Council or to both. Any such question on which action is necessary shall be referred to the Security Council by the General Assembly either before or after discussion.

3. The General Assembly may call the attention of the Security Council to situations which are likely to endanger international peace and security.

4. The powers of the General Assembly set forth in this Article shall not limit the general scope of Article 10.

#### *Article 12*

1. While the Security Council is exercising in respect of any dispute or situation the functions assigned to it in the present Charter, the General Assembly shall not make any recommendation with regard to that dispute or situation unless the Security Council so requests.

2. The Secretary-General, with the consent of the Security Council, shall notify the General Assembly at each session of any matters relative to the maintenance of international peace and security which are being dealt with by the Security Council and shall similarly notify the General Assembly, or the Members of the United Nations if the General Assembly is not in session, immediately the Security Council ceases to deal with such matters.

#### *Article 13*

1. The General Assembly shall initiate studies and make recommendations for the purpose of:

a. promoting international cooperation in the political field and encouraging the progressive development of international law and its codification;

b. promoting international cooperation in the economic, social, cultural, educational, and health fields, and assisting in the realization of human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion.

2. The further responsibilities, functions, and powers of the General Assembly with respect to matters mentioned in paragraph 1(b) above are set forth in Chapters IX and X.

#### *Article 14*

Subject to the provisions of Article 12, the General Assembly may recommend measures for the peaceful adjustment of any situation, regardless of origin, which it deems likely to impair the general welfare or friendly relations among nations, including situations resulting from a violation of the provisions of the present Charter setting forth the Purposes and Principles of the United Nations.

#### *Article 15*

1. The General Assembly shall receive and consider annual and special reports from the Security Council; these reports shall include an account of the measures that the Security Council has decided upon or taken to maintain international peace and security.

2. The General Assembly shall receive and consider reports from the other organs of the United Nations.

#### *Article 16*

The General Assembly shall perform such functions with respect to the international trusteeship system as are assigned to it under Chapters XII and XIII, including the approval of the trusteeship agreements for areas not designated as strategic.

#### *Article 17*

1. The General Assembly shall consider and approve the budget of the Organization.

2. The expenses of the Organization shall be borne by the Members as apportioned by the General Assembly.

3. The General Assembly shall consider and approve any financial and budgetary arrangements with specialized agencies referred to in Article 57 and shall examine the administrative budgets of such specialized agencies with a view to making recommendations to the agencies concerned.

#### *Voting*

##### *Article 18*

1. Each member of the General Assembly shall have one vote.

2. Decisions of the General Assembly on important questions shall be made by a two-thirds majority of the members present and voting. These questions shall include: recommendations with respect to the maintenance of international peace and security, the election of the non-permanent members of the Security Council, the election of the members of the Economic and Social Council, the election of members of the Trusteeship Council in accordance with paragraph 1(c) of Article 86, the admission of new Members to the United Nations, the suspension of the rights and privileges of membership, the expulsion of Members, questions relating to the operation of the trusteeship system, and budgetary questions.

3. Decisions on other questions, including the determination of additional categories of questions to be decided by a two-thirds majority, shall be made by a majority of the members present and voting.

##### *Article 19*

A Member of the United Nations which is in arrears in the payment of its financial contributions to the Organization shall have no vote in the General Assembly if the amount of its arrears equals or exceeds the amount of the contributions

due from it for the preceding two full years. The General Assembly may, nevertheless, permit such a Member to vote if it is satisfied that the failure to pay is due to conditions beyond the control of the Member.

#### *Procedure*

##### *Article 20*

The General Assembly shall meet in regular annual sessions and in such special sessions as occasion may require. Special sessions shall be convoked by the Secretary-General at the request of the Security Council or of a majority of the Members of the United Nations.

##### *Article 21*

The General Assembly shall adopt its own rules of procedure. It shall elect its President for each session.

##### *Article 22*

The General Assembly may establish such subsidiary organs as it deems necessary for the performance of its functions.

## CHAPTER V

### THE SECURITY COUNCIL

#### *Composition*

##### *Article 23*

1. The Security Council shall consist of eleven Members of the United Nations. The Republic of China, France, the Union of Soviet Socialist Republics, the United Kingdom of Great Britain and Northern Ireland, and the United States of America shall be permanent members of the Security Council. The General Assembly shall elect six other Members of the United Nations to be non-permanent members of the Security Council, due regard being specially paid, in the first instance to the contribution of Members of the

United Nations to the maintenance of international peace and security and to the other purposes of the Organization, and also to equitable geographical distribution.

2. The non-permanent members of the Security Council shall be elected for a term of two years. In the first election of the non-permanent members, however, three shall be chosen for a term of one year. A retiring member shall not be eligible for immediate re-election.

3. Each member of the Security Council shall have one representative.

#### *Functions and Powers*

##### *Article 24*

1. In order to ensure prompt and effective action by the United Nations, its Members confer on the Security Council primary responsibility for the maintenance of international peace and security, and agree that in carrying out its duties under this responsibility the Security Council acts on their behalf.

2. In discharging these duties the Security Council shall act in accordance with the Purposes and Principles of the United Nations. The specific powers granted to the Security Council for the discharge of these duties are laid down in Chapters VI, VII, VIII, and XII.

3. The Security Council shall submit annual and, when necessary, special reports to the General Assembly for its consideration.

##### *Article 25*

The Members of the United Nations agree to accept and carry out the decisions of the Security Council in accordance with the present Charter.

##### *Article 26*

In order to promote the establishment and maintenance of international peace and security with the least diversion for armaments of the world's human and economic resources, the Se-

curity Council shall be responsible for formulating, with the assistance of the Military Staff Committee referred to in Article 47, plans to be submitted to the Members of the United Nations for the establishment of a system for the regulation of armaments.

#### *Voting*

##### *Article 27*

1. Each member of the Security Council shall have one vote.

2. Decisions of the Security Council on procedural matters shall be made by an affirmative vote of seven members.

3. Decisions of the Security Council on all other matters shall be made by an affirmative vote of seven members including the concurring votes of the permanent members; provided that, in decisions under Chapter VI, and under paragraph 3 of Article 52, a party to a dispute shall abstain from voting.

#### *Procedure*

##### *Article 28*

1. The Security Council shall be so organized as to be able to function continuously. Each member of the Security Council shall for this purpose be represented at all times at the seat of the Organization.

2. The Security Council shall hold periodic meetings at which each of its members may, if it so desires, be represented by a member of the government or by some other specially designated representative.

3. The Security Council may hold meetings at such places other than the seat of the Organization as in its judgment will best facilitate its work.

##### *Article 29*

The Security Council may establish such subsidiary organs as it deems necessary for the performance of its functions.

### *Article 30*

The Security Council shall adopt its own rules of procedure, including the method of selecting its President.

### *Article 31*

Any Member of the United Nations which is not a member of the Security Council may participate, without vote, in the discussion of any question brought before the Security Council whenever the latter considers that the interests of that Member are specially affected.

### *Article 32*

Any Member of the United Nations which is not a member of the Security Council or any state which is not a Member of the United Nations, if it is a party to a dispute under consideration by the Security Council, shall be invited to participate, without vote, in the discussion relating to the dispute. The Security Council shall lay down such conditions as it deems just for the participation of a state which is not a Member of the United Nations.

## CHAPTER VI

### PACIFIC SETTLEMENT OF DISPUTES

#### *Article 33*

1. The parties to any dispute, the continuance of which is likely to endanger the maintenance of international peace and security, shall, first of all, seek a solution by negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means of their own choice.

2. The Security Council shall, when it deems necessary, call upon the parties to settle their dispute by such means.

#### *Article 34*

The Security Council may investigate any dispute, or any situation which might lead to inter-

national friction or give rise to a dispute, in order to determine whether the continuance of the dispute or situation is likely to endanger the maintenance of international peace and security.

#### *Article 35*

1. Any Member of the United Nations may bring any dispute, or any situation of the nature referred to in Article 34, to the attention of the Security Council or of the General Assembly.

2. A state which is not a Member of the United Nations may bring to the attention of the Security Council or of the General Assembly any dispute to which it is a party if it accepts in advance, for the purposes of the dispute, the obligations of pacific settlement provided in the present Charter.

3. The proceedings of the General Assembly in respect of matters brought to its attention under this Article will be subject to the provisions of Articles 11 and 12.

#### *Article 36*

1. The Security Council may, at any stage of a dispute of the nature referred to in Article 33 or of a situation of like nature, recommend appropriate procedures or methods of adjustment.

2. The Security Council should take into consideration any procedures for the settlement of the dispute which have already been adopted by the parties.

3. In making recommendations under this Article the Security Council should also take into consideration that legal disputes should as a general rule be referred by the parties to the International Court of Justice in accordance with the provisions of the Statute of the Court.

#### *Article 37*

1. Should the parties to a dispute of the nature referred to in Article 33 fail to settle it by the means indicated in that Article, they shall refer it to the Security Council.

2. If the Security Council deems that the continuance of the dispute is in fact likely to endanger the maintenance of international peace and security, it shall decide whether to take action under Article 36 or to recommend such terms of settlement as it may consider appropriate.

*Article 38*

Without prejudice to the provisions of Articles 33 to 37, the Security Council may, if all the parties to any dispute so request, make recommendations to the parties with a view to a pacific settlement of the dispute.

**CHAPTER VII**

**ACTION WITH RESPECT TO THREATS TO THE PEACE, BREACHES OF THE PEACE, AND ACTS OF AGGRESSION**

*Article 39*

The Security Council shall determine the existence of any threat to the peace, breach of the peace, or act of aggression and shall make recommendations, or decide what measures shall be taken in accordance with Articles 41 and 42, to maintain or restore international peace and security.

*Article 40*

In order to prevent an aggravation of the situation, the Security Council may, before making the recommendations or deciding upon the measures provided for in Article 39, call upon the parties concerned to comply with such provisional measures as it deems necessary or desirable. Such provisional measures shall be without prejudice to the rights, claims, or position of the parties concerned. The Security Council shall duly take account of failure to comply with such provisional measures.

*Article 41*

The Security Council may decide what measures not involving the use of armed force are to be

employed to give effect to its decisions, and it may call upon the Members of the United Nations to apply such measures. These may include complete or partial interruption of economic relations and of rail, sea, air, postal, telegraphic, radio, and other means of communication, and the severance of diplomatic relations.

*Article 42*

Should the Security Council consider that measures provided for in Article 41 would be inadequate or have proved to be inadequate, it may take such action by air, sea, or land forces as may be necessary to maintain or restore international peace and security. Such action may include demonstrations, blockade, and other operations by air, sea, or land forces of Members of the United Nations.

*Article 43*

1. All Members of the United Nations, in order to contribute to the maintenance of international peace and security, undertake to make available to the Security Council, on its call and in accordance with a special agreement or agreements, armed forces, assistance, and facilities, including rights of passage, necessary for the purpose of maintaining international peace and security.

2. Such agreement or agreements shall govern the numbers and types of forces, their degree of readiness and general location, and the nature of the facilities and assistance to be provided.

3. The agreement or agreements shall be negotiated as soon as possible on the initiative of the Security Council. They shall be concluded between the Security Council and Members or between the Security Council and groups of Members and shall be subject to ratification by the signatory states in accordance with their respective constitutional processes.

*Article 44*

When the Security Council has decided to use force it shall, before calling upon a Member not

represented on it to provide armed forces in fulfillment of the obligations assumed under Article 43, invite that Member, if the Member so desires, to participate in the decisions of the Security Council concerning the employment of contingents of that Member's armed forces.

#### *Article 45*

In order to enable the United Nations to take urgent military measures, Members shall hold immediately available national air-force contingents for combined international enforcement action. The strength and degree of readiness of these contingents and plans for their combined action shall be determined, within the limits laid down in the special agreement or agreements referred to in Article 43, by the Security Council with the assistance of the Military Staff Committee.

#### *Article 46*

Plans for the application of armed force shall be made by the Security Council with the assistance of the Military Staff Committee.

#### *Article 47*

1. There shall be established a Military Staff Committee to advise and assist the Security Council on all questions relating to the Security Council's military requirements for the maintenance of international peace and security, the employment and command of forces placed at its disposal, the regulation of armaments, and possible disarmament.

2. The Military Staff Committee shall consist of the Chiefs of Staff of the permanent members of the Security Council or their representatives. Any Member of the United Nations not permanently represented on the Committee shall be invited by the Committee to be associated with it when the efficient discharge of the Committee's responsibilities requires the participation of that Member in its work.

3. The Military Staff Committee shall be responsible under the Security Council for the strategic direction of any armed forces placed at the disposal of the Security Council. Questions relating to the command of such forces shall be worked out subsequently.

4. The Military Staff Committee, with the authorization of the Security Council and after consultation with appropriate regional agencies, may establish regional subcommittees.

#### *Article 48*

1. The action required to carry out the decisions of the Security Council for the maintenance of international peace and security shall be taken by all the Members of the United Nations or by some of them, as the Security Council may determine.

2. Such decisions shall be carried out by the Members of the United Nations directly and through their action in the appropriate international agencies of which they are members.

#### *Article 49*

The Members of the United Nations shall join in affording mutual assistance in carrying out the measures decided upon by the Security Council.

#### *Article 50*

If preventive or enforcement measures against any state are taken by the Security Council, any other state, whether a Member of the United Nations or not, which finds itself confronted with special economic problems arising from the carrying out of those measures shall have the right to consult the Security Council with regard to a solution of those problems.

#### *Article 51*

Nothing in the present Charter shall impair the inherent right of individual or collective self-defense if an armed attack occurs against a Mem-

ber of the United Nations, until the Security Council has taken the measures necessary to maintain international peace and security. Measures taken by Members in the exercise of this right of self-defense shall be immediately reported to the Security Council and shall not in any way affect the authority and responsibility of the Security Council under the present Charter to take at any time such action as it deems necessary in order to maintain or restore international peace and security.

## CHAPTER VIII

### REGIONAL ARRANGEMENTS

#### *Article 52*

1. Nothing in the present Charter precludes the existence of regional arrangements or agencies for dealing with such matters relating to the maintenance of international peace and security as are appropriate for regional action, provided that such arrangements or agencies and their activities are consistent with the Purposes and Principles of the United Nations.

2. The Members of the United Nations entering into such arrangements or constituting such agencies shall make every effort to achieve pacific settlement of local disputes through such regional arrangements or by such regional agencies before referring them to the Security Council.

3. The Security Council shall encourage the development of pacific settlement of local disputes through such regional arrangements or by such regional agencies either on the initiative of the states concerned or by reference from the Security Council.

4. This Article in no way impairs the application of Articles 34 and 35.

#### *Article 53*

1. The Security Council shall, where appropriate, utilize such regional arrangements or

agencies for enforcement action under its authority. But no enforcement action shall be taken under regional arrangements or by regional agencies without the authorization of the Security Council, with the exception of measures against any enemy state, as defined in paragraph 2 of this Article, provided for pursuant to Article 107 or in regional arrangements directed against renewal of aggressive policy on the part of any such state, until such time as the Organization may, on request of the Governments concerned, be charged with the responsibility for preventing further aggression by such a state.

2. The term enemy state as used in paragraph 1 of this Article applies to any state which during the Second World War has been an enemy of any signatory of the present Charter.

#### *Article 54*

The Security Council shall at all times be kept fully informed of activities undertaken or in contemplation under regional arrangements or by regional agencies for the maintenance of international peace and security.

## CHAPTER IX

### INTERNATIONAL ECONOMIC AND SOCIAL COOPERATION

#### *Article 55*

With a view to the creation of conditions of stability and well-being which are necessary for peaceful and friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, the United Nations shall promote:

a. higher standards of living, full employment, and conditions of economic and social progress and development;

b. solutions of international economic, social, health, and related problems; and inter-

national cultural and educational cooperation;  
and

c. universal respect for, and observance of,  
human rights and fundamental freedoms for  
all without distinction as to race, sex, language,  
or religion.

*Article 56*

All Members pledge themselves to take joint  
and separate action in cooperation with the Or-  
ganization for the achievement of the purposes set  
forth in Article 55.

*Article 57*

1. The various specialized agencies, estab-  
lished by intergovernmental agreement and hav-  
ing wide international responsibilities, as defined  
in their basic instruments, in economic, social,  
cultural, educational, health, and related fields,  
shall be brought into relationship with the United  
Nations in accordance with the provisions of  
Article 63.

2. Such agencies thus brought into relation-  
ship with the United Nations are hereinafter re-  
ferred to as specialized agencies.

*Article 58*

The Organization shall make recommendations  
for the coordination of the policies and activities  
of the specialized agencies.

*Article 59*

The Organization shall, where appropriate,  
initiate negotiations among the states concerned  
for the creation of any new specialized agencies  
required for the accomplishment of the purposes  
set forth in Article 55.

*Article 60*

Responsibility for the discharge of the func-  
tions of the Organization set forth in this Chap-  
ter shall be vested in the General Assembly and,  
under the authority of the General Assembly, in

the Economic and Social Council, which shall  
have for this purpose the powers set forth in  
Chapter X.

## CHAPTER X

### THE ECONOMIC AND SOCIAL COUNCIL

*Composition*

*Article 61*

1. The Economic and Social Council shall con-  
sist of eighteen Members of the United Nations  
elected by the General Assembly.

2. Subject to the provisions of paragraph 3,  
six members of the Economic and Social Council  
shall be elected each year for a term of three years.  
A retiring member shall be eligible for immediate  
re-election.

3. At the first election, eighteen members of  
the Economic and Social Council shall be chosen.  
The term of office of six members so chosen shall  
expire at the end of one year, and of six other  
members at the end of two years, in accordance  
with arrangements made by the General Assembly.

4. Each member of the Economic and Social  
Council shall have one representative.

*Functions and Powers*

*Article 62*

1. The Economic and Social Council may make  
or initiate studies and reports with respect to inter-  
national economic, social, cultural, educational,  
health, and related matters and may make recom-  
mendations with respect to any such matters to the  
General Assembly, to the Members of the United  
Nations, and to the specialized agencies concerned.

2. It may make recommendations for the pur-  
pose of promoting respect for, and observance of,  
human rights and fundamental freedoms for all.

3. It may prepare draft conventions for sub-  
mission to the General Assembly, with respect to  
matters falling within its competence.

4. It may call, in accordance with the rules prescribed by the United Nations, international conferences on matters falling within its competence.

#### *Article 63*

1. The Economic and Social Council may enter into agreements with any of the agencies referred to in Article 57, defining the terms on which the agency concerned shall be brought into relationship with the United Nations. Such agreements shall be subject to approval by the General Assembly.

2. It may coordinate the activities of the specialized agencies through consultation with and recommendations to such agencies and through recommendations to the General Assembly and to the Members of the United Nations.

#### *Article 64*

1. The Economic and Social Council may take appropriate steps to obtain regular reports from the specialized agencies. It may make arrangements with the Members of the United Nations and with the specialized agencies to obtain reports on the steps taken to give effect to its own recommendations and to recommendations on matters falling within its competence made by the General Assembly.

2. It may communicate its observations on these reports to the General Assembly.

#### *Article 65*

The Economic and Social Council may furnish information to the Security Council and shall assist the Security Council upon its request.

#### *Article 66*

1. The Economic and Social Council shall perform such functions as fall within its competence in connection with the carrying out of the recommendations of the General Assembly.

2. It may, with the approval of the General

Assembly, perform services at the request of Members of the United Nations and at the request of specialized agencies.

3. It shall perform such other functions as are specified elsewhere in the present Charter or as may be assigned to it by the General Assembly.

#### *Voting*

#### *Article 67*

1. Each member of the Economic and Social Council shall have one vote.

2. Decisions of the Economic and Social Council shall be made by a majority of the members present and voting.

#### *Procedure*

#### *Article 68*

The Economic and Social Council shall set up commissions in economic and social fields and for the promotion of human rights, and such other commissions as may be required for the performance of its functions.

#### *Article 69*

The Economic and Social Council shall invite any Member of the United Nations to participate, without vote, in its deliberations on any matter of particular concern to that Member.

#### *Article 70*

The Economic and Social Council may make arrangements for representatives of the specialized agencies to participate, without vote, in its deliberations and in those of the commissions established by it, and for its representatives to participate in the deliberations of the specialized agencies.

#### *Article 71*

The Economic and Social Council may make suitable arrangements for consultation with non-governmental organizations which are concerned with matters within its competence. Such arrange-

ments may be made with international organizations and, where appropriate, with national organizations after consultation with the Member of the United Nations concerned.

#### *Article 72*

1. The Economic and Social Council shall adopt its own rules of procedure, including the method of selecting its President.

2. The Economic and Social Council shall meet as required in accordance with its rules, which shall include provision for the convening of meetings on the request of a majority of its members.

### CHAPTER XI

#### DECLARATION REGARDING NON-SELF-GOVERNING TERRITORIES

#### *Article 73*

Members of the United Nations which have or assume responsibilities for the administration of territories whose peoples have not yet attained a full measure of self-government recognize the principle that the interests of the inhabitants of these territories are paramount, and accept as a sacred trust the obligation to promote to the utmost, within the system of international peace and security established by the present Charter, the well-being of the inhabitants of these territories, and, to this end:

a. to ensure, with due respect for the culture of the peoples concerned, their political, economic, social, and educational advancement, their just treatment, and their protection against abuses;

b. to develop self-government, to take due account of the political aspirations of the peoples, and to assist them in the progressive development of their free political institutions, according to the particular circumstances of each territory and its peoples and their varying stages of advancement;

c. to further international peace and security;

d. to promote constructive measures of development, to encourage research, and to cooperate with one another and, when and where appropriate, with specialized international bodies with a view to the practical achievement of the social, economic, and scientific purposes set forth in this Article; and

e. to transmit regularly to the Secretary-General for information purposes, subject to such limitation as security and constitutional considerations may require, statistical and other information of a technical nature relating to economic, social, and educational conditions in the territories for which they are respectively responsible other than those territories to which Chapters XII and XIII apply.

#### *Article 74*

Members of the United Nations also agree that their policy in respect of the territories to which this Chapter applies, no less than in respect of their metropolitan areas, must be based on the general principle of good-neighborliness, due account being taken of the interests and well-being of the rest of the world, in social, economic, and commercial matters.

### CHAPTER XII

#### INTERNATIONAL TRUSTEESHIP SYSTEM

#### *Article 75*

The United Nations shall establish under its authority an international trusteeship system for the administration and supervision of such territories as may be placed thereunder by subsequent individual agreements. These territories are hereinafter referred to as trust territories.

#### *Article 76*

The basic objectives of the trusteeship system,

in accordance with the Purposes of the United Nations laid down in Article 1 of the present Charter, shall be:

a. to further international peace and security;

b. to promote the political, economic, social, and educational advancement of the inhabitants of the trust territories, and their progressive development towards self-government or independence as may be appropriate to the particular circumstances of each territory and its peoples and the freely expressed wishes of the peoples concerned, and as may be provided by the terms of each trusteeship agreement;

c. to encourage respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion, and to encourage recognition of the interdependence of the peoples of the world; and

d. to ensure equal treatment in social, economic, and commercial matters for all Members of the United Nations and their nationals, and also equal treatment for the latter in the administration of justice, without prejudice to the attainment of the foregoing objectives and subject to the provisions of Article 80.

#### *Article 77*

1. The trusteeship system shall apply to such territories in the following categories as may be placed thereunder by means of trusteeship agreements:

a. territories now held under mandate;

b. territories which may be detached from enemy states as a result of the Second World War; and

c. territories voluntarily placed under the system by states responsible for their administration.

2. It will be a matter for subsequent agreement as to which territories in the foregoing categories

will be brought under the trusteeship system and upon what terms.

#### *Article 78*

The trusteeship system shall not apply to territories which have become Members of the United Nations, relationship among which shall be based on respect for the principle of sovereign equality.

#### *Article 79*

The terms of trusteeship for each territory to be placed under the trusteeship system, including any alteration or amendment, shall be agreed upon by the states directly concerned, including the mandatory power in the case of territories held under mandate by a Member of the United Nations, and shall be approved as provided for in Articles 83 and 85.

#### *Article 80*

1. Except as may be agreed upon in individual trusteeship agreements, made under Articles 77, 79, and 81, placing each territory under the trusteeship system, and until such agreements have been concluded, nothing in this Chapter shall be construed in or of itself to alter in any manner the rights whatsoever of any states or any peoples or the terms of existing international instruments to which Members of the United Nations may respectively be parties.

2. Paragraph 1 of this Article shall not be interpreted as giving grounds for delay or postponement of the negotiation and conclusion of agreements for placing mandated and other territories under the trusteeship system as provided for in Article 77.

#### *Article 81*

The trusteeship agreement shall in each case include the terms under which the trust territory will be administered and designate the authority which will exercise the administration of the trust territory. Such authority, hereinafter called the

administering authority, may be one or more states or the Organization itself.

#### *Article 82*

There may be designated, in any trusteeship agreement, a strategic area or areas which may include part or all of the trust territory to which the agreement applies, without prejudice to any special agreement or agreements made under Article 43.

#### *Article 83*

1. All functions of the United Nations relating to strategic areas, including the approval of the terms of the trusteeship agreements and of their alteration or amendment, shall be exercised by the Security Council.

2. The basic objectives set forth in Article 76 shall be applicable to the people of each strategic area.

3. The Security Council shall, subject to the provisions of the trusteeship agreements and without prejudice to security considerations, avail itself of the assistance of the Trusteeship Council to perform those functions of the United Nations under the trusteeship system relating to political, economic, social, and educational matters in the strategic areas.

#### *Article 84*

It shall be the duty of the administering authority to ensure that the trust territory shall play its part in the maintenance of international peace and security. To this end the administering authority may make use of volunteer forces, facilities, and assistance from the trust territory in carrying out the obligations towards the Security Council undertaken in this regard by the administering authority, as well as for local defense and the maintenance of law and order within the trust territory.

#### *Article 85*

1. The functions of the United Nations with

regard to trusteeship agreements for all areas not designated as strategic, including the approval of the terms of the trusteeship agreements and of their alteration or amendment, shall be exercised by the General Assembly.

2. The Trusteeship Council, operating under the authority of the General Assembly, shall assist the General Assembly in carrying out these functions.

## CHAPTER XIII

### THE TRUSTEESHIP COUNCIL

#### *Composition*

#### *Article 86*

1. The Trusteeship Council shall consist of the following Members of the United Nations:

a. those Members administering trust territories;

b. such of those Members mentioned by name in Article 23 as are not administering trust territories; and

c. as many other Members elected for three-year terms by the General Assembly as may be necessary to ensure that the total number of members of the Trusteeship Council is equally divided between those Members of the United Nations which administer trust territories and those which do not.

2. Each member of the Trusteeship Council shall designate one specially qualified person to represent it therein.

#### *Functions and Powers*

#### *Article 87*

The General Assembly and, under its authority, the Trusteeship Council, in carrying out their functions, may:

a. consider reports submitted by the administering authority;

- b. accept petitions and examine them in consultation with the administering authority;
- c. provide for periodic visits to the respective trust territories at times agreed upon with the administering authority; and
- d. take these and other actions in conformity with the terms of the trusteeship agreements.

#### *Article 88*

The Trusteeship Council shall formulate a questionnaire on the political, economic, social, and educational advancement of the inhabitants of each trust territory, and the administering authority for each trust territory within the competence of the General Assembly shall make an annual report to the General Assembly upon the basis of such questionnaire.

#### *Voting*

##### *Article 89*

1. Each member of the Trusteeship Council shall have one vote.
2. Decisions of the Trusteeship Council shall be made by a majority of the members present and voting.

#### *Procedure*

##### *Article 90*

1. The Trusteeship Council shall adopt its own rules of procedure, including the method of selecting its President.
2. The Trusteeship Council shall meet as required in accordance with its rules, which shall include provision for the convening of meetings on the request of a majority of its members.

##### *Article 91*

The Trusteeship Council shall, when appropriate, avail itself of the assistance of the Economic and Social Council and of the specialized agencies in regard to matters with which they are respectively concerned.

## CHAPTER XIV

### THE INTERNATIONAL COURT OF JUSTICE

#### *Article 92*

The International Court of Justice shall be the principal judicial organ of the United Nations. It shall function in accordance with the annexed Statute, which is based upon the Statute of the Permanent Court of International Justice and forms an integral part of the present Charter.

#### *Article 93*

1. All Members of the United Nations are *ipso facto* parties to the Statute of the International Court of Justice.
2. A state which is not a Member of the United Nations may become a party to the Statute of the International Court of Justice on conditions to be determined in each case by the General Assembly upon the recommendation of the Security Council.

#### *Article 94*

1. Each Member of the United Nations undertakes to comply with the decision of the International Court of Justice in any case to which it is a party.
2. If any party to a case fails to perform the obligations incumbent upon it under a judgment rendered by the Court, the other party may have recourse to the Security Council, which may, if it deems necessary, make recommendations or decide upon measures to be taken to give effect to the judgment.

#### *Article 95*

Nothing in the present Charter shall prevent Members of the United Nations from entrusting the solution of their differences to other tribunals by virtue of agreements already in existence or which may be concluded in the future.

### *Article 96*

1. The General Assembly or the Security Council may request the International Court of Justice to give an advisory opinion on any legal question.

2. Other organs of the United Nations and specialized agencies, which may at any time be so authorized by the General Assembly, may also request advisory opinions of the Court on legal questions arising within the scope of their activities.

## CHAPTER XV THE SECRETARIAT

### *Article 97*

The Secretariat shall comprise a Secretary-General and such staff as the Organization may require. The Secretary-General shall be appointed by the General Assembly upon the recommendation of the Security Council. He shall be the chief administrative officer of the Organization.

### *Article 98*

The Secretary-General shall act in that capacity in all meetings of the General Assembly, of the Security Council, of the Economic and Social Council, and of the Trusteeship Council, and shall perform such other functions as are entrusted to him by these organs. The Secretary-General shall make an annual report to the General Assembly on the work of the Organization.

### *Article 99*

The Secretary-General may bring to the attention of the Security Council any matter which in his opinion may threaten the maintenance of international peace and security.

### *Article 100*

1. In the performance of their duties the Secre-

tary-General and the staff shall not seek or receive instructions from any government or from any other authority external to the Organization. They shall refrain from any action which might reflect on their position as international officials responsible only to the Organization.

2. Each Member of the United Nations undertakes to respect the exclusively international character of the responsibilities of the Secretary-General and the staff and not to seek to influence them in the discharge of their responsibilities.

### *Article 101*

1. The staff shall be appointed by the Secretary-General under regulations established by the General Assembly.

2. Appropriate staffs shall be permanently assigned to the Economic and Social Council, the Trusteeship Council, and, as required, to other organs of the United Nations. These staffs shall form a part of the Secretariat.

3. The paramount consideration in the employment of the staff and in the determination of the conditions of service shall be the necessity of securing the highest standards of efficiency, competence, and integrity. Due regard shall be paid to the importance of recruiting the staff on as wide a geographical basis as possible.

## CHAPTER XVI MISCELLANEOUS PROVISIONS

### *Article 102*

1. Every treaty and every international agreement entered into by any Member of the United Nations after the present Charter comes into force shall as soon as possible be registered with the Secretariat and published by it.

2. No party to any such treaty or international agreement which has not been registered in accordance with the provisions of paragraph 1 of

this Article may invoke that treaty or agreement before any organ of the United Nations.

#### *Article 103*

In the event of a conflict between the obligations of the Members of the United Nations under the present Charter and their obligations under any other international agreement, their obligations under the present Charter shall prevail.

#### *Article 104*

The Organization shall enjoy in the territory of each of its Members such legal capacity as may be necessary for the exercise of its functions and the fulfillment of its purposes.

#### *Article 105*

1. The Organization shall enjoy in the territory of each of its Members such privileges and immunities as are necessary for the fulfillment of its purposes.

2. Representatives of the Members of the United Nations and officials of the Organization shall similarly enjoy such privileges and immunities as are necessary for the independent exercise of their functions in connection with the Organization.

3. The General Assembly may make recommendations with a view to determining the details of the application of paragraphs 1 and 2 of this Article or may propose conventions to the Members of the United Nations for this purpose.

## CHAPTER XVII

### TRANSITIONAL SECURITY ARRANGEMENTS

#### *Article 106*

Pending the coming into force of such special agreements referred to in Article 43 as in the opinion of the Security Council enable it to begin

the exercise of its responsibilities under Article 42, the parties to the Four-Nation Declaration, signed at Moscow, October 30, 1943, and France, shall, in accordance with the provisions of paragraph 5 of that Declaration, consult with one another and as occasion requires with other Members of the United Nations with a view to such joint action on behalf of the Organization as may be necessary for the purpose of maintaining international peace and security.

#### *Article 107*

Nothing in the present Charter shall invalidate or preclude action, in relation to any state which during the Second World War has been an enemy of any signatory to the present Charter, taken or authorized as a result of that war by the Governments having responsibility for such action.

## CHAPTER XVIII

### AMENDMENTS

#### *Article 108*

Amendments to the present Charter shall come into force for all Members of the United Nations when they have been adopted by a vote of two thirds of the members of the General Assembly and ratified in accordance with their respective constitutional processes by two thirds of the Members of the United Nations, including all the permanent members of the Security Council.

#### *Article 109*

1. A General Conference of the Members of the United Nations for the purpose of reviewing the present Charter may be held at a date and place to be fixed by a two-thirds vote of the members of the General Assembly and by a vote of any seven members of the Security Council. Each Member of the United Nations shall have one vote in the conference.

2. Any alteration of the present Charter recommended by a two-thirds vote of the conference shall take effect when ratified in accordance with their respective constitutional processes by two thirds of the Members of the United Nations including all the permanent members of the Security Council.

3. If such a conference has not been held before the tenth annual session of the General Assembly following the coming into force of the present Charter, the proposal to call such a conference shall be placed on the agenda of that session of the General Assembly, and the conference shall be held if so decided by a majority vote of the members of the General Assembly and by a vote of any seven members of the Security Council.

## CHAPTER XIX

### RATIFICATION AND SIGNATURE

#### *Article 110*

1. The present Charter shall be ratified by the signatory states in accordance with their respective constitutional processes.

2. The ratifications shall be deposited with the Government of the United States of America, which shall notify all the signatory states of each deposit as well as the Secretary-General of the Organization when he has been appointed.

3. The present Charter shall come into force upon the deposit of ratifications by the Republic of China, France, the Union of Soviet Socialist Republics, the United Kingdom of Great Britain and Northern Ireland, and the United States of America, and by a majority of the other signatory states. A protocol of the ratifications deposited shall thereupon be drawn up by the Government of the United States of America which shall communicate copies thereof to all the signatory states.

4. The states signatory to the present Charter which ratify it after it has come into force will become original Members of the United Nations on the date of the deposit of their respective ratifications.

#### *Article 111*

The present Charter, of which the Chinese, French, Russian, English, and Spanish texts are equally authentic, shall remain deposited in the archives of the Government of the United States of America. Duly certified copies thereof shall be transmitted by that Government to the Governments of the other signatory states.

IN FAITH WHEREOF the representatives of the Governments of the United Nations have signed the present Charter.

DONE at the city of San Francisco the twenty-sixth day of June, one thousand nine hundred and forty-five.

# STATUTE OF THE INTERNATIONAL COURT OF JUSTICE

## *Article 1*

THE INTERNATIONAL COURT OF JUSTICE established by the Charter of the United Nations as the principal judicial organ of the United Nations shall be constituted and shall function in accordance with the provisions of the present Statute.

## CHAPTER I

### ORGANIZATION OF THE COURT

#### *Article 2*

The Court shall be composed of a body of independent judges, elected regardless of their nationality from among persons of high moral character, who possess the qualifications required in their respective countries for appointment to the highest judicial offices, or are jurisconsults of recognized competence in international law.

#### *Article 3*

1. The Court shall consist of fifteen members, no two of whom may be nationals of the same state.

2. A person who for the purposes of membership in the Court could be regarded as a national of more than one state shall be deemed to be a national of the one in which he ordinarily exercises civil and political rights.

#### *Article 4*

1. The members of the Court shall be elected by the General Assembly and by the Security Council from a list of persons nominated by the national groups in the Permanent Court of Arbitration, in accordance with the following provisions.

2. In the case of Members of the United Nations not represented in the Permanent Court of Arbitration, candidates shall be nominated by national groups appointed for this purpose by their governments under the same conditions as

those prescribed for members of the Permanent Court of Arbitration by Article 44 of the Convention of The Hague of 1907 for the pacific settlement of international disputes.

3. The conditions under which a state which is a party to the present Statute but is not a Member of the United Nations may participate in electing the members of the Court shall, in the absence of a special agreement, be laid down by the General Assembly upon recommendation of the Security Council.

#### *Article 5*

1. At least three months before the date of the election, the Secretary-General of the United Nations shall address a written request to the members of the Permanent Court of Arbitration belonging to the states which are parties to the present Statute, and to the members of the national groups appointed under Article 4, paragraph 2, inviting them to undertake, within a given time, by national groups, the nomination of persons in a position to accept the duties of a member of the Court.

2. No group may nominate more than four persons, not more than two of whom shall be of their own nationality. In no case may the number of candidates nominated by a group be more than double the number of seats to be filled.

#### *Article 6*

Before making these nominations, each national group is recommended to consult its highest court of justice, its legal faculties and schools of law, and its national academies and national sections of international academies devoted to the study of law.

#### *Article 7*

1. The Secretary-General shall prepare a list

in alphabetical order of all the persons thus nominated. Save as provided in Article 12, paragraph 2, these shall be the only persons eligible.

2. The Secretary-General shall submit this list to the General Assembly and to the Security Council.

#### *Article 8*

The General Assembly and the Security Council shall proceed independently of one another to elect the members of the Court.

#### *Article 9*

At every election, the electors shall bear in mind not only that the persons to be elected should individually possess the qualifications required, but also that in the body as a whole the representation of the main forms of civilization and of the principal legal systems of the world should be assured.

#### *Article 10*

1. Those candidates who obtain an absolute majority of votes in the General Assembly and in the Security Council shall be considered as elected.

2. Any vote of the Security Council, whether for the election of judges or for the appointment of members of the conference envisaged in Article 12, shall be taken without any distinction between permanent and non-permanent members of the Security Council.

3. In the event of more than one national of the same state obtaining an absolute majority of the votes both of the General Assembly and of the Security Council, the eldest of these only shall be considered as elected.

#### *Article 11*

If, after the first meeting held for the purpose of the election, one or more seats remain to be filled, a second and, if necessary, a third meeting shall take place.

#### *Article 12*

1. If, after the third meeting, one or more seats still remain unfilled, a joint conference consisting of six members, three appointed by the General Assembly and three by the Security Council, may be formed at any time at the request of either the General Assembly or the Security Council, for the purpose of choosing by the vote of an absolute majority one name for each seat still vacant, to submit to the General Assembly and the Security Council for their respective acceptance.

2. If the joint conference is unanimously agreed upon any person who fulfils the required conditions, he may be included in its list, even though he was not included in the list of nominations referred to in Article 7.

3. If the joint conference is satisfied that it will not be successful in procuring an election, those members of the Court who have already been elected shall, within a period to be fixed by the Security Council, proceed to fill the vacant seats by selection from among those candidates who have obtained votes either in the General Assembly or in the Security Council.

4. In the event of an equality of votes among the judges, the eldest judge shall have a casting vote.

#### *Article 13*

1. The members of the Court shall be elected for nine years and may be re-elected; provided, however, that of the judges elected at the first election, the terms of five judges shall expire at the end of three years and the terms of five more judges shall expire at the end of six years.

2. The judges whose terms are to expire at the end of the above-mentioned initial periods of three and six years shall be chosen by lot to be drawn by the Secretary-General immediately after the first election has been completed.

3. The members of the Court shall continue to

discharge their duties until their places have been filled. Though replaced, they shall finish any cases which they may have begun.

4. In the case of the resignation of a member of the Court, the resignation shall be addressed to the President of the Court for transmission to the Secretary-General. This last notification makes the place vacant.

#### *Article 14*

Vacancies shall be filled by the same method as that laid down for the first election, subject to the following provision: the Secretary-General shall, within one month of the occurrence of the vacancy, proceed to issue the invitations provided for in Article 5, and the date of the election shall be fixed by the Security Council.

#### *Article 15*

A member of the Court elected to replace a member whose term of office has not expired shall hold office for the remainder of his predecessor's term.

#### *Article 16*

1. No member of the Court may exercise any political or administrative function, or engage in any other occupation of a professional nature.

2. Any doubt on this point shall be settled by the decision of the Court.

#### *Article 17*

1. No member of the Court may act as agent, counsel, or advocate in any case.

2. No member may participate in the decision of any case in which he has previously taken part as agent, counsel, or advocate for one of the parties, or as a member of a national or international court, or of a commission of enquiry, or in any other capacity.

3. Any doubt on this point shall be settled by the decision of the Court.

#### *Article 18*

1. No member of the Court can be dismissed unless, in the unanimous opinion of the other members, he has ceased to fulfil the required conditions.

2. Formal notification thereof shall be made to the Secretary-General by the Registrar.

3. This notification makes the place vacant.

#### *Article 19*

The members of the Court, when engaged on the business of the Court, shall enjoy diplomatic privileges and immunities.

#### *Article 20*

Every member of the Court shall, before taking up his duties, make a solemn declaration in open court that he will exercise his powers impartially and conscientiously.

#### *Article 21*

1. The Court shall elect its President and Vice-President for three years; they may be re-elected.

2. The Court shall appoint its Registrar and may provide for the appointment of such other officers as may be necessary.

#### *Article 22*

1. The seat of the Court shall be established at The Hague. This, however, shall not prevent the Court from sitting and exercising its functions elsewhere whenever the Court considers it desirable.

2. The President and the Registrar shall reside at the seat of the Court.

#### *Article 23*

1. The Court shall remain permanently in session, except during the judicial vacations, the dates and duration of which shall be fixed by the Court.

2. Members of the Court are entitled to peri-

odic leave, the dates and duration of which shall be fixed by the Court, having in mind the distance between The Hague and the home of each judge.

3. Members of the Court shall be bound, unless they are on leave or prevented from attending by illness or other serious reasons duly explained to the President, to hold themselves permanently at the disposal of the Court.

#### *Article 24*

1. If, for some special reason, a member of the Court considers that he should not take part in the decision of a particular case, he shall so inform the President.

2. If the President considers that for some special reason one of the members of the Court should not sit in a particular case, he shall give him notice accordingly.

3. If in any such case the member of the Court and the President disagree, the matter shall be settled by the decision of the Court.

#### *Article 25*

1. The full Court shall sit except when it is expressly provided otherwise in the present Statute.

2. Subject to the condition that the number of judges available to constitute the Court is not thereby reduced below eleven, the Rules of the Court may provide for allowing one or more judges, according to circumstances and in rotation, to be dispensed from sitting.

3. A quorum of nine judges shall suffice to constitute the Court.

#### *Article 26*

1. The Court may from time to time form one or more chambers, composed of three or more judges as the Court may determine, for dealing with particular categories of cases; for example, labor cases and cases relating to transit and communications.

2. The Court may at any time form a chamber

for dealing with a particular case. The number of judges to constitute such a chamber shall be determined by the Court with the approval of the parties.

3. Cases shall be heard and determined by the chambers provided for in this Article if the parties so request.

#### *Article 27*

A judgment given by any of the chambers provided for in Articles 26 and 29 shall be considered as rendered by the Court.

#### *Article 28*

The chambers provided for in Articles 26 and 29 may, with the consent of the parties, sit and exercise their functions elsewhere than at The Hague.

#### *Article 29*

With a view to the speedy despatch of business, the Court shall form annually a chamber composed of five judges which, at the request of the parties, may hear and determine cases by summary procedure. In addition, two judges shall be selected for the purpose of replacing judges who find it impossible to sit.

#### *Article 30*

1. The Court shall frame rules for carrying out its functions. In particular, it shall lay down rules of procedure.

2. The Rules of the Court may provide for assessors to sit with the Court or with any of its chambers, without the right to vote.

#### *Article 31*

1. Judges of the nationality of each of the parties shall retain their right to sit in the case before the Court.

2. If the Court includes upon the Bench a judge of the nationality of one of the parties, any other party may choose a person to sit as judge. Such person shall be chosen preferably from among

those persons who have been nominated as candidates as provided in Articles 4 and 5.

3. If the Court includes upon the Bench no judge of the nationality of the parties, each of these parties may proceed to choose a judge as provided in paragraph 2 of this Article.

4. The provisions of this Article shall apply to the case of Articles 26 and 29. In such cases, the President shall request one or, if necessary, two of the members of the Court forming the chamber to give place to the members of the Court of the nationality of the parties concerned, and, failing such, or if they are unable to be present, to the judges specially chosen by the parties.

5. Should there be several parties in the same interest, they shall, for the purpose of the preceding provisions, be reckoned as one party only. Any doubt upon this point shall be settled by the decision of the Court.

6. Judges chosen as laid down in paragraphs 2, 3, and 4 of this Article shall fulfil the conditions required by Articles 2, 17 (paragraph 2), 20, and 24 of the present Statute. They shall take part in the decision on terms of complete equality with their colleagues.

#### *Article 32*

1. Each member of the Court shall receive an annual salary.

2. The President shall receive a special annual allowance.

3. The Vice-President shall receive a special allowance for every day on which he acts as President.

4. The judges chosen under Article 31, other than members of the Court, shall receive compensation for each day on which they exercise their functions.

5. These salaries, allowances, and compensation shall be fixed by the General Assembly. They may not be decreased during the term of office.

6. The salary of the Registrar shall be fixed by

the General Assembly on the proposal of the Court.

7. Regulations made by the General Assembly shall fix the conditions under which retirement pensions may be given to members of the Court and to the Registrar, and the conditions under which members of the Court and the Registrar shall have their traveling expenses refunded.

8. The above salaries, allowances, and compensation shall be free of all taxation.

#### *Article 33*

The expenses of the Court shall be borne by the United Nations in such a manner as shall be decided by the General Assembly.

## CHAPTER II

### COMPETENCE OF THE COURT

#### *Article 34*

1. Only states may be parties in cases before the Court.

2. The Court, subject to and in conformity with its Rules, may request of public international organizations information relevant to cases before it, and shall receive such information presented by such organizations on their own initiative.

3. Whenever the construction of the constituent instrument of a public international organization or of an international convention adopted thereunder is in question in a case before the Court, the Registrar shall so notify the public international organization concerned and shall communicate to it copies of all the written proceedings.

#### *Article 35*

1. The Court shall be open to the states parties to the present Statute.

2. The conditions under which the Court shall be open to other states shall, subject to the special provisions contained in treaties in force, be laid

down by the Security Council, but in no case shall such conditions place the parties in a position of inequality before the Court.

3. When a state which is not a Member of the United Nations is a party to a case, the Court shall fix the amount which that party is to contribute towards the expenses of the Court. This provision shall not apply if such state is bearing a share of the expenses of the Court.

#### Article 36

1. The jurisdiction of the Court comprises all cases which the parties refer to it and all matters specially provided for in the Charter of the United Nations or in treaties and conventions in force.

2. The states parties to the present Statute may at any time declare that they recognize as compulsory *ipso facto* and without special agreement, in relation to any other state accepting the same obligation, the jurisdiction of the Court in all legal disputes concerning:

- a. the interpretation of a treaty;
- b. any question of international law;
- c. the existence of any fact which, if established, would constitute a breach of an international obligation;
- d. the nature or extent of the reparation to be made for the breach of an international obligation.

3. The declarations referred to above may be made unconditionally or on condition of reciprocity on the part of several or certain states, or for a certain time.

4. Such declarations shall be deposited with the Secretary-General of the United Nations, who shall transmit copies thereof to the parties to the Statute and to the Registrar of the Court.

5. Declarations made under Article 36 of the Statute of the Permanent Court of International Justice and which are still in force shall be deemed, as between the parties to the present Statute, to be acceptances of the compulsory jurisdiction of the

International Court of Justice for the period which they still have to run and in accordance with their terms.

6. In the event of a dispute as to whether the Court has jurisdiction, the matter shall be settled by the decision of the Court.

#### Article 37

Whenever a treaty or convention in force provides for reference of a matter to a tribunal to have been instituted by the League of Nations, or to the Permanent Court of International Justice, the matter shall, as between the parties to the present Statute, be referred to the International Court of Justice.

#### Article 38

1. The Court, whose function is to decide in accordance with international law such disputes as are submitted to it, shall apply:

- a. international conventions, whether general or particular, establishing rules expressly recognized by the contesting states;
- b. international custom, as evidence of a general practice accepted as law;
- c. the general principles of law recognized by civilized nations;
- d. subject to the provisions of Article 59, judicial decisions and the teachings of the most highly qualified publicists of the various nations, as subsidiary means for the determination of rules of law.

2. This provision shall not prejudice the power of the Court to decide a case *ex aequo et bono*, if the parties agree thereto.

### CHAPTER III PROCEDURE

#### Article 39

1. The official languages of the Court shall be French and English. If the parties agree that the

case shall be conducted in French, the judgment shall be delivered in French. If the parties agree that the case shall be conducted in English, the judgment shall be delivered in English.

2. In the absence of an agreement as to which language shall be employed, each party may, in the pleadings, use the language which it prefers; the decision of the Court shall be given in French and English. In this case the Court shall at the same time determine which of the two texts shall be considered as authoritative.

3. The Court shall, at the request of any party, authorize a language other than French or English to be used by that party.

#### *Article 40*

1. Cases are brought before the Court, as the case may be, either by the notification of the special agreement or by a written application addressed to the Registrar. In either case the subject of the dispute and the parties shall be indicated.

2. The Registrar shall forthwith communicate the application to all concerned.

3. He shall also notify the Members of the United Nations through the Secretary-General, and also any other states entitled to appear before the Court.

#### *Article 41*

1. The Court shall have the power to indicate, if it considers that circumstances so require, any provisional measures which ought to be taken to preserve the respective rights of either party.

2. Pending the final decision, notice of the measures suggested shall forthwith be given to the parties and to the Security Council.

#### *Article 42*

1. The parties shall be represented by agents.

2. They may have the assistance of counsel or advocates before the Court.

3. The agents, counsel, and advocates of par-

ties before the Court shall enjoy the privileges and immunities necessary to the independent exercise of their duties.

#### *Article 43*

1. The procedure shall consist of two parts: written and oral.

2. The written proceedings shall consist of the communication to the Court and to the parties of memorials, counter-memorials and, if necessary, replies; also all papers and documents in support.

3. These communications shall be made through the Registrar, in the order and within the time fixed by the Court.

4. A certified copy of every document produced by one party shall be communicated to the other party.

5. The oral proceedings shall consist of the hearing by the Court of witnesses, experts, agents, counsel, and advocates.

#### *Article 44*

1. For the service of all notices upon persons other than the agents, counsel, and advocates, the Court shall apply direct to the government of the state upon whose territory the notice has to be served.

2. The same provision shall apply whenever steps are to be taken to procure evidence on the spot.

#### *Article 45*

The hearing shall be under the control of the President or, if he is unable to preside, of the Vice-President; if neither is able to preside, the senior judge present shall preside.

#### *Article 46*

The hearing in Court shall be public, unless the Court shall decide otherwise, or unless the parties demand that the public be not admitted.

*Article 47*

1. Minutes shall be made at each hearing and signed by the Registrar and the President.
2. These minutes alone shall be authentic.

*Article 48*

The Court shall make orders for the conduct of the case, shall decide the form and time in which each party must conclude its arguments, and make all arrangements connected with the taking of evidence.

*Article 49*

The Court may, even before the hearing begins, call upon the agents to produce any document or to supply any explanations. Formal note shall be taken of any refusal.

*Article 50*

The Court may, at any time, entrust any individual, body, bureau, commission, or other organization that it may select, with the task of carrying out an enquiry or giving an expert opinion.

*Article 51*

During the hearing any relevant questions are to be put to the witnesses and experts under the conditions laid down by the Court in the rules of procedure referred to in Article 30.

*Article 52*

After the Court has received the proofs and evidence within the time specified for the purpose, it may refuse to accept any further oral or written evidence that one party may desire to present unless the other side consents.

*Article 53*

1. Whenever one of the parties does not appear before the Court, or fails to defend its case, the other party may call upon the Court to decide in favor of its claim.

2. The Court must, before doing so, satisfy itself, not only that it has jurisdiction in accordance with Articles 36 and 37, but also that the claim is well founded in fact and law.

*Article 54*

1. When, subject to the control of the Court, the agents, counsel, and advocates have completed their presentation of the case, the President shall declare the hearing closed.
2. The Court shall withdraw to consider the judgment.
3. The deliberations of the Court shall take place in private and remain secret.

*Article 55*

1. All questions shall be decided by a majority of the judges present.
2. In the event of an equality of votes, the President or the judge who acts in his place shall have a casting vote.

*Article 56*

1. The judgment shall state the reasons on which it is based.
2. It shall contain the names of the judges who have taken part in the decision.

*Article 57*

If the judgment does not represent in whole or in part the unanimous opinion of the judges, any judge shall be entitled to deliver a separate opinion.

*Article 58*

The judgment shall be signed by the President and by the Registrar. It shall be read in open court, due notice having been given to the agents.

*Article 59*

The decision of the Court has no binding force except between the parties and in respect of that particular case.

### *Article 60*

The judgment is final and without appeal. In the event of dispute as to the meaning or scope of the judgment, the Court shall construe it upon the request of any party.

### *Article 61*

1. An application for revision of a judgment may be made only when it is based upon the discovery of some fact of such a nature as to be a decisive factor, which fact was, when the judgment was given, unknown to the Court and also to the party claiming revision, always provided that such ignorance was not due to negligence.

2. The proceedings for revision shall be opened by a judgment of the Court expressly recording the existence of the new fact, recognizing that it has such a character as to lay the case open to revision, and declaring the application admissible on this ground.

3. The Court may require previous compliance with the terms of the judgment before it admits proceedings in revision.

4. The application for revision must be made at latest within six months of the discovery of the new fact.

5. No application for revision may be made after the lapse of ten years from the date of the judgment.

### *Article 62*

1. Should a state consider that it has an interest of a legal nature which may be affected by the decision in the case, it may submit a request to the Court to be permitted to intervene.

2. It shall be for the Court to decide upon this request.

### *Article 63*

1. Whenever the construction of a convention to which states other than those concerned in the case are parties is in question, the Registrar shall notify all such states forthwith.

2. Every state so notified has the right to intervene in the proceedings; but if it uses this right, the construction given by the judgment will be equally binding upon it.

### *Article 64*

Unless otherwise decided by the Court, each party shall bear its own costs.

## CHAPTER IV ADVISORY OPINIONS

### *Article 65*

1. The Court may give an advisory opinion on any legal question at the request of whatever body may be authorized by or in accordance with the Charter of the United Nations to make such a request.

2. Questions upon which the advisory opinion of the Court is asked shall be laid before the Court by means of a written request containing an exact statement of the question upon which an opinion is required, and accompanied by all documents likely to throw light upon the question.

### *Article 66*

1. The Registrar shall forthwith give notice of the request for an advisory opinion to all states entitled to appear before the Court.

2. The Registrar shall also, by means of a special and direct communication, notify any state entitled to appear before the Court or international organization considered by the Court, or, should it not be sitting, by the President, as likely to be able to furnish information on the question, that the Court will be prepared to receive, within a time limit to be fixed by the President, written statements, or to hear, at a public sitting to be held for the purpose, oral statements relating to the question.

3. Should any such state entitled to appear before the Court have failed to receive the special communication referred to in paragraph 2 of this Article, such state may express a desire to submit a written statement or to be heard; and the Court will decide.

4. States and organizations having presented written or oral statements or both shall be permitted to comment on the statements made by other states or organizations in the form, to the extent, and within the time limits which the Court, or, should it not be sitting, the President, shall decide in each particular case. Accordingly, the Registrar shall in due time communicate any such written statements to states and organizations having submitted similar statements.

*Article 67*

The Court shall deliver its advisory opinions in open court, notice having been given to the Secretary-General and to the representatives of Members of the United Nations, of other states and of international organizations immediately concerned.

*Article 68*

In the exercise of its advisory functions the

Court shall further be guided by the provisions of the present Statute which apply in contentious cases to the extent to which it recognizes them to be applicable.

CHAPTER V  
AMENDMENT

*Article 69*

Amendments to the present Statute shall be effected by the same procedure as is provided by the Charter of the United Nations for amendments to that Charter, subject however to any provisions which the General Assembly upon recommendation of the Security Council may adopt concerning the participation of states which are parties to the present Statute but are not Members of the United Nations.

*Article 70*

The Court shall have power to propose such amendments to the present Statute as it may deem necessary, through written communications to the Secretary-General, for consideration in conformity with the provisions of Article 69.

FOR CHINA:

POUR LA CHINE:

中國:

За Китаѣ:

FOR LA CHINA:

鉞 維 預  
惠 寵 王  
明 道 魏  
芳 貽 吳  
璜 君 李  
勳 必 張  
武 董  
霖 胡

FOR THE UNION OF SOVIET SOCIALIST REPUBLICS:  
POUR L'UNION DES RÉPUBLIQUES SOVIÉTIQUES SOCIALISTES:  
蘇維埃社會主義共和國聯邦:  
За Союз Советских Социалистических Республик:  
POR LA UNIÓN DE REPÚBLICAS SOCIALISTAS SOVIÉTICAS:

А. А. А. А.  
А. А. А. А.

FOR THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND:  
POUR LE ROYAUME-UNI DE GRANDE-BRETAGNE ET D'IRLANDE DU NORD:  
大不列顛及北愛爾蘭聯合王國:  
За Соединенное Королевство Великобритании и Северной Ирландии:  
POR EL REINO UNIDO DE LA GRAN BRETAÑA E IRLANDA DEL NORTE:

*Halifax*  
*Стамбуле.*

FOR THE UNITED STATES OF AMERICA:  
POUR LES ETATS-UNIS D'AMÉRIQUE:  
美利堅合衆國:  
За Соединенные Штаты Америки:  
POR LOS ESTADOS UNIDOS DE AMÉRICA:

*E. Dutton*

*Tom Cunniff*

*Arthur Anderson*

*Joseph Bloom*

*Charles A. Eaton*

*Harold E. Stassen*

*Virginia C. Giddens*

FOR FRANCE:  
POUR LA FRANCE:  
法蘭西:  
За Францию:  
POR FRANCIA:

*J. Carl - Boncom*

FOR ARGENTINA:  
POUR L'ARGENTINE:  
阿根廷:  
За Аргентину:  
POR LA ARGENTINA:

*Julian*  
*James*  
*James*

FOR AUSTRALIA:  
POUR L'AUSTRALIE:  
澳大利亞:  
За Австралию:  
FOR AUSTRALIA:

*F. M. Forde*  
*W. Watt.*

FOR THE KINGDOM OF BELGIUM:  
POUR LE ROYAUME DE BELGIQUE:  
比利時王國:  
За Королевство Бельгии:  
POR EL REINO DE BÉLGICA:

*A. L. Recheysy*

FOR BOLIVIA:  
POUR LA BOLIVIE:  
玻利維亞:  
За Боливию:  
POR BOLIVIA:

*J. Andrade*  
*Salamanca*  
*Chylo.*

FOR BRAZIL:

POUR LE BRÉSIL:

巴西:

За Бразилію:

POR EL BRASIL:

P. Luis V uman

editeitastamp

Gen. Estevão Lito albarcelho

A. - Lourenço a duruvi.

Dr. Bertha Lito

FOR THE BYELORUSSIAN SOVIET SOCIALIST REPUBLIC:

POUR LA RÉPUBLIQUE SOVIÉTIQUE SOCIALISTE DE BÉLORUSSIE:

白俄羅斯蘇維埃社會主義共和國:

За Белорусскую Советскую Социалистическую Республику:

FOR LA REPÚBLICA SOCIALISTA SOVIÉTICA BIELORRUSA:

*Кривошеин*  
*А. Н. Жуков*  
*В. Терещук*  
*Байдаков*  
*Ю. Шмыгов*

FOR CANADA:

POUR LE CANADA:

加拿大:

За Канаду:

FOR EL CANADÁ:

*М. Касимович*  
*Людмила С. Лавина*

FOR CHILE:

POUR LE CHILI:

智利:

За Чили:

FOR CHILE:

*José María Fernández*

*Baron de...*

*Siempre  
aceptado.*

*Contreras y Larraín*

*J. M. de...*

*Amante...*  
*Luis...*

FOR COLOMBIA:

POUR LA COLOMBIE:

哥倫比亞:

За Колумбію:

FOR COLOMBIA:

Alfredo Vera  
algunos años de  
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de la zona de la zona

FOR COSTA RICA:

POUR COSTA-RICA:

哥斯大黎加:

За Коста-Рику:

FOR COSTA RICA:

Trinidad  
Rafael Oreamuno

FOR CUBA:

POUR CUBA:

古巴:

За Кубу:

FOR CUBA:

*Emilio Bell*

*Emilio Dillig*

FOR CZECHOSLOVAKIA:

POUR LA TCHÉCOSLOVAQUIE:

捷克斯拉夫:

За Чехословакию:

FOR CHECOESLOVAQUIA:

*Jan Mararyt*

FOR DENMARK:

POUR LE DANEMARK:

丹麥:

За Данию:

FOR DINAMARCA:

*Henrik Keuffmann*

*Hans Friis*

*N. Kusper*

FOR THE DOMINICAN REPUBLIC:  
POUR LA RÉPUBLIQUE DOMINICAINE:  
多明尼加共和國:  
За Доминиканскую Республику:  
POR LA REPÚBLICA DOMINICANA:

*M. Juan Bator*  
*Ramón G. Godoy*  
*Liberté auche mort*

*1. fuch*  
*Minerva Bernardino*

FOR ECUADOR:  
POUR L'ÉQUATEUR:  
厄瓜多:  
За Эквадор:  
POR EL ECUADOR:

*J. J. J. J. J.*  
*J. J. J. J. J.*

*Prado*

*Galos*  
*C. Tobo Zaldumbide*

FOR EGYPT:  
POUR L'ÉGYPTE:  
埃及:  
За Египет:  
FOR EGIPTO:

*A. Badar*  
*A. Hach*

FOR EL SALVADOR:

POUR LE SALVADOR:

薩爾瓦多:

За Сальвадор:

FOR EL SALVADOR:

*Walter Daniel Carter*  
*Carlos King, M.D.*

FOR ETHIOPIA:

POUR L'ETHIOPIE:

阿比西尼亞:

За Эфиопию:

FOR ETIOPIA:

*Walter Daniel Carter*  
*Ambassador*  
*E/steven I. Medley*

FOR GREECE:  
POUR LA GRÈCE:  
希臘:  
За Грецию:  
POR GRECIA:

*J. V. Vofianopoulos*

FOR GUATEMALA:  
POUR LE GUATEMALA:  
瓜地馬拉:  
За Гватемалу:  
POR GUATEMALA:

*Guillermo Isonillo*  
*M. Moniega*  
*Chavez*

FOR HAITI:  
POUR HAÏTI:  
海地:  
За Гаити:  
POR HAÏTI:

*Gerard Leroy*  
*Blanc*

FOR HONDURAS:  
POUR LE HONDURAS:  
洪都拉斯:  
За Гондурас:  
POR HONDURAS:

*Julian de Jesus*  
*Marcos Varias Reyes*  
*Sup. Ja*

FOR INDIA:  
POUR L'INDE:  
印度:  
За Индию:  
POR LA INDIA:

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伊朗:  
За Иран:  
POR IRÁN:

*Mostafa Adley*

FOR IRAQ:

POUR L'IRAK:

伊拉克:

За Ирак:

FOR IRAK:

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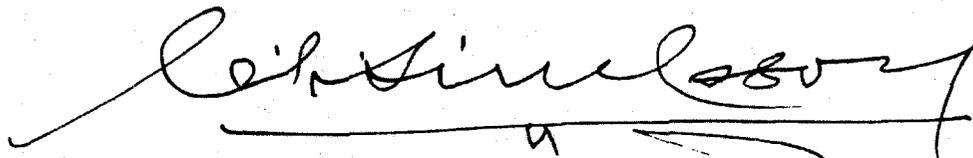
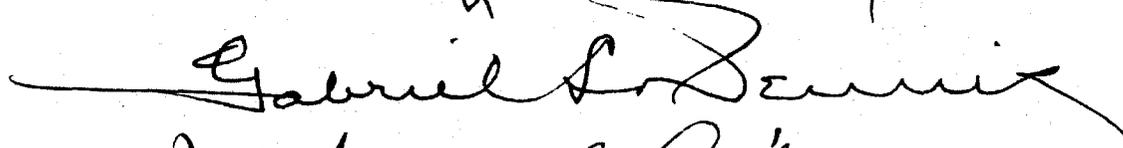
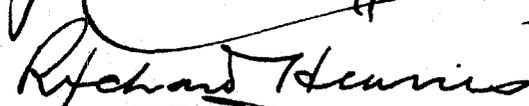
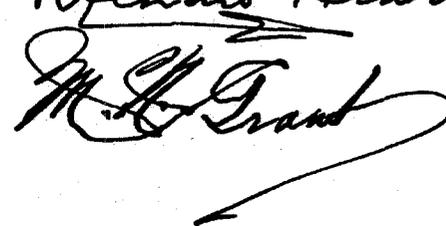
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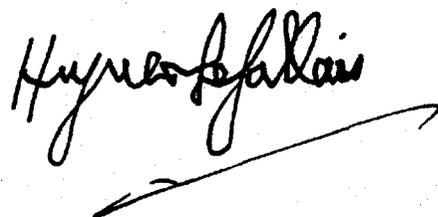
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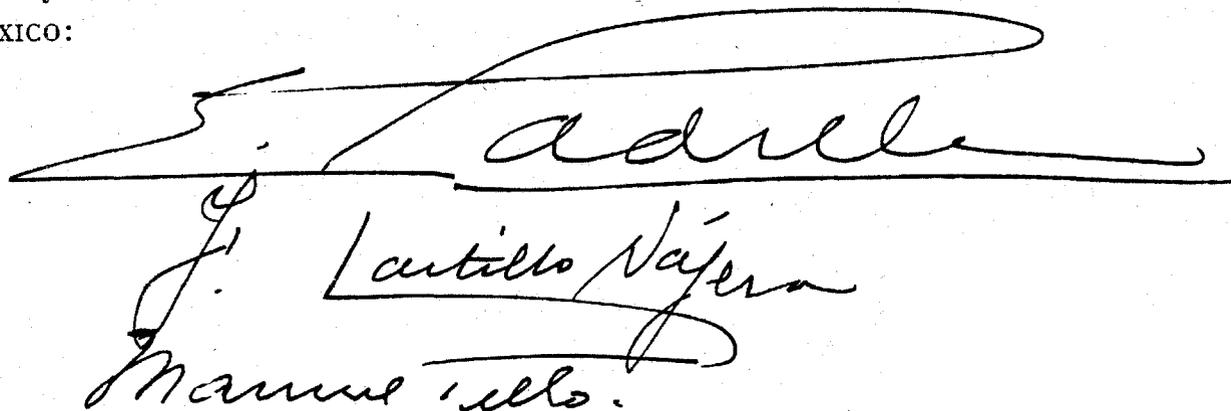
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Manuelillo.

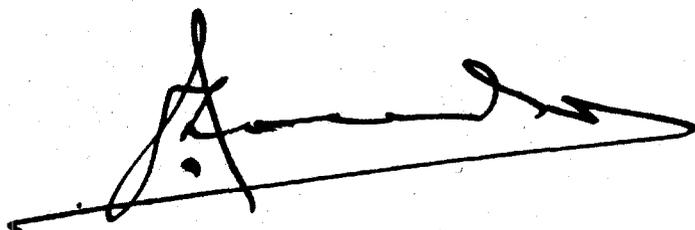
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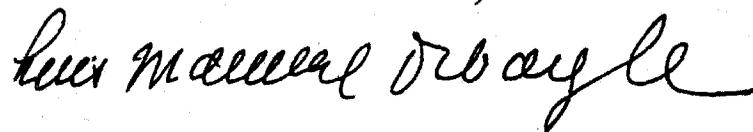
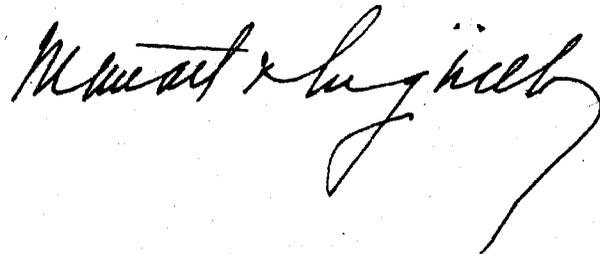
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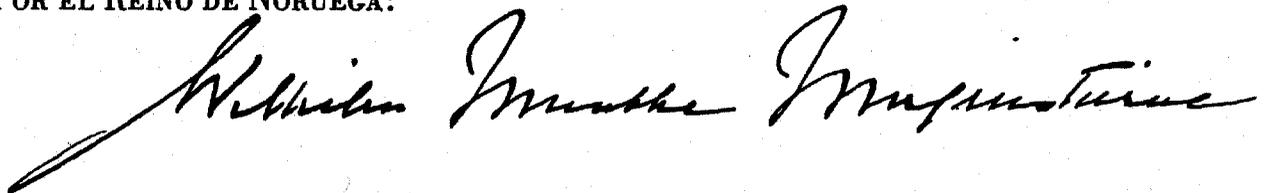


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За Перу:

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*N. Roudsi* *سعيد*

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土耳其:  
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*Amir Nazif Baydar*

*Genelkurmay*

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POUR LA RÉPUBLIQUE SOVIÉTIQUE SOCIALISTE D'UKRAINE:

烏克蘭蘇維埃社會主義共和國:

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POUR L'UNION SUD-AFRICAINE:

南非聯邦:

За Южноафриканский Союз:

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W. Gonzalez

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Blackadghy  
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FOR YUGOSLAVIA:

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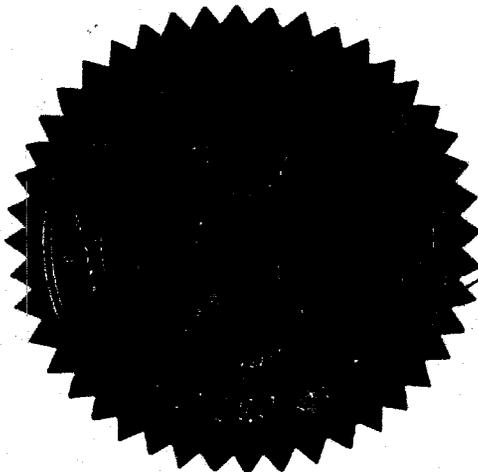
За ЮГОСЛАВИЈУ:

FOR YUGOSLAVIA:

*Stanoje Simić*

I Certify That the foregoing is a true copy of the Charter of the United Nations, with the Statute of the International Court of Justice annexed thereto, signed in San Francisco, California, on June 26, 1945, in the Chinese, French, Russian, English, and Spanish languages, the signed original of which is deposited in the archives of the Government of the United States of America.

In Testimony Whereof, I, EDWARD R. STETTINIUS, JR., Secretary of State, have hereunto caused the seal of the Department of State to be affixed and my name subscribed by an Assistant Chief, Division of Central Services of the said Department, at the city of Washington, in the District of Columbia, this twenty-<sup>sixth</sup> day of June 1945.



*E. R. Stettinius Jr.*  
Secretary of State

By *W. L. Merritt*  
Assistant Chief, Division of Central Services

# European Convention on Human Rights



EUROPEAN COURT OF HUMAN RIGHTS  
COUR EUROPÉENNE DES DROITS DE L'HOMME

COUNCIL OF EUROPE



CONSEIL DE L'EUROPE



as amended by Protocols Nos. 11,  
14 and 15

supplemented by Protocols Nos. 1, 4,  
6, 7, 12, 13 and 16

The text of the Convention is presented as amended by the provisions of Protocol No. 15 (CETS No. 213) as from its entry into force on 1 August 2021 and of Protocol No. 14 (CETS No. 194) as from its entry into force on 1 June 2010. The text of the Convention had previously been amended according to the provisions of Protocol No. 3 (ETS No. 45), which entered into force on 21 September 1970, of Protocol No. 5 (ETS No. 55), which entered into force on 20 December 1971, and of Protocol No. 8 (ETS No. 118), which entered into force on 1 January 1990, and comprised also the text of Protocol No. 2 (ETS No. 44) which, in accordance with Article 5 paragraph 3 thereof, had been an integral part of the Convention since its entry into force on 21 September 1970. All provisions which had been amended or added by these Protocols were replaced by Protocol No. 11 (ETS No. 155), as from the date of its entry into force on 1 November 1998. As from that date, Protocol No. 9 (ETS No. 140), which entered into force on 1 October 1994, was repealed and Protocol No. 10 (ETS No. 146) lost its purpose.

The current state of signatures and ratifications of the Convention and its Protocols as well as the complete list of declarations and reservations are available at [www.conventions.coe.int](http://www.conventions.coe.int).

Only the English and French versions of the Convention are authentic.

European Court of Human Rights  
Council of Europe  
67075 Strasbourg cedex  
France  
[www.echr.coe.int](http://www.echr.coe.int)

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# Convention for the Protection of Human Rights and Fundamental Freedoms

Rome, 4.XI.1950

THE GOVERNMENTS SIGNATORY HERETO, being members of the Council of Europe,

Considering the Universal Declaration of Human Rights proclaimed by the General Assembly of the United Nations on 10th December 1948;

Considering that this Declaration aims at securing the universal and effective recognition and observance of the Rights therein declared;

Considering that the aim of the Council of Europe is the achievement of greater unity between its members and that one of the methods by which that aim is to be pursued is the maintenance and further realisation of Human Rights and Fundamental Freedoms;

Reaffirming their profound belief in those fundamental freedoms which are the foundation of justice and peace in the world and are best maintained on the one hand by an effective political democracy and on the other by a common understanding and observance of the Human Rights upon which they depend;

Being resolved, as the governments of European countries which are like-minded and have a common heritage of political traditions, ideals, freedom and the rule of law, to take the first steps for the collective enforcement of certain of the rights stated in the Universal Declaration,

Affirming that the High Contracting Parties, in accordance with the principle of subsidiarity, have the primary responsibility to secure the rights and freedoms defined in this Convention and the Protocols thereto, and that in doing so they enjoy a margin of appreciation, subject to the supervisory jurisdiction of the European Court of Human Rights established by this Convention, Have agreed as follows:

#### ARTICLE 1

##### **Obligation to respect Human Rights**

The High Contracting Parties shall secure to everyone within their jurisdiction the rights and freedoms defined in Section I of this Convention.

### SECTION I RIGHTS AND FREEDOMS

#### ARTICLE 2

##### **Right to life**

1. Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.
2. Deprivation of life shall not be regarded as inflicted in contravention of this Article when it results from the use of force which is no more than absolutely necessary:
  - (a) in defence of any person from unlawful violence;
  - (b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;

- (c) in action lawfully taken for the purpose of quelling a riot or insurrection.

#### ARTICLE 3

##### **Prohibition of torture**

No one shall be subjected to torture or to inhuman or degrading treatment or punishment.

#### ARTICLE 4

##### **Prohibition of slavery and forced labour**

1. No one shall be held in slavery or servitude.
2. No one shall be required to perform forced or compulsory labour.
3. For the purpose of this Article the term "forced or compulsory labour" shall not include:
  - (a) any work required to be done in the ordinary course of detention imposed according to the provisions of Article 5 of this Convention or during conditional release from such detention;
  - (b) any service of a military character or, in case of conscientious objectors in countries where they are recognised, service exacted instead of compulsory military service;
  - (c) any service exacted in case of an emergency or calamity threatening the life or well-being of the community;
  - (d) any work or service which forms part of normal civic obligations.

## ARTICLE 5

### Right to liberty and security

1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:
  - (a) the lawful detention of a person after conviction by a competent court;
  - (b) the lawful arrest or detention of a person for non-compliance with the lawful order of a court or in order to secure the fulfilment of any obligation prescribed by law;
  - (c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;
  - (d) the detention of a minor by lawful order for the purpose of educational supervision or his lawful detention for the purpose of bringing him before the competent legal authority;
  - (e) the lawful detention of persons for the prevention of the spreading of infectious diseases, of persons of unsound mind, alcoholics or drug addicts or vagrants;
  - (f) the lawful arrest or detention of a person to prevent his effecting an unauthorised entry into the country or of a person against whom action is being taken with a view to deportation or extradition.
2. Everyone who is arrested shall be informed promptly, in a language which he understands, of the reasons for his arrest and of any charge against him.

3. Everyone arrested or detained in accordance with the provisions of paragraph 1 (c) of this Article shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial.
4. Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful.
5. Everyone who has been the victim of arrest or detention in contravention of the provisions of this Article shall have an enforceable right to compensation.

## ARTICLE 6

### Right to a fair trial

1. In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.
2. Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.

3. Everyone charged with a criminal offence has the following minimum rights:

- (a) to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him;
- (b) to have adequate time and facilities for the preparation of his defence;
- (c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;
- (d) to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;
- (e) to have the free assistance of an interpreter if he cannot understand or speak the language used in court.

#### ARTICLE 7

##### **No punishment without law**

1. No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national or international law at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the criminal offence was committed.
2. This Article shall not prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of law recognised by civilised nations.

#### ARTICLE 8

##### **Right to respect for private and family life**

1. Everyone has the right to respect for his private and family life, his home and his correspondence.
2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

#### ARTICLE 9

##### **Freedom of thought, conscience and religion**

1. Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.
2. Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others.

## ARTICLE 10

### Freedom of expression

1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.
2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.

## ARTICLE 11

### Freedom of assembly and association

1. Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.
2. No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. This Article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the State.

## ARTICLE 12

### Right to marry

Men and women of marriageable age have the right to marry and to found a family, according to the national laws governing the exercise of this right.

## ARTICLE 13

### Right to an effective remedy

Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.

## ARTICLE 14

### Prohibition of discrimination

The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

## ARTICLE 15

### Derogation in time of emergency

1. In time of war or other public emergency threatening the life of the nation any High Contracting Party may take measures derogating from its obligations under this Convention to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with its other obligations under international law.

2. No derogation from Article 2, except in respect of deaths resulting from lawful acts of war, or from Articles 3, 4 (paragraph 1) and 7 shall be made under this provision.

3. Any High Contracting Party availing itself of this right of derogation shall keep the Secretary General of the Council of Europe fully informed of the measures which it has taken and the reasons therefor. It shall also inform the Secretary General of the Council of Europe when such measures have ceased to operate and the provisions of the Convention are again being fully executed.

#### **ARTICLE 16**

##### **Restrictions on political activity of aliens**

Nothing in Articles 10, 11 and 14 shall be regarded as preventing the High Contracting Parties from imposing restrictions on the political activity of aliens.

#### **ARTICLE 17**

##### **Prohibition of abuse of rights**

Nothing in this Convention may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms set forth herein or at their limitation to a greater extent than is provided for in the Convention.

#### **ARTICLE 18**

##### **Limitation on use of restrictions on rights**

The restrictions permitted under this Convention to the said rights and freedoms shall not be applied for any purpose other than those for which they have been prescribed.

## **SECTION II EUROPEAN COURT OF HUMAN RIGHTS**

### **ARTICLE 19**

#### **Establishment of the Court**

To ensure the observance of the engagements undertaken by the High Contracting Parties in the Convention and the Protocols thereto, there shall be set up a European Court of Human Rights, hereinafter referred to as "the Court". It shall function on a permanent basis.

### **ARTICLE 20**

#### **Number of judges**

The Court shall consist of a number of judges equal to that of the High Contracting Parties.

### **ARTICLE 21**

#### **Criteria for office**

1. The judges shall be of high moral character and must either possess the qualifications required for appointment to high judicial office or be jurisconsults of recognised competence.
2. Candidates shall be less than 65 years of age at the date by which the list of three candidates has been requested by the Parliamentary Assembly, further to Article 22.
3. The judges shall sit on the Court in their individual capacity.
4. During their term of office the judges shall not engage in any activity which is incompatible with their independence, impartiality or with the demands of a full-time office; all questions arising from the application of this paragraph shall be decided by the Court.

## ARTICLE 22

### Election of judges

The judges shall be elected by the Parliamentary Assembly with respect to each High Contracting Party by a majority of votes cast from a list of three candidates nominated by the High Contracting Party.

## ARTICLE 23

### Terms of office and dismissal

1. The judges shall be elected for a period of nine years. They may not be re-elected.
2. The judges shall hold office until replaced. They shall, however, continue to deal with such cases as they already have under consideration.
3. No judge may be dismissed from office unless the other judges decide by a majority of two-thirds that that judge has ceased to fulfil the required conditions.

## ARTICLE 24

### Registry and rapporteurs

1. The Court shall have a Registry, the functions and organisation of which shall be laid down in the rules of the Court.
2. When sitting in a single-judge formation, the Court shall be assisted by rapporteurs who shall function under the authority of the President of the Court. They shall form part of the Court's Registry.

## ARTICLE 25

### Plenary Court

The plenary Court shall

- (a) elect its President and one or two Vice-Presidents for a period of three years; they may be re-elected;
- (b) set up Chambers, constituted for a fixed period of time;
- (c) elect the Presidents of the Chambers of the Court; they may be re-elected;
- (d) adopt the rules of the Court;
- (e) elect the Registrar and one or more Deputy Registrars;
- (f) make any request under Article 26, paragraph 2.

## ARTICLE 26

### Single-judge formation, Committees, Chambers and Grand Chamber

1. To consider cases brought before it, the Court shall sit in a single-judge formation, in committees of three judges, in Chambers of seven judges and in a Grand Chamber of seventeen judges. The Court's Chambers shall set up committees for a fixed period of time.
2. At the request of the plenary Court, the Committee of Ministers may, by a unanimous decision and for a fixed period, reduce to five the number of judges of the Chambers.
3. When sitting as a single judge, a judge shall not examine any application against the High Contracting Party in respect of which that judge has been elected.

4. There shall sit as an *ex officio* member of the Chamber and the Grand Chamber the judge elected in respect of the High Contracting Party concerned. If there is none or if that judge is unable to sit, a person chosen by the President of the Court from a list submitted in advance by that Party shall sit in the capacity of judge.
5. The Grand Chamber shall also include the President of the Court, the Vice-Presidents, the Presidents of the Chambers and other judges chosen in accordance with the rules of the Court. When a case is referred to the Grand Chamber under Article 43, no judge from the Chamber which rendered the judgment shall sit in the Grand Chamber, with the exception of the President of the Chamber and the judge who sat in respect of the High Contracting Party concerned.

#### ARTICLE 27

##### Competence of single judges

1. A single judge may declare inadmissible or strike out of the Court's list of cases an application submitted under Article 34, where such a decision can be taken without further examination.
2. The decision shall be final.
3. If the single judge does not declare an application inadmissible or strike it out, that judge shall forward it to a committee or to a Chamber for further examination.

#### ARTICLE 28

##### Competence of Committees

1. In respect of an application submitted under Article 34, a committee may, by a unanimous vote,

- (a) declare it inadmissible or strike it out of its list of cases, where such decision can be taken without further examination; or
  - (b) declare it admissible and render at the same time a judgment on the merits, if the underlying question in the case, concerning the interpretation or the application of the Convention or the Protocols thereto, is already the subject of well-established case-law of the Court.
2. Decisions and judgments under paragraph 1 shall be final.
  3. If the judge elected in respect of the High Contracting Party concerned is not a member of the committee, the committee may at any stage of the proceedings invite that judge to take the place of one of the members of the committee, having regard to all relevant factors, including whether that Party has contested the application of the procedure under paragraph 1. (b).

#### ARTICLE 29

##### Decisions by Chambers on admissibility and merits

1. If no decision is taken under Article 27 or 28, or no judgment rendered under Article 28, a Chamber shall decide on the admissibility and merits of individual applications submitted under Article 34. The decision on admissibility may be taken separately.
2. A Chamber shall decide on the admissibility and merits of inter-State applications submitted under Article 33. The decision on admissibility shall be taken separately unless the Court, in exceptional cases, decides otherwise.

## ARTICLE 30

### **Relinquishment of jurisdiction to the Grand Chamber**

Where a case pending before a Chamber raises a serious question affecting the interpretation of the Convention or the Protocols thereto, or where the resolution of a question before the Chamber might have a result inconsistent with a judgment previously delivered by the Court, the Chamber may, at any time before it has rendered its judgment, relinquish jurisdiction in favour of the Grand Chamber.

## ARTICLE 31

### **Powers of the Grand Chamber**

The Grand Chamber shall

- (a) determine applications submitted either under Article 33 or Article 34 when a Chamber has relinquished jurisdiction under Article 30 or when the case has been referred to it under Article 43;
- (b) decide on issues referred to the Court by the Committee of Ministers in accordance with Article 46, paragraph 4; and
- (c) consider requests for advisory opinions submitted under Article 47.

## ARTICLE 32

### **Jurisdiction of the Court**

1. The jurisdiction of the Court shall extend to all matters concerning the interpretation and application of the Convention and the Protocols thereto which are referred to it as provided in Articles 33, 34, 46 and 47.

2. In the event of dispute as to whether the Court has jurisdiction, the Court shall decide.

## ARTICLE 33

### **Inter-State cases**

Any High Contracting Party may refer to the Court any alleged breach of the provisions of the Convention and the Protocols thereto by another High Contracting Party.

## ARTICLE 34

### **Individual applications**

The Court may receive applications from any person, non-governmental organisation or group of individuals claiming to be the victim of a violation by one of the High Contracting Parties of the rights set forth in the Convention or the Protocols thereto. The High Contracting Parties undertake not to hinder in any way the effective exercise of this right.

## ARTICLE 35

### **Admissibility criteria**

1. The Court may only deal with the matter after all domestic remedies have been exhausted, according to the generally recognised rules of international law, and within a period of four months from the date on which the final decision was taken.
2. The Court shall not deal with any application submitted under Article 34 that
  - (a) is anonymous; or
  - (b) is substantially the same as a matter that has already been examined by the Court or has already been submitted to another procedure of international investigation or settlement and contains no relevant new information.

3. The Court shall declare inadmissible any individual application submitted under Article 34 if it considers that:

- (a) the application is incompatible with the provisions of the Convention or the Protocols thereto, manifestly ill-founded, or an abuse of the right of individual application; or
- (b) the applicant has not suffered a significant disadvantage, unless respect for human rights as defined in the Convention and the Protocols thereto requires an examination of the application on the merits.

4. The Court shall reject any application which it considers inadmissible under this Article. It may do so at any stage of the proceedings.

#### **ARTICLE 36**

##### **Third party intervention**

1. In all cases before a Chamber or the Grand Chamber, a High Contracting Party one of whose nationals is an applicant shall have the right to submit written comments and to take part in hearings.

2. The President of the Court may, in the interest of the proper administration of justice, invite any High Contracting Party which is not a party to the proceedings or any person concerned who is not the applicant to submit written comments or take part in hearings.

3. In all cases before a Chamber or the Grand Chamber, the Council of Europe Commissioner for Human Rights may submit written comments and take part in hearings.

#### **ARTICLE 37**

##### **Striking out applications**

1. The Court may at any stage of the proceedings decide to strike an application out of its list of cases where the circumstances lead to the conclusion that

- (a) the applicant does not intend to pursue his application; or
- (b) the matter has been resolved; or
- (c) for any other reason established by the Court, it is no longer justified to continue the examination of the application.

However, the Court shall continue the examination of the application if respect for human rights as defined in the Convention and the Protocols thereto so requires.

2. The Court may decide to restore an application to its list of cases if it considers that the circumstances justify such a course.

#### **ARTICLE 38**

##### **Examination of the case**

The Court shall examine the case together with the representatives of the parties and, if need be, undertake an investigation, for the effective conduct of which the High Contracting Parties concerned shall furnish all necessary facilities.

#### **ARTICLE 39**

##### **Friendly settlements**

1. At any stage of the proceedings, the Court may place itself at the disposal of the parties concerned with a view to securing a friendly settlement of the matter on the basis of respect for human rights as defined in the Convention and the Protocols thereto.

2. Proceedings conducted under paragraph 1 shall be confidential.
3. If a friendly settlement is effected, the Court shall strike the case out of its list by means of a decision which shall be confined to a brief statement of the facts and of the solution reached.
4. This decision shall be transmitted to the Committee of Ministers, which shall supervise the execution of the terms of the friendly settlement as set out in the decision.

#### **ARTICLE 40**

##### **Public hearings and access to documents**

1. Hearings shall be in public unless the Court in exceptional circumstances decides otherwise.
2. Documents deposited with the Registrar shall be accessible to the public unless the President of the Court decides otherwise.

#### **ARTICLE 41**

##### **Just satisfaction**

If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party.

#### **ARTICLE 42**

##### **Judgments of Chambers**

Judgments of Chambers shall become final in accordance with the provisions of Article 44, paragraph 2.

#### **ARTICLE 43**

##### **Referral to the Grand Chamber**

1. Within a period of three months from the date of the judgment of the Chamber, any party to the case may, in exceptional cases, request that the case be referred to the Grand Chamber.
2. A panel of five judges of the Grand Chamber shall accept the request if the case raises a serious question affecting the interpretation or application of the Convention or the Protocols thereto, or a serious issue of general importance.
3. If the panel accepts the request, the Grand Chamber shall decide the case by means of a judgment.

#### **ARTICLE 44**

##### **Final judgments**

1. The judgment of the Grand Chamber shall be final.
2. The judgment of a Chamber shall become final
  - (a) when the parties declare that they will not request that the case be referred to the Grand Chamber; or
  - (b) three months after the date of the judgment, if reference of the case to the Grand Chamber has not been requested; or
  - (c) when the panel of the Grand Chamber rejects the request to refer under Article 43.
3. The final judgment shall be published.

## ARTICLE 45

### Reasons for judgments and decisions

1. Reasons shall be given for judgments as well as for decisions declaring applications admissible or inadmissible.
2. If a judgment does not represent, in whole or in part, the unanimous opinion of the judges, any judge shall be entitled to deliver a separate opinion.

## ARTICLE 46

### Binding force and execution of judgments

1. The High Contracting Parties undertake to abide by the final judgment of the Court in any case to which they are parties.
2. The final judgment of the Court shall be transmitted to the Committee of Ministers, which shall supervise its execution.
3. If the Committee of Ministers considers that the supervision of the execution of a final judgment is hindered by a problem of interpretation of the judgment, it may refer the matter to the Court for a ruling on the question of interpretation. A referral decision shall require a majority vote of two-thirds of the representatives entitled to sit on the committee.

4. If the Committee of Ministers considers that a High Contracting Party refuses to abide by a final judgment in a case to which it is a party, it may, after serving formal notice on that Party and by decision adopted by a majority vote of two-thirds of the representatives entitled to sit on the committee, refer to the Court the question whether that Party has failed to fulfil its obligation under paragraph 1.

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5. If the Court finds a violation of paragraph 1, it shall refer the case to the Committee of Ministers for consideration of the measures to be taken. If the Court finds no violation of paragraph 1, it shall refer the case to the Committee of Ministers, which shall close its examination of the case.

## ARTICLE 47

### Advisory opinions

1. The Court may, at the request of the Committee of Ministers, give advisory opinions on legal questions concerning the interpretation of the Convention and the Protocols thereto.
2. Such opinions shall not deal with any question relating to the content or scope of the rights or freedoms defined in Section I of the Convention and the Protocols thereto, or with any other question which the Court or the Committee of Ministers might have to consider in consequence of any such proceedings as could be instituted in accordance with the Convention.
3. Decisions of the Committee of Ministers to request an advisory opinion of the Court shall require a majority vote of the representatives entitled to sit on the committee.

## ARTICLE 48

### Advisory jurisdiction of the Court

The Court shall decide whether a request for an advisory opinion submitted by the Committee of Ministers is within its competence as defined in Article 47.

## ARTICLE 49

### Reasons for advisory opinions

1. Reasons shall be given for advisory opinions of the Court.
2. If the advisory opinion does not represent, in whole or in part, the unanimous opinion of the judges, any judge shall be entitled to deliver a separate opinion.
3. Advisory opinions of the Court shall be communicated to the Committee of Ministers.

## ARTICLE 50

### Expenditure on the Court

The expenditure on the Court shall be borne by the Council of Europe.

## ARTICLE 51

### Privileges and immunities of judges

The judges shall be entitled, during the exercise of their functions, to the privileges and immunities provided for in Article 40 of the Statute of the Council of Europe and in the agreements made thereunder.

## SECTION III

### MISCELLANEOUS PROVISIONS

## ARTICLE 52

### Inquiries by the Secretary General

On receipt of a request from the Secretary General of the Council of Europe any High Contracting Party shall furnish an explanation of the manner in which its internal law ensures the effective implementation of any of the provisions of the Convention.

## ARTICLE 53

### Safeguard for existing human rights

Nothing in this Convention shall be construed as limiting or derogating from any of the human rights and fundamental freedoms which may be ensured under the laws of any High Contracting Party or under any other agreement to which it is a party.

## ARTICLE 54

### Powers of the Committee of Ministers

Nothing in this Convention shall prejudice the powers conferred on the Committee of Ministers by the Statute of the Council of Europe.

## ARTICLE 55

### Exclusion of other means of dispute settlement

The High Contracting Parties agree that, except by special agreement, they will not avail themselves of treaties, conventions or declarations in force between them for the purpose of submitting, by way of petition, a dispute arising out of the interpretation or application of this Convention to a means of settlement other than those provided for in this Convention.

## ARTICLE 56

### Territorial application

1. Any State may at the time of its ratification or at any time thereafter declare by notification addressed to the Secretary General of the Council of Europe that the present Convention shall, subject to paragraph 4 of this Article, extend to all or any of the territories for whose international relations it is responsible.
2. The Convention shall extend to the territory or territories named in the notification as from the thirtieth day after the receipt of this notification by the Secretary General of the Council of Europe.
3. The provisions of this Convention shall be applied in such territories with due regard, however, to local requirements.
4. Any State which has made a declaration in accordance with paragraph 1 of this Article may at any time thereafter declare on behalf of one or more of the territories to which the declaration relates that it accepts the competence of the Court to receive applications from individuals, non-governmental organisations or groups of individuals as provided by Article 34 of the Convention.

## ARTICLE 57

### Reservations

1. Any State may, when signing this Convention or when depositing its instrument of ratification, make a reservation in respect of any particular provision of the Convention to the extent that any law then in force in its territory is not in conformity with the provision. Reservations of a general character shall not be permitted under this Article.

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2. Any reservation made under this Article shall contain a brief statement of the law concerned.

## ARTICLE 58

### Denunciation

1. A High Contracting Party may denounce the present Convention only after the expiry of five years from the date on which it became a party to it and after six months' notice contained in a notification addressed to the Secretary General of the Council of Europe, who shall inform the other High Contracting Parties.
2. Such a denunciation shall not have the effect of releasing the High Contracting Party concerned from its obligations under this Convention in respect of any act which, being capable of constituting a violation of such obligations, may have been performed by it before the date at which the denunciation became effective.
3. Any High Contracting Party which shall cease to be a member of the Council of Europe shall cease to be a Party to this Convention under the same conditions.
4. The Convention may be denounced in accordance with the provisions of the preceding paragraphs in respect of any territory to which it has been declared to extend under the terms of Article 56.

## ARTICLE 59

### Signature and ratification

1. This Convention shall be open to the signature of the members of the Council of Europe. It shall be ratified. Ratifications shall be deposited with the Secretary General of the Council of Europe.
2. The European Union may accede to this Convention.

3. The present Convention shall come into force after the deposit of ten instruments of ratification.

4. As regards any signatory ratifying subsequently, the Convention shall come into force at the date of the deposit of its instrument of ratification.

5. The Secretary General of the Council of Europe shall notify all the members of the Council of Europe of the entry into force of the Convention, the names of the High Contracting Parties who have ratified it, and the deposit of all instruments of ratification which may be effected subsequently.

DONE AT ROME THIS 4TH DAY OF NOVEMBER 1950, in English and French, both texts being equally authentic, in a single copy which shall remain deposited in the archives of the Council of Europe. The Secretary General shall transmit certified copies to each of the signatories.

# Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms

Paris, 20.III.1952

THE GOVERNMENTS SIGNATORY HERETO, being members of the Council of Europe,

Being resolved to take steps to ensure the collective enforcement of certain rights and freedoms other than those already included in Section I of the Convention for the Protection of Human Rights and Fundamental Freedoms signed at Rome on 4 November 1950 (hereinafter referred to as "the Convention"),

Have agreed as follows:

## ARTICLE 1

### Protection of property

Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.

## **ARTICLE 2**

### **Right to education**

No person shall be denied the right to education. In the exercise of any functions which it assumes in relation to education and to teaching, the State shall respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions.

## **ARTICLE 3**

### **Right to free elections**

The High Contracting Parties undertake to hold free elections at reasonable intervals by secret ballot, under conditions which will ensure the free expression of the opinion of the people in the choice of the legislature.

## **ARTICLE 4**

### **Territorial application**

Any High Contracting Party may at the time of signature or ratification or at any time thereafter communicate to the Secretary General of the Council of Europe a declaration stating the extent to which it undertakes that the provisions of the present Protocol shall apply to such of the territories for the international relations of which it is responsible as are named therein.

Any High Contracting Party which has communicated a declaration in virtue of the preceding paragraph may from time to time communicate a further declaration modifying the terms of any former declaration or terminating the application of the provisions of this Protocol in respect of any territory.

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A declaration made in accordance with this Article shall be deemed to have been made in accordance with paragraph 1 of Article 56 of the Convention.

## **ARTICLE 5**

### **Relationship to the Convention**

As between the High Contracting Parties the provisions of Articles 1, 2, 3 and 4 of this Protocol shall be regarded as additional Articles to the Convention and all the provisions of the Convention shall apply accordingly.

## **ARTICLE 6**

### **Signature and ratification**

This Protocol shall be open for signature by the members of the Council of Europe, who are the signatories of the Convention; it shall be ratified at the same time as or after the ratification of the Convention. It shall enter into force after the deposit of ten instruments of ratification. As regards any signatory ratifying subsequently, the Protocol shall enter into force at the date of the deposit of its instrument of ratification.

The instruments of ratification shall be deposited with the Secretary General of the Council of Europe, who will notify all members of the names of those who have ratified.

DONE AT PARIS ON THE 20<sup>TH</sup> DAY OF MARCH 1952, in English and French, both texts being equally authentic, in a single copy which shall remain deposited in the archives of the Council of Europe. The Secretary General shall transmit certified copies to each of the signatory governments.

# Protocol No. 4 to the Convention for the Protection of Human Rights and Fundamental Freedoms securing certain rights and freedoms other than those already included in the Convention and in the First Protocol thereto

Strasbourg, 16.IX.1963

THE GOVERNMENTS SIGNATORY HERETO, being members of the Council of Europe,

Being resolved to take steps to ensure the collective enforcement of certain rights and freedoms other than those already included in Section 1 of the Convention for the Protection of Human Rights and Fundamental Freedoms signed at Rome on 4th November 1950 (hereinafter referred to as the "Convention") and in Articles 1 to 3 of the First Protocol to the Convention, signed at Paris on 20th March 1952,

Have agreed as follows:

## ARTICLE 1

### **Prohibition of imprisonment for debt**

No one shall be deprived of his liberty merely on the ground of inability to fulfil a contractual obligation.

## ARTICLE 2

### **Freedom of movement**

1. Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.
2. Everyone shall be free to leave any country, including his own.
3. No restrictions shall be placed on the exercise of these rights other than such as are in accordance with law and are necessary in a democratic society in the interests of national security or public safety, for the maintenance of ordre public, for the prevention of crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.
4. The rights set forth in paragraph 1 may also be subject, in particular areas, to restrictions imposed in accordance with law and justified by the public interest in a democratic society.

## ARTICLE 3

### **Prohibition of expulsion of nationals**

1. No one shall be expelled, by means either of an individual or of a collective measure, from the territory of the State of which he is a national.
2. No one shall be deprived of the right to enter the territory of the State of which he is a national.

## ARTICLE 4

### **Prohibition of collective expulsion of aliens**

Collective expulsion of aliens is prohibited.

## ARTICLE 5

### Territorial application

1. Any High Contracting Party may, at the time of signature or ratification of this Protocol, or at any time thereafter, communicate to the Secretary General of the Council of Europe a declaration stating the extent to which it undertakes that the provisions of this Protocol shall apply to such of the territories for the international relations of which it is responsible as are named therein.
2. Any High Contracting Party which has communicated a declaration in virtue of the preceding paragraph may, from time to time, communicate a further declaration modifying the terms of any former declaration or terminating the application of the provisions of this Protocol in respect of any territory.
3. A declaration made in accordance with this Article shall be deemed to have been made in accordance with paragraph 1 of Article 56 of the Convention.
4. The territory of any State to which this Protocol applies by virtue of ratification or acceptance by that State, and each territory to which this Protocol is applied by virtue of a declaration by that State under this Article, shall be treated as separate territories for the purpose of the references in Articles 2 and 3 to the territory of a State.
5. Any State which has made a declaration in accordance with paragraph 1 or 2 of this Article may at any time thereafter declare on behalf of one or more of the territories to which the declaration relates that it accepts the competence of the Court to receive applications from individuals, non-governmental organisations or groups of individuals as provided in Article 34 of the Convention in respect of all or any of Articles 1 to 4 of this Protocol.

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## ARTICLE 6

### Relationship to the Convention

As between the High Contracting Parties the provisions of Articles 1 to 5 of this Protocol shall be regarded as additional Articles to the Convention, and all the provisions of the Convention shall apply accordingly.

## ARTICLE 7

### Signature and ratification

1. This Protocol shall be open for signature by the members of the Council of Europe who are the signatories of the Convention; it shall be ratified at the same time as or after the ratification of the Convention. It shall enter into force after the deposit of five instruments of ratification. As regards any signatory ratifying subsequently, the Protocol shall enter into force at the date of the deposit of its instrument of ratification.
  2. The instruments of ratification shall be deposited with the Secretary General of the Council of Europe, who will notify all members of the names of those who have ratified.
- In witness whereof the undersigned, being duly authorised thereto, have signed this Protocol.
- DONE AT STRASBOURG, THIS 16TH DAY OF SEPTEMBER 1963, in English and in French, both texts being equally authoritative, in a single copy which shall remain deposited in the archives of the Council of Europe. The Secretary General shall transmit certified copies to each of the signatory States.

# Protocol No. 6 to the Convention for the Protection of Human Rights and Fundamental Freedoms concerning the Abolition of the Death Penalty

Strasbourg, 28.IV.1983

THE MEMBER STATES OF THE COUNCIL OF EUROPE, signatory to this Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms, signed at Rome on 4 November 1950 (hereinafter referred to as "the Convention"),

Considering that the evolution that has occurred in several member States of the Council of Europe expresses a general tendency in favour of abolition of the death penalty;

Have agreed as follows:

## ARTICLE 1

### **Abolition of the death penalty**

The death penalty shall be abolished. No one shall be condemned to such penalty or executed.

## ARTICLE 2

### **Death penalty in time of war**

A State may make provision in its law for the death penalty in respect of acts committed in time of war or of imminent threat of war; such penalty shall be applied only in the instances laid down in the law and in accordance with its provisions. The State shall communicate to the Secretary General of the Council of Europe the relevant provisions of that law.

## ARTICLE 3

### **Prohibition of derogations**

No derogation from the provisions of this Protocol shall be made under Article 15 of the Convention.

## ARTICLE 4

### **Prohibition of reservations**

No reservation may be made under Article 57 of the Convention in respect of the provisions of this Protocol.

## ARTICLE 5

### **Territorial application**

1. Any State may at the time of signature or when depositing its instrument of ratification, acceptance or approval, specify the territory or territories to which this Protocol shall apply.
2. Any State may at any later date, by a declaration addressed to the Secretary General of the Council of Europe, extend the application of this Protocol to any other territory specified in the declaration. In respect of such territory the Protocol shall enter into force on the first day of the month following the date of receipt of such declaration by the Secretary General.

3. Any declaration made under the two preceding paragraphs may, in respect of any territory specified in such declaration, be withdrawn by a notification addressed to the Secretary General. The withdrawal shall become effective on the first day of the month following the date of receipt of such notification by the Secretary General.

#### **ARTICLE 6**

##### **Relationship to the Convention**

As between the States Parties the provisions of Articles 1 to 5 of this Protocol shall be regarded as additional Articles to the Convention and all the provisions of the Convention shall apply accordingly.

#### **ARTICLE 7**

##### **Signature and ratification**

The Protocol shall be open for signature by the member States of the Council of Europe, signatories to the Convention. It shall be subject to ratification, acceptance or approval. A member State of the Council of Europe may not ratify, accept or approve this Protocol unless it has, simultaneously or previously, ratified the Convention. Instruments of ratification, acceptance or approval shall be deposited with the Secretary General of the Council of Europe.

#### **ARTICLE 8**

##### **Entry into force**

1. This Protocol shall enter into force on the first day of the month following the date on which five member States of the Council of Europe have expressed their consent to be bound by the Protocol in accordance with the provisions of Article 7.

2. In respect of any member State which subsequently expresses its consent to be bound by it, the Protocol shall enter into force on the first day of the month following the date of the deposit of the instrument of ratification, acceptance or approval.

#### **ARTICLE 9**

##### **Depositary functions**

The Secretary General of the Council of Europe shall notify the member States of the Council of:

- (a) any signature;
- (b) the deposit of any instrument of ratification, acceptance or approval;
- (c) any date of entry into force of this Protocol in accordance with Articles 5 and 8;
- (d) any other act, notification or communication relating to this Protocol.

In witness whereof the undersigned, being duly authorised thereto, have signed this Protocol.

DONE AT STRASBOURG, THIS 28TH DAY OF APRIL 1983, in English and in French, both texts being equally authentic, in a single copy which shall be deposited in the archives of the Council of Europe. The Secretary General of the Council of Europe shall transmit certified copies to each member State of the Council of Europe.

# Protocol No. 7 to the Convention for the Protection of Human Rights and Fundamental Freedoms

Strasbourg, 22.XI.1984

THE MEMBER STATES OF THE COUNCIL OF EUROPE, signatory hereto,

Being resolved to take further steps to ensure the collective enforcement of certain rights and freedoms by means of the Convention for the Protection of Human Rights and Fundamental Freedoms signed at Rome on 4 November 1950 (hereinafter referred to as "the Convention"),

Have agreed as follows:

## ARTICLE 1

### **Procedural safeguards relating to expulsion of aliens**

1. An alien lawfully resident in the territory of a State shall not be expelled therefrom except in pursuance of a decision reached in accordance with law and shall be allowed:

- (a) to submit reasons against his expulsion,
- (b) to have his case reviewed, and
- (c) to be represented for these purposes before the competent authority or a person or persons designated by that authority.

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2. An alien may be expelled before the exercise of his rights under paragraph 1.(a), (b) and (c) of this Article, when such expulsion is necessary in the interests of public order or is grounded on reasons of national security.

## ARTICLE 2

### **Right of appeal in criminal matters**

1. Everyone convicted of a criminal offence by a tribunal shall have the right to have his conviction or sentence reviewed by a higher tribunal. The exercise of this right, including the grounds on which it may be exercised, shall be governed by law.

2. This right may be subject to exceptions in regard to offences of a minor character, as prescribed by law, or in cases in which the person concerned was tried in the first instance by the highest tribunal or was convicted following an appeal against acquittal.

## ARTICLE 3

### **Compensation for wrongful conviction**

When a person has by a final decision been convicted of a criminal offence and when subsequently his conviction has been reversed, or he has been pardoned, on the ground that a new or newly discovered fact shows conclusively that there has been a miscarriage of justice, the person who has suffered punishment as a result of such conviction shall be compensated according to the law or the practice of the State concerned, unless it is proved that the nondisclosure of the unknown fact in time is wholly or partly attributable to him.

## ARTICLE 4

### **Right not to be tried or punished twice**

1. No one shall be liable to be tried or punished again in criminal proceedings under the jurisdiction of the same State for an offence for which he has already been finally acquitted or convicted in accordance with the law and penal procedure of that State.
2. The provisions of the preceding paragraph shall not prevent the reopening of the case in accordance with the law and penal procedure of the State concerned, if there is evidence of new or newly discovered facts, or if there has been a fundamental defect in the previous proceedings, which could affect the outcome of the case.
3. No derogation from this Article shall be made under Article 15 of the Convention.

## ARTICLE 5

### **Equality between spouses**

Spouses shall enjoy equality of rights and responsibilities of a private law character between them, and in their relations with their children, as to marriage, during marriage and in the event of its dissolution. This Article shall not prevent States from taking such measures as are necessary in the interests of the children.

## ARTICLE 6

### **Territorial application**

1. Any State may at the time of signature or when depositing its instrument of ratification, acceptance or approval, specify the territory or territories to which the Protocol shall apply and State the extent to which it undertakes that the provisions of this Protocol shall apply to such territory or territories.

2. Any State may at any later date, by a declaration addressed to the Secretary General of the Council of Europe, extend the application of this Protocol to any other territory specified in the declaration. In respect of such territory the Protocol shall enter into force on the first day of the month following the expiration of a period of two months after the date of receipt by the Secretary General of such declaration.
3. Any declaration made under the two preceding paragraphs may, in respect of any territory specified in such declaration, be withdrawn or modified by a notification addressed to the Secretary General. The withdrawal or modification shall become effective on the first day of the month following the expiration of a period of two months after the date of receipt of such notification by the Secretary General.
4. A declaration made in accordance with this Article shall be deemed to have been made in accordance with paragraph 1 of Article 56 of the Convention.
5. The territory of any State to which this Protocol applies by virtue of ratification, acceptance or approval by that State, and each territory to which this Protocol is applied by virtue of a declaration by that State under this Article, may be treated as separate territories for the purpose of the reference in Article 1 to the territory of a State.
6. Any State which has made a declaration in accordance with paragraph 1 or 2 of this Article may at any time thereafter declare on behalf of one or more of the territories to which the declaration relates that it accepts the competence of the Court to receive applications from individuals, non-governmental organisations or groups of individuals as provided in Article 34 of the Convention in respect of Articles 1 to 5 of this Protocol.

## ARTICLE 7

### Relationship to the Convention

As between the States Parties, the provisions of Article 1 to 6 of this Protocol shall be regarded as additional Articles to the Convention, and all the provisions of the Convention shall apply accordingly.

## ARTICLE 8

### Signature and ratification

This Protocol shall be open for signature by member States of the Council of Europe which have signed the Convention. It is subject to ratification, acceptance or approval. A member State of the Council of Europe may not ratify, accept or approve this Protocol without previously or simultaneously ratifying the Convention. Instruments of ratification, acceptance or approval shall be deposited with the Secretary General of the Council of Europe.

## ARTICLE 9

### Entry into force

1. This Protocol shall enter into force on the first day of the month following the expiration of a period of two months after the date on which seven member States of the Council of Europe have expressed their consent to be bound by the Protocol in accordance with the provisions of Article 8.
2. In respect of any member State which subsequently expresses its consent to be bound by it, the Protocol shall enter into force on the first day of the month following the expiration of a period of two months after the date of the deposit of the instrument of ratification, acceptance or approval.

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## ARTICLE 10

### Depositary functions

The Secretary General of the Council of Europe shall notify all the member States of the Council of Europe of:

- (a) any signature;
- (b) the deposit of any instrument of ratification, acceptance or approval;
- (c) any date of entry into force of this Protocol in accordance with Articles 6 and 9;
- (d) any other act, notification or declaration relating to this Protocol.

In witness whereof the undersigned, being duly authorised thereto, have signed this Protocol.

DONE AT STRASBOURG, THIS 22<sup>ND</sup> DAY OF NOVEMBER 1984, in English and French, both texts being equally authentic, in a single copy which shall be deposited in the archives of the Council of Europe. The Secretary General of the Council of Europe shall transmit certified copies to each member State of the Council of Europe.

# Protocol No. 12 to the Convention for the Protection of Human Rights and Fundamental Freedoms

Rome, 4.XI.2000

THE MEMBER STATES OF THE COUNCIL OF EUROPE, signatory hereto,

Having regard to the fundamental principle according to which all persons are equal before the law and are entitled to the equal protection of the law;

Being resolved to take further steps to promote the equality of all persons through the collective enforcement of a general prohibition of discrimination by means of the Convention for the Protection of Human Rights and Fundamental Freedoms signed at Rome on 4 November 1950 (hereinafter referred to as "the Convention");

Reaffirming that the principle of non-discrimination does not prevent States Parties from taking measures in order to promote full and effective equality, provided that there is an objective and reasonable justification for those measures,

Have agreed as follows:

## ARTICLE 1

### General prohibition of discrimination

1. The enjoyment of any right set forth by law shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.
2. No one shall be discriminated against by any public authority on any ground such as those mentioned in paragraph 1.

## ARTICLE 2

### Territorial application

1. Any State may, at the time of signature or when depositing its instrument of ratification, acceptance or approval, specify the territory or territories to which this Protocol shall apply.
2. Any State may at any later date, by a declaration addressed to the Secretary General of the Council of Europe, extend the application of this Protocol to any other territory specified in the declaration. In respect of such territory the Protocol shall enter into force on the first day of the month following the expiration of a period of three months after the date of receipt by the Secretary General of such declaration.
3. Any declaration made under the two preceding paragraphs may, in respect of any territory specified in such declaration, be withdrawn or modified by a notification addressed to the Secretary General of the Council of Europe. The withdrawal or modification shall become effective on the first day of the month following the expiration of a period of three months after the date of receipt of such notification by the Secretary General.

4. A declaration made in accordance with this Article shall be deemed to have been made in accordance with paragraph 1 of Article 56 of the Convention.

5. Any State which has made a declaration in accordance with paragraph 1 or 2 of this Article may at any time thereafter declare on behalf of one or more of the territories to which the declaration relates that it accepts the competence of the Court to receive applications from individuals, non-governmental organisations or groups of individuals as provided by Article 34 of the Convention in respect of Article 1 of this Protocol.

### **ARTICLE 3**

#### **Relationship to the Convention**

As between the States Parties, the provisions of Articles 1 and 2 of this Protocol shall be regarded as additional Articles to the Convention, and all the provisions of the Convention shall apply accordingly.

### **ARTICLE 4**

#### **Signature and ratification**

This Protocol shall be open for signature by member States of the Council of Europe which have signed the Convention. It is subject to ratification, acceptance or approval. A member State of the Council of Europe may not ratify, accept or approve this Protocol without previously or simultaneously ratifying the Convention. Instruments of ratification, acceptance or approval shall be deposited with the Secretary General of the Council of Europe.

### **ARTICLE 5**

#### **Entry into force**

1. This Protocol shall enter into force on the first day of the month following the expiration of a period of three months after the date on which ten member States of the Council of Europe have expressed their consent to be bound by the Protocol in accordance with the provisions of Article 4.

2. In respect of any member State which subsequently expresses its consent to be bound by it, the Protocol shall enter into force on the first day of the month following the expiration of a period of three months after the date of the deposit of the instrument of ratification, acceptance or approval.

### **ARTICLE 6**

#### **Depositary functions**

The Secretary General of the Council of Europe shall notify all the member States of the Council of Europe of:

- (a) any signature;
- (b) the deposit of any instrument of ratification, acceptance or approval;
- (c) any date of entry into force of this Protocol in accordance with Articles 2 and 5;
- (d) any other act, notification or communication relating to this Protocol.

In witness whereof the undersigned, being duly authorised thereto, have signed this Protocol.

DONE AT ROME, THIS 4TH DAY OF NOVEMBER 2000, in English and in French, both texts being equally authentic, in a single copy which shall be deposited in the archives of the Council of Europe. The Secretary General of the Council of Europe shall transmit certified copies to each member State of the Council of Europe.

# Protocol No. 13 to the Convention for the Protection of Human Rights and Fundamental Freedoms concerning the abolition of the death penalty in all circumstances

Vilnius, 3.V.2002

THE MEMBER STATES OF THE COUNCIL OF EUROPE, signatory hereto,

Convinced that everyone's right to life is a basic value in a democratic society and that the abolition of the death penalty is essential for the protection of this right and for the full recognition of the inherent dignity of all human beings;

Wishing to strengthen the protection of the right to life guaranteed by the Convention for the Protection of Human Rights and Fundamental Freedoms signed at Rome on 4 November 1950 (hereinafter referred to as "the Convention");

Noting that Protocol No. 6 to the Convention, concerning the Abolition of the Death Penalty, signed at Strasbourg on 28 April 1983, does not exclude the death penalty in respect of acts committed in time of war or of imminent threat of war;

Being resolved to take the final step in order to abolish the death penalty in all circumstances,

Have agreed as follows:

## ARTICLE 1

### Abolition of the death penalty

The death penalty shall be abolished. No one shall be condemned to such penalty or executed.

## ARTICLE 2

### Prohibition of derogations

No derogation from the provisions of this Protocol shall be made under Article 15 of the Convention.

## ARTICLE 3

### Prohibition of reservations

No reservation may be made under Article 57 of the Convention in respect of the provisions of this Protocol.

## ARTICLE 4

### Territorial application

1. Any State may, at the time of signature or when depositing its instrument of ratification, acceptance or approval, specify the territory or territories to which this Protocol shall apply.
2. Any State may at any later date, by a declaration addressed to the Secretary General of the Council of Europe, extend the application of this Protocol to any other territory specified in the declaration. In respect of such territory the Protocol shall enter into force on the first day of the month following the expiration of a period of three months after the date of receipt by the Secretary General of such declaration.

3. Any declaration made under the two preceding paragraphs may, in respect of any territory specified in such declaration, be withdrawn or modified by a notification addressed to the Secretary General. The withdrawal or modification shall become effective on the first day of the month following the expiration of a period of three months after the date of receipt of such notification by the Secretary General.

#### **ARTICLE 5**

##### **Relationship to the Convention**

As between the States Parties the provisions of Articles 1 to 4 of this Protocol shall be regarded as additional Articles to the Convention, and all the provisions of the Convention shall apply accordingly.

#### **ARTICLE 6**

##### **Signature and ratification**

This Protocol shall be open for signature by member States of the Council of Europe which have signed the Convention. It is subject to ratification, acceptance or approval. A member State of the Council of Europe may not ratify, accept or approve this Protocol without previously or simultaneously ratifying the Convention. Instruments of ratification, acceptance or approval shall be deposited with the Secretary General of the Council of Europe.

#### **ARTICLE 7**

##### **Entry into force**

1. This Protocol shall enter into force on the first day of the month following the expiration of a period of three months after the date on which ten member States of the Council of Europe have expressed their consent to be bound by the Protocol in accordance with the provisions of Article 6.

2. In respect of any member State which subsequently expresses its consent to be bound by it, the Protocol shall enter into force on the first day of the month following the expiration of a period of three months after the date of the deposit of the instrument of ratification, acceptance or approval.

#### **ARTICLE 8**

##### **Depositary functions**

The Secretary General of the Council of Europe shall notify all the member States of the Council of Europe of:

- (a) any signature;
- (b) the deposit of any instrument of ratification, acceptance or approval;
- (c) any date of entry into force of this Protocol in accordance with Articles 4 and 7;
- (d) any other act, notification or communication relating to this Protocol.

In witness whereof the undersigned, being duly authorised thereto, have signed this Protocol.

DONE AT VIILNIUS, THIS 3RD DAY OF MAY 2002, in English and in French, both texts being equally authentic, in a single copy which shall be deposited in the archives of the Council of Europe. The Secretary General of the Council of Europe shall transmit certified copies to each member State of the Council of Europe.

# Protocol No. 16 to the Convention on the Protection of Human Rights and Fundamental Freedoms

Strasbourg, 2.X.2013

THE MEMBER STATES OF THE COUNCIL OF EUROPE AND OTHER HIGH CONTRACTING PARTIES TO THE CONVENTION FOR THE PROTECTION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS, signed at Rome on 4 November 1950 (hereinafter referred to as "the Convention"), signatories hereto,

Having regard to the provisions of the Convention and, in particular, Article 19 establishing the European Court of Human Rights (hereinafter referred to as "the Court");

Considering that the extension of the Court's competence to give advisory opinions will further enhance the interaction between the Court and national authorities and thereby reinforce implementation of the Convention, in accordance with the principle of subsidiarity;

Having regard to Opinion No. 285 (2013) adopted by the Parliamentary Assembly of the Council of Europe on 28 June 2013,

Have agreed as follows:

## ARTICLE 1

1. Highest courts and tribunals of a High Contracting Party, as specified in accordance with Article 10, may request the Court to give advisory opinions on questions of principle relating to the interpretation or application of the rights and freedoms defined in the Convention or the protocols thereto.
2. The requesting court or tribunal may seek an advisory opinion only in the context of a case pending before it.
3. The requesting court or tribunal shall give reasons for its request and shall provide the relevant legal and factual background of the pending case.

## ARTICLE 2

1. A panel of five judges of the Grand Chamber shall decide whether to accept the request for an advisory opinion, having regard to Article 1. The panel shall give reasons for any refusal to accept the request.
2. If the panel accepts the request, the Grand Chamber shall deliver the advisory opinion.
3. The panel and the Grand Chamber, as referred to in the preceding paragraphs, shall include *ex officio* the judge elected in respect of the High Contracting Party to which the requesting court or tribunal pertains. If there is none or if that judge is unable to sit, a person chosen by the President of the Court from a list submitted in advance by that Party shall sit in the capacity of judge.

## ARTICLE 3

The Council of Europe Commissioner for Human Rights and the High Contracting Party to which the requesting court or tribunal pertains shall have the right to submit written comments and take part in any hearing. The President of the Court may, in the interest of the proper administration of justice, invite any other High Contracting Party or person also to submit written comments or take part in any hearing.

## ARTICLE 4

1. Reasons shall be given for advisory opinions.
2. If the advisory opinion does not represent, in whole or in part, the unanimous opinion of the judges, any judge shall be entitled to deliver a separate opinion.
3. Advisory opinions shall be communicated to the requesting court or tribunal and to the High Contracting Party to which that court or tribunal pertains.
4. Advisory opinions shall be published.

## ARTICLE 5

Advisory opinions shall not be binding.

## ARTICLE 6

As between the High Contracting Parties the provisions of Articles 1 to 5 of this Protocol shall be regarded as additional articles to the Convention, and all the provisions of the Convention shall apply accordingly.

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## ARTICLE 7

1. This Protocol shall be open for signature by the High Contracting Parties to the Convention, which may express their consent to be bound by:
  - (a) signature without reservation as to ratification, acceptance or approval; or
  - (b) signature subject to ratification, acceptance or approval, followed by ratification, acceptance or approval.
2. The instruments of ratification, acceptance or approval shall be deposited with the Secretary General of the Council of Europe.

## ARTICLE 8

1. This Protocol shall enter into force on the first day of the month following the expiration of a period of three months after the date on which ten High Contracting Parties to the Convention have expressed their consent to be bound by the Protocol in accordance with the provisions of Article 7.
2. In respect of any High Contracting Party to the Convention which subsequently expresses its consent to be bound by it, the Protocol shall enter into force on the first day of the month following the expiration of a period of three months after the date of the expression of its consent to be bound by the Protocol in accordance with the provisions of Article 7.

## ARTICLE 9

No reservation may be made under Article 57 of the Convention in respect of the provisions of this Protocol.

## ARTICLE 10

Each High Contracting Party to the Convention shall, at the time of signature or when depositing its instrument of ratification, acceptance or approval, by means of a declaration addressed to the Secretary General of the Council of Europe, indicate the courts or tribunals that it designates for the purposes of Article 1, paragraph 1, of this Protocol. This declaration may be modified at any later date and in the same manner.

## ARTICLE 11

The Secretary General of the Council of Europe shall notify the member States of the Council of Europe and the other High Contracting Parties to the Convention of:

- (a) a any signature;
- (b) the deposit of any instrument of ratification, acceptance or approval;
- (c) any date of entry into force of this Protocol in accordance with Article 8;
- (d) any declaration made in accordance with Article 10; and
- (e) any other act, notification or communication relating to this Protocol.

In witness whereof the undersigned, being duly authorised thereto, have signed this Protocol.

DONE AT STRASBOURG, THIS 2ND DAY OF OCTOBER 2013, in English and French, both texts being equally authentic, in a single copy which shall be deposited in the archives of the Council of Europe. The Secretary General of the Council of Europe shall transmit certified copies to each member State of the Council of Europe and to the other High Contracting Parties to the Convention.

# European Convention on Human Rights

European Court of Human Rights  
Council of Europe  
67075 Strasbourg cedex  
France

[www.echr.coe.int](http://www.echr.coe.int)

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ENG



SINGLE CONVENTION  
ON  
NARCOTIC DRUGS, 1961

As amended by the 1972 Protocol amending the Single Convention on Narcotic Drugs, 1961,

UNITED NATIONS

**FINAL ACT OF THE UNITED NATIONS CONFERENCE  
FOR THE ADOPTION OF A SINGLE CONVENTION  
ON NARCOTIC DRUGS**

1. The Economic and Social Council of the United Nations, by resolution 689 J (XXVI) of 28 July 1958, decided to convene in accordance with Article 62, paragraph 4, of the Charter of the United Nations, and with the provisions of General Assembly resolution 366 (IV) of 3 December 1949, a plenipotentiary conference for the adoption of a single convention on narcotic drugs to replace by a single instrument the existing multilateral treaties in the field, to reduce the number of international treaty organs exclusively concerned with control of narcotic drugs, and to make provision for the control of the production of raw materials of narcotic drugs.

2. The United Nations Conference for the Adoption of a Single Convention on Narcotic Drugs met at United Nations Headquarters from 24 January to 25 March 1961.

3. The following seventy-three States were represented by representatives at the Conference:

Afghanistan	Greece	Pakistan
Albania	Guatemala	Panama
Argentina	Haiti	Paraguay
Australia	Holy See	Peru
Bolivia	Hungary	Philippines
Brazil	India	Poland
Bulgaria	Indonesia	Portugal
Burma	Iran	Romania
Byelorussian Soviet Socialist Republic	Iraq	Senegal
Cambodia	Israel	Spain
Canada	Italy	Sweden
Chad	Japan	Switzerland
Chile	Jordan	Thailand
China	Korea, Republic of	Tunisia
Congo (Léopoldville)	Lebanon	Turkey
Costa Rica	Liberia	Ukrainian Soviet Socialist Republic
Czechoslovakia	Madagascar	Union of Soviet Socialist Republics
Dahomey	Mexico	United Arab Republic

Denmark	Monaco	United Kingdom of Great Britain and Northern Ireland
Dominican Republic	Morocco	United States of America
El Salvador	Netherlands	Uruguay
Finland	New Zealand	Venezuela
France	Nicaragua	Yugoslavia
Germany, Federal Republic of	Nigeria	
Ghana	Norway	

4. The following State was represented by an observer at the Conference:

Ceylon

5. The following specialized agency was represented at the Conference:

Food and Agriculture Organization of the United Nations;  
International Civil Aviation Organization;  
International Labour Organisation;  
World Health Organization.

6. The following international bodies were represented at the Conference:

Permanent Central Opium Board;  
Drug Supervisory Body.

7. The following non-governmental organizations were also represented at the Conference:

International Conference of Catholic Charities;  
International Criminal Police Organization;  
International Federation of Women Lawyers.

8. General Safwat, Director of the Permanent Anti-Narcotics Bureau of the League of Arab States, at the invitation of the Conference, also attended in a personal capacity.

9. In accordance with the resolution of the Economic and Social Council referred to in paragraph 1 and with the rules of procedure adopted by the Conference, the observers and the representatives of the above-mentioned organizations and bodies participated in the work of the Conference without the right to vote.

10. The Conference elected Mr. Carl Schurmann (Netherlands) as President, and as Vice-Presidents the representatives of the following States:

Afghanistan	Iran	Thailand
Brazil Ghana	Japan	Turkey
Dahomey	Mexico	United Arab Republic
France	Pakistan	United Kingdom of Great

		Britain and Northern Ireland
Hungary	Peru	Union of Soviet Socialist Republics
India Togo	Switzerland	United States of America

11. The Executive Secretary of the Conference was Mr. G. E. Yates, and the Deputy Executive Secretary was Mr. Adolf Lande.

12. The Conference had before it, in accordance with the resolution of the Economic and Social Council, the third draft of a single convention on narcotic drugs prepared by the Commission on Narcotic Drugs of the Council and a compilation of the comments thereon; it also had before it other documentation prepared by the Secretariat.

13. The Conference set up the following committees:

*General Committee*

Chairman: The President of the Conference

*Ad Hoc Committee on articles 2 and 3 of the Third Draft* (Scope of the Convention and Method of Bringing Additional Substances under Control)

Chairman: Mr. A. Tabibi (Afghanistan)

*Ad Hoc Committee on articles 25, 30 and 40-43* (National Control in General)

Chairman: Mr. B. Banerji (India)

*Ad Hoc Committee on articles 31-34* (National Control of Opium Poppy and Poppy Straw)

Chairman: Mr. L. Ignacio-Pinto (Dahomey)  
Vice-Chairman: Mr. J. Koch (Denmark)

*Ad Hoc Committee on articles 35-38* (National Control of Coca Leaf)

Chairman: Mr. K. Chikaraishi (Japan)

*Ad Hoc Committee on article 39* (National Control of Cannabis)

Chairman: Mr. B. Grinberg (Bulgaria)

*Ad Hoc Committee on articles 26, 27-29, 20-21, 4* (Information to be furnished by Governments; the system of estimates and statistics; obligations of Governments in general)

Chairman: Mr. E. Rodriguez Fabregat (Uruguay)  
Vice-Chairman: Mr. J. Bertschinger (Switzerland)

*Ad Hoc Committee on article 22* (Measures exercisable by the Board in case of non-compliance)

Chairman: Mr. A. Gurinovich (Byelorussian SSR)

*Ad Hoc Committee on articles 5-11, 13-19, 23* (Constitution, Functions and Secretariat of International Organs)

Chairman: Mr. H. Blomstedt (Finland)

*Ad Hoc Committee on articles 44-46* (Direct Measures against the Illicit Traffic)

Chairman: Mr. A. Bittencourt (Brazil)

*Technical Committee*

Chairman: Mr. A. Johnson (Australia)

Vice-Chairman: Mr. A. Ismael (United Arab Republic)

*Drafting Committee*

Chairman: Mr. R. Curran (Canada)

Vice-Chairman: Mr. D. Nikoli (Yugoslavia)

*Credentials Committee*

Chairman: Mr. G. Ortiz (Costa Rica)

14. As the result of its deliberations, as recorded in the summary records of the Plenary and the summary records and reports of the committees, the Conference adopted and opened for signature the Single Convention on Narcotic Drugs, 1961. In addition the Conference adopted the five resolutions annexed to this Final Act.

IN WITNESS WHEREOF the representatives have signed this Final Act.

DONE at New York, this thirtieth day of March one thousand nine hundred and sixty-one, in a single copy in the Chinese, English, French, Russian and Spanish languages, each text being equally authentic. The original texts shall be deposited with the Secretary-General of the United Nations.

**FINAL ACT OF THE UNITED NATIONS CONFERENCE TO  
CONSIDER AMENDMENTS TO THE SINGLE CONVENTION  
ON NARCOTIC DRUGS, 1961**

1. The Economic and Social Council of the United Nations, noting that amendments had been proposed to the Single Convention on Narcotic Drugs, 1961, and bearing in mind article 47 of that Convention, decided by its resolution 1577 (L) of 21 May 1971 to call, in accordance with Article 62, paragraph 4, of the Charter of the United Nations a conference of plenipotentiaries to consider all amendments proposed to the Single Convention on Narcotic Drugs, 1961.

2. The United Nations Conference to consider amendments to the Single Convention on Narcotic Drugs, 1961, met at the United Nations Office at Geneva from 6 to 24 March 1972.

3. The following 97 States were represented by representatives at the Conference:

Afghanistan	Haiti	Nigeria
Algeria	Holy See	Norway
Argentina	Hungary	Pakistan
Australia	India	Panama
Austria	Indonesia	Peru
Belgium	Iran	Philippines
Bolivia	Iraq	Poland
Brazil	Ireland	Portugal
Bulgaria	Israel	Republic of Korea
Burma	Italy	Republic of Viet-Nam
Burundi	Ivory Coast	Saudi Arabia
Byelorussian Soviet Socialist Republic	Jamaica	Senegal
Canada	Japan	Sierra Leone
Ceylon	Jordan	Singapore
Chile	Kenya	South Africa
Colombia	Khmer Republic	Spain
Costa Rica	Kuwait	Sudan
Cuba	Laos	Sweden
Cyprus	Lebanon	Switzerland
Czechoslovakia	Liberia	Thailand
Dahomey	Libyan Arab Republic	Togo
Denmark	Liechtenstein	Tunisia
Ecuador	Luxembourg	Turkey
Egypt	Madagascar	Ukrainian Soviet Socialist Republic
El Salvador	Malawi	Union of Soviet Socialist Republics

Federal Republic of Germany	Mexico	United Kingdom of Great Britain and Northern Ireland
Finland	Monaco	United States of America
France	Mongolian People's Republic	Uruguay
Gabon	Morocco	Venezuela
Gambia	Netherlands	Yugoslavia
Ghana	New Zealand	Zaire
Greece	Nicaragua	
Guatemala	Niger	

4. The following States were represented by observers at the Conference:

Cameroon	Malaysia	Romania
Dominican Republic	Malta	

5. The Economic and Social Council, by its resolution 1577 (L), requested the Secretary-General to invite to the Conference the World Health Organization and other interested specialized agencies, the International Narcotics Control Board and the International Criminal Police Organization. The World Health Organization, the International Narcotics Control Board and the International Criminal Police Organization were represented at the Conference.

6. The Conference elected Mr. K. B. Asante (Ghana) as President of the Conference, Mr. D. Nikoli (Yugoslavia) as First Vice-President, and as the other Vice-Presidents the representatives of the following States:

Argentina	Lebanon	United Kingdom of Great Britain and Northern Ireland
Egypt	Mexico	United States of America
France	Turkey	
India	Union of Soviet Socialist Republics	

7. Mr. V. Winspeare-Guicciardi, Director-General of the United Nations Office at Geneva, was the representative of the Secretary-General of the United Nations. The Executive Secretary of the Conference was Dr. V. Kuševi, the Legal Adviser of the Conference was Mr. G. Wattles and the Deputy Executive Secretary and Deputy Legal Adviser was Mr. P. Raton.

8. The Conference had before it the amendments to the Single Convention on Narcotic Drugs, 1953, which were proposed by States participating in the Conference.

9. The Conference set up the following committees:

*General Committee*

Chairman: The President of the Conference

*Committee I*

Chairman: Dr. R. A. Chapman (Canada)

*Committee II*

Chairman: Dr. Béla Bölcs (Hungary)

*Drafting Committee*

Chairman: Mr. J-P, Bertschinger (Switzerland)

*Credentials Committee*

Chairman: Mr. J. W. Lennon (Ireland)

10. Committee 1 established a working group on article 14, the Chairman of which was Mr. A. C. Kirca (Turkey).

11. As a result of its deliberations, as recorded in the summary records of the Plenary and Committees 1 and 11, the Conference adopted and opened for signature the Protocol amending the Single Convention on Narcotic Drugs, 1961. In addition, the Conference adopted three resolutions annexed to this Final Act.

DONE at Geneva, this twenty-fifth day of March, one thousand nine hundred and seventy-two, in a single copy in the English, French, Russian and Spanish languages, each text being equally authentic. The original text shall be deposited with the Secretary-General of the United Nations.

IN WITNESS WHEREOF the representatives have signed this Final Act.

**RESOLUTIONS  
ADOPTED BY THE UNITED NATIONS CONFERENCE  
FOR THE ADOPTION OF A SINGLE CONVENTION  
ON NARCOTIC DRUGS**

***Resolution I***

**TECHNICAL ASSISTANCE ON NARCOTIC DRUGS**

*The Conference,*

*Welcoming* the establishment by General Assembly resolution 1395 (XIV) of special arrangements for technical assistance in the field of narcotics control,

*Noting* that the United Nations and the specialized agencies concerned have already provided a limited amount of assistance under the Expanded Programme of Technical Assistance and in their regular programmes,

*Welcoming* also the co-operation of the International Criminal Police Organization in the execution of technical assistance projects,

*Expresses the hope* that adequate resources will be made available to provide assistance in the fight against the illicit traffic, to those countries which desire and request it, particularly in the form of expert advisers and of training, including training courses for national officials.

---

***Resolution II***

**TREATMENT OF DRUG ADDICTS**

*The Conference,*

*Recalling* the provisions of article 38 of the Convention concerning the treatment and rehabilitation of drug addicts,

1. *Declares* that one of the most effective methods of treatment for addiction is treatment in a hospital institution having a drug free atmosphere;

2. *Urges* Parties having a serious drug addiction problem, and the economic

means to do so, to provide such facilities.

---

***Resolution III***

**ILLICIT TRAFFICKERS**

*The Conference,*

1. *Calls attention* to the importance of the technical records on international traffickers kept at present by the International Criminal Police Organization;

2. *Recommends* that these records be completed as far as possible by all parties and be widely used for the circulation of description of the traffickers by that Organization.

---

### ***Resolution IV***

#### **MEMBERSHIP OF THE COMMISSION ON NARCOTIC DRUGS**

*The Conference*

*Invites* the Economic and Social Council to examine at its thirty-second session the question of an increase in the membership of the Commission on Narcotic Drugs, in the light of the terms of this Convention and of the views expressed on this question at this Conference.

---

### ***Resolution V***

#### **INTERNATIONAL CONTROL MACHINERY**

*The Conference,*

*Considering* the importance of facilitating the transitional arrangements provided for in article 45 of the Single Convention on Narcotic Drugs, 1961,

*Invites* the Economic and Social Council to study the possibility of taking measures which would ensure the rapid and smooth carrying out of the simplification of the international control machinery.

**RESOLUTIONS  
ADOPTED BY THE UNITED NATIONS CONFERENCE  
TO CONSIDER AMENDMENTS TO THE SINGLE CONVENTION  
ON NARCOTIC DRUGS, 1961**

***Resolution I***

**SECRETARIAT OF THE INTERNATIONAL NARCOTICS CONTROL BOARD**

*The Conference,*

*Considering* that the measures adopted by the Economic and Social Council in its resolution 1196 (XLII) of 16 May 1967 (1464th plenary meeting) met the wishes of the States Parties to the Single Convention on Narcotic Drugs, 1961, and to the earlier conventions still in force,

*Recommends* the continuation of the system which was instituted by the Secretary-General of the United Nations and whose main provisions are as follows:

1. The International Narcotics Control Board (hereinafter referred to as the Board) has a secretariat distinct from the Division of Narcotic Drugs;
2. That secretariat is an integral part of the Secretariat of the United Nations; while under the full administrative control of the Secretary-General, it is bound to carry out the decisions of the Board;
3. The members of the secretariat are appointed or assigned by the Secretary-General; the head of that secretariat is appointed or assigned in consultation with the Board.

---

***Resolution II***

**ASSISTANCE IN NARCOTICS CONTROL**

*The Conference,*

*Recalling* that assistance to developing countries is a concrete manifestation of the will of the international community to honour the commitment contained in the United Nations Charter to promote the social and economic progress of all peoples,

*Recalling* the special arrangements made by the United Nations General Assembly under its resolution 1395 (XIV) with a view to the provision of technical assistance for drug abuse control,

*Welcoming* the establishment pursuant to United Nations General Assembly resolution 2719 (XXV), of a United Nations Fund for Drug Abuse Control,

*Noting* that the Conference has adopted a new article 14 *bis* concerning technical and financial assistance to promote more effective execution of the provisions of the Single Convention on Narcotic Drugs, 1961,

1. *Declares* that, to be more effective, the measures taken against drug abuse must be co-ordinated and universal;

2. *Declares further* that the fulfilment by the developing countries of their obligations under the Convention will be facilitated by adequate technical and financial assistance from the international community.

---

### ***Resolution III***

#### **SOCIAL CONDITIONS AND PROTECTION AGAINST DRUG ADDICTION**

*The Conference,*

*Recalling* that the Preamble to the Single Convention on Narcotic Drugs, 1953, states that the Parties to the Convention are "concerned with the health and welfare of mankind" and are "conscious of their duty to prevent and combat" the evil of drug addiction,

*Considering* that the discussions at the Conference have given evidence of the desire to take effective steps to prevent drug addiction,

*Considering* that, while drug addiction leads to personal degradation and social disruption, it happens very often that the deplorable social and economic conditions in which certain individuals and certain groups are living predispose them to drug addiction,

*Recognizing* that social factors have a certain and sometimes preponderant influence on the behaviour of individuals and groups,

*Recommends that the Parties:*

1. Should bear in mind that drug addiction is often the result of an unwholesome social atmosphere in which those who are most exposed to the danger of drug abuse live;
2. Should do everything in their power to combat the spread of the illicit use of drugs;
3. Should develop leisure and other activities conducive to the sound physical and psychological health of young people.

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**SINGLE CONVENTION ON NARCOTIC DRUGS, 1961,  
AS AMENDED BY THE 1972 PROTOCOL AMENDING THE  
SINGLE CONVENTION ON NARCOTIC DRUGS, 1961**

PREAMBLE

*The Parties,*

*Concerned* with the health and welfare of mankind,

*Recognizing* that the medical use of narcotic drugs continues to be indispensable for the relief of pain and suffering and that adequate provision must be made to ensure the availability of narcotic drugs for such purposes,

*Recognizing* that addiction to narcotic drugs constitutes a serious evil for the individual and is fraught with social and economic danger to mankind,

*Conscious* of their duty to prevent and combat this evil,

*Considering* that effective measures against abuse of narcotic drugs require co-ordinated and universal action,

*Understanding* that such universal action calls for international co-operation guided by the same principles and aimed at common objectives,

*Acknowledging* the competence of the United Nations in the field of narcotics control and desirous that the international organs concerned should be within the framework of that Organization,

*Desiring* to conclude a generally acceptable international convention replacing existing treaties on narcotic drugs, limiting such drugs to medical and scientific use, and providing for continuous international co-operation and control for the achievement of such aims and objectives,

*Hereby agree* as follows:<sup>1</sup>

*Article 1*

DEFINITIONS

1. Except where otherwise expressly indicated or where the context otherwise requires, the following definitions shall apply throughout the Convention:
  - a) "Board" means the International Narcotics Control Board,
  - b) "Cannabis" means the flowering or fruiting tops of the cannabis plant (excluding the seeds and leaves when not accompanied by the tops) from which the resin has not been extracted, by whatever name they may be designated.
  - c) "Cannabis plant" means any plant of the genus Cannabis,
  - d) "Cannabis resin" means the separated resin, whether crude or purified, obtained from the cannabis plant.
  - e) "Coca bush" means the plant of any species of the genus Erythroxylon.
  - f) "Coca leaf" means the leaf of the coca bush except a leaf from which all ecgonine, cocaine and any other ecgonine alkaloids have been removed.
  - g) "Commission" means the Commission on Narcotic Drugs of the Council.
  - h) "Council" means the Economic and Social Council of the United Nations.
  - i) "Cultivation" means the cultivation of the opium poppy, coca bush or cannabis plant.
  - j) "Drug" means any of the substances in Schedules I and II, whether natural or synthetic.
  - k) "General Assembly" means the General Assembly of the United Nations.

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<sup>1</sup> *Note by the Secretariat:* The Preamble to the Protocol amending the Single Convention on Narcotic Drugs, 1961, reads as follows:

*"The Parties to the Present Protocol,*

*"Considering* the provisions of the Single Convention on Narcotic Drugs, 1961, done at New York on 30 March 1961 (hereinafter called the Single Convention),

*"Desiring* to amend the Single Convention

*"Have agreed* as follows:"

- l) "Illicit traffic" means cultivation or trafficking in drugs contrary to the provisions of this Convention.
- m) "Import" and "export" mean in their respective connotations the physical transfer of drugs from one State to another State, or from one territory to another territory of the same State.
- n) "Manufacture" means all processes, other than production, by which drugs may be obtained and includes refining as well as the transformation of drugs into other drugs.
- o) "Medicinal opium" means opium which has undergone the processes necessary to adapt it for medicinal use.
- p) "Opium" means the coagulated juice of the opium poppy.
- q) "Opium poppy" means the plant of the species *Papaver somniferum L.*
- r) "Poppy straw" means all parts (except the seeds) of the opium poppy, after mowing.
- s) "Preparation" means a mixture, solid or liquid, containing a drug.
- t) "Production" means the separation of opium, coca leaves, cannabis and cannabis resin from the plants from which they are obtained.
- u) "Schedule I", "Schedule II", "Schedule III" and "Schedule IV" mean the correspondingly numbered list of drugs or preparations annexed to this Convention, as amended from time to time in accordance with article 3.
- v) "Secretary-General" means the Secretary-General of the United Nations.
- w) "Special stocks" means the amounts of drugs held in a country or territory by the Government of such country or territory for special government purposes and to meet exceptional circumstances; and the expression "special purposes" shall be construed accordingly.
- x) "Stocks" means the amounts of drugs held in a country or territory and intended for:
- i) Consumption in the country or territory for medical and scientific purposes,
  - ii) Utilization in the country or territory for the manufacture of drugs and other substances, or
  - iii) Export;

but does not include the amounts of drugs held in the country or territory,

- iv) By retail pharmacists or other authorized retail distributors and by institutions or qualified persons in the duly authorized exercise of therapeutic or scientific functions, or
- v) As "special stocks".
- y) "Territory" means any part of a State which is treated as a separate entity for the application of the system of import certificates and export authorizations provided for in article 31. This definition shall not apply to the term "territory" as used in articles 42 and 46.

2. For the purposes of this Convention a drug shall be regarded as "consumed" when it has been supplied to any person or enterprise for retail distribution, medical use or scientific research; and "consumption" shall be construed accordingly.

## *Article 2*

### SUBSTANCES UNDER CONTROL

1. Except as to measures of control which are limited to specified drugs, the drugs in Schedule I are subject to all measures of control applicable to drugs under this Convention and in particular to those prescribed in article 4 c), 19, 20, 21, 29, 30, 31, 32, 33, 34 and 37.
2. The drugs in Schedule II are subject to the same measures of control as drugs in Schedule I with the exception of the measures prescribed in article 30, paragraphs 2 and 5, in respect of the retail trade.
3. Preparations other than those in Schedule III are subject to the same measures of control as the drugs which they contain, but estimates (article 19) and statistics (article 20) distinct from those dealing with these drugs shall not be required in the case of such preparations, and article 29, paragraph 2 c) and article 30, paragraph 1 b) ii) need not apply.
4. Preparations in Schedule III are subject to the same measures of control as preparations containing drugs in Schedule II except that article 31, paragraphs 1 b) and 3 to 15 and, as regards their acquisition and retail distribution, article 34, paragraph b), need not apply, and that for the purpose of estimates (article 19) and statistics (article 20) the information required shall be restricted to the quantities of drugs used in the manufacture of such preparations.

5. The drugs in Schedule IV shall also be included in Schedule I and subject to all measures of control applicable to drugs in the latter Schedule, and in addition thereto:
- a) A Party shall adopt any special measures of control which in its opinion are necessary having regard to the particularly dangerous properties of a drug so included; and
  - b) A Party shall, if in its opinion the prevailing conditions in its country render it the most appropriate means of protecting the public health and welfare, prohibit the production, manufacture, export and import of, trade in, possession or use of any such drug except for amounts which may be necessary for medical and scientific research only, including clinical trials therewith to be conducted under or subject to the direct supervision and control of the Party.
6. In addition to the measures of control applicable to all drugs in Schedule I, opium is subject to the provisions of article 19, paragraph 1, subparagraph *f*), and of articles 21 *bis*, 23 and 24, the coca leaf to those of articles 26 and 27 and cannabis to those of article 28.
7. The opium poppy, the coca bush, the cannabis plant, poppy straw and cannabis leaves are subject to the control measures prescribed in article 19, paragraph 1, subparagraph *e*), article 20, paragraph 1, subparagraph *g*), article 21 *bis* and in articles 22 to 24; 22, 26 and 27; 22 and 28; 25; and 28, respectively:
8. The Parties shall use their best endeavours to apply to substances which do not fall under this Convention, but which may be used in the illicit manufacture of drugs, such measures of supervision as may be practicable.
9. Parties are not required to apply the provisions of this Convention to drugs which are commonly used in industry for other than medical or scientific purposes, provided that:
- a) They ensure by appropriate methods of denaturing or by other means that the drugs so used are not liable to be abused or have ill effects (article 3, paragraph 3) and that the harmful substances cannot in practice be recovered; and
  - b) They include in the statistical information (article 20) furnished by them the amount of each drug so used.

### Article 3

#### CHANGES IN THE SCOPE OF CONTROL

1. Where a Party or the World Health Organization has information which in its opinion may require an amendment to any of the Schedules, it shall notify the Secretary-General and furnish him with the information in support of the notification.
2. The Secretary-General shall transmit such notification, and any information which he considers relevant, to the Parties, to the Commission, and, where the notification is made by a Party, to the World Health Organization.
3. Where a notification relates to a substance not already in Schedule I or in Schedule II,
  - i) The Parties shall examine in the light of the available information the possibility of the provisional application to the substance of all measures of control applicable to drugs in Schedule I;
  - ii) Pending its decision as provided in subparagraph iii) of this paragraph, the Commission may decide that the Parties apply provisionally to that substance all measures of control applicable to drugs in Schedule I. The Parties shall apply such measures provisionally to the substance in question;
  - iii) If the World Health Organization finds that the substance is liable to similar abuse and productive of similar ill effects as the drugs in Schedule I or Schedule II or is convertible into a drug, it shall communicate that finding to the Commission which may, in accordance with the recommendation of the World Health Organization, decide that the substance shall be added to Schedule I or Schedule II.

4. If the World Health Organization finds that a preparation because of the substances which it contains is not liable to abuse and cannot produce ill effects (paragraph 3) and that the drug therein is not readily recoverable, the Commission may, in accordance with the recommendation of the World Health Organization, add that preparation to Schedule III.

5. If the World Health Organization finds that a drug in Schedule I is particularly liable to abuse and to produce ill effects (paragraph 3) and that such liability is not offset by substantial therapeutic advantages not possessed by substances other than drugs in Schedule IV, the Commission may, in accordance with the recommendation of the World Health Organization, place that drug in Schedule IV.

6. Where a notification relates to a drug already in Schedule I or Schedule II or to a preparation in Schedule III, the Commission, apart from the measure provided for in paragraph 5, may, in accordance with the recommendation of the World Health Organization, amend any of the Schedules by:

- a) Transferring a drug from Schedule I to Schedule II or from Schedule II to Schedule I;  
or
- b) Deleting a drug or a preparation as the case may be, from a Schedule.

7. Any decision of the Commission taken pursuant to this article shall be communicated by the Secretary-General to all States Members of the United Nations, to non-member States Parties to this Convention, to the World Health Organization and to the Board. Such decision shall become effective with respect to each Party on the date of its receipt of such communication, and the Parties shall thereupon take such action as may be required under this Convention.

8. a) The decisions of the Commission amending any of the Schedules shall be subject to review by the Council upon the request of any Party filed within ninety days from receipt of notification of the decision. The request for review shall be sent to the Secretary-General together with all relevant information upon which the request for review is based;
- b) The Secretary-General shall transmit copies of the request for review and relevant information to the Commission, the World Health Organization and to all the Parties inviting them to submit comments within ninety days. All comments received shall be submitted to the Council for consideration;
- c) The Council may confirm, alter or reverse the decision of the Commission, and the decision of the Council shall be final. Notification of the Council's decision shall be transmitted to all States Members of the United Nations, to non-member States Parties to this Convention, to the Commission, to the World Health Organization, and to the Board;
- d) During pendency of the review the original decision of the Commission shall remain in effect.

9. Decisions of the Commission taken in accordance with this article shall not be subject to the review procedure provided for in article 7.

#### *Article 4*

##### GENERAL OBLIGATIONS

The parties shall take such legislative and administrative measures as may be necessary:

- a) To give effect to and carry out the provisions of this Convention within their own territories;
- b) To co-operate with other States in the execution of the provisions of this Convention;  
and
- c) Subject to the provisions of this Convention, to limit exclusively to medical and scientific purposes the production, manufacture, export, import, distribution of, trade in, use and possession of drugs.

#### *Article 5*

##### THE INTERNATIONAL CONTROL ORGANS

The Parties, recognizing the competence of the United Nations with respect to the international control of drugs, agree to entrust to the Commission on Narcotic Drugs of the Economic and Social Council, and to the International Narcotics Control Board, the functions respectively assigned to them under this Convention.

## *Article 6*

### EXPENSES OF THE INTERNATIONAL CONTROL ORGANS

The expenses of the Commission and the Board will be borne by the United Nations in such manner as shall be decided by the General Assembly. The Parties which are not Members of the United Nations shall contribute to these expenses such amounts as the General Assembly finds equitable and assess from time to time after consultation with the Governments of these Parties.

## *Article 7*

### REVIEW OF DECISIONS AND RECOMMENDATIONS OF THE COMMISSION

Except for decisions under article 3, each decision or recommendation adopted by the Commission pursuant to the provisions of this Convention shall be subject to approval or modification by the Council or the General Assembly in the same way as other decisions or recommendations of the Commission.

## *Article 8*

### FUNCTIONS OF THE COMMISSION

The Commission is authorized to consider all matters pertaining to the aims of this Convention, and in particular:

- a) To amend the Schedules in accordance with article 3;
- b) To call the attention of the Board to any matters which may be relevant to the functions of the Board;
- c) To make recommendations for the implementation of the aims and provisions of this Convention, including programmes of scientific research and the exchange of information of a scientific or technical nature; and
- d) To draw the attention of non-parties to decisions and recommendations which it adopts under this Convention, with a view to their considering taking action in accordance therewith.

## *Article 9*

### COMPOSITION AND FUNCTIONS OF THE BOARD

1. The Board shall consist of thirteen members to be elected by the Council as follows:
  - a) Three members with medical, pharmacological or pharmaceutical experience from a list of at least five persons nominated by the World Health Organization; and
  - b) Ten members from a list of persons nominated by the Members of the United Nations and by Parties which are not Members of the United Nations.
2. Members of the Board shall be persons who, by their competence, impartiality and disinterestedness, will command general confidence. During their term of office they shall not hold any position or engage in any activity which would be liable to impair their impartiality in the exercise of their functions. The Council shall, in consultation with the Board, make all arrangements necessary to ensure the full technical independence of the Board in carrying out its functions.
3. The Council, with due regard to the principle of equitable geographic representation, shall give consideration to the importance of including on the Board, in equitable proportion, persons possessing a knowledge of the drug situation in the producing, manufacturing, and consuming countries, and connected with such countries.
4. The Board, in co-operation with Governments, and subject to the terms of this Convention, shall endeavour to limit the cultivation, production, manufacture and use of drugs to an adequate amount required for medical and scientific purposes, to ensure their availability for such purposes and to prevent illicit cultivation, production and manufacture of, and illicit trafficking in and use of, drugs.

5. All measures taken by the Board under this Convention shall be those most consistent with the intent to further the co-operation of Governments with the Board and to provide the mechanism for a continuing dialogue between Governments and the Board which will lend assistance to and facilitate effective national action to attain the aims of this Convention.

#### *Article 10*

##### TERMS OF OFFICE AND REMUNERATION OF MEMBERS OF THE BOARD

1. The members of the Board shall serve for a period of five years, and may be re-elected.
2. The term of office of each member of the Board shall end on the eve of the first meeting of the Board which his successor shall be entitled to attend.
3. A member of the Board who has failed to attend three consecutive sessions shall be deemed to have resigned.
4. The Council, on the recommendation of the Board, may dismiss a member of the Board who has ceased to fulfil the conditions required for membership by paragraph 2 of article 9. Such recommendation shall be made by an affirmative vote of nine members of the Board.
5. Where a vacancy occurs on the Board during the term of office of a member, the Council shall fill such vacancy as soon as possible and in accordance with the applicable provisions of article 9, by electing another member for the remainder of the term.
6. The members of the Board shall receive an adequate remuneration as determined by the General Assembly.

#### *Article 11*

##### RULES OF PROCEDURE OF THE BOARD

1. The Board shall elect its own President and such other officers as it may consider necessary and shall adopt its rules of procedure.
2. The Board shall meet as often as, in its opinion, may be necessary for the proper discharge of its functions, but shall hold at least two sessions in each calendar year.
3. The quorum necessary at meetings of the Board shall consist of eight members.

#### *Article 12*

##### ADMINISTRATION OF THE ESTIMATE SYSTEM

1. The Board shall fix the date or dates by which, and the manner in which, the estimates as provided in article 19 shall be furnished and shall prescribe the forms therefor.
2. The Board shall, in respect of countries and territories to which this Convention does not apply, request the Governments concerned to furnish estimates in accordance with the provisions of this Convention.
3. If any State fails to furnish estimates in respect of any of its territories by the date specified, the Board shall, as far as possible, establish the estimates. The Board in establishing such estimates shall to the extent practicable do so in co-operation with the Government concerned.
4. The Board shall examine the estimates, including supplementary estimates, and, except as regards requirements for special purposes, may require such information as it considers necessary in respect of any country or territory on behalf of which an estimate has been furnished, in order to complete the estimate or to explain any statement contained therein.

5. The Board, with a view to limiting the use and distribution of drugs to an adequate amount required for medical and scientific purposes and to ensuring their availability for such purposes, shall as expeditiously as possible confirm the estimates, including supplementary estimates, or, with the consent of the Government concerned, may amend such estimates. In case of a disagreement between the Government and the Board, the latter shall have the right to establish, communicate, and publish its own estimates, including supplementary estimates.

6. In addition to the reports mentioned in article 15, the Board shall, at such times as it shall determine but at least annually, issue such information on the estimates as in its opinion will facilitate the carrying out of this Convention.

### *Article 13*

#### ADMINISTRATION OF THE STATISTICAL RETURNS SYSTEM

1. The Board shall determine the manner and form in which statistical returns shall be furnished as provided in article 20 and shall prescribe the forms therefor.

2. The Board shall examine the returns with a view to determining whether a Party or any other State has complied with the provisions of this Convention.

3. The Board may require such further information as it considers necessary to complete or explain the information contained in such statistical returns.

4. It shall not be within the competence of the Board to question or express an opinion on statistical information respecting drugs required for special purposes.

### *Article 14*

#### MEASURES BY THE BOARD TO ENSURE THE EXECUTION OF PROVISIONS OF THE CONVENTION

1. a) If, on the basis of its examination of information submitted by Governments to the Board under the provisions of this Convention, or of information communicated by United Nations organs or by specialized agencies or, provided that they are approved by the Commission on the Board's recommendation, by either, other intergovernmental organizations or international non-governmental organizations which have direct competence in the subject matter and which are in consultative status with the Economic and Social Council under Article 71 of the Charter of the United Nations or which enjoy a similar status by special agreement with the Council, the Board has objective reasons to believe that the aims of this Convention are being seriously endangered by reason of the failure of any Party, country or territory to carry out the provisions of this Convention, the Board shall have the right to propose to the Government concerned the opening of consultations or to request it to furnish explanations. If, without any failure in implementing the provisions of the Convention, a Party or a country or territory has become, or if there exists evidence of a serious risk that it may become, an important centre of illicit cultivation, production or manufacture of, or traffic in or consumption of drugs, the Board has the right to propose to the Government concerned the opening of consultations. Subject to the right of the Board to call the attention of the Parties, the Council and the Commission to the matter referred to in subparagraph *d)* below, the Board shall treat as confidential a request for information and an explanation by a Government or a proposal for consultations and the consultations held with a Government under this subparagraph.

b) After taking action under subparagraph *a)* above, the Board, if satisfied that it is necessary to do so, may call upon the Government concerned to adopt such remedial measures as shall seem under the circumstances to be necessary for the execution of the provisions of this Convention.

c) The Board may, if it thinks such action necessary, for the purpose of assessing a matter referred to in subparagraph *a)* of this paragraph, propose to the Government concerned that a study of the matter, be carried out in its territory by such means as the Government deems appropriate. If the Government concerned decides to undertake this study, it may request the Board to make available the expertise and the services of one or more persons with the requisite competence to assist the officials of the Government in the proposed study. The person or persons whom the Board intends to make available shall be subject to the approval of the Government. The modalities of this study and the time-limit within which the study has to be completed shall be determined by consultation between the

Government and the Board. The Government shall communicate to the Board the results of the study and shall indicate the remedial measures that it considers necessary to take.

d) If the Board finds that the Government concerned has failed to give satisfactory explanations when called upon to do so under subparagraph *a)* above, or has failed, to adopt any remedial measures which it has been called upon to take under subparagraph *b)* above, or that there is a serious situation that needs co-operative action at the international level with a view to remedying it, it may call the attention of the Parties, the Council and the Commission to the matter. The Board shall so act if the aims of this Convention are being seriously endangered and it has not been possible to resolve the matter satisfactorily in any other way. It shall also so act if it finds that there is a serious situation that needs co-operative action at the international level with a view to remedying it and that bringing such a situation to the notice of the Parties, the Council and the Commission is the most appropriate method of facilitating such co-operative action; after considering the reports of the Board, and of the Commission if available on the matter, the Council may draw the attention of the General Assembly to the matter.

2. The Board, when calling the attention of the Parties, the Council and the Commission to a matter in accordance with paragraph 1 *d)* above, may, if it is satisfied that such a course is necessary, recommend to Parties that they stop the import of drugs, the export of drugs, or both, from or to the country or territory concerned, either for a designated period or until the Board shall be satisfied as to the situation in that country or territory. The State concerned may bring the matter before the Council.

3. The Board shall have the right to publish a report on any matter dealt with under the provisions of this article, and communicate it to the Council, which shall forward it to all Parties. If the Board publishes in this report a decision taken under this article or any information relating thereto, it shall also publish therein the views of the Government concerned if the latter so requests.

4. If in any case a decision of the Board which is published under this article is not unanimous, the views of the minority shall be stated.

5. Any State shall be invited to be represented at a meeting of the Board at which a question directly interesting it is considered under this article.

6. Decisions of the Board under this article shall be taken by a two-thirds majority of the whole number of the Board.

#### *Article 14 bis*

##### TECHNICAL AND FINANCIAL ASSISTANCE

In cases which it considers appropriate and either in addition or as an alternative to measures set forth in article 14, paragraphs 1 and 2, the Board, with the agreement of the Government concerned, may recommend to the competent United Nations organs and to the specialized agencies that technical or financial assistance, or both, be provided to the Government in support of its efforts to carry out its obligations under this Convention, including those set out or referred to in articles 2, 35, 38 and 38 *bis*.

#### *Article 15*

##### REPORTS OF THE BOARD

1. The Board shall prepare an annual report on its work and such additional reports as it considers necessary containing also an analysis of the estimates and statistical information at its disposal, and, in appropriate cases, an account of the explanations, if any, given by or required of Governments, together with any observations and recommendations which the Board desires to make. These reports shall be submitted to the Council through the Commission, which may make such comments as it sees fit.

2. The reports shall be communicated to the Parties and subsequently published by the Secretary-General. The Parties shall permit their unrestricted distribution.

## Article 16

### SECRETARIAT

The secretariat services of the Commission and the Board shall be furnished by the Secretary-General. In particular, the Secretary of the Board shall be appointed by the Secretary-General in consultation with the Board.

## Article 17

### SPECIAL ADMINISTRATION

The Parties shall maintain a special administration for the purpose of applying the provisions of this Convention.

## Article 18

### INFORMATION TO BE FURNISHED BY PARTIES TO THE SECRETARY-GENERAL

1. The Parties shall furnish to the Secretary-General such information as the Commission may request as being necessary for the performance of its functions, and in particular:
  - a) An annual report on the working of the Convention within each of their territories;
  - b) The text of all laws and regulations from time to time promulgated in order to give effect to this Convention;
  - c) Such particulars as the Commission shall determine concerning cases of illicit traffic, including particulars of each case of illicit traffic discovered which may be of importance, because of the light thrown on the source from which drugs are obtained for the illicit traffic, or because of quantities involved or the method employed by illicit traffickers; and
  - d) The names and addresses of the governmental authorities empowered to issue export and import authorizations or certificates.
2. Parties shall furnish the information referred to in the preceding paragraph in such manner and by such dates and use such forms as the Commission may request.

## Article 19

### ESTIMATES OF DRUG REQUIREMENTS

1. The Parties shall furnish to the Board each year for each of their territories, in the manner and form prescribed by the Board, estimates on forms supplied by it in respect of the following matters:
  - a) Quantities of drugs to be consumed for medical and scientific purposes;
  - b) Quantities of drugs to be utilized for the manufacture of other drugs, of preparations in Schedule III, and of substances not covered by this Convention;
  - c) Stocks of drugs to be held as at 31 December of the year to which the estimates relate;
  - d) Quantities of drugs necessary for addition to special stocks;
  - e) The area (in hectares) and the geographical location of land to be used for the cultivation of the opium poppy;
  - f) Approximate quantity of opium to be produced;
  - g) The number of industrial establishments which will manufacture synthetic drugs; and
  - h) The quantities of synthetic drugs to be manufactured by each of the establishments referred to in the preceding subparagraph.
2. a) Subject to the deductions referred to in paragraph 3 of article 21, the total of the estimates for each territory and each drug except opium and synthetic drugs shall consist of the sum of the amounts specified under subparagraphs *a)*, *b)* and *d)* of paragraph 1 of this article, with the addition of any amount required to bring the actual stocks on hand at 31 December of the preceding year to the level estimated as provided in subparagraph (c) of paragraph 1;

b) Subject to the deductions referred to in paragraph 3 of article 21 regarding imports and in paragraph 2 of article 21 *bis*, the total of the estimates for opium for each territory shall consist either of the sum of the amounts specified under subparagraphs (a), (b) and (d) of paragraph 1 of this article, with the addition of any amount required to bring the actual stocks on hand at 31 December of the preceding year to the level estimated as provided in subparagraph c) of paragraph 1, or of the amount specified under subparagraph f) of paragraph 1 of this article, whichever is higher.

c) Subject to the deductions referred to in paragraph 3 of article 21, the total of the estimates for each territory for each synthetic drug shall consist either of the sum of the amounts specified under subparagraphs a), b) and d) of paragraph 1 of this article, with the addition of any amount required to bring the actual stocks on hand at 31 December of the preceding year to the level estimated as provided in subparagraph c) of paragraph 1, or of the sum of the amounts specified under subparagraph h) of paragraph 1 of this article, whichever is higher.

d) The estimates furnished under the preceding subparagraphs of this paragraph shall be appropriately modified to take into account any quantity seized and thereafter released for licit use as well as any quantity taken from special stocks for the requirements of the civilian population.

3. Any State may during the year furnish supplementary estimates with an explanation of the circumstances necessitating such estimates.

4. The Parties shall inform the Board of the method used for determining quantities shown in the estimates and of any changes in the said method.

5. Subject to the deductions referred to in paragraph 3 of article 21, and account being taken where appropriate of the provisions of article 21 *bis*, the estimates shall not be exceeded.

#### Article 20

##### STATISTICAL RETURNS TO BE FURNISHED TO THE BOARD

1. The Parties shall furnish to the Board for each of their territories, in the manner and form prescribed by the Board, statistical returns on forms supplied by it in respect of the following matters:

- a) Production or manufacture of drugs;
- b) Utilization of drugs for the manufacture of other drugs, of preparations in Schedule III and of substances not covered by this Convention, and utilization of poppy straw for the manufacture of drugs;
- c) Consumption of drugs;
- d) Imports and exports of drugs and poppy straw;
- e) Seizures of drugs and disposal thereof;
- f) Stocks of drugs as at 31 December of the year to which the returns relate; and
- g) Ascertainable area of cultivation of the opium poppy.

2. a) The statistical returns in respect of the matters referred to in paragraph 1, except subparagraph d), shall be prepared annually and shall be furnished to the Board not later than 30 June following the year to which they relate.

b) The statistical returns in respect to the matters referred to in subparagraph d) of paragraph 1 shall be prepared quarterly and shall be furnished to the Board within one month after the end of the quarter to which they relate.

3. The Parties are not required to furnish statistical returns respecting special stocks, but shall furnish separately returns respecting drugs imported into or procured within the country or territory for special purposes, as well as quantities of drugs withdrawn from special stocks to meet the requirements of the civilian population.

## Article 21

### LIMITATION OF MANUFACTURE AND IMPORTATION

1. The total of the quantities of each drug manufactured and imported by any country or territory in any one year shall not exceed the sum of the following:

- a) The quantity consumed, within the limit of the relevant estimate, for medical and scientific purposes;
- b) The quantity used, within the limit of the relevant estimate, for the manufacture of other drugs, of preparations in Schedule III, and of substances not covered by this Convention;
- c) The quantity exported;
- d) The quantity added to the stock for the purpose of bringing that stock up to the level specified in the relevant estimate; and
- e) The quantity acquired within the limit of the relevant estimate for special purposes.

2. From the sum of the quantities specified in paragraph 1 there shall be deducted any quantity that has been seized and released for licit use, as well as any quantity taken from special stocks for the requirements of the civilian population.

3. If the Board finds that the quantity manufactured and imported in any one year exceeds the sum of the quantities specified in paragraph 1, less any deductions required under paragraph 2 of this article, any excess so established and remaining at the end of the year shall, in the following year, be deducted from the quantity to be manufactured or imported and from the total of the estimates as defined in paragraph 2 of article 19.

4. a) If it appears from the statistical returns on imports or exports (article 20) that the quantity exported to any country or territory exceeds the total of the estimates for that country or territory, as defined in paragraph 2 of article 19, with the addition of the amounts shown to have been exported, and after deduction of any excess as established in paragraph 3 of this article, the Board may notify this fact to States which, in the opinion of the Board, should be so informed;
- b) On receipt of such a notification, Parties shall not during the year in question authorize any further exports of the drug concerned to that country or territory, except:
- i) In the event of a supplementary estimate being furnished for that country or territory in respect both of any quantity over imported and of the additional quantity required, or
  - ii) In exceptional cases where the export, in the opinion of the Government of the exporting country, is essential for the treatment of the sick.

## Article 21 bis

### LIMITATION OF PRODUCTION OF OPIUM

1. The production of opium by any country or territory shall be organized and controlled in such manner as to ensure that, as far as possible, the quantity produced in any one year shall not exceed the estimate of opium to be produced as established under paragraph 1 *f*) of article 19.

2. If the Board finds on the basis of information at its disposal in accordance with the provisions of this Convention that a Party which has submitted an estimate under paragraph 1 *f*) of article 19 has not limited opium produced within its borders to licit purposes in accordance with relevant estimates and that a significant amount of opium produced, whether licitly or illicitly, within the borders of such a Party, has been introduced into the illicit traffic, it may, after studying the explanations of the Party concerned, which shall be submitted to it within one month after notification of the finding in question, decide to deduct all, or a portion, of such an amount from the quantity to be produced and from the total of the estimates as defined in paragraph 2 *b*) of article 19 for the next year in which such a deduction can be technically accomplished, taking into account the season of the year and contractual commitments to export opium. This decision shall take effect ninety days after the Party concerned is notified thereof.

3. After notifying the Party concerned of the decision it has taken under paragraph 2 above with regard to a deduction, the Board shall consult with that Party in order to resolve the situation satisfactorily.

4. If the situation is not satisfactorily resolved, the Board may utilize the provisions of article 14 where appropriate.

5. In taking its decision with regard to a deduction under paragraph 2 above, the Board shall take into account not only all relevant circumstances including those giving rise to the illicit traffic problem referred to in paragraph 2 above, but also any relevant new control measures which may have been adopted by the Party.

#### *Article 22*

##### SPECIAL PROVISION APPLICABLE TO CULTIVATION

1. Whenever the prevailing conditions in the country or a territory of a Party render the prohibition of the cultivation of the opium poppy, the coca bush or the cannabis plant the most suitable measure, in its opinion, for protecting the public health and welfare and preventing the diversion of drugs into the illicit traffic, the Party concerned shall prohibit cultivation.

2. A Party prohibiting cultivation of the opium poppy or the cannabis plant shall take appropriate measures to seize any plants illicitly cultivated and to destroy them, except for small quantities required by the Party for scientific or research purposes.

#### *Article 23*

##### NATIONAL OPIUM AGENCIES

1. A Party that permits the cultivation of the opium poppy for the production of opium shall establish, if it has not already done so, and maintain, one or more government agencies (hereafter in this article referred to as the Agency) to carry out the functions required under this article.

2. Each such Party shall apply the following provisions to the cultivation of the opium poppy for the production of opium and to opium:

a) The Agency shall designate the areas in which, and the plots of land on which, cultivation of the opium poppy for the purpose of producing opium shall be permitted.

b) Only cultivators licensed by the Agency shall be authorized to engage in such cultivation.

c) Each licence shall specify the extent of the land on which the cultivation is permitted.

d) All cultivators of the opium poppy shall be required to deliver their total crops of opium to the Agency. The Agency shall purchase and take physical possession of such crops as soon as possible, but not later than four months after the end of the harvest.

e) The Agency shall, in respect of opium, have the exclusive right of importing, exporting, wholesale trading and maintaining stocks other than those held by manufacturers of opium alkaloids, medicinal opium or opium preparations. Parties need not extend this exclusive right to medicinal opium and opium preparations.

3. The governmental functions referred to in paragraph 2 shall be discharged by a single government agency if the constitution of the Party concerned permits it.

#### *Article 24*

##### LIMITATION ON PRODUCTION OF OPIUM FOR INTERNATIONAL TRADE

1. a) If any Party intends to initiate the production of opium or to increase existing production, it shall take account of the prevailing world need for opium in accordance with the estimates thereof published by the Board so that the production of opium by such Party does not result in overproduction of opium in the world.

b) A Party shall not permit the production of opium or increase the existing production thereof if in its opinion such production or increased production in its territory may result in illicit traffic in opium.

2. a) Subject to paragraph 1, where a Party which as of 1 January 1961 was not producing opium for export desires to export opium which it produces, in amounts not exceeding five tons annually, it shall notify the Board, furnishing with such notification information regarding:

- i) The controls in force as required by this Convention respecting the opium to be produced and exported; and
- ii) The name of the country or countries to which it expects to export such opium;

and the Board may either approve such notification or may recommend to the Party that it not engage in the production of opium for export.

b) Where a Party other than a party referred to in paragraph 3 desires to produce opium, for export in amounts exceeding five tons annually, it shall notify the Council, furnishing with such notification relevant information including:

- i) The estimated amounts to be produced for export;
- ii) The controls existing or proposed respecting the opium to be produced;
- iii) The name of the country or countries to which it expects to export such opium;

and the Council shall either approve the notification or may recommend to the Party that it not engage in the production of opium for export.

3. Notwithstanding the provisions of subparagraphs *a)* and *b)* of paragraph 2, a Party that during ten years immediately prior to 1 January 1961 exported opium which such country produced may continue to export opium which it produces.

4. a) A Party shall not import opium from any country or territory except opium produced in the territory of:

- i) A Party referred to in paragraph 3;
- ii) A Party that has notified the Board as provided in subparagraph *a)* of paragraph 2; or
- iii) A Party that has received the approval of the Council as provided in subparagraph *b)* of paragraph 2.

b) Notwithstanding subparagraph *a)* of this paragraph, a Party may import opium produced by any country which produced and exported opium during the ten years prior to 1 January 1961 if such country has established and maintains a national control organ or agency for the purposes set out in article 23 and has in force an effective means of ensuring that the opium it produces is not diverted into the illicit traffic.

5. The provisions of this article do not prevent a Party:

- a) From producing opium sufficient for its own requirements; or
- b) From exporting opium seized in the illicit traffic, to another Party in accordance with the requirements of this Convention.

#### *Article 25*

##### CONTROL OF POPPY STRAW

1. A Party that permits the cultivation of the opium poppy for purposes other than the production of opium shall take all measures necessary to ensure:

- a) That opium is not produced from such opium poppies; and
- b) That the manufacture of drugs from poppy straw is adequately controlled.

2. The Parties shall apply to poppy straw the system of import certificates and export authorizations as provided in article 31, paragraphs 4 to 15.

3. The Parties shall furnish statistical information on the import and export of poppy straw as required for drugs under article 20, paragraphs 1 *d)* and 2 *b)*.

## *Article 26*

### THE COCA BUSH AND COCA LEAVES

1. If a Party permits the cultivation of the coca bush, it shall apply thereto and to coca leaves the system of controls as provided in article 23 respecting the control of the opium poppy, but as regards paragraph 2 *d*) of that article, the requirements imposed on the Agency therein referred to shall be only to take physical possession of the crops as soon as possible after the end of the harvest.
2. The Parties shall so far as possible enforce the uprooting of all coca bushes which grow wild. They shall destroy the coca bushes if illegally cultivated.

## *Article 27*

### ADDITIONAL PROVISIONS RELATING TO COCA LEAVES

1. The Parties may permit the use of coca leaves for the preparation of a flavouring agent, which shall not contain any alkaloids, and, to the extent necessary for such use, may permit the production, import, export, trade in and possession of such leaves.
2. The Parties shall furnish separately estimates (article 19) and statistical information (article 20) in respect of coca leaves for preparation of the flavouring agent, except to the extent that the same coca leaves are used for the extraction of alkaloids and the flavouring agent, and so explained in the estimates and statistical information.

## *Article 28*

### CONTROL OF CANNABIS

1. If a Party permits the cultivation of the cannabis plant for the production of cannabis or cannabis resin, it shall apply thereto the system of controls as provided in article 23 respecting the control of the opium poppy.
2. This Convention shall not apply to the cultivation of the cannabis plant exclusively for industrial purposes (fibre and seed) or horticultural purposes.
3. The Parties shall adopt such measures as may be necessary to prevent the misuse of, and illicit traffic in, the leaves of the cannabis plant.

## *Article 29*

### MANUFACTURE

1. The Parties shall require that the manufacture of drugs be under licence except where such manufacture is carried out by a State enterprise or State enterprises.
2. The Parties shall:
  - a) Control all persons and enterprises carrying on or engaged in the manufacture of drugs;
  - b) Control under licence the establishments and premises in which such manufacture may take place; and
  - c) Require that licensed manufacturers of drugs obtain periodical permits specifying the kinds and amounts of drugs which they shall be entitled to manufacture. A periodical permit, however, need not be required for preparations.
3. The Parties shall prevent the accumulation, in the possession of drug manufacturers, of quantities of drugs and poppy straw in excess of those required for the normal conduct of business, having regard to the prevailing market conditions.

### Article 30

#### TRADE AND DISTRIBUTION

1. a) The Parties shall require that the trade in and distribution of drugs be under licence except where such trade or distribution is carried out by a State enterprise or State enterprises:
  - b) The Parties shall:
    - i) Control all persons and enterprises carrying on or engaged in the trade in or distribution of drugs;
    - ii) Control under licence the establishments and premises in which such trade or distribution may take place. The requirement of licensing need not apply to preparations.
  - c) The provisions of subparagraphs *a)* and *b)* relating to licensing need not apply to persons duly authorized to perform and while performing therapeutic or scientific functions.
2. The Parties shall also:
  - a) Prevent the accumulation in the possession of traders, distributors, State enterprises or duly authorized persons referred to above, of quantities of drugs and poppy straw in excess of those required for the normal conduct of business, having regard to the prevailing market conditions; and
  - b)
    - i) Require medical prescriptions for the supply, or dispensation of drugs to individuals. This requirement need not apply to such drugs as individuals may lawfully obtain, use, dispense or administer in connexion with their duly authorized therapeutic functions; and
    - ii) If the Parties deem these measures necessary or desirable, require that prescriptions for drugs in Schedule I should be written on official forms to be issued in the form of counterfoil books by the competent governmental authorities or by authorized professional associations.
3. It is desirable that Parties require that written or printed offers of drugs, advertisements of every kind or descriptive literature relating to drugs and used for commercial purposes, interior wrappings of packages containing drugs, and labels under which drugs are offered for sale indicate the international non-proprietary name communicated by the World Health Organization.
4. If a Party considers such measure necessary or desirable, it shall require that the inner package containing a drug or wrapping thereof shall bear a clearly visible double red band. The exterior wrapping of the package in which such drug is contained shall not bear a double red band.
5. A Party shall require that the label under which a drug is offered for sale show the exact drug content by weight or percentage. This requirement of label information need not apply to a drug dispensed to an individual on medical prescription.
6. The provisions of paragraphs 2 and 5 need not apply to the retail trade in or retail distribution of drugs in Schedule II.

### Article 31

#### SPECIAL PROVISIONS RELATING TO INTERNATIONAL TRADE

1. The Parties shall not knowingly permit the export of drugs to any country or territory except:
  - a) In accordance with the laws and regulations of that country or territory; and
  - b) Within the limits of the total of the estimates for that country or territory, as defined in paragraph 2 of article 19, with the addition of the amounts intended to be re-exported.
2. The Parties shall exercise in free ports and zones the same supervision and control as in other parts of their territories, provided, however, that they may apply more drastic measures.

3. The Parties shall:
  - a) Control under licence the import and export of drugs except where such import or export is carried out by a State enterprise or enterprises;
  - b) Control all persons and enterprises carrying on or engaged in such import or export.
4.
  - a) Every Party permitting the import or export of drugs shall require a separate import or export authorization to be obtained for each such import or export whether it consists of one or more drugs.
  - b) Such authorization shall state the name of the drug, the international non-proprietary name if any, the quantity to be imported or exported, and the name and address of the importer and exporter, and shall specify the period within which the importation or exportation must be effected.
  - c) The export authorization shall also state the number and date of the import certificate (paragraph 5) and the authority by whom it has been issued.
  - d) The import authorization may allow an importation in more than one consignment.
5. Before issuing an export authorization the Parties shall require an import certificate, issued by the competent authorities of the importing country or territory and certifying that the importation of the drug or drugs referred to therein, is approved and such certificate shall be produced by the person or establishment applying for the export authorization. The Parties shall follow as closely as may be practicable the form of import certificate approved by the Commission.
6. A copy of the export authorization shall accompany each consignment, and the Government issuing the export authorization shall send a copy to the Government of the importing country or territory.
7.
  - a) The Government of the importing country or territory, when the importation has been effected or when the period fixed for the importation has expired, shall return the export authorization, with an endorsement to that effect, to the Government of the exporting country or territory.
  - b) The endorsement shall specify the amount actually imported;
  - c) If a lesser quantity than that specified in the export authorization is actually exported, the quantity actually exported shall be stated by the competent authorities on the export authorization and on any official copy thereof.
8. Exports of consignments to a post office box, or to a bank to the account of a Party other than the Party named in the export authorization, shall be prohibited.
9. Exports of consignments to a bonded warehouse are prohibited unless the Government of the importing country certifies on the import certificate, produced by the person or establishment applying for the export authorization, that it has approved the importation for the purpose of being placed in a bonded warehouse. In such case the export authorization shall specify that the consignment is exported for such purpose. Each withdrawal from the bonded warehouse shall require a permit from the authorities having jurisdiction over the warehouse and, in the case of a foreign destination shall be treated as if it were a new export within the meaning of this Convention.
10. Consignments of drugs entering or leaving the territory of a Party not accompanied by an export authorization shall be detained by the competent authorities.
11. A Party shall not permit any drugs consigned to another country to pass through its territory, whether or not the consignment is removed from the conveyance in which it is carried, unless a copy of the export authorization for such consignment is produced to the competent authorities of such Party.
12. The competent authorities of any country or territory through which a consignment of drugs is permitted to pass shall take all due measures to prevent the diversion of the consignment to a destination other than that named in the accompanying copy of the export authorization unless the Government of that country or territory through which the consignment is passing authorizes the diversion. The Government of the country or territory of transit shall treat any requested diversion as if the diversion were an export from the country or territory of transit to the country or territory of new destination. If the diversion is authorized, the provisions of paragraph 7 a) and b) shall also apply between the country or territory of transit and the country or territory which originally exported the consignment.
13. No consignment of drugs while in transit, or whilst being stored in a bonded warehouse, may be subjected to any process which would change the nature of the drugs in question. The packing may not be altered without the permission of the competent authorities.

14. The provisions of paragraphs 11 to 13 relating to the passage of drugs through the territory of a Party do not apply where the consignment in question is transported by aircraft which does not land in the country or territory of transit. If the aircraft lands in any such country or territory, those provisions shall be applied so far as circumstances require.

15. The provisions of this article are without prejudice to the provisions of any international agreements which limit the control which may be exercised by any of the Parties over drugs in transit.

16. Nothing in this article other than paragraphs 1 a) and 2 need apply in the case of preparations in Schedule III.

#### *Article 32*

##### SPECIAL PROVISIONS CONCERNING THE CARRIAGE OF DRUGS IN FIRST-AID KITS OF SHIPS OR AIRCRAFT ENGAGED IN INTERNATIONAL TRAFFIC

1. The international carriage by ships or aircraft of such limited amounts of drugs as may be needed during their journey or voyage for first-aid purposes or emergency cases shall not be considered to be import, export or passage through a country within the meaning of this Convention.

2. Appropriate safeguards shall be taken by the country of registry to prevent the improper use of the drugs referred to in paragraph 1 or their diversion for illicit purposes. The Commission, in consultation with the appropriate international organizations, shall recommend such safeguards.

3. Drugs carried by ships or aircraft in accordance with paragraph 1 shall be subject to the laws, regulations, permits and licences of the country of registry, without prejudice to any rights of the competent local authorities to carry out checks, inspections and other control measures on board ships or aircraft. The administration of such drugs in the case of emergency shall not be considered a violation of the requirements of article 30, paragraph 2 b).

#### *Article 33*

##### POSSESSION OF DRUGS

The Parties shall not permit the possession of drugs except under legal authority.

#### *Article 34*

##### MEASURES OF SUPERVISION AND INSPECTION

The Parties shall require:

a) That all persons who obtain licences as provided in accordance with this Convention, or who have managerial or supervisory positions in a State enterprise established in accordance with this Convention, shall have adequate qualifications for the effective and faithful execution of the provisions of such laws and regulations as are enacted in pursuance thereof; and

b) That governmental authorities, manufacturers, traders, scientists, scientific institutions and hospitals keep such records as will show the quantities of each drug manufactured and of each individual acquisition and disposal of drugs. Such records shall respectively be preserved for a period of not less than two years. Where counterfoil books (article 30, paragraph 2 b)) of official prescriptions are used, such books including the counterfoils shall also be kept for a period of not less than two years.

## Article 35

### ACTION AGAINST THE ILLICIT TRAFFIC

Having due regard to their constitutional, legal and administrative systems, the Parties shall:

- a) Make arrangements at the national level for co-ordination of preventive and repressive action against the illicit traffic; to this end they may usefully designate an appropriate agency responsible for such co-ordination;
- b) Assist each other in the campaign against the illicit traffic in narcotic drugs;
- c) Co-operate closely with each other and with the competent international organizations of which they are members with a view to maintaining a co-ordinated campaign against the illicit traffic;
- d) Ensure that international co-operation between the appropriate agencies be conducted in an expeditious manner; and
- e) Ensure that where legal papers are transmitted internationally for the purposes of a prosecution, the transmittal be effected in an expeditious manner to the bodies designated by the Parties; this requirement shall be without prejudice to the right of a Party to require that legal papers be sent to it through the diplomatic channel;
- f) Furnish, if they deem it appropriate, to the Board and the Commission through the Secretary-General, in addition to information required by article 18, information relating to illicit drug activity within their borders, including information on illicit cultivation, production, manufacture and use of, and on illicit trafficking in, drugs; and
- g) Furnish the information referred to in the preceding paragraph as far as possible in such manner, and by such dates as the Board may request; if requested by a Party, the Board may offer its advice to it in furnishing the information and in endeavouring to reduce the illicit drug activity within the borders of that Party.

## Article 36

### PENAL PROVISIONS

1.
  - a) Subject to its constitutional limitations, each Party shall adopt such measures as will ensure that cultivation, production, manufacture, extraction, preparation, possession, offering, offering for sale, distribution, purchase, sale, delivery on any terms whatsoever, brokerage, dispatch, dispatch in transit, transport, importation and exportation of drugs contrary to the provisions of this Convention, and any other action which in the opinion of such Party may be contrary to the provisions of this Convention, shall be punishable offences when committed intentionally, and that serious offences shall be liable to adequate punishment particularly by imprisonment or other penalties of deprivation of liberty.
  - b) Notwithstanding the preceding subparagraph, when abusers of drugs have committed such offences, the Parties may provide, either as an alternative to conviction or punishment or in addition to conviction or punishment, that such abusers shall undergo measures of treatment, education, after-care, rehabilitation and social reintegration in conformity with paragraph 1 of article 38.
2. Subject to the constitutional limitations of a Party, its legal system and domestic law,
  - a)
    - i) Each of the offences enumerated in paragraph 1, if committed in different countries, shall be considered as a distinct offence;
    - ii) Intentional participation in, conspiracy to commit and attempts to commit, any of such offences, and preparatory acts and financial operations in connexion with the offences referred to in this article, shall be punishable offences as provided in paragraph 1;
    - iii) Foreign convictions for such offences shall be taken into account for the purpose of establishing recidivism; and
    - iv) Serious offences heretofore referred to committed either by nationals or by foreigners shall be prosecuted by the Party in whose territory the offence was committed, or by the Party in whose territory the offender is found if extradition is not acceptable in conformity with the law of the Party to which application is made, and if such offender has not already been prosecuted and judgement given.

- b)
  - i) Each of the offences enumerated in paragraphs 1 and 2 a) ii) of this article shall be deemed to be included as an extraditable offence in any extradition treaty existing between Parties. Parties undertake to include such offences as extraditable offences in every extradition treaty to be concluded between them.
  - ii) If a Party which makes extradition conditional on the existence of a treaty receives a request for extradition from another Party with which it has no extradition treaty, it may at its option consider this Convention as the legal basis for extradition in respect of the offences enumerated in paragraphs 1 and 2 a) ii) of this article. Extradition shall be subject to the other conditions provided by the law of the requested Party.
  - iii) Parties which do not make extradition conditional on the existence of a treaty shall recognize the offences enumerated in paragraphs 1 and 2 a) ii) of this article as extraditable offences between themselves, subject to the conditions provided by the law of the requested Party.
  - iv) Extradition shall be granted in conformity with the law of the Party to which application is made, and, notwithstanding subparagraphs b) i), ii) and iii) of this paragraph, the Party, shall have the right to refuse to grant the extradition in cases where the competent authorities consider that the offence is not sufficiently serious.

3. The provisions of this article shall be subject to the provisions of the criminal law of the Party concerned on questions of jurisdiction.

4. Nothing contained in this article shall affect the principle that the offences to which it refers shall be defined, prosecuted and punished in conformity with the domestic law of a Party.

#### *Article 37*

##### SEIZURE AND CONFISCATION

Any drugs, substances and equipment used in or intended for the commission of any of the offences, referred to in article 36, shall be liable to seizure and confiscation.

#### *Article 38*

##### MEASURES AGAINST THE ABUSE OF DRUGS

1. The Parties shall give special attention to and take all practicable measures for the prevention of abuse of drugs and for the early identification, treatment, education, after-care, rehabilitation and social reintegration of the persons involved and shall co-ordinate their efforts to these ends.

2. The Parties shall as far as possible promote the training of personnel in the treatment, after-care, rehabilitation and social reintegration of abusers of drugs.

3. The Parties shall take all practicable measures to assist persons whose work so requires to gain an understanding of the problems of abuse of drugs and of its prevention, and shall also promote such understanding among the general public if there is a risk that abuse of drugs will become widespread.

#### *Article 38 bis*

##### AGREEMENTS ON REGIONAL CENTRES

If a Party considers it desirable as part of its action against the illicit traffic in drugs, having due regard to its constitutional, legal and administrative systems, and, if it so desires, with the technical advice of the Board or the specialized agencies, it shall promote the establishment, in consultation, with other interested Parties in the region, of agreements which contemplate the development of regional centres for scientific research and education to combat the problems resulting from the illicit use of and traffic in drugs.

### Article 39

#### APPLICATION OF STRICTER NATIONAL CONTROL MEASURES THAN THOSE REQUIRED BY THIS CONVENTION

Notwithstanding anything contained in this Convention, a Party shall not be, or be deemed to be, precluded from adopting measures of control more strict or severe than those provided by this Convention and in particular from requiring that preparations in Schedule III or drugs in Schedule II be subject to all or such of the measures of control applicable to drugs in Schedule I as in its opinion is necessary or desirable for the protection of the public health or welfare.

### Article 40<sup>2</sup>

#### LANGUAGES OF THE CONVENTION AND PROCEDURE FOR SIGNATURE, RATIFICATION AND ACCESSION

1. This Convention, of which the Chinese, English, French, Russian and Spanish texts are equally authentic, shall be open for signature until 1 August 1961 on behalf of any Member of the United Nations, of any non-member State which is a Party to the Statute of the International Court of Justice or member of a specialized agency of the United Nations, and also of any other State which the Council may invite to become a Party.
2. This Convention is subject to ratification. The instruments of ratification shall be deposited with the Secretary-General.
3. This Convention shall be open after 1 August 1961 for accession by the States referred to in paragraph 1. The instruments of accession shall be deposited with the Secretary-General.

### Article 41<sup>3</sup>

#### ENTRY INTO FORCE

1. This Convention shall come into force on the thirtieth day following the date on which the fortieth instrument of ratification or accession is deposited in accordance with article 40.
2. In respect of any other State depositing an instrument of ratification or accession after the date of deposit of the said fortieth instrument, this Convention shall come into force on the thirtieth day after the deposit by that State of its instrument of ratification or accession.

### Article 42

#### TERRITORIAL APPLICATION

This Convention shall apply to all non-metropolitan territories for the international relations of which any Party is responsible, except where the previous consent of such a territory is required by the Constitution of the Party or of the territory concerned, or required by custom. In such case the Party shall endeavour to secure the needed consent of the territory within the shortest period possible, and when that consent is obtained the Party shall notify the Secretary-General. This Convention shall apply to the territory or territories named in such notification from the date of its receipt by the Secretary-

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<sup>2</sup> *Note by the Secretariat:* The following two paragraphs are taken from the Introductory Note to the text of the Single Convention on Narcotic Drugs, 1961, as amended by the Protocol Amending the Single Convention on Narcotic Drugs, 1961, as established by the Secretary-General on 8 August 1975, in accordance with article 22 of the Protocol of 25 March 1972:

"The Protocol Amending the Single Convention on Narcotic Drugs, 1961 (hereinafter called the 1972 Protocol) entered into force on 8 August 1975, in accordance with paragraph 1 of its article 18. In respect to any States which is already a Party to the Single Convention and deposits with the Secretary-General, after the date of deposit of the fortieth instrument of ratification or accession, an instrument of ratification or accession to the 1972 Protocol, the latter will come into force on the thirtieth day after the deposit by that State of its instrument (see articles 17 and 18 of the 1972 Protocol).

"Any State which becomes a Party to the Single Convention after the entry into force of the 1972 Protocol shall, failing an expression of a different intention by that State: (a) be considered as a Party to the Single Convention as amended; and (b) be considered as a Party to the unamended Single Convention in relation to any Party to that Convention not bound by the 1972 Protocol (see article 19 of the 1972 Protocol)."

<sup>3</sup> See footnote 3 above.

General. In those cases where the previous consent of the non-metropolitan territory is not required, the Party concerned shall, at the time of signature, ratification or accession, declare the non-metropolitan territory or territories to which this Convention applies.

#### *Article 43*

##### TERRITORIES FOR THE PURPOSES OF ARTICLES 19, 20, 21 AND 31

1. Any Party may notify the Secretary-General that, for the purposes of articles 19, 20, 21 and 31, one of its territories is divided into two or more territories, or that two or more of its territories are consolidated into a single territory.
2. Two or more Parties may notify the Secretary-General that, as the result of the establishment of a customs union between them, those Parties constitute a single territory for the purposes of articles 19, 20, 21 and 31.
3. Any notification under paragraph 1 or 2 above shall take effect on 1 January of the year following the year in which the notification was made.

#### *Article 44*

##### TERMINATION OF PREVIOUS INTERNATIONAL TREATIES

1. The provisions of this Convention, upon its coming into force, shall, as between Parties hereto, terminate and replace the provisions of the following treaties:
  - a) International Opium Convention, signed at The Hague on 23 January 1912;
  - b) Agreement concerning the Manufacture of, Internal Trade in and Use of Prepared Opium, signed at Geneva on 11 February 1925;
  - c) International Opium Convention, signed at Geneva on 19 February 1925;
  - d) Convention for Limiting the Manufacture and Regulating the Distribution of Narcotic Drugs, signed at Geneva on 13 July 1931;
  - e) Agreement for the Control of Opium Smoking in the Far East, signed at Bangkok on 27 November 1931;
  - f) Protocol signed at Lake Success on 11 December 1946, amending the Agreements, Conventions and Protocols on Narcotic Drugs concluded at The Hague on 23 January 1912, at Geneva on 11 February 1925 and 19 February 1925 and 13 July 1931, at Bangkok on 27 November 1931 and at Geneva on 26 June 1936, except as it affects the last-named Convention;
  - g) The Conventions and Agreements referred to in subparagraphs a) to e) as amended by the Protocol of 1946 referred to in subparagraph f);
  - h) Protocol signed at Paris on 19 November 1948 Bringing under International Control Drugs outside the Scope of the Convention of 13 July 1931 for Limiting the Manufacture and Regulating the Distribution of Narcotic Drugs, as Amended by the Protocol signed at Lake Success on 11 December 1946;
  - i) Protocol for Limiting and Regulating the Cultivation of the Poppy Plant, the Production of, International and Wholesale Trade in, and Use of Opium, signed at New York on 23 June 1953, should that Protocol have come into force.
2. Upon the coming into force of this Convention, article 9 of the Convention for the Suppression of the Illicit Traffic in Dangerous Drugs, signed at Geneva on 26 June 1936, shall, between the Parties thereto which are also Parties to this Convention, be terminated, and shall be replaced by paragraph 2 *b)* of article 36 of this Convention; provided that such a Party may by notification to the Secretary-General continue in force the said article 9.

*Article 45<sup>4</sup>*

TRANSITIONAL PROVISIONS

1. The functions of the Board provided for in article 9 shall, as from the date of the coming into force of this Convention (article 41, paragraph 1), be provisionally carried out by the Permanent Central Board constituted under chapter VI of the Convention referred to in article 44 c) as amended, and by the Supervisory Body constituted under chapter II of the Convention referred to in article 44 d) as amended, as such functions may respectively require.

2. The Council shall fix the date on which the new Board referred to in article 9 shall enter upon its duties. As from that date that Board shall, with respect to the States Parties to the treaties enumerated in article 44 which are not Parties to this Convention, undertake the functions of the Permanent Central Board and of the Supervisory Body referred to in paragraph 1.

*Article 46*

DENUNCIATION

1. After the expiry of two years from the date of the coming into force of this Convention (article 41, paragraph 1) any Party may, on its own behalf or on behalf of a territory for which it has international responsibility, and which has withdrawn its consent given in accordance with article 42, denounce this Convention by an instrument in writing deposited with the Secretary-General.

2. The denunciation, if received by the Secretary-General on or before the first day of July in any year, shall take effect on the first day of January in the succeeding year, and, if received after the first day of July, shall take effect as if it had been received on or before the first day of July in the succeeding year.

3. This Convention shall be terminated if, as a result of denunciations made in accordance with paragraph 1, the conditions for its coming into force as laid down in article 41, paragraph 1, cease to exist.

*Article 47*

AMENDMENTS

1. Any Party may propose an amendment to this Convention. The text of any such amendment and the reasons therefor shall be communicated to the Secretary-General who shall communicate them to the Parties and to the Council. The Council may decide either:

a) That a conference shall be called in accordance with Article 62, paragraph 4, of the Charter of the United Nations to consider the proposed amendment; or

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<sup>4</sup> The following is the text of article 20 of the 1972 Protocol:

*"Article 20  
"Transitional provisions*

"1. The functions of the International Narcotics Control Board provided for in the amendments contained in this Protocol shall, as from the date of coming into force of this Protocol pursuant to paragraph 1 of article 18 above, be performed by the Board as constituted by the unamended Single Convention.

"2. The Economic and Social Council shall fix the date on which the Board constituted under the amendments contained in this Protocol shall enter upon its duties. As from that date the Board as so constituted shall, with respect to those Parties to the unamended Single Convention and to those Parties to the treaties enumerated in article 44 thereof which are not Parties to this Protocol, undertake the functions of the Board as constituted under the unamended Single Convention.

"3. Of the members elected at the first election after the increase in the membership of the Board from eleven to thirteen members the terms of six members shall expire at the end of three years and the terms of the other seven members shall expire at the end of five years.

"4. The members of the Board whose terms are to expire at the end of the above-mentioned initial period of three years shall be chosen by lot to be drawn by the Secretary-General immediately after the first election has been completed."

b) That the Parties shall be asked whether they accept the proposed amendment and also asked to submit to the Council any comments on the proposal.

2. If a proposed amendment circulated under paragraph 1 *b)* of this article has not been rejected by any Party within eighteen months after it has been circulated, it shall thereupon enter into force. If, however, a proposed amendment is rejected by any Party, the Council may decide, in the light of comments received from Parties, whether a conference shall be called to consider such amendment.

#### *Article 48*

##### DISPUTES

1. If there should arise between two or more Parties a dispute relating to the interpretation or application of this Convention, the said Parties shall consult together with a view to the settlement of the dispute by negotiation, investigation, mediation, conciliation, arbitration, recourse to regional bodies, judicial process or other peaceful means of their own choice.

2. Any such dispute which cannot be settled in the manner prescribed shall be referred to the International Court of Justice for decision.

#### *Article 49*

##### TRANSITIONAL RESERVATIONS

1. A Party may at the time of signature, ratification or accession reserve the right to permit temporarily in any one of its territories:

- a) The quasi-medical use of opium;
- b) Opium smoking;
- c) Coca leaf chewing;
- d) The use of cannabis, cannabis resin, extracts and tinctures of cannabis for non-medical purposes; and
- e) The production and manufacture of and trade in the drugs referred to under a) to d) for the purposes mentioned therein.

2. The reservations under paragraph 1 shall be subject to the following restrictions:

- a) The activities mentioned in paragraph 1 may be authorized only to the extent that they were traditional in the territories in respect of which the reservation is made, and were there permitted on 1 January 1961.
- b) No export of the drugs referred to in paragraph 1 for the purposes mentioned therein may be permitted to a non-party or to a territory to which this Convention does not apply under article 42.
- c) Only such persons may be permitted to smoke opium as were registered by the competent authorities to this effect on 1 January 1964.
- d) The quasi-medical use of opium must be abolished within 15 years from the coming into force of this Convention as provided in paragraph 1 of article 41.
- e) Coca leaf chewing must be abolished within twenty-five years from the coming into force of this Convention as provided in paragraph 1 of article 41.
- f) The use of cannabis for other than medical and scientific purposes must be discontinued as soon as possible but in any case within twenty-five years from the coming into force of this Convention as provided in paragraph 1 of article 41.
- g) The production and manufacture of and trade in the drugs referred to in paragraph 1 for any of the uses mentioned therein must be reduced and finally abolished simultaneously with the reduction and abolition of such uses.

3. A Party making a reservation under paragraph 1 shall:

- a) Include in the annual report to be furnished to the Secretary-General, in accordance with article 18, paragraph 1 a), an account of the progress made in the preceding year towards the abolition of the use, production, manufacture or trade referred to under paragraph 1; and
- b) Furnish to the Board separate estimates (article 19) and statistical returns (article 20) in respect of the reserved activities in the manner and form prescribed by the Board.

4. a) If a Party which makes a reservation under paragraph 1 fails to furnish:
- i) The report referred to in paragraph 3 a) within six months after the end of the year to which the information relates;
  - ii) The estimates referred to in paragraph 3 b) within three months after the date fixed for that purpose by the Board in accordance with article 12, paragraph 1;
  - iii) The statistics referred to in paragraph 3 b) within three months after the date on which they are due in accordance with article 20, paragraph 2,

the Board or the Secretary-General, as the case may be, shall send to the Party concerned a notification of the delay, and shall request such information within a period of three months after the receipt of that notification.

b) If the Party fails to comply within this period with the request of the Board or the Secretary-General, the reservation in question made under paragraph 1 shall cease to be effective.

5. A State which has made reservations may at any time by notification in writing withdraw all or part of its reservations.

#### *Article 50<sup>5</sup>*

##### OTHER RESERVATIONS

1. No reservations other than those made in accordance with article 49 or with the following paragraphs shall be permitted.

2. Any State may at the time of signature, ratification or accession make reservations in respect of the following provisions of this Convention:

Article 12, paragraphs 2 and 3; article 13, paragraph 2; article 14, paragraphs 1 and 2; article 31, paragraph 1 b) and article 48.

3. A State which desires to become a Party but wishes to be authorized to make reservations other than those made in accordance with paragraph 2 of this article or with article 49 may inform the Secretary-General of such intention. Unless by the end of twelve months after the date of the Secretary-General's communication of the reservation concerned, this reservation has been objected to by one third of the States that have ratified or acceded to this Convention before the end of that period, it shall be deemed to be permitted, it being understood however that States which have objected to the reservation need not assume towards the reserving State any legal obligation under this Convention which is affected by the reservation.

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<sup>5</sup> The following is the text of article 21 of the 1972 Protocol:

##### *"Article 21*

##### *"Reservations*

"1. Any State may, at the time of signature or ratification of or accession to this Protocol, make a reservation in respect of any amendment contained herein other than the amendments to article 2, paragraphs 6 and 7 (article 1 of this Protocol), article 9, paragraphs 1, 4 and 5 (article 2 of this Protocol), article 10, paragraphs 1 and 4 (article 3 of this Protocol), article 11 (article 4 of this Protocol), article 14 *bis* (article 7 of this Protocol), article 16 (article 8 of this Protocol), article 22 (article 12 of this Protocol), article 35 (article 13 of this Protocol), article 36, paragraph 1 b) (article 14 of this Protocol), article 38 (article 15 of this Protocol) and article 38 *bis* (article 16 of this Protocol).

"2. A State which has made reservations may at any time by notification in writing withdraw all or part of its reservations."

\* *Note by the Secretariat:* The following explanatory note is reproduced from the certified true copy, established by the Secretary-General on 8 August 1975, of the Single Convention on Narcotic Drugs, 1961, as amended by the 1972 Protocol Amending the Single Convention on Narcotic Drugs, 1961:

"It will be noted that States that wish to make a reservation to one or more of the amendments in accordance with the above article 21 of the 1972 Protocol should first become Parties to the Single Convention in its unamended form (if they have not already done so), and then should ratify or accede to the 1972 Protocol subject to the desired reservation."

4. A State which has made reservations may at any time by notification in writing withdraw all or part of its reservations.

*Article 51*

NOTIFICATIONS

The Secretary-General shall notify to all the States referred to in paragraph 1 of article 40:

- a) Signatures, ratifications and accessions in accordance with article 40;
- b) The date upon which this Convention enters into force in accordance with article 41;
- c) Denunciations in accordance with article 46; and
- d) Declarations and notifications under articles 42, 43, 47, 49 and 50.

## SCHEDULES

Revised Schedules including all amendments made by the Commission on Narcotic Drugs in  
Force as of 5 March 1990

### List of Drugs Included in Schedule I

<b>Acetorphine</b>	3-O-acetyltetrahydro-7- <i>alpha</i> -(1-hydroxy-1-methylbutyl)-6,14- <i>endo</i> etheno-oripavine
<b>Acetyl-<i>alpha</i>-methylfentanyl</b>	<i>N</i> -[1-( <i>alpha</i> -methylphenethyl)-4-piperidyl]acetanilide
<b>Acetylmethadol</b>	3-acetoxy-6-dimethylamino-4,4-diphenylheptane
<b>Alfentanil</b>	<i>N</i> -[1-[2-(4-ethyl-4,5-dihydro-5-oxo-1 <i>H</i> -tetrazol-1-yl)ethyl]-4-(methoxymethyl)-4-piperidinyl]- <i>N</i> -phenylpropanamide
<b>Allylprodine</b>	3-allyl-1-methyl-4-phenyl-4-propionoxypiperidine
<b>Alphacetylmethadol</b>	<i>alpha</i> -3-acetoxy-6-dimethylamino-4,4-diphenylheptane
<b>Alphameprodine</b>	<i>alpha</i> -3-ethyl-1-methyl-4-phenyl-4-propionoxypiperidine
<b>Alphamethadol</b>	<i>alpha</i> -6-dimethylamino-4,4-diphenyl-3-heptanol
<b><i>Alpha</i>-methylfentanyl</b>	<i>N</i> -[1( <i>alpha</i> -methylphenethyl)-4-piperidyl]propionanilide
<b><i>Alpha</i>-methylthiofentanyl</b>	<i>N</i> -[1-[1-methyl-2-(2-thienyl)ethyl]-4-piperidyl]propionanilide
<b>Alphaprodine</b>	<i>alpha</i> -1,3-dimethyl-4-phenyl-4-propionoxypiperidine
<b>Anileridine</b>	1- <i>para</i> -aminophenethyl-4-phenylpiperidine-4-carboxylic acid ethyl ester
<b>Benzethidine</b>	1-(2-benzyloxyethyl)-4-phenylpiperidine-4-carboxylic acid ethyl ester
<b>Benzylmorphine</b>	3-O-benzylmorphine
<b>Betacetylmethadol</b>	<i>beta</i> -3-acetoxy-6-dimethylamino-4,4-diphenylheptane
<b><i>Beta</i>-hydroxyfentanyl</b>	<i>N</i> -[1-( <i>beta</i> -hydroxyphenethyl)-4-piperidyl]propionanilide
<b><i>Beta</i>-hydroxy-3-methylfentanyl</b>	<i>N</i> -[1-( <i>beta</i> -hydroxyphenethyl)-3-methyl-4-piperidyl]propionanilide
<b>Betameprodine</b>	<i>beta</i> -3-ethyl-1-methyl-4-phenyl-4-propionoxypiperidine
<b>Betamethadol</b>	<i>beta</i> -6-dimethylamino-4,4-diphenyl-3-heptanol
<b>Betaprodine</b>	<i>beta</i> -1,3-dimethyl-4-phenyl-4-propionoxypiperidine
<b>Bezitramide</b>	1-(3-cyano-3,3-diphenylpropyl)-4-(2-oxo-3-propionyl-1-benzimidazolyl)-piperidine
<b>Cannabis and Cannabis resin</b>	and EXTRACTS and TICTURES OF CANNABIS
<b>Clonitazene</b>	2- <i>para</i> -chlorbenzyl-1-diethylaminoethyl-5-nitrobenzimidazole
<b>Coca leaf</b>	
<b>Cocaine</b>	methyl ester of benzoylecgonine
<b>Codoxime</b>	dihydrocodeinone-6-carboxymethyloxime
<b>Concentrate of poppy straw</b>	the material arising when poppy straw has entered into a process for the concentration of its alkaloids when such material is made available in trade
<b>Desomorphine</b>	dihydrodeoxymorphine
<b>Dextromoramide</b>	(+)-4-[2-methyl-4-oxo-3,3-diphenyl-4-(1-pyrrolidinyl)butyl]-morpholine
<b>Diampromide</b>	<i>N</i> -[2-(methylphenethylamino)-propyl]propionanilide
<b>Diethylthiambutene</b>	3-diethylamino-1,1-di-(2'-thienyl)-1-butene
<b>Difenoxin</b>	1-(3-cyano-3,3-diphenylpropyl)-4-phenylisonipectic acid
<b>Dihydromorphine</b>	
<b>Dimenoxadol</b>	2-dimethylaminoethyl-1-ethoxy-1,1-diphenylacetate

<b>Dimepheptanol</b>	6-dimethylamino-4,4-diphenyl-3-heptanol
<b>Dimethylthiambutene</b>	3-dimethylamino-1,1-di-(2'-thienyl)-1-butene
<b>Dioxaphetyl butyrate</b>	ethyl-4-morpholino-2,2-diphenylbutyrate
<b>Diphenoxylate</b>	1-(3-cyano-3,3-diphenylpropyl)-4-phenylpiperidine-4-carboxylic acid ethyl ester
<b>Dipipanone</b>	4,4-diphenyl-6-piperidine-3-heptanone
<b>Drotebanol</b>	3,4-dimethoxy-17-methylmorphinan-6- <i>beta</i> ,14-diol
<b>Ecgonine</b>	its esters and derivatives which are convertible to ecgonine and cocaine
<b>Ethylmethylthiambutene</b>	3-ethylmethylamino-1,1-di-(2'-thienyl)-1-butene
<b>Etonitazene</b>	1-diethylaminoethyl-2- <i>para</i> -ethoxybenzyl-5-nitrobenzimidazole
<b>Etorphine</b>	tetrahydro-7- <i>alpha</i> -(1-hydroxy-1-methylbutyl)-6,14- <i>endo</i> etheno-oripavine
<b>Etoperidone</b>	1-[2-(2-hydroxyethoxy)-ethyl]-4-phenylpiperidine-4-carboxylic acid ethyl ester
<b>Fentanyl</b>	1-phenethyl-4- <i>N</i> -propionylanilinopiperidine
<b>Furethidine</b>	1-(2-tetrahydrofurfuryloxyethyl)-4-phenylpiperidine-4-carboxylic acid ethyl ester
<b>Heroin</b>	diacetylmorphine
<b>Hydrocodone</b>	dihydrocodeinone
<b>Hydromorphanol</b>	14-hydroxydihydromorphine
<b>Hydromorphone</b>	dihydromorphinone
<b>Hydroxypethidine</b>	4- <i>meta</i> -hydroxyphenyl-1-methylpiperidine-4-carboxylic acid ethyl ester
<b>Isomethadone</b>	6-dimethylamino-5-methyl-4,4-diphenyl-3-hexanone
<b>Ketobemidone</b>	4- <i>meta</i> -hydroxyphenyl-1-methyl-4-propionylpiperidine
<b>Levomethorphan</b> *	(-)-3-methoxy- <i>N</i> -methylmorphinan
<b>Levomoramide</b>	(-)-4-[2-methyl-4-oxo-3,3-diphenyl-4-(1-pyrrolidinyl)-butyl]morpholine
<b>Levophenacymorphan</b>	(1)-3-hydroxy- <i>N</i> -phenacymorphinan
<b>Levorphanol</b> *	(-)-3-hydroxy- <i>N</i> -methylmorphinan
<b>Metazocine</b>	2'-hydroxy-2,5,9-trimethyl-6,7-benzomorphan
<b>Methadone</b>	6-dimethylamino-4,4-diphenyl-3-heptanone
<b>Methadone intermediate</b>	4-cyano-2-dimethylamino-4,4-diphenylbutane
<b>Methyldesorphine</b>	6-methyl- <i>delta</i> -6-deoxymorphine
<b>Methyldihydromorphine</b>	6-methyldihydromorphine
<b>3-methylfentanyl</b>	<i>N</i> -(3-methyl-1-phenethyl-4-piperidyl)propionanilide
<b>3-methylthiofentanyl</b>	<i>N</i> -[3-methyl-1-[2-(2-thienyl)ethyl]-4-piperidyl]propionanilide
<b>Metopon</b>	5-methyldihydromorphinone
<b>Moramide intermediate</b>	2-methyl-3-morpholino-1,1-diphenylpropane carboxylic acid
<b>Morpheridine</b>	1-(2-morpholinoethyl)-4-phenylpiperidine-4-carboxylic acid ethyl ester
<b>Morphine</b>	
<b>Morphine methobromide</b>	and other pentavalent nitrogen morphine derivatives, including in particular the morphine- <i>N</i> -oxide derivatives, one of which is codeine- <i>N</i> -oxide
<b>Morphine-<i>N</i>-oxide</b>	
<b>MPPP</b>	1-methyl-4-phenyl-4-piperidinol propionate (ester)
<b>Myrophine</b>	myristylbenzylmorphine
<b>Nicomorphine</b>	3,6-dinicotinylmorphine
<b>Noracymethadol</b>	(±)- <i>alpha</i> -3-acetoxy-6-methylamino-4,4-diphenylheptane
<b>Norlevorphanol</b>	(-)-3-hydroxymorphinan

<b>Normethadone</b>	6-dimethylamino-4,4-diphenyl-3-hexanone
<b>Normorphine</b>	demethylmorphine or <i>N</i> -demethylated morphine
<b>Norpipanone</b>	4,4-diphenyl-6-piperidino-3-hexanone
<b>Opium</b>	
<b>Oxycodone</b>	14-hydroxydihydrocodeinone
<b>Oxymorphone</b>	14-hydroxydihydromorphinone
<b>Para-fluorofentanyl</b>	4'-fluoro- <i>N</i> -(1-phenethyl-4-piperidyl)propionanilide
<b>PEPAP</b>	1-phenethyl-4-phenyl-4-piperidinol acetate (ester)
<b>Pethidine</b>	1-methyl-4-phenylpiperidine-4-carboxylic acid ethyl ester
<b>Pethidine intermediate A</b>	4-cyano-1-methyl-4-phenylpiperidine
<b>Pethidine intermediate B</b>	4-phenylpiperidine-4-carboxylic acid ethyl ester
<b>Pethidine intermediate C</b>	1-methyl-4-phenylpiperidine-4-carboxylic acid
<b>Phenadoxone</b>	6-morpholino-4,4-diphenyl-3-heptanone
<b>Phenampramide</b>	<i>N</i> -(1-methyl-2-piperidinoethyl)-propionanilide
<b>Phenazocine</b>	2'-hydroxy-5,9-dimethyl-2-phenethyl-6,7-benzomorphan
<b>Phenomorphin</b>	3-hydroxy- <i>N</i> -phenethylmorphinan
<b>Phenoperidine</b>	1-(3-hydroxy-3-phenylpropyl)-4-phenylpiperidine-4-carboxylic acid ethyl ester
<b>Piminodine</b>	4-phenyl-1-(3-phenylaminopropyl)-piperidine-4-carboxylic acid ethyl ester
<b>Piritramide</b>	1-(3-cyano-3,3-diphenylpropyl)-4-(1-piperidino)-piperidine-4-carboxylic acid amide
<b>Proheptazine</b>	1,3-dimethyl-4-phenyl-4-propionoxyazacycloheptane
<b>Properidine</b>	1-methyl-4-phenylpiperidine-4-carboxylic acid isopropyl ester
<b>Racemethorphan</b>	(±)-3-methoxy- <i>N</i> -methylmorphinan
<b>Racemoramide</b>	(±)-4-[2-methyl-4-oxo-3,3-diphenyl-4-(1-pyrrolidinyl)-butyl]-morpholine
<b>Racemorphan</b>	(±)-3-hydroxy- <i>N</i> -methylmorphinan
<b>Sufentanil</b>	<i>N</i> -[4-(methoxymethyl)-1-[2-(2-thienyl)-ethyl]-4-piperidyl]propionanilide
<b>Thebacon</b>	acetyldihydrocodeinone
<b>Thebaine</b>	
<b>Thiofentanyl</b>	<i>N</i> -[1-[2-(2-thienyl)ethyl]-4-piperidyl]propionanilide
<b>Tilidine</b>	(±)-ethyl- <i>trans</i> -2-(dimethylamino)-1-phenyl-3-cyclohexene-1-carboxylate
<b>Trimeperidine</b>	1,2,5-trimethyl-4-phenyl-4-propionoxypiperidine; and

The isomers, unless specifically excepted, of the drugs in this Schedule whenever the existence of such isomers is possible within the specific chemical designation;

The esters and ethers, unless appearing in another Schedule, of the drugs in this Schedule whenever the existence of such esters or ethers is possible;

The salts of the drugs listed in this Schedule, including the salts of esters, ethers and isomers as provided above whenever the existence of such salts is possible.

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\* Dextromethorphan ((+)-3-methoxy-*N*-methylmorphinan) and dextrorphan ((+)-3-hydroxy-*N*-methylmorphinan) are specifically excluded from this Schedule.

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### **List of Drugs Included in Schedule II**

<b>Acetyldihydrocodeine</b>	
<b>Codeine</b>	3-O-methylmorphine
<b>Dextropropoxyphene</b>	<i>alpha</i> -(+)-4-dimethylamino-1,2-diphenyl-3-methyl-2-butanol propionate
<b>Dihydrocodeine</b>	
<b>Ethylmorphine</b>	3-O-ethylmorphine
<b>Nicocodeine</b>	6-nicotinylcodeine
<b>Nicodicodine</b>	6-nicotinyldihydrocodeine
<b>Norcodeine</b>	<i>N</i> -demethylcodeine
<b>Pholcodine</b>	morpholinylethylmorphine
<b>Propiram</b>	<i>N</i> -(1-methyl-2-piperidinoethyl)- <i>N</i> -2-pyridylpropionamide; and

The isomers, unless specifically excepted, of the drugs in this Schedule whenever the existence of such isomers is possible within the specific chemical designation;

The salts of the drugs listed in this Schedule, including the salts of the isomers as provided above whenever the existence of such salts is possible.

### **List of Preparations Included in Schedule III**

1. Preparations of Acetyldihydrocodeine,

Codeine,  
Dihydrocodeine,  
Ethylmorphine,  
Nicodicodine,  
Norcodeine, and  
Pholcodine

when compounded with one or more other ingredients and containing not more than 100 milligrams of the drug per dosage unit and with a concentration of not more than 2.5 per cent in undivided preparations.

2. Preparations of Propiram containing not more than 100 milligrams of propiram per dosage unit and compounded with at least the same amount of methylcellulose.

3. Preparations of Dextropropoxyphene for oral use containing not more than 135 milligrams of dextropropoxyphene base per dosage unit or with a concentration of not more than 2.5 per cent in undivided preparations, provided that such preparations do not contain any substance controlled under the 1971 Convention on Psychotropic Substances.

4. Preparations of Cocaine containing not more than 0.1 per cent of cocaine calculated as cocaine base and preparations of opium or morphine containing not more than 0.2 per cent of morphine calculated as anhydrous morphine base and compounded with one or more other ingredients and in such a way that the drug cannot be recovered by readily applicable means or in a yield which would constitute a risk to public health.

5. Preparations of Difenoxylin containing, per dosage unit, not more than 0.5 milligram of difenoxylin and a quantity of atropine sulfate equivalent to at least 5 per cent of the dose of difenoxylin.

6. Preparations of Diphenoxylate containing, per dosage unit, not more than 2.5 milligrams of diphenoxylate calculated as base and a quantity of atropine sulfate equivalent to at least 1 per cent of the dose of diphenoxylate.

7. Preparations of *Pulvis ipecacuanhae et opii compositus*

- 10 per cent opium in powder
- 10 per cent ipecacuanha root, in powder
- well mixed with
- 80 per cent of any other powdered ingredient containing no drug.

8. Preparations conforming to any of the formulas listed in this Schedule and mixtures of such preparations with any material which contains no drug.

### List of Drugs Included in Schedule IV

<b>Acetorphine</b>	3-O-acetyltetrahydro-7- $\alpha$ -(1-hydroxy-1-methylbutyl)-6,14- <i>endoetheno</i> -oripavine
<b>Acetyl-<math>\alpha</math>-methylfentanyl</b>	<i>N</i> -[1-( $\alpha$ -methylphenethyl)-4-piperidyl]acetanilide
<b><math>\alpha</math>-methylfentanyl</b>	<i>N</i> -[1-( $\alpha$ -methylphenethyl)-4-piperidyl]propionanilide
<b><math>\alpha</math>-methylthiofentanyl</b>	<i>N</i> -[1-[1-methyl-2-(2-thienyl)ethyl]-4-piperidyl]propionanilide
<b><math>\beta</math>-hydroxy-3-methylfentanyl</b>	<i>N</i> -[1-( $\beta$ -hydroxyphenethyl)-3-methyl-4-piperidyl]propionanilide
<b><math>\beta</math>-hydroxyfentanyl</b>	<i>N</i> -[1-( $\beta$ -hydroxyphenethyl)-4-piperidyl]propionanilide
<b>Cannabis and Cannabis resin</b>	
<b>Desomorphine</b>	dihydrodeoxymorphine
<b>Etorphine</b>	tetrahydro-7- $\alpha$ -(1-hydroxy-1-methylbutyl)-6,14- <i>endoetheno</i> -oripavine
<b>Heroin</b>	diacetylmorphine
<b>Ketobemidone</b>	4- <i>meta</i> -hydroxyphenyl-1-methyl-4-propionylpiperidine
<b>3-methylfentanyl</b>	<i>N</i> -(3-methyl-1-phenethyl-4-piperidyl)propionanilide; <i>cis-N</i> -[3-methyl-1-(2-phenylethyl)-4-piperidyl]propionanilide; <i>trans-N</i> -[3-methyl-1-(2-phenylethyl)-4-piperidyl]propionanilide
<b>3-methylthiofentanyl</b>	<i>N</i> -(3-methyl-1-[2-(2-thienyl)ethyl]-4-piperidyl)propionanilide
<b>MPPP</b>	1-methyl-4-phenyl-4-piperidinol propionate (ester)
<b><i>Para</i>-fluorofentanyl</b>	4'-fluoro- <i>N</i> -(1-phenethyl-4-piperidyl)propionanilide
<b>PEPAP</b>	1-phenethyl-4-phenyl-4-piperidinol acetate (ester)
<b>Thiofentanyl</b>	<i>N</i> -[1-[2-(thienyl)ethyl]-4-piperidyl]propionanilide; and

The salts of the drugs listed in this Schedule whenever the formation of such salts is possible.

# **International Covenant on Economic, Social and Cultural Rights**

**Adopted and opened for signature, ratification and accession by General Assembly  
resolution 2200A (XXI)  
of 16 December 1966**

**entry into force 3 January 1976, in accordance with article 27**

Preamble

The States Parties to the present Covenant,

Considering that, in accordance with the principles proclaimed in the Charter of the United Nations, recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

Recognizing that these rights derive from the inherent dignity of the human person,

Recognizing that, in accordance with the Universal Declaration of Human Rights, the ideal of free human beings enjoying freedom from fear and want can only be achieved if conditions are created whereby everyone may enjoy his economic, social and cultural rights, as well as his civil and political rights,

Considering the obligation of States under the Charter of the United Nations to promote universal respect for, and observance of, human rights and freedoms,

Realizing that the individual, having duties to other individuals and to the community to which he belongs, is under a responsibility to strive for the promotion and observance of the rights recognized in the present Covenant,

Agree upon the following articles:

## **PART I**

### **Article 1**

1. All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

2. All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence.

3. The States Parties to the present Covenant, including those having responsibility for the administration of Non-Self-Governing and Trust Territories, shall promote the realization of the right of self-determination, and shall respect that right, in conformity with the provisions of the Charter of the United Nations.

## **PART II**

### **Article 2**

1. Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures.

2. The States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

3. Developing countries, with due regard to human rights and their national economy, may determine to what extent they would guarantee the economic rights recognized in the present Covenant to non-nationals.

### **Article 3**

The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all economic, social and cultural rights set forth in the present Covenant.

### **Article 4**

The States Parties to the present Covenant recognize that, in the enjoyment of those rights provided by the State in conformity with the present Covenant, the State may subject such rights only to such limitations as are determined by law only in so far as this may be compatible with the nature of these rights and solely for the purpose of promoting the general welfare in a democratic society.

### **Article 5**

1. Nothing in the present Covenant may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights or freedoms recognized herein, or at their limitation to a greater extent than is provided for in the present Covenant.

2. No restriction upon or derogation from any of the fundamental human rights recognized or existing in any country in virtue of law, conventions, regulations or custom shall be admitted on the pretext that the present Covenant does not recognize such rights or that it recognizes them to a lesser extent.

## **PART III**

### **Article 6**

1. The States Parties to the present Covenant recognize the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right.

2. The steps to be taken by a State Party to the present Covenant to achieve the full realization of this right shall include technical and vocational guidance and training programmes, policies and techniques to achieve steady economic, social and cultural development and full and productive employment under conditions safeguarding fundamental political and economic freedoms to the individual.

### **Article 7**

The States Parties to the present Covenant recognize the right of everyone to the enjoyment of just and favourable conditions of work which ensure, in particular:

(a) Remuneration which provides all workers, as a minimum, with:

(i) Fair wages and equal remuneration for work of equal value without distinction of any kind, in particular women being guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work;

(ii) A decent living for themselves and their families in accordance with the provisions of the present Covenant;

(b) Safe and healthy working conditions; (c) Equal opportunity for everyone to be promoted in his employment to an appropriate higher level, subject to no considerations other than those of seniority and competence;

(d) Rest, leisure and reasonable limitation of working hours and periodic holidays with pay, as well as remuneration for public holidays

### **Article 8**

1. The States Parties to the present Covenant undertake to ensure:

(a) The right of everyone to form trade unions and join the trade union of his choice, subject only to the rules of the organization concerned, for the promotion and protection of his economic and social interests. No restrictions may be placed on the exercise of this right other than those prescribed by law and which are necessary in a democratic society in the interests of national security or public order or for the protection of the rights and freedoms of others;

(b) The right of trade unions to establish national federations or confederations and the right of the latter to form or join international trade-union organizations;

(c) The right of trade unions to function freely subject to no limitations other than those prescribed by law and which are necessary in a democratic society in the interests of national security or public order or for the protection of the rights and freedoms of others;

(d) The right to strike, provided that it is exercised in conformity with the laws of the particular country.

2. This article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces or of the police or of the administration of the State. 3. Nothing in this article shall authorize States Parties to the International Labour Organisation Convention of 1948 concerning Freedom of Association and Protection of the Right to Organize to take legislative measures which would prejudice, or apply the law in such a manner as would prejudice, the guarantees provided for in that Convention.

### **Article 9**

The States Parties to the present Covenant recognize the right of everyone to social security, including social insurance.

### **Article 10**

The States Parties to the present Covenant recognize that:

1. The widest possible protection and assistance should be accorded to the family, which is the natural and fundamental group unit of society, particularly for its establishment and while it is responsible for the care and education of dependent children. Marriage must be entered into with the free consent of the intending spouses.

2. Special protection should be accorded to mothers during a reasonable period before and after childbirth. During such period working mothers should be accorded paid leave or leave with adequate social security benefits.

3. Special measures of protection and assistance should be taken on behalf of all children and young persons without any discrimination for reasons of parentage or other conditions. Children and young persons should be protected from economic and social exploitation. Their employment in work harmful to their morals or health or dangerous to life or likely to hamper their normal development should be punishable by law. States should also set age limits below which the paid employment of child labour should be prohibited and punishable by law.

#### **Article 11**

1. The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent.

2. The States Parties to the present Covenant, recognizing the fundamental right of everyone to be free from hunger, shall take, individually and through international co-operation, the measures, including specific programmes, which are needed:

(a) To improve methods of production, conservation and distribution of food by making full use of technical and scientific knowledge, by disseminating knowledge of the principles of nutrition and by developing or reforming agrarian systems in such a way as to achieve the most efficient development and utilization of natural resources;

(b) Taking into account the problems of both food-importing and food-exporting countries, to ensure an equitable distribution of world food supplies in relation to need.

#### **Article 12**

1. The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.

2. The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for:

(a) The provision for the reduction of the stillbirth-rate and of infant mortality and for the healthy development of the child;

(b) The improvement of all aspects of environmental and industrial hygiene;

(c) The prevention, treatment and control of epidemic, endemic, occupational and other diseases;

(d) The creation of conditions which would assure to all medical service and medical attention in the event of sickness.

#### **Article 13**

1. The States Parties to the present Covenant recognize the right of everyone to education. They agree that education shall be directed to the full development of the human personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedoms. They further agree that education shall enable all persons to participate effectively in a free society, promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups, and further the activities of the United Nations for the maintenance of peace.

2. The States Parties to the present Covenant recognize that, with a view to achieving the full realization of this right:

(a) Primary education shall be compulsory and available free to all;

(b) Secondary education in its different forms, including technical and vocational secondary education, shall be made generally available and accessible to all by every appropriate means, and in particular by the progressive introduction of free education;

(c) Higher education shall be made equally accessible to all, on the basis of capacity, by every appropriate means, and in particular by the progressive introduction of free education;

(d) Fundamental education shall be encouraged or intensified as far as possible for those persons who have not received or completed the whole period of their primary education;

(e) The development of a system of schools at all levels shall be actively pursued, an adequate fellowship system shall be established, and the material conditions of teaching staff shall be continuously improved.

3. The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to choose for their children schools, other than those established by the public authorities, which conform to such minimum educational standards as may be laid down or approved by the State and to ensure the religious and moral education of their children in conformity with their own convictions.

4. No part of this article shall be construed so as to interfere with the liberty of individuals and bodies to establish and direct educational institutions, subject always to the observance of the principles set forth in paragraph I of this article and to the requirement that the education given in such institutions shall conform to such minimum standards as may be laid down by the State.

#### **Article 14**

Each State Party to the present Covenant which, at the time of becoming a Party, has not been able to secure in its metropolitan territory or other territories under its jurisdiction compulsory primary education, free of charge, undertakes, within two years, to work out and adopt a detailed plan of action for the progressive implementation, within a reasonable number of years, to be fixed in the plan, of the principle of compulsory education free of charge for all.

#### **Article 15**

1. The States Parties to the present Covenant recognize the right of everyone:

(a) To take part in cultural life;

(b) To enjoy the benefits of scientific progress and its applications;

(c) To benefit from the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.

2. The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for the conservation, the development and the diffusion of science and culture. 3. The States Parties to the present Covenant undertake to respect the freedom indispensable for scientific research and creative activity.

4. The States Parties to the present Covenant recognize the benefits to be derived from the encouragement and development of international contacts and co-operation in the scientific and cultural fields.

### **PART IV**

#### **Article 16**

1. The States Parties to the present Covenant undertake to submit in conformity with this part of the Covenant reports on the measures which they have adopted and the progress made in achieving the observance of the rights recognized herein.

2.

(a) All reports shall be submitted to the Secretary-General of the United Nations, who shall transmit copies to the Economic and Social Council for consideration in accordance with the provisions of the present Covenant;

(b) The Secretary-General of the United Nations shall also transmit to the specialized agencies copies of the reports, or any relevant parts therefrom, from States Parties to the present Covenant which are also members of these specialized agencies in so far as these reports, or parts therefrom, relate to any matters which fall within the responsibilities of the said agencies in accordance with their constitutional instruments.

### **Article 17**

1. The States Parties to the present Covenant shall furnish their reports in stages, in accordance with a programme to be established by the Economic and Social Council within one year of the entry into force of the present Covenant after consultation with the States Parties and the specialized agencies concerned.

2. Reports may indicate factors and difficulties affecting the degree of fulfilment of obligations under the present Covenant.

3. Where relevant information has previously been furnished to the United Nations or to any specialized agency by any State Party to the present Covenant, it will not be necessary to reproduce that information, but a precise reference to the information so furnished will suffice.

### **Article 18**

Pursuant to its responsibilities under the Charter of the United Nations in the field of human rights and fundamental freedoms, the Economic and Social Council may make arrangements with the specialized agencies in respect of their reporting to it on the progress made in achieving the observance of the provisions of the present Covenant falling within the scope of their activities. These reports may include particulars of decisions and recommendations on such implementation adopted by their competent organs.

### **Article 19**

The Economic and Social Council may transmit to the Commission on Human Rights for study and general recommendation or, as appropriate, for information the reports concerning human rights submitted by States in accordance with articles 16 and 17, and those concerning human rights submitted by the specialized agencies in accordance with article 18.

### **Article 20**

The States Parties to the present Covenant and the specialized agencies concerned may submit comments to the Economic and Social Council on any general recommendation under article 19 or reference to such general recommendation in any report of the Commission on Human Rights or any documentation referred to therein.

### **Article 21**

The Economic and Social Council may submit from time to time to the General Assembly reports with recommendations of a general nature and a summary of the information received from the States Parties to the present Covenant and the specialized agencies on the measures taken and the progress made in achieving general observance of the rights recognized in the present Covenant.

**Article 22**

The Economic and Social Council may bring to the attention of other organs of the United Nations, their subsidiary organs and specialized agencies concerned with furnishing technical assistance any matters arising out of the reports referred to in this part of the present Covenant which may assist such bodies in deciding, each within its field of competence, on the advisability of international measures likely to contribute to the effective progressive implementation of the present Covenant.

**Article 23**

The States Parties to the present Covenant agree that international action for the achievement of the rights recognized in the present Covenant includes such methods as the conclusion of conventions, the adoption of recommendations, the furnishing of technical assistance and the holding of regional meetings and technical meetings for the purpose of consultation and study organized in conjunction with the Governments concerned.

**Article 24**

Nothing in the present Covenant shall be interpreted as impairing the provisions of the Charter of the United Nations and of the constitutions of the specialized agencies which define the respective responsibilities of the various organs of the United Nations and of the specialized agencies in regard to the matters dealt with in the present Covenant.

**Article 25**

Nothing in the present Covenant shall be interpreted as impairing the inherent right of all peoples to enjoy and utilize fully and freely their natural wealth and resources.

**PART V****Article 26**

1. The present Covenant is open for signature by any State Member of the United Nations or member of any of its specialized agencies, by any State Party to the Statute of the International Court of Justice, and by any other State which has been invited by the General Assembly of the United Nations to become a party to the present Covenant.
2. The present Covenant is subject to ratification. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.
3. The present Covenant shall be open to accession by any State referred to in paragraph 1 of this article.
4. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.
5. The Secretary-General of the United Nations shall inform all States which have signed the present Covenant or acceded to it of the deposit of each instrument of ratification or accession.

**Article 27**

1. The present Covenant shall enter into force three months after the date of the deposit with the Secretary-General of the United Nations of the thirty-fifth instrument of ratification or instrument of accession.

2. For each State ratifying the present Covenant or acceding to it after the deposit of the thirty-fifth instrument of ratification or instrument of accession, the present Covenant shall enter into force three months after the date of the deposit of its own instrument of ratification or instrument of accession.

#### **Article 28**

The provisions of the present Covenant shall extend to all parts of federal States without any limitations or exceptions.

#### **Article 29**

1. Any State Party to the present Covenant may propose an amendment and file it with the Secretary-General of the United Nations. The Secretary-General shall thereupon communicate any proposed amendments to the States Parties to the present Covenant with a request that they notify him whether they favour a conference of States Parties for the purpose of considering and voting upon the proposals. In the event that at least one third of the States Parties favours such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of the States Parties present and voting at the conference shall be submitted to the General Assembly of the United Nations for approval.

2. Amendments shall come into force when they have been approved by the General Assembly of the United Nations and accepted by a two-thirds majority of the States Parties to the present Covenant in accordance with their respective constitutional processes.

3. When amendments come into force they shall be binding on those States Parties which have accepted them, other States Parties still being bound by the provisions of the present Covenant and any earlier amendment which they have accepted.

#### **Article 30**

Irrespective of the notifications made under article 26, paragraph 5, the Secretary-General of the United Nations shall inform all States referred to in paragraph I of the same article of the following particulars:

(a) Signatures, ratifications and accessions under article 26;

(b) The date of the entry into force of the present Covenant under article 27 and the date of the entry into force of any amendments under article 29.

#### **Article 31**

1. The present Covenant, of which the Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited in the archives of the United Nations.

2. The Secretary-General of the United Nations shall transmit certified copies of the present Covenant to all States referred to in article 26.

**11. INTERNATIONAL CONVENTION FOR THE SUPPRESSION OF THE FINANCING OF  
TERRORISM**

*New York, 9 December 1999*

- ENTRY INTO FORCE:** 10 April 2002, in accordance with article 26 which reads as follows: "1. This Convention shall enter into force on the thirtieth day following the date of the deposit of the twenty-second instrument of ratification, acceptance, approval or accession with the Secretary-General of the United Nations. 2. For each State ratifying, accepting, approving or acceding to the Convention after the deposit of the twenty-second instrument of ratification, acceptance, approval or accession, the Convention shall enter into force on the thirtieth day after deposit by such State of its instrument of ratification, acceptance, approval or accession."
- REGISTRATION:** 10 April 2002, No. 38349.
- STATUS:** Signatories: 132. Parties: 189.
- TEXT:** United Nations, *Treaty Series*, vol. 2178, p. 197; Resolution [A/RES/54/109](#); depositary notifications C.N.327.2000.TREATIES-12 of 30 May 2000 (rectification of the original text of the Convention); and C.N.3.2002.TREATIES-1 of 2 January 2002 [proposal for corrections to the original text of the Convention (Arabic, Chinese, English, French, Russian and Spanish authentic texts)] and C.N.86.2002.TREATIES-4 of 1 February 2002 [Rectification of the original of the Convention (Arabic, Chinese, English, French, Russian and Spanish authentic texts)]; C.N.312.2002.TREATIES-14 of 4 April 2002 [proposal of a correction to the original of the Convention (Spanish authentic text)] and C.N.420.2002.TREATIES-20 of 3 May 2002 [rectification of the original of the Convention (Spanish authentic text)].

*Note:* The Convention was adopted by Resolution [54/109](#) of 9 December 1999 at the fourth session of the General Assembly of the United Nations. In accordance with its article 25 (1), the Convention will be open for signature by all States at United Nations Headquarters from 10 January 2000 to 31 December 2001.

<i>Participant</i>	<i>Signature</i>	<i>Approval(AA), Acceptance(A), Accession(a), Succession(d), Ratification</i>	<i>Participant</i>	<i>Signature</i>	<i>Approval(AA), Acceptance(A), Accession(a), Succession(d), Ratification</i>
Afghanistan.....		24 Sep 2003 a	Benin.....	16 Nov 2001	30 Aug 2004
Albania.....	18 Dec 2001	10 Apr 2002	Bhutan.....	14 Nov 2001	22 Mar 2004
Algeria .....	18 Jan 2000	8 Nov 2001	Bolivia (Plurinational State of).....	10 Nov 2001	7 Jan 2002
Andorra.....	11 Nov 2001	22 Oct 2008	Bosnia and Herzegovina .....	11 Nov 2001	10 Jun 2003
Angola .....		9 Jun 2011 a	Botswana .....	8 Sep 2000	8 Sep 2000
Antigua and Barbuda .....		11 Mar 2002 a	Brazil .....	10 Nov 2001	16 Sep 2005
Argentina .....	28 Mar 2001	22 Aug 2005	Brunei Darussalam .....		4 Dec 2002 a
Armenia .....	15 Nov 2001	16 Mar 2004	Bulgaria .....	19 Mar 2001	15 Apr 2002
Australia.....	15 Oct 2001	26 Sep 2002	Burkina Faso.....		1 Oct 2003 a
Austria .....	24 Sep 2001	15 Apr 2002	Burundi .....	13 Nov 2001	
Azerbaijan.....	4 Oct 2001	26 Oct 2001	Cabo Verde.....	13 Nov 2001	10 May 2002
Bahamas.....	2 Oct 2001	1 Nov 2005	Cambodia.....	11 Nov 2001	12 Dec 2005
Bahrain.....	14 Nov 2001	21 Sep 2004	Cameroon.....		6 Feb 2006 a
Bangladesh.....		26 Aug 2005 a	Canada .....	10 Feb 2000	19 Feb 2002
Barbados .....	13 Nov 2001	18 Sep 2002	Central African Republic .....	19 Dec 2001	19 Feb 2008
Belarus .....	12 Nov 2001	6 Oct 2004	Chile.....	2 May 2001	10 Nov 2001
Belgium <sup>1</sup> .....	27 Sep 2001	17 May 2004			
Belize.....	14 Nov 2001	1 Dec 2003			

<i>Participant</i>	<i>Signature</i>	<i>Approval(AA), Acceptance(A), Accession(a), Succession(d), Ratification</i>	<i>Participant</i>	<i>Signature</i>	<i>Approval(AA), Acceptance(A), Accession(a), Succession(d), Ratification</i>
China <sup>2</sup> .....	13 Nov 2001	19 Apr 2006	Hungary .....	30 Nov 2001	14 Oct 2002
Colombia .....	30 Oct 2001	14 Sep 2004	Iceland .....	1 Oct 2001	15 Apr 2002
Comoros.....	14 Jan 2000	25 Sep 2003	India .....	8 Sep 2000	22 Apr 2003
Congo.....	14 Nov 2001	20 Apr 2007	Indonesia.....	24 Sep 2001	29 Jun 2006
Cook Islands .....	24 Dec 2001	4 Mar 2004	Iraq.....		16 Nov 2012 a
Costa Rica.....	14 Jun 2000	24 Jan 2003	Ireland.....	15 Oct 2001	30 Jun 2005
Côte d'Ivoire .....		13 Mar 2002 a	Israel .....	11 Jul 2000	10 Feb 2003
Croatia .....	11 Nov 2001	1 Dec 2003	Italy .....	13 Jan 2000	27 Mar 2003
Cuba.....	19 Oct 2001	15 Nov 2001	Jamaica .....	10 Nov 2001	16 Sep 2005
Cyprus.....	1 Mar 2001	30 Nov 2001	Japan .....	30 Oct 2001	11 Jun 2002 A
Czech Republic.....	6 Sep 2000	27 Dec 2005	Jordan.....	24 Sep 2001	28 Aug 2003
Democratic People's Republic of Korea....	12 Nov 2001	25 Jul 2013	Kazakhstan.....		24 Feb 2003 a
Democratic Republic of the Congo.....	11 Nov 2001	28 Oct 2005	Kenya.....	4 Dec 2001	27 Jun 2003
Denmark <sup>3</sup> .....	25 Sep 2001	27 Aug 2002	Kiribati.....		15 Sep 2005 a
Djibouti.....	15 Nov 2001	13 Mar 2006	Kuwait .....		11 Jul 2013 a
Dominica .....		24 Sep 2004 a	Kyrgyzstan.....		2 Oct 2003 a
Dominican Republic.....	15 Nov 2001	4 Sep 2008	Lao People's Democratic Republic .....		29 Sep 2008 a
Ecuador.....	6 Sep 2000	9 Dec 2003	Latvia.....	18 Dec 2001	14 Nov 2002
Egypt.....	6 Sep 2000	1 Mar 2005	Lebanon .....		29 Aug 2019 a
El Salvador .....		15 May 2003 a	Lesotho .....	6 Sep 2000	12 Nov 2001
Equatorial Guinea .....		7 Feb 2003 a	Liberia.....		5 Mar 2003 a
Estonia .....	6 Sep 2000	22 May 2002	Libya.....	13 Nov 2001	9 Jul 2002
Eswatini .....		4 Apr 2003 a	Liechtenstein.....	2 Oct 2001	9 Jul 2003
Ethiopia.....		20 Mar 2012 a	Lithuania.....		20 Feb 2003 a
Fiji .....		15 May 2008 a	Luxembourg.....	20 Sep 2001	5 Nov 2003
Finland.....	10 Jan 2000	28 Jun 2002 A	Madagascar.....	1 Oct 2001	24 Sep 2003
France .....	10 Jan 2000	7 Jan 2002	Malawi .....		11 Aug 2003 a
Gabon.....	8 Sep 2000	10 Mar 2005	Malaysia.....		29 May 2007 a
Gambia.....		8 Jul 2015 a	Maldives .....		20 Apr 2004 a
Georgia .....	23 Jun 2000	27 Sep 2002	Mali.....	11 Nov 2001	28 Mar 2002
Germany .....	20 Jul 2000	17 Jun 2004	Malta.....	10 Jan 2000	11 Nov 2001
Ghana.....	12 Nov 2001	6 Sep 2002	Marshall Islands.....		27 Jan 2003 a
Greece.....	8 Mar 2000	16 Apr 2004	Mauritania.....		30 Apr 2003 a
Grenada.....		13 Dec 2001 a	Mauritius.....	11 Nov 2001	14 Dec 2004
Guatemala.....	23 Oct 2001	12 Feb 2002	Mexico .....	7 Sep 2000	20 Jan 2003
Guinea.....	16 Nov 2001	14 Jul 2003	Micronesia (Federated States of) .....	12 Nov 2001	23 Sep 2002
Guinea-Bissau.....	14 Nov 2001	19 Sep 2008	Monaco .....	10 Nov 2001	10 Nov 2001
Guyana.....		12 Sep 2007 a	Mongolia.....	12 Nov 2001	25 Feb 2004
Haiti .....		13 Jan 2010 a	Montenegro <sup>4</sup> .....		23 Oct 2006 d
Holy See .....		25 Jan 2012 a	Morocco.....	12 Oct 2001	19 Sep 2002
Honduras.....	11 Nov 2001	25 Mar 2003			

<i>Participant</i>	<i>Signature</i>	<i>Approval(AA), Acceptance(A), Accession(a), Succession(d), Ratification</i>	<i>Participant</i>	<i>Signature</i>	<i>Approval(AA), Acceptance(A), Accession(a), Succession(d), Ratification</i>
Mozambique .....	11 Nov 2001	14 Jan 2003	Solomon Islands .....		24 Sep 2009 a
Myanmar.....	12 Nov 2001	16 Aug 2006	Somalia .....	19 Dec 2001	
Namibia .....	10 Nov 2001	18 Oct 2012	South Africa.....	10 Nov 2001	1 May 2003
Nauru .....	12 Nov 2001	24 May 2005	Spain .....	8 Jan 2001	9 Apr 2002
Nepal.....		23 Dec 2011 a	Sri Lanka.....	10 Jan 2000	8 Sep 2000
Netherlands <sup>5</sup> .....	10 Jan 2000	7 Feb 2002 A	St. Kitts and Nevis.....	12 Nov 2001	16 Nov 2001
New Zealand <sup>6</sup> .....	7 Sep 2000	4 Nov 2002	St. Lucia.....		18 Nov 2011 a
Nicaragua.....	17 Oct 2001	14 Nov 2002	St. Vincent and the Grenadines .....	3 Dec 2001	28 Mar 2002
Niger .....		30 Sep 2004 a	Sudan .....	29 Feb 2000	5 May 2003
Nigeria .....	1 Jun 2000	16 Jun 2003	Suriname.....		19 Jul 2013 a
Niue .....		22 Jun 2009 a	Sweden.....	15 Oct 2001	6 Jun 2002
North Macedonia .....	31 Jan 2000	30 Aug 2004	Switzerland .....	13 Jun 2001	23 Sep 2003
Norway .....	1 Oct 2001	15 Jul 2002	Syrian Arab Republic ....		24 Apr 2005 a
Oman .....		10 Nov 2011 a	Tajikistan .....	6 Nov 2001	16 Jul 2004
Pakistan.....		17 Jun 2009 a	Thailand.....	18 Dec 2001	29 Sep 2004
Palau .....		14 Nov 2001 a	Timor-Leste .....		27 May 2014 a
Panama.....	12 Nov 2001	3 Jul 2002	Togo.....	15 Nov 2001	10 Mar 2003
Papua New Guinea .....		30 Sep 2003 a	Tonga.....		9 Dec 2002 a
Paraguay .....	12 Oct 2001	30 Nov 2004	Trinidad and Tobago ....		23 Sep 2009 a
Peru.....	14 Sep 2000	10 Nov 2001	Tunisia .....	2 Nov 2001	10 Jun 2003
Philippines .....	16 Nov 2001	7 Jan 2004	Turkey.....	27 Sep 2001	28 Jun 2002
Poland.....	4 Oct 2001	26 Sep 2003	Turkmenistan.....		7 Jan 2005 a
Portugal.....	16 Feb 2000	18 Oct 2002	Uganda.....	13 Nov 2001	5 Nov 2003
Qatar .....		27 Jul 2008 a	Ukraine <sup>7,8</sup> .....	8 Jun 2000	6 Dec 2002
Republic of Korea.....	9 Oct 2001	17 Feb 2004	United Arab Emirates ....		23 Sep 2005 a
Republic of Moldova.....	16 Nov 2001	10 Oct 2002	United Kingdom of Great Britain and Northern Ireland <sup>9</sup> .....	10 Jan 2000	7 Mar 2001
Romania.....	26 Sep 2000	9 Jan 2003	United Republic of Tanzania.....		22 Jan 2003 a
Russian Federation .....	3 Apr 2000	27 Nov 2002	United States of America.....	10 Jan 2000	26 Jun 2002
Rwanda .....	4 Dec 2001	13 May 2002	Uruguay .....	25 Oct 2001	8 Jan 2004
Samoa .....	13 Nov 2001	27 Sep 2002	Uzbekistan .....	13 Dec 2000	9 Jul 2001
San Marino .....	26 Sep 2000	12 Mar 2002	Vanuatu.....		31 Oct 2005 a
Sao Tome and Principe..		12 Apr 2006 a	Venezuela (Bolivarian Republic of) .....	16 Nov 2001	23 Sep 2003
Saudi Arabia .....	29 Nov 2001	23 Aug 2007	Viet Nam.....		25 Sep 2002 a
Senegal.....		24 Sep 2004 a	Yemen.....		3 Mar 2010 a
Serbia.....	12 Nov 2001	10 Oct 2002	Zambia .....		7 Apr 2017 a
Seychelles .....	15 Nov 2001	30 Mar 2004	Zimbabwe.....		30 Jan 2013 a
Sierra Leone.....	27 Nov 2001	26 Sep 2003			
Singapore.....	18 Dec 2001	30 Dec 2002			
Slovakia .....	26 Jan 2001	13 Sep 2002			
Slovenia .....	10 Nov 2001	23 Sep 2004			

**Declarations and Reservations**  
*(Unless otherwise indicated, the declarations and reservations were made upon ratification, acceptance, approval or accession.)*

**ALGERIA**

The Government of the People's Democratic Republic of Algeria does not consider itself bound by the provisions of article 24, paragraph 1, of the International Convention for the Suppression of the Financing of Terrorism.

The Government of the People's Democratic Republic of Algeria declares that in order for a dispute to be submitted to arbitration or to the International Court of Justice, the agreement of all parties to the dispute shall be required in each case.

**ANDORRA**

The Principality of Andorra does not consider itself bound by article 24, paragraph 1, of the International Convention for the Suppression of the Financing of Terrorism. The Government of the Principality of Andorra hereby declares that, for a dispute to be referred to the International Court of Justice, the agreement of all parties shall in every case be required.

**ARGENTINA**

In accordance with the provisions of article 24, paragraph 2, the Argentine Republic declares that it does not consider itself bound by article 24, paragraph 1, and consequently does not accept mandatory recourse to arbitration or to the jurisdiction of the International Court of Justice.

**BAHAMAS**

"In accordance with article 2.2 of the Convention for the Suppression of the Financing of Terrorism, the Government of the Commonwealth of The Bahamas declares that it is not a party to the Agreements listed as items 5 to 9 in the annex referred to in paragraph 1, subparagraph (a) of the Convention and that those Agreements shall be deemed not to be included in the annex referred to in paragraph 1, subparagraph (a). Those Agreements are:

Convention on the Physical Protection of Nuclear Material, adopted at Vienna on 3rd March, 1980.

Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, supplementary to the Convention for the Suppression of Unlawful Acts against Safety of Civil Aviation, done at Montreal on 24th February, 1988.

Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, done at Rome on 10th March, 1988.

Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms located on the Continental Shelf, done at Rome, on 10th March, 1988.

International Convention for the Suppression of Terrorist Bombings adopted by the General Assembly of the United Nations on 15th December, 1997."

**BAHRAIN**

The Kingdom of Bahrain does not consider itself bound by paragraph 1 of Article 24 of the Convention.

The following Conventions shall be deemed not to be included in the annex referred to in Article 2, paragraph 1, subparagraph (a), since Bahrain is not a party thereto:

1. Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons,

including Diplomatic Agents, adopted by the General Assembly of the United Nations on 14 December 1973.

2. International Convention against the Taking of Hostages, adopted by the General Assembly of the United Nations on 17 December 1979.

3. Convention on the Physical Protection of Nuclear Material, signed at Vienna on 3 March 1980.

4. Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, done at Rome on 10 March 1988.

5. Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf, done at Rome on 10 March 1988.

6. International Convention for the Suppression of Terrorist Bombings, adopted by the General Assembly of the United Nations on 15 December 1997.

**BANGLADESH**

"Pursuant to Article 24, paragraph 2 of the Convention [the] Government of the People's Republic of Bangladesh does not consider itself bound by the provisions of Article 24, paragraph 1 of the Convention."

"[The] Government of the People's Republic of Bangladesh understands that its accession to this Convention shall not be deemed to be inconsistent with its international obligations under the Constitution of the country."

**BELGIUM<sup>1,10</sup>**

I. Concerning article 2, paragraph 2 (a), of the Convention, the Government of Belgium declares the following:

The following treaties are to be deemed not to be included in the annex:

Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, adopted by the General Assembly of the United Nations on 14 December 1973;

Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (Rome, 10 March 1988);

Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf (Rome, 10 March 1988);

International Convention for the Suppression of Terrorist Bombings, adopted by the General Assembly of the United Nations on 15 December 1997.

II. The Government of Belgium interprets paragraphs 1 and 3 of article 2 as follows: an offence in the sense of the Convention is committed by any person who provides or collects funds if by doing so he contributes, fully or partly, to the planning, preparation or commission of an offence as defined in article 2, paragraph 1 (a) and (b) of the Convention. There is no requirement to prove that the funds provided or collected have been used precisely for a particular terrorist act, provided that they have contributed to the criminal activities of persons whose goal was to commit the acts set forth in article 2, paragraph 1 (a) and (b).

[.....]

**BRAZIL<sup>11</sup>**

*Interpretative declarations:*

"Interpretative Declarations to be made by the Federal Republic of Brazil on the occasion of signing of the

International Convention for the Suppression of the Financing of Terrorism:

1. As concerns Article 2 of the said Convention, three of the legal instruments listed in the Annex to the Convention have not come into force in Brazil. These are the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation; Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf; and the International Convention for the Suppression of Terrorist Bombings.

2. As concerns Article 24, paragraph 2 of the said Convention, Brazil does not consider itself obligated by paragraph 1 of the said Article, given that it has not recognized the mandatory jurisdiction clause of the International Court of Justice."

#### CHINA

1. The People's Republic of China shall not be bound by paragraph 1 of article 24 of the Convention.

[...]

3. As to the Macao Special Administrative Region of the People's Republic of China, the following three Conventions shall not be included in the annex referred to in Article 2, paragraph 1, subparagraph (a) of the Convention:

(1) Convention on the Physical Protection of Nuclear Material, adopted at Vienna on 3 March 1980.

(2) Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, done at Rome on 10 March 1988.

(3) Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms located on the Continental Shelf, done at Rome on 10 March 1988.

#### COLOMBIA

By virtue of article 24, paragraph 2, of the Convention, Colombia declares that it does not consider itself bound by paragraph 1 of the said article.

Furthermore, by virtue of article 7, paragraph 3, of the Convention, Colombia states that it establishes its jurisdiction in accordance with its domestic law in accordance with paragraph 2 of the same article.

#### COOK ISLANDS

"In accordance with the provisions of article 2, paragraph 2, subparagraph (a) of the International Convention for the Suppression of the Financing of Terrorism, the Government of the Cook Islands declares:

That in the application of this Convention, the treaties listed in the annex, referred to in article 2, paragraph 1, subparagraph (a) shall be deemed not to be included, given that the Cook Islands is not yet a party to the following Conventions:

(i) Convention on the Physical Protection of Nuclear Material, adopted at Vienna on 3 March 1980;

(ii) Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, supplementary to the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, done at Montreal on 24 February 1988;

(iii) Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, done at Rome on 10 March 1988;

(iv) Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms located on the Continental Shelf, done at Rome on 10 March 1988;

(v) International Convention for the Suppression of Terrorist Bombings, adopted by the General Assembly of the United Nations on 15 December 1997."

#### CROATIA

"The Republic of Croatia, pursuant to Article 2 paragraph 2 of the International Convention for the Suppression of the Financing of Terrorism, declares that in the application of the Convention to the Republic of Croatia the following treaties shall be deemed not to be included in the Annex referred to in Article 2, paragraph 1, subparagraph (a) of the Convention:

1. International Convention against the Taking of Hostages, adopted by the General Assembly of the United Nations on 17 December 1979,

2. Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, done at Rome on 10 March 1988,

3. Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms located on the Continental Shelf, done at Rome on 10 March 1988,

4. International Convention for the Suppression of Terrorist Bombings, adopted by the General Assembly of the United Nations on 15 December 1997."

#### CUBA

The Republic of Cuba declares, pursuant to article 24, paragraph 2, that it does not consider itself bound by paragraph 1 of the said article, concerning the settlement of disputes arising between States Parties, inasmuch as it considers that such disputes must be settled through amicable negotiation. In consequence, it declares that it does not recognize the compulsory jurisdiction of the International Court of Justice.

#### DEMOCRATIC PEOPLE'S REPUBLIC OF KOREA<sup>12</sup>

##### *Reservations:*

1. The Democratic People's Republic of Korea does not consider itself bound by the provisions of article 2, paragraph 1, sub-paragraph (a) of the Convention.

2. The Democratic People's Republic of Korea does not consider itself bound by the provisions of article 14 of the Convention.

3. The Democratic People's Republic of Korea does not consider itself bound by the provisions of article 24, paragraph 1 of the Convention.

##### *Reservations:*

1. The reservation relating to Article 2, paragraph 1, sub-paragraph (a) of the Convention shall be amended to read as 'The Democratic People's Republic of Korea does not consider itself bound by the treaties to which it is not a party among the treaties listed in the Annex of the Convention.'

2. The reservation relating to Article 14 of the Convention shall be withdrawn.

3. The reservation relating to Article 24, paragraph 1 of the Convention shall remain valid.

#### EGYPT<sup>13</sup>

1. Under article 2, paragraph 2 (a), of the Convention, the Government of the Arab Republic of Egypt considers that, in the application of the Convention, conventions to which it is not a party are deemed not included in the annex.

2. Under article 24, paragraph 2, of the Convention, the Government of the Arab Republic of Egypt does not consider itself bound by the provisions of paragraph 1 of that article.

Without prejudice to the principles and norms of general international law and the relevant United Nations resolutions, the Arab Republic of Egypt does not consider acts of national resistance in all its forms, including armed resistance against foreign occupation and aggression with a view to liberation and self-determination, as terrorist acts within the meaning of article 2, paragraph 1, subparagraph (b), of the Convention.

## EL SALVADOR

(1) Pursuant to article 2, paragraph 2 (a), the Republic of El Salvador declares that in the application of this Convention, the Convention on the Physical Protection of Nuclear Material, adopted in Vienna on 3 March 1980, shall not be considered as having been included in the annex referred to in article 2, paragraph 1 (a), since El Salvador is not currently a State party thereto;

(3) pursuant to article 24, paragraph 2, the Republic of El Salvador declares that it does not consider itself bound by paragraph 1 of that article, because it does not recognize the compulsory jurisdiction of the International Court of Justice; and

(4) El Salvador accedes to this Convention on the understanding that such accession is without prejudice to any provisions thereof which may conflict with the principles expressed in its Constitution and domestic legal system.

## ESTONIA<sup>14</sup>

### ETHIOPIA

“Ethiopia does not consider itself to be bound by the jurisdiction of the International Court of Justice as per Article 24 (2) of the Convention.”

“Pursuant to Article 2 (2) (a) of the Convention, the Convention on the Physical Protection of Nuclear Materials which has been adopted in Vienna on 3 March 1980 and annexed to the [International Convention for the Suppression of the Financing of Terrorism], shall not apply in Ethiopia.”

## FRANCE

Declaration pursuant to article 2, paragraph 2 (a)

In accordance with article 2, paragraph 2 (a) of this Convention, France declares that in the application of the Convention to France, the Convention of 14 December 1973 on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, shall be deemed not to be included in the annex referred to in article 2, paragraph 1, subparagraph (a), since France is not a party thereto.

## GEORGIA

“In accordance with article 2.2, Georgia declares, that while applying this Convention, treaties to which Georgia is not contracting party shall not be considered as included in the annex to this Convention.”

## GUATEMALA

Pursuant to article 2, paragraph 2 (a) of the Convention referred to in the preceding article, the State of Guatemala, in ratifying the Convention, makes the following declaration: “In the application of this Convention, Guatemala deems the following treaties not to be included in the annex: the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, signed at Rome on 10 March 1988; the Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms located on the Continental Shelf, done at Rome on 10 March 1988 and the International Convention for the Suppression of Terrorist Bombings, adopted by the General Assembly of the United Nations on 15 December 1997. The declaration shall cease to have effect, for each of the treaties indicated, as soon as the treaty enters into force for the State of Guatemala, which shall notify the depositary of this fact.

[The Government of Guatemala notifies,]...pursuant to article 2, paragraph 2 of the International Convention for the Suppression of the Financing of Terrorism, that on 14

March 2002 [should read: 10 April 2002], the International Convention for the Suppression of Terrorist Bombings entered into force for the Republic of Guatemala. Accordingly, the declaration made by the Republic of Guatemala at the time of depositing its instrument of ratification that the latter Convention was deemed not to be included in the annex to the International Convention for the Suppression of the Financing of Terrorism has ceased to have effect.

## HOLY SEE

“Pursuant to article 24.2 of the Convention, the Holy See, acting also in the name and on behalf of Vatican City State, declares that it does not consider itself bound by article 24.1 of the Convention. The Holy See, acting also in the name and on behalf of Vatican City State, specifically reserves the right to agree in a particular case, on an ad hoc basis, to any convenient means to settle any dispute arising out of this Convention.”

“By acceding to the International Convention for the Suppression of the Financing of Terrorism, the Holy See, acting also in the name and on behalf of Vatican City State, intends to contribute and to give its moral support to the global prevention, repression and prosecution of terrorism and to the protection of victims of such crimes.

In conformity with its own nature, its mission, and the particular character of Vatican City State, the Holy See upholds the values of brotherhood, justice and peace between persons and peoples, whose protection and strengthening require the primacy of the rule of law and respect for human rights, and it reaffirms that instruments of criminal and judicial cooperation constitute effective safeguards in the face of criminal activities that jeopardize human dignity and peace.

The Holy See, acting also in the name and on behalf of the Vatican City State, declares that its accession to the Convention does not constitute consent to be bound by or to become a party to any of the treaties listed in the Annex to the Convention. Considering that, at the date of its accession to the Convention, the Holy See is not a party to any of the treaties listed in the Annex, for the purposes of article 2.2(a) of the Convention, none of them should be deemed to be included within the scope of the Convention pursuant to its article 2.1(a). In the future, should the Holy See ratify or acceded to any of those treaties, once it has come into force for the Holy See, the treaty in question shall be deemed to be included within the scope of the Convention pursuant to its article 2.1(a).

In respect to article 5 of the Convention, the Holy See notes that, due to the particular nature of the Holy See and of Vatican City State, the concept of criminal liability of legal persons is not embodied in their domestic legal principles.

Pursuant to article 11.2 of the Convention, the Holy See declares that it takes the Convention as the legal basis for cooperation on extradition with other Parties to the Convention, subject to the limitations to the extradition of persons provided for by its domestic law.

With regard to article 15 of the Convention, the Holy See declares that the terms ‘prosecuting or punishing a person on account of that person’s race, religion, nationality, ethnic origin or political opinion’ and ‘prejudice to that person’s position’ shall be interpreted in light of its legal doctrine and the sources of its law (Vatican City State Law LXXI, 1 October 2008).”

“Pursuant to the last sentence of article 2.2(a) of the International Convention for the Suppression of the Financing of Terrorism, of 9 December 1999, the Holy See, acting also in the name and on behalf of Vatican City State, declares that, from the moment the Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, enters into force for the Holy See, it shall be deemed to be included within the scope of the Convention

for the Suppression of the Financing of Terrorism pursuant to its article 2.1(a).”

#### INDONESIA

"A. In accordance with Article 2 paragraph 2 subparagraph (a) of the Convention for the Suppression of the Financing of Terrorism, the Government of the Republic of Indonesia declares that the following treaties are to be deemed not to be included in the Annex referred to in Article 2 paragraph 1 subparagraph (a) of the Convention:

1. Convention on the Prevention and Punishment of Crimes Against Internationally Protected Persons, including Diplomatic Agents, adopted by the General Assembly of the United Nations on 14 December 1973.

2. International Convention against the Taking of Hostages, adopted by the General Assembly of the United Nations on 17 December 1979.

3. Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, supplementary to the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, done at Montreal on 24 February 1988.

4. Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, done at Rome on 10 March 1988.

5. Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf, done at Rome on 10 March 1988.

B. The Government of the Republic of Indonesia declares that the provisions of Article 7 of the Convention for the Suppression of the Financing of Terrorism will have to be implemented in strict compliance with the principles of the sovereignty and territorial integrity of States. "

The Government of the Republic of Indonesia, while signatory to the Convention for the Suppression of the Financing of Terrorism, does not consider itself bound by the provision of Article 24 and takes the position that dispute relating to the interpretation and application on the Convention which cannot be settled through the channel provided for in paragraph (1) of the said Article, may be referred to the International Court of Justice only with the consent of all the Parties to the dispute."

#### ISRAEL<sup>15</sup>

"... with the following declarations:

Pursuant to Article 2, paragraph 2 (a) of the International Convention for the Suppression of the Financing of Terrorism, the Government of the State of Israel declares that in the application of the Convention the treaties to which the state of Israel is not a party shall be deemed not to be included in the Annex of the Convention.

...

Pursuant to Article 24, paragraph 2 of the Convention, the State of Israel does not consider itself bound by the provisions of Article 24, paragraph 1 of the Convention.

The Government of the State of Israel understands that the term "international humanitarian law" referred to in Article 21 of the Convention has the same substantial meaning as the term "the law of war". This body of laws does not include the provisions of the Protocols Additional to the Geneva Convention of 1977 to which the State of Israel is not a party."

#### JAPAN

"The Government of Japan has carefully examined the declaration described as a reservation, relating to Article 14 of the International Convention for the Suppression of the Financing of Terrorism, opened for signature at the United Nations Headquarters in New York on 10 January 2000 (hereinafter referred to as "the Convention"), made

by the Government of the Islamic Republic of Pakistan when acceding to the Convention.

The Government of Japan considers that, if the Islamic Republic of Pakistan purported to exclude or to limit the legal effect of the provision of the said Article in its application to the Islamic Republic of Pakistan and thereby not to implement the obligation of the country under the said Article, the aforesaid declaration would amount to a reservation that is incompatible with the object and purpose of the Convention.

The Government of Japan recalls that such reservation shall not be permitted under established rules of international law.

The Government of Japan thus considers the aforesaid declaration made by the Government of the Islamic Republic of Pakistan to have no effect on the application of the Convention, including Article 14, between the two countries."

#### JORDAN<sup>16</sup>

"1. The Government of the Hashemite Kingdom of Jordan does not consider acts of national armed struggle and fighting foreign occupation in the exercise of people's right to self-determination as terrorist acts within the context of paragraph 1(b) of article 2 of the Convention.

2. Jordan is not a party to the following treaties:

A. Convention on the Physical Protection of Nuclear Material, adopted in Vienna on 3 March 1980.

B. Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, done at Rome on 10 March 1988.

C. Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf, done at Rome on 10 March 1988.

D. International Convention for the Suppression of Terrorist Bombings, adopted in New York on 15 December 1997.

Accordingly Jordan is not bound to include, in the application of the International Convention for the Suppression of the Financing of Terrorism, the offences within the scope and as defined in such Treaties."

#### KAZAKHSTAN<sup>17</sup>

The Republic of Kazakhstan does not consider itself bound by the provisions of article 24, paragraph 1 of the International Convention for the Suppression of the Financing of Terrorism.

#### KUWAIT

Availing itself of article 24, paragraph 2, the State of Kuwait shall not be bound by the provisions of article 24, paragraph 1.

The commitment of the State of Kuwait to the Convention is without prejudice to its Arab and Islamic obligations in respect of the definition of terrorism and the distinction between terrorism and legitimate national struggle against occupation.

#### LATVIA

"In accordance with Article 2, paragraph 2 of the International Convention for the Suppression of the Financing of Terrorism, adopted at New York on the 9th day of December 1999, the Republic of Latvia declares that in the application of the Convention to the Republic of Latvia the following treaties shall be deemed not to be included in the annex referred to in Article 2 paragraph 1, subparagraph (a) of the Convention:

1. International Convention against the Taking of Hostages, adopted by the General Assembly of the United Nations on 17 December 1979.

2. Convention on the Physical Protection of Nuclear Material, adopted at Vienna on 3 March 1980.

3. Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, done at Rome on 10 March 1988.

4. Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms located on the Continental Shelf, done at Rome on 10 March 1988. 5.

International Convention for the Suppression of Terrorist Bombings, adopted by the General Assembly of the United Nations on 15 December 1997."

"In accordance with Article 2, paragraph 2 of the International Convention for the Suppression of the Financing of Terrorism, adopted at New York on the 9th day of December 1999, the Republic of Latvia notifies that the following treaties have entered into force for the Republic of Latvia:

1. International Convention against the Taking of Hostages, adopted by the General Assembly of the United Nations on 17 December 1979,

2. Convention on the Physical Protection of Nuclear Material, adopted at Vienna on 3 March 1980,

3. Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, done at Rome on 10 March 1988,

4. Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms located on the Continental Shelf, done at Rome on 10 March 1988; and

5. International Convention for the Suppression of Terrorist Bombings, adopted by the General Assembly of the United Nations on 15 December 1997."

#### LEBANON

... with a reservation regarding the definition of terrorism set forth in Article 2, paragraph 1 (b) of that Convention and an endorsement of the definition of terrorism set forth in articles 1 and 2 of the Arab counter-Terrorism Convention signed in Cairo on 22 April 1984.

#### LITHUANIA

".....it is provided in paragraph 2 of Article 24 of the said Convention, the Seimas of the Republic of Lithuania declares that the Republic of Lithuania does not consider itself bound by the provisions of paragraph 1 of Article 24 of the Convention stipulating that any dispute concerning the interpretation or application of this Convention shall be referred to the International Court of Justice.

.....it is provided in subparagraph a) of paragraph 2 of the said Convention, the Seimas of the Republic of Lithuania declares that in the application of this Convention to the Republic of Lithuania, the International Convention for the Suppression of Terrorist Bombings, adopted on 15 December 1997, shall be deemed not to be included in the annex referred to in subparagraph a) of paragraph 1 of Article 2 of the Convention."

#### LUXEMBOURG

Pursuant to article 2, paragraph 2, subparagraph (a), of the Convention, Luxembourg declares that when the Convention is applied to it, the treaties listed in the annex which have not yet been ratified by Luxembourg shall be deemed not to appear in the annex.

As at the date of ratification of the Convention, the following treaties listed in the annex had been ratified by Luxembourg:

Convention for the Suppression of Unlawful Seizure of Aircraft, done at The Hague, on 16 December 1970;

Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, done at Montreal, on 23 September 1971;

International Convention against the Taking of Hostages, adopted by the General Assembly of the United Nations, on 17 December 1979;

Convention on the Physical Protection of Nuclear Material, adopted in Vienna on 3 March 1980.

#### MAURITIUS

"(1) in accordance with Article 2, paragraph 2, subparagraph (a) of the said Convention, the Government of the Republic of Mauritius declares that in the application of this Convention to the Republic of Mauritius, the following treaty shall be deemed not to be included in the annex referred to in Article 2 [paragraph 1 subparagraph (a)] of the said Convention, since the Republic of Mauritius is not yet a party thereto -

(1) The International Convention on the Physical Protection of Nuclear Materials:

(ii) In accordance with Article 24(2) of the said Convention, the Government of the Republic of Mauritius does not consider itself bound by Article 24 (1). The Government of the Republic of Mauritius considers that any dispute may be referred to the International Court of Justice only with the consent of all the Parties to the dispute."

#### MOZAMBIQUE

"... with the following declaration in accordance with its article 24, paragraph 2:

"The Republic of Mozambique does not consider itself bound by the provisions of article 24 paragraph 1 of the Convention.

In this connection the Republic of Mozambique states that, in the each individual case, the consent of all Parties to such a dispute is necessary for the submission of the dispute to arbitration or to the International Court of Justice."

Furthermore, the Republic of Mozambique declare that:

"The Republic of Mozambique, in accordance with its Constitution and domestic laws, may not and will not extradite Mozambique citizens.

Therefore, Mozambique citizens will be tried and sentenced in national courts".

#### MYANMAR<sup>18</sup>

##### *Reservation:*

"The Government of the Union of Myanmar declares in pursuance of Article 24, paragraph (2) of the International Convention for the Suppression of the Financing of Terrorism that it does not consider itself bound by the provisions of Article 24, Paragraph (1)."

##### *Reservations:*

"Regarding article 24 of the International Convention for the Suppression of the Financing of Terrorism, the Union of Myanmar declares that it does not consider itself bound by paragraph 1 of the article 24 of the said Convention.

Regarding the 9 Conventions mentioned in the Annex of the International Convention for the Suppression of the Financing of Terrorism, the Union of Myanmar declares that it is yet to be a party to the Convention on the Physical Protection of Nuclear Material, adopted at Vienna on 3 March 1980."

#### NAMIBIA

"That a struggle waged by people in accordance with the principles of international law for their liberation or self-determination, including armed struggle against colonialism, occupation, aggression and domination by foreign forces, shall not be considered as terrorist acts."

#### NEPAL

"Nepal hereby declares that it does not consider itself bound by the provision of paragraph 1 of Article 24 of the International Convention for the Suppression of the Financing of Terrorism."

"[The] Government of Nepal declares that as Nepal is not a party to the following Conventions referred to in Annex to the International Convention for the

Suppression of the Financing of Terrorism, it does not consider itself bound by the provisions of such conventions until Nepal becomes a party:

1. Convention on the Physical Protection of Nuclear Material, adopted at Vienna on 3 March 1980.

2. Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, supplementary to the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, done at Montreal on 24 February 1988.

3. Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, done at Rome on 10 March 1988.

4. Protocol for the Suppression of Unlawful Acts against the Safety of fixed Platforms located on the Continental Shelf, done at Rome on 10 March 1988.

5. International Convention for the Suppression of Terrorist Bombings, adopted by the General Assembly of the United Nations on 15 December 1997."

"Nepal has acceded to the 'International Convention for the Suppression of the Financing of Terrorism, 1999' on 24 June 2011 according to the National Law. While presenting the proposal for accession to the said Convention in the Legislature Parliament, the Government of Nepal clarified the meaning of the word 'Terrorism' as mentioned in the 'International Convention for the Suppression of the Financing of Terrorism, 1999' that 'any acts which are related to political activities will not be considered as the acts of Terrorism'."

#### NETHERLANDS

"The Kingdom of the Netherlands understands Article 10, paragraph 1, of the International Convention for the Suppression of the Financing of Terrorism to include the right of the competent judicial authorities to decide not to prosecute a person alleged to have committed such an offence, if, in the opinion of the competent judicial authorities grave considerations of procedural law indicate that effective prosecution will be impossible."

"The Government of the Kingdom of the Netherlands has examined the reservations made by the Government of the Democratic People's Republic of Korea regarding article 2, paragraph 1 (a), and article 14 of the International Convention for the suppression of the financing of terrorism made at the time of its signature of the said Convention.

The Government of the Kingdom of the Netherlands considers that the reservations made by the Democratic People's Republic of Korea regarding article 2, paragraph 1 (a), and article 14 of the Convention are reservations incompatible with the object and purpose of the Convention.

The Government of the Kingdom of the Netherlands recalls that, according to Article 19 (c) of the Vienna Convention on the law of treaties, a reservation incompatible with the object and purpose of the Convention shall not be permitted.

It is in the common interest of States that treaties to which they have chosen to become party are respected, as to their object and purpose, by all parties and that States are prepared to undertake any legislative changes necessary to comply with their obligations under the treaties.

The Government of the Kingdom of the Netherlands therefore objects to the aforesaid reservations made by the Government of the Democratic People's Republic of Korea to the International Convention for the suppression of the financing of terrorism.

This objection shall not preclude the entry into force of the Convention between the Kingdom of the Netherlands and the Democratic People's Republic of Korea."

".....the Government of the Kingdom of the Netherlands has examined the Declaration relating to paragraph 1 (b) of Article 2 of the International

Convention for the Suppression of the Financing of Terrorism made by the Government of Jordan at the time of its ratification of the Convention. The Government of the Kingdom of the Netherlands considers that the declaration made by Jordan is in fact a reservation that seeks to limit the scope of the Convention on a unilateral basis and which is contrary to its object and purpose, namely the suppression of the financing of terrorist acts, irrespective of where they take place or who carries them out.

The Government of the Kingdom of the Netherlands further considers the Declaration to be contrary to the terms of Article 6 of the Convention, according to which States Parties commit themselves to "adopt such measures as may be necessary, including, where appropriate, domestic legislation, to ensure that criminal acts within the scope of this Convention are under no circumstances justifiable by considerations of a political, philosophical, ideological, racial, ethnic, religious or other similar nature".

The Government of the Kingdom of the Netherlands recalls that, according to Article 19 (c) of the Vienna Convention on the Law of Treaties, a reservation incompatible with the object and purpose of the Convention shall not be permitted.

It is in the common interest of the States that treaties to which they have chosen to become party are respected, as to their object and purpose, by all parties and that States are prepared to undertake any legislative changes necessary to comply with their obligations under the treaties.

The Government of the Kingdom of the Netherlands therefore objects to the aforesaid reservation made by the Government of Jordan to the International Convention for the Suppression of the Financing of Terrorism. This objection shall not preclude the entry into force of the Convention between the Kingdom of the Netherlands and Jordan."

"The Government of the Kingdom of the Netherlands has examined the reservation made by the Government of Belgium regarding Article 14 of the International Convention for the suppression of the financing of terrorism made at the time of its ratification of the Convention.

The Government of the Kingdom of the Netherlands notes that the reservation made by the Government of Belgium is expressed to apply only "in exceptional circumstances" and that, notwithstanding the application of the reservation, Belgium continues to be bound by the general legal principle of *aut dedere aut judicare*. The Government of the Kingdom of the Netherlands further notes that the exceptional circumstances that are envisaged in paragraph 1 of the reservation made by the Government of Belgium are not specified in the reservation.

The Government of the Kingdom of the Netherlands considers the offences set forth in Article 2 of the Convention to be of such grave nature, that the provisions of Article 14 should apply in all circumstances.

Furthermore the Government of the Kingdom of the Netherlands recalls the principle that claims of political motivation must not be recognised as grounds for refusing requests for the extradition of alleged terrorists.

The Government of the Kingdom of the Netherlands therefore objects to the reservation made by the Government of Belgium to the International Convention for the suppression of the financing of terrorism.

This objection shall not preclude the entry into force of the Convention between Belgium and the Kingdom of the Netherlands, without Belgium benefiting from its reservation."

"The Government of the Kingdom of the Netherlands has carefully examined the declaration made by the Arab Republic of Egypt to the International Convention for the Suppression of the Financing of Terrorism upon ratification of the Convention relating to Article 2 paragraph 1 (b) thereof. It is of the opinion that this

declaration amounts to a reservation, since its purpose is to unilaterally limit the scope of the Convention. The Government of the Kingdom of the Netherlands is furthermore of the opinion that the declaration is in contradiction to the object and purpose of the Convention, in particular the object of suppressing the financing of terrorist acts wherever and by whomever they may be committed.

The declaration is further contrary to the terms of Article 6 of the Convention, according to which States Parties commit themselves to adopt such measures as may be necessary, including, where appropriate, domestic legislation, to ensure that criminal acts within the scope of this Convention are under no circumstances justifiable by considerations of a political, philosophical, ideological, racial, ethnic, religious or other similar nature.

The Government of the Kingdom of the Netherlands recalls that, according to customary international law as codified in the Vienna Convention on the Law of Treaties, reservations that are incompatible with the object and purpose of a convention are not permissible.

The Government of the Kingdom of the Netherlands therefore objects to the above-mentioned declaration by the Arab Republic of Egypt to the International Convention for the Suppression of the Financing of Terrorism. This objection shall not preclude the entry into force of the Convention as between the Kingdom of the Netherlands and the Arab Republic of Egypt."

"The Government of the Kingdom of the Netherlands has carefully examined the reservation made by the Syrian Arab Republic to the International Convention for the Suppression of the Financing of Terrorism upon accession to the Convention relating to Article 2 paragraph 1 (b) thereof. It is of the opinion that this reservation unilaterally limits the scope of the Convention and is in contradiction to the object and purpose of the Convention, in particular the object of suppressing the financing of terrorist acts wherever and by whomever they may be committed.

The reservation is further contrary to the terms of Article 6 of the Convention, according to which States Parties commit themselves to adopt such measures as may be necessary, including, where appropriate, domestic legislation, to ensure that criminal acts within the scope of this Convention are under no circumstances justifiable by considerations of a political, philosophical, ideological, racial, ethnic, religious or other similar nature.

The Government of the Kingdom of the Netherlands recalls that, according to customary international law as codified in the Vienna Convention on the Law of Treaties, reservations that are incompatible with the object and purpose of a convention are not permissible.

The Government of the Kingdom of the Netherlands therefore objects to the above-mentioned reservation by the Syrian Arab Republic to the International Convention for the Suppression of the Financing of Terrorism. This objection shall not preclude the entry into force of the Convention as between the Kingdom of the Netherlands and the Syrian Arab Republic."

"The Government of the Kingdom of the Netherlands has examined the declaration made by the Government of the People's Republic of Bangladesh upon accession to the International Convention for the Suppression of the Financing of Terrorism. The People's Republic of Bangladesh has declared that its accession to the Convention shall not be deemed to be inconsistent with its international obligations under the Constitution of the country. The Government of the Kingdom of the Netherlands is of the opinion that this declaration raises questions as to which obligations the People's Republic of Bangladesh intends to give precedence to in the event of any inconsistency between the Convention and its Constitution. Declarations that leave it uncertain to what extent a State consents to be bound by its contractual obligations are in the opinion of the Government of the Kingdom of the Netherlands to be treated, in effect, as

general reservations, which are not compatible with the object and purpose of a Convention.

The Government of the Kingdom of the Netherlands therefore objects to the above-mentioned declaration made by the Government of the People's Republic of Bangladesh to the International Convention for the Suppression of the Financing of Terrorism. This objection shall not preclude the entry into force of the Convention as between the Kingdom of the Netherlands and the People's Republic of Bangladesh."

#### NEW ZEALAND

"... AND DECLARES, in accordance with Article 2, paragraph 2 (a), of the Convention, that, in the application of the Convention to New Zealand, the Convention on the Physical Protection of Nuclear Materials adopted at Vienna on [3 March 1980] shall be deemed not to be included in the annex referred to in Article 2, paragraph 1 (a), as New Zealand is not yet a party to it; ..."

#### NICARAGUA

In accordance with the provisions of article 2, paragraph 2, subparagraph (a), of the International Convention for the Suppression of the Financing of Terrorism, the Government of Nicaragua declares:

That, in the application of this Convention, the treaties listed in the annex referred to in article 2, paragraph 1, subparagraph (a), shall be deemed not to be included, given that Nicaragua is not yet a party to the following conventions:

1. International Convention against the Taking of Hostages, adopted by the United Nations General Assembly on 17 December 1979.
2. Convention on the Physical Protection of Nuclear Material, adopted at Vienna on 3 March 1980.
3. Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, done at Rome on 10 March 1988.
4. Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms located on the Continental Shelf, done at Rome on 10 March 1988.

#### NORTH MACEDONIA

"The following treaties are to be deemed not to be included in the annex:

Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, done on 10 March 1988;

Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms located on the Continental Shelf, done at Rome on 10 March 1988."

#### OMAN

"In accordance with the provisions of article 24, paragraph 2, the Sultanate of Oman declares that it does not consider itself bound by Article 24, paragraph 1, and consequently does not accept mandatory recourse to arbitration or to the jurisdiction of the International Court of Justice."

#### PAKISTAN

"Article 11

The Government of the Islamic Republic of Pakistan declares that pursuant to Article 11 paragraph 2, of the Convention, it does not take this Convention as the legal basis for cooperation on extradition with other States Parties.

Article 14

Extradition to other countries shall be subject to the domestic laws of Pakistan.

Article 24

The Government of the Islamic Republic of Pakistan does not consider itself bound by Article 24, Paragraph 1 of the International Convention for the Suppression of the Financing of Terrorism. The Government of Islamic Republic of Pakistan hereby declares that, for a dispute to be referred to the International Court of Justice, the agreement of all parties shall in every case be required."

#### PHILIPPINES

"... , in ratifying the Convention, the Philippines has to declare, as it hereby declares, that in the application of the Convention the following treaties to which it is not yet a party shall be deemed not included in the annex:

(a) Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, supplementary to the Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation;

(b) Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation;

(c) Protocol for the Suppression of Unlawful Acts Against the Safety of Fixed Platforms located on the Continental Shelf;

(d) International Convention for the Suppression of Terrorist Bombings.

... , this declaration shall cease to have effect upon entry into force of the said treaties with respect to the Philippines."

".....pursuant to Article 2 (a) of the International Convention on the Financing of Terrorism, the Philippine Government has become State Party to the following international instruments:

1. Protocol on the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, entered into force for [the Republic of the Philippines] on 16 January 2004 ([Republic of Philippines] ratification deposited with the ICAO on 17 December 2003);

2. International Convention for the Suppression of Terrorist Bombings, entered into force for [the Republic of the Philippines] on 06 February 2004 ([Republic of the Philippines] ratification deposited with the UN Secretary-General on 07 January 2004);

3. Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation, entered into force for [the Republic of the Philippines] on 05 April 2004 ( [Republic of the Philippines] ratification deposited with the IMO on 06 January 2004); and

4. Protocol for the Suppression of Unlawful Acts Against the Safety of Fixed Platforms Located on the Continental Shelf, entered into force for [the Republic of the Philippines] on 05 April 2004 ( [Republic of the Philippines] ratification deposited with the IMO on 06 January 2004).

#### QATAR

&lt;Right&gt;Reservation:&lt;/Right&gt;

... with reservation regarding paragraph 1 of Article (24) concerning the submission of disputes to International Arbitration or to the International Court of Justice.

#### REPUBLIC OF MOLDOVA

1. Pursuant to article 2, paragraph 2 (a) of the International Convention for the Suppression of the Financing of Terrorism, the Republic of Moldova declares that in the application of the Convention the treaties the Republic of Moldova is not a party to shall be deemed not to be included in the Annex of the Convention.

2. Pursuant to article 24, paragraph 2 of the International Convention for the Suppression of the Financing of Terrorism, the Republic of Moldova declares that it does not consider itself bound by the provisions of article 24, paragraph 1 of the Convention.

#### ROMANIA

"In accordance with Article 2, paragraph 2, subparagraph (a) of the Convention, Romania declares that, on the date of the application of this Convention to Romania, the International Convention for the Suppression of Terrorism Bombings of 15 December 1997, shall be deemed not to be included in the annex referred to in Article 2, paragraph 1, subparagraph (a)."

#### RUSSIAN FEDERATION

It is the position of the Russian Federation that the provisions of article 15 of the Convention must be applied in such a way as to ensure the inevitability of responsibility for perpetrating the crimes falling within the purview of the Convention, without prejudice to the effectiveness of international cooperation with regard to the questions of extradition and legal assistance.

1. ....

2. It is the position of the Russian Federation that the provisions of article 15 of the Convention must be applied in such a way as to ensure the inevitability of responsibility for perpetrating crimes falling within the purview of the Convention, without prejudice to the effectiveness of international cooperation with regard to the questions of extradition and legal assistance.

#### SAUDI ARABIA

The Kingdom of Saudi Arabia does not consider itself bound by article 24, paragraph 1 of the Convention relating to the submission to arbitration of any dispute concerning the interpretation or application of this Convention, or their referral to the International Court of Justice should settlement by arbitration be impossible.

The Convention on the Physical Protection of Nuclear Material is not deemed by the Kingdom of Saudi Arabia to be included in the annex referred to in article 2, paragraph 1 (a) of the Convention.

#### SINGAPORE

"... the Government of the Republic of Singapore makes the following reservations in relation to Article 2 and Article 24 of the 1999 International Convention for the Suppression of the Financing of Terrorism:

i) The Republic of Singapore declares, in pursuance of Article 2, paragraph 2 (a) of the Convention that in the application of this Convention, the treaty shall be deemed not to include the treaties listed in the annex of this Convention which the Republic of Singapore is not a party to.

ii) The Republic of Singapore declares, in pursuance of Article 24, paragraph 2 of the Convention that it will not be bound by the provisions of Article 24 paragraph 1 of the Convention."

"... [S]ubject to the following declarations and reservations:

Declarations

(1) The Republic of Singapore understands that Article 21 of the Convention clarifies that nothing in the Convention precludes the application of the law of armed conflict with regard to legitimate military objectives.

Reservations

(1) With respect to Article 2, paragraph 2 (a) of the Convention, the Republic of Singapore declares that the treaty shall be deemed not to include the treaties listed in the annex of this Convention which the Republic of Singapore is not a party to.

(2) The Republic of Singapore declares, in pursuance of Article 24, paragraph 2 of the Convention that it will not be bound by the provisions of Article 24, paragraph 1 of the Convention."

## ST. LUCIA

"In accordance with Article 2, paragraph 2, subparagraph (a) of the Convention for the Suppression of the Financing of Terrorism, the Government of Saint Lucia declares that in the application of this Convention to Saint Lucia, the following treaties shall be deemed not to be included in the Annex referred to in Article 2, paragraph 1 (a) of the Convention, as Saint Lucia is not a party to these treaties:

1. Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, adopted by the General Assembly of the United Nations on 14 December 1973.

2. International Convention against the Taking of Hostages, adopted by the General Assembly of the United Nations on 17 December 1979.

3. Convention on the Physical Protection of Nuclear Material, adopted at Vienna on 3 March 1980.

4. International Convention for the Suppression of Terrorist Bombings, adopted by the General Assembly of the United Nations on 15 December 1997."

"In accordance with Article 24, paragraph 2 of the Convention, the Government of Saint Lucia does not consider itself bound by the provision of Article 24, paragraph 1 of the Convention, and takes the position that any dispute may only be referred to the International Court of Justice with the consent of all the parties to the dispute."

## ST. VINCENT AND THE GRENADINES

"In accordance with Article 2 paragraph 2 a) of the said Convention, however, the Government of Saint Vincent and the Grenadines declares that in the application of this Convention to Saint Vincent and the Grenadines the following treaties shall be deemed not to be included in the Annex referred to in its Article 2 paragraph 1(a):

1. Convention on the Physical Protection of Nuclear Material, adopted at Vienna on 3 March 1980.

2. International Convention for the Suppression of Terrorist Bombings, adopted by the General Assembly of the United Nations on 15 December 1997.

Further, in accordance with Article 24 paragraph 2 of the said Convention, the Government of Saint Vincent and the Grenadines declares that it does not consider itself bound by paragraph 1 of Article 24. The Government of Saint Vincent and the Grenadines considers that any dispute may be referred to the International Court of Justice only with the consent of all the parties to the dispute."

## SURINAME

"[I]n the application of the aforementioned Convention the following treaties listed in the Annex referred to in Article 2, paragraph 1, subparagraph a, shall be deemed not to be included:

Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, adopted by the General Assembly of the United Nations on 14 December 1973;

Convention on the Physical Protection of Nuclear Material, adopted at Vienna on 3 March 1980;

Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, done at Rome on 10 March 1988;

Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms located on the Continental Shelf, done at Rome on 10 March 1988;

International Convention for the Suppression of Terrorist Bombings, adopted by the General Assembly of the United Nations on 15 December 1997".

## SYRIAN ARAB REPUBLIC<sup>19</sup>

A reservation concerning the provisions of its article 2, paragraph 1 (b), inasmuch as the Syrian Arab Republic considers that acts of resistance to foreign occupation are not included under acts of terrorism;

Pursuant to article 2, paragraph 2 (a) of the Convention, the accession of the Syrian Arab Republic to the Convention shall not apply to the following treaties listed in the annex to the Convention until they have been adopted by the Syrian Arab Republic:

1. The International Convention against the Taking of Hostages, adopted by the General Assembly on 17 December 1979;

2. The Convention on the Physical Protection of Nuclear Materials, adopted at Vienna on 3 March 1980;

3. The International Convention for the Suppression of Terrorist Bombings, adopted by the General Assembly on 15 December 1997.

Pursuant to article 24, paragraph 2, of the Convention, the Syrian Arab Republic declares that it does not consider itself bound by paragraph 1 of the said article;

The accession of the Syrian Arab Republic to this Convention shall in no way imply its recognition of Israel or entail its entry into any dealings with Israel in the matters governed by the provisions thereof.

## THAILAND

"I. The Kingdom of Thailand declares in pursuance to Article 2 paragraph 2 (a) of the Convention that in the application of this Convention, the following treaties, which the Kingdom of Thailand is not a party to, shall not be included in the annex of this Convention.

1. Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, adopted by the General Assembly of the United Nations on 14 December 1973.

2. International Convention against the Taking of Hostages, adopted by the General Assembly of the United Nations on 17 December 1979.

3. Convention on the Physical Protection of Nuclear Material, adopted at Vienna on 3 March 1980.

4. Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, done at Rome on 10 March 1988.

5. Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms located on the Continental Shelf, done at Rome on 10 March 1988.

6. International Convention for the Suppression of Terrorist Bombings, adopted by the General Assembly of the United Nations on 15 December 1997.

II. The Kingdom of Thailand declares, in pursuance to Article 24 paragraph 2 of the Convention, that it does not consider itself bound by Article 24 paragraph 1 of the Convention."

## TRINIDAD AND TOBAGO

"... pursuant to paragraph 2 of Article 24 the Government of the Republic of Trinidad and Tobago declares that it does not consider itself bound by paragraph 1 of Article 24 of the Convention."

## TUNISIA

The Republic of Tunisia,

In ratifying the International Convention for the Suppression of the Financing of Terrorism adopted on 9 December 1999 by the General Assembly at its fifty-fourth session and signed by the Republic of Tunisia on 2 November 2001, declares that it does not consider itself bound by the provisions of article 24, paragraph 1, of the Convention and affirms that, in the settlement of disputes concerning the interpretation or implementation of the Convention, there shall be no recourse to arbitration or to

the International Court of Justice without its prior consent.

#### TURKEY

"1. The Republic of Turkey declares that the application of Paragraph 1(b) of Article (2) of the Convention does not necessarily indicate the existence of an armed conflict and the term "armed conflict", whether it is organized or not, describes a situation different from the commitment of acts that constitute the crime of terrorism within the scope of criminal law.

2. The Republic of Turkey declares its understanding that Paragraph 1(b) of Article (2) of the International Convention for the Suppression of the Financing of Terrorism, as stated in Article (21) of the said Convention, shall not prejudice the obligations of states under international law including the Charter of the United Nations, in particular the obligation of not providing financial support to terrorist and armed groups acting in the territory of other states.

3. Pursuant to Paragraph 2 of Article 24 of the International Convention for the Suppression of the Financing of Terrorism, the Republic of Turkey declares that it does not consider itself bound by the provisions of Paragraph 1 of Article (24) of the said Convention."

#### UNITED ARAB EMIRATES

.....subject to a reservation with respect to article 24, paragraph 1, thereof, in consequence of which the United Arab Emirates does not consider itself bound by that paragraph, which relates to arbitration.

#### UNITED STATES OF AMERICA

"(a) pursuant to Article 24 (2) of the Convention, the United States of America declares that it does not consider itself bound by Article 24 (1) of the Convention; and

(b) the United States of America reserves the right specifically to agree in a particular case to follow the arbitration procedure set forth in Article 24 (1) of the Convention or any other procedure for arbitration."

"(1) EXCLUSION OF LEGITIMATE ACTIVITIES AGAINST LAWFUL TARGETS. The United States of America understands that nothing in the Convention precludes any State Party to the Convention from conducting any legitimate activity against any lawful target in accordance with the law of armed conflict.

(2) MEANING OF THE TERM "ARMED CONFLICT". The United States of America understands that the term "armed conflict" in Article 2 (1) (b) of the Convention does not include internal disturbances and tensions, such as riots, isolated and sporadic acts of violence, and other acts of a similar nature."

#### VENEZUELA (BOLIVARIAN REPUBLIC OF)

Pursuant to article 24, paragraph 2, of the International Convention for the Suppression of the Financing of Terrorism, the Bolivarian Republic of Venezuela hereby formulates an express reservation to the provisions of article 24, paragraph 1, of that Convention. Accordingly,

it does not consider itself bound to resort to arbitration as a means of dispute settlement, and does not recognize the binding jurisdiction of the International Court of Justice.

Furthermore, pursuant to article 2, paragraph 2, subparagraph (a), of the International Convention for the Suppression of the Financing of Terrorism, it declares that in the application of that Convention to Venezuela, the following treaties shall be deemed not to be included in the annex referred to in article 2, paragraph 1, subparagraph (a), of that Convention until they enter into force for the Bolivarian Republic of Venezuela:

1. Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, adopted by the General Assembly of the United Nations on 14 December 1973;

2. Convention on the Physical Protection of Nuclear Material, signed at Vienna on 3 March 1980;

3. Protocol on the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, supplementary to the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, signed at Montreal on 24 February 1988;

4. Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, done at Rome on 10 March 1988;

5. Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf, done at Rome on 10 March 1988;

6. International Convention for the Suppression of Terrorist Bombings, adopted by the General Assembly of the United Nations on 15 December 1997.

#### VIET NAM<sup>20</sup>

"Acceding to this Convention, the Socialist Republic of Vietnam makes its reservation to paragraph 1 of Article 24 of the Convention.

The Socialist Republic of Vietnam also declares that the provisions of the Convention shall not be applied with regard to the offences set forth in the following treaties to which the Socialist Republic of Vietnam is not a party:

- Convention on the Physical Protection of Nuclear Material, adopted at Vienna on 3 March 1980;

#### YEMEN<sup>21</sup>

[The Government of the Republic of Yemen has ratified the Convention] ... subject to reservations to the following articles:

- (a) Article 2, paragraph 1(b);
- (b) Article 24, paragraph 1.

The accession of the Republic of Yemen to this Convention shall in no way signify recognition of Israel or entry into any relations with it.

#### ZIMBABWE

"The Government of the Republic of Zimbabwe hereby declares in terms of Article 24 (2) that it enters a reservation to Article 24 (1) which provides that where Parties fail to resolve their dispute through arbitration any Party may refer the dispute to the International Court of Justice."

### Objections

*(Unless otherwise indicated, the objections were made upon ratification, acceptance, approval or accession.)*

#### AUSTRALIA

"The Permanent Mission of Australia to the United Nations [...] advise[s] that it has examined the reservation

made by the Republic of Yemen to Article 2 (1) (b) of the International Convention for the Suppression of the Financing of Terrorism 1999 upon ratifying this Convention.

The Government of Australia considers that the reservation made by the Republic of Yemen is incompatible with the object and purpose of the Convention, that is, the suppression of the financing of terrorism acts. The norm of customary international law embodied in Article 19 (c) of the Vienna Convention of the Law of Treaties 1961 provides that a reservation incompatible with the object and purpose of the Convention shall not be permitted.

The Government of Australia therefore objects to the reservation made by the Republic of Yemen to Article 2 (1) (b) of the International Convention for the Suppression of the Financing of Terrorism 1999.

This objection shall not preclude the entry into force of the Convention as between Australia and Yemen."

#### AUSTRIA

"The Government of Austria has examined the Declaration relating to paragraph 1 (b) of Article 2 of the International Convention for the Suppression of the Financing of Terrorism made by the Government of the Hashemite Kingdom of Jordan at the time of its ratification of the Convention. The Government of Austria considers that the declaration made by the Government of the Hashemite Kingdom of Jordan is in fact a reservation that seeks to limit the scope of the Convention on a unilateral basis and is therefore contrary to its object and purpose, which is the suppression of the financing of terrorist acts, irrespective of where they take place and of who carries them out.

The Declaration is furthermore contrary to the terms of Article 6 of the Convention, according to which States Parties commit themselves to "adopt such measures as may be necessary, including, where appropriate, domestic legislation, to ensure that criminal acts within the scope of this Convention are under no circumstances justifiable by considerations of a political, philosophical, ideological, racial, ethnic, religious or other similar nature."

The Government of Austria recalls that, according to customary international law as codified in the Vienna Convention on the Law of Treaties, a reservation incompatible with the object and purpose of a treaty shall not be permitted.

The Government of Austria therefore objects to the aforesaid reservation made by the Government of the Hashemite Kingdom of Jordan to the International Convention for the Suppression of the Financing of Terrorism. However, this objection shall not preclude the entry into force of the Convention between Austria and the Hashemite Kingdom of Jordan."

"The Government of Austria has carefully examined the Declaration relating to paragraph 1 (b) of Article 2 of the International Convention for the Suppression of the Financing of Terrorism made by the Government of the Arab Republic of Egypt at the time of its ratification of the Convention. The Government of Austria considers that this declaration is in fact a reservation that seeks to limit the scope of the Convention on a unilateral basis and is therefore contrary to its object and purpose, which is the suppression of the financing of terrorist acts, irrespective of where they take place and of who carries them out.

The Declaration is furthermore contrary to the terms of Article 6 of the Convention, according to which States Parties commit themselves to "adopt such measures as may be necessary, including, where appropriate, domestic legislation, to ensure that criminal acts within the scope of this Convention are under no circumstances justifiable by considerations of a political, philosophical, ideological, racial, ethnic, religious or other similar nature."

The Government of Austria recalls that, according to customary international law as codified in the Vienna Convention on the Law of Treaties, a reservation incompatible with the object and purpose of a treaty shall not be permitted. It is in the common interest of States that treaties to which they have chosen to become parties

are respected as to their object and purpose and that States are prepared to undertake any legislative changes necessary to comply with their obligations under the treaties.

The Government of Austria therefore objects to the aforesaid reservation made by the Government of the Arab Republic of Egypt to the International Convention for the Suppression of the Financing of Terrorism. However, this objection shall not preclude the entry into force of the Convention between Austria and the Arab Republic of Egypt."

"The Government of Austria has carefully examined the Declaration relating to paragraph 1 (b) of Article 2 of the International Convention for the Suppression of the Financing of Terrorism made by the Government of the Syrian Arab Republic at the time of its ratification of the Convention.

The Government of Austria considers that this declaration is in fact a reservation that seeks to limit the scope of the Convention on a unilateral basis and is therefore contrary to its object and purpose, which is the suppression of the financing of terrorist acts, irrespective of where they take place and of who carries them out.

The Declaration is furthermore contrary to the terms of Article 6 of the Convention, according to which States Parties commit themselves to "adopt such measures as may be necessary, including, where appropriate, domestic legislation, to ensure that criminal acts within the scope of this Convention are under no circumstances justifiable by considerations of a political, philosophical, ideological, racial, ethnic, religious or other similar nature."

The Government of Austria recalls that, according to customary international law as codified in the Vienna Convention on the Law of Treaties, a reservation incompatible with the object and purpose of a treaty shall not be permitted.

It is in the common interest of States that treaties to which they have chosen to become parties are respected as to their object and purpose and that States are prepared to undertake any legislative changes necessary to comply with their obligations under the treaties.

The Government of Austria therefore objects to the aforesaid reservation made by the Government of the Syrian Arab Republic to the International Convention for the Suppression of the Financing of Terrorism.

However, this objection shall not preclude the entry into force of the Convention between Austria and the Syrian Arab Republic."

"The Government of Austria has examined the reservation made by the Government of Yemen to the International Convention for the Suppression of the Financing of Terrorism upon accession.

Austria finds that the reservation to Article 2, paragraph 1 (b), seeks to limit the scope of application of the Convention in a way that is contrary to its object and purpose, namely the suppression of the financing of terrorist acts.

Austria would like to recall that, according to customary law as codified in the Vienna Convention on the Law of Treaties (Article 19, sub-paragraph c), a reservation incompatible with the object and purpose of the Convention shall not be permitted.

It is in the common interest of States that treaties to which they have chosen to become parties are respected as to their object and purpose, by all parties, and that States are prepared to undertake any legislative changes necessary to comply with their obligations under the treaties.

For these reasons, the Government of Austria objects to the aforementioned reservations made by the Government of Yemen to the International Convention for the Suppression of the Financing of Terrorism.

This position however does not preclude the entry into force in its entirety of the Convention between the Republic of Yemen and Austria."

“The Government of Austria has carefully examined the reservation made by Namibia upon the ratification of the International Convention for the Suppression of the Financing of Terrorism.

The Government of Austria considers that this reservation limits the scope of the Convention on a unilateral basis and is therefore contrary to its object and purpose, which is the suppression of the financing of terrorist acts, irrespective of where they take place and of who carries them out.

The reservation is furthermore contrary to the terms of Article 6 of the Convention, according to which States Parties commit themselves to ‘adopt such measures as may be necessary, including, where appropriate, domestic legislation, to ensure that criminal acts within the scope of this Convention are under no circumstances justifiable by considerations of a political, philosophical, ideological, racial, ethnic, religious or other similar nature.’

The Government of Austria recalls that, according to customary international law as codified in the Vienna Convention on the Law of Treaties, a reservation incompatible with the object and purpose of a treaty shall not be permitted. It is in the common interest of States that treaties to which they have chosen to become parties are respected as to their object and purpose and that States are prepared to undertake any legislative changes necessary to comply with their obligations under the treaties.

The Government of Austria therefore objects to the aforesaid reservation made by Namibia to the International Convention for the Suppression of the Financing of Terrorism.

However, this objection shall not preclude the entry into force of the Convention between Austria and Namibia.”

“The Government of Austria has carefully examined the interpretative declaration made by Kuwait upon the ratification of the International Convention for the Suppression of the Financing of Terrorism.

The Government of Austria is of the view that the declaration amounts to a reservation as it unilaterally limits the scope of the Convention. The Government of Austria further considers the reservation to be in contradiction with the object and purpose of the Convention, namely the suppression of the financing of terrorist acts wherever and by whomever carried out.

The reservation is contrary to the terms of Article 6 of the Convention, according to which States Parties commit themselves to ‘adopt such measures as may be necessary, including, where appropriate, domestic legislation, to ensure that criminal acts within the scope of this Convention are under no circumstances justifiable by considerations of a political, philosophical, ideological, racial, ethnic, religious or other similar nature’.

The Government of Austria recalls that, according to customary international law as codified in the Vienna Convention on the Law of Treaties, a reservation incompatible with the object and purpose of a treaty shall not be permitted. It is in the common interest of States that treaties to which they have chosen to become parties are respected as to their object and purpose and that States are prepared to undertake any legislative changes necessary to comply with their obligations under the treaties.

The Government of Austria therefore objects to the aforesaid reservation made by Kuwait to the International Convention for the Suppression of the Financing of Terrorism.

However, this objection shall not preclude the entry into force of the Convention between Austria and Kuwait.”

“The Government of Austria has carefully examined the reservation and statement made by the Lebanese Republic upon accession to the International Convention

for the Suppression of the Financing of Terrorism on 29 August 2019.

Austria considers the statement to amount to a reservation as well, because it aims at subjecting the application of the Convention for the Lebanese Republic to its own, narrower definition of terrorism.

By excluding the definition of terrorism set forth in Article 2, paragraph 1 (b) of the Convention and applying a different definition, Lebanon seeks to limit the scope of the Convention on a unilateral basis. Austria considers these reservations to be contrary to the object and purpose of the Convention, which is the suppression of the financing of terrorism acts, irrespective of where they take place and of who carries them out.

Furthermore, the reservations are contrary to the terms of Article 6 of the Convention, according to which States Parties commit themselves to ‘adopt such measures as may be necessary, including, where appropriate, domestic legislation, to ensure that criminal acts within the scope of this Convention are under no circumstances justifiable by considerations of a political, philosophical, ideological, racial, ethnic, religious or other similar nature’.

Austria would like to recall that, according to customary law as codified in the Vienna Convention on the Law of Treaties (Article 19, sub-paragraph (c)), a reservation incompatible with the object and purpose of the Convention shall not be permitted. It is in the common interest of states that treaties to which they have chosen to become parties are respected as to their object and purpose, by all parties, and that states are prepared to undertake any legislative changes necessary to comply with their obligations under the treaties.

Austria therefore objects to the aforementioned reservations. This objection shall not preclude the entry into force of the Convention between the Republic of Austria and the Lebanese Republic in its entirety. The Convention will thus become operative between the two states without Lebanon benefitting from the aforementioned reservations.”

#### BELGIUM

The Government of the Kingdom of Belgium has examined the reservation formulated by the Government of the Arab Republic of Egypt upon ratification of the International Convention for the Suppression of the Financing of Terrorism, in particular the part of the reservation in which the Government of the Arab Republic of Egypt declares that it "does not consider acts of national resistance in all its forms, including armed resistance against foreign occupation and aggression with a view to liberation and self-determination, as terrorist acts within the meaning of article 2, [paragraph 1], subparagraph (b), of the Convention". The Government of Belgium considers that this reservation is a reservation that seeks to limit the scope of the Convention on a unilateral basis and that is contrary to its object and purpose, namely, the suppression of the financing of terrorist acts, wherever and by whomever committed.

Moreover, this declaration is contrary to article 6 of the Convention, according to which "each State Party shall adopt such measures as may be necessary, including, where appropriate, domestic legislation, to ensure that criminal acts within the scope of this Convention are under no circumstances justifiable by considerations of a political, philosophical, ideological, racial, ethnic, religious or other similar nature".

The Government of Belgium recalls that, according to article 19, paragraph (c), of the Vienna Convention on the Law of Treaties, a reservation incompatible with the

object and purpose of the Convention shall not be permitted.

The Government of Belgium therefore objects to the aforementioned reservation made by the Government of Egypt to the International Convention for the Suppression of the Financing of Terrorism. This objection shall not preclude the entry into force of the Convention between Belgium and Egypt.

The Government of Belgium has examined the reservation formulated by the Syrian Arab Republic upon accession to the International Convention for the Suppression of the Financing of Terrorism, in particular the part of the reservations and declarations relating to the provisions of article 2, paragraph 1 (b), of the Convention, in which the Syrian Arab Republic declares that it considers "that acts of resistance to foreign occupation are not included under acts of terrorism". The Government of Belgium considers that this reservation seeks to limit the scope of the Convention on a unilateral basis, which is contrary to the object and purpose thereof, namely, the suppression of the financing of acts of terrorism, wherever and by whomever committed.

Moreover, this reservation contravenes article 6 of the Convention, according to which "Each State Party shall adopt such measures as may be necessary, including, where appropriate, domestic legislation, to ensure that criminal acts within the scope of this Convention are under no circumstances justifiable by considerations of a political, philosophical, ideological, racial, ethnic, religious or other similar nature".

The Government of Belgium recalls that, under article 19 (c) of the Vienna Convention on the Law of Treaties, no reservation may be formulated that is incompatible with the object and purpose of the Convention.

The Government of Belgium therefore objects to the above-mentioned reservation made by the Syrian Arab Republic to the International Convention for the Suppression of the Financing of Terrorism. This objection shall not preclude the entry into force of the Convention between Belgium and the Syrian Arab Republic.

The Government of the Kingdom of Belgium has examined the reservation formulated by the Government of the Republic of Namibia to article 2, paragraph 1 (b), of the International Convention for the Suppression of the Financing of Terrorism, stating that an armed struggle waged by people... "for their liberation or self-determination, including armed struggle against colonialism, occupation, aggression and domination by foreign forces, shall not be considered as terrorist acts" by the Government of Namibia. The Government of the Kingdom of Belgium considers that this reservation seeks to limit the scope of the Convention on a unilateral basis and is contrary to the object and purpose thereof, namely, the suppression of the financing of terrorist acts, wherever and by whomever committed.

Moreover, this declaration is contrary to article 6 of the Convention, according to which "each State Party shall adopt such measures as may be necessary, including, where appropriate, domestic legislation, to ensure that criminal acts within the scope of this Convention are under no circumstances justifiable by considerations of a political, philosophical, ideological, racial, ethnic, religious or other similar nature".

The Government of the Kingdom of Belgium recalls that, according to article 19, paragraph (c), of the Vienna Convention on the Law of Treaties, reservations incompatible with the object and purpose of the Convention are not permitted.

The Government of Belgium therefore objects to the aforementioned reservation made by the Government of Namibia to the International Convention for the Suppression of the Financing of Terrorism. This objection shall not preclude the entry into force of the Convention between Belgium and Namibia.

The Government of the Kingdom of Belgium has examined the interpretative declaration formulated by the Government of the State of Kuwait upon its accession to the International Convention for the Suppression of the Financing of Terrorism (New York, 9 December 1999).

The Government of the Kingdom of Belgium considers that this interpretative declaration in fact constitutes a reservation the aim of which is to restrict the scope of the Convention by making the implementation of the Convention subject to the domestic legislation in force in Kuwait.

The Government of the Kingdom of Belgium considers that the aim of this reservation is to limit the scope of the Convention unilaterally and that it is contrary to the purpose and objective of the Convention, which is to suppress the financing of terrorism, wherever and by whomever committed.

Moreover, this declaration contravenes article 6 of the Convention, which states that "Each State Party shall adopt such measures as may be necessary, including, where appropriate, domestic legislation, to ensure that criminal acts within the scope of this Convention are under no circumstances justifiable by considerations of a political, philosophical, ideological, racial, ethnic, religious or other similar nature."

The Government of the Kingdom of Belgium recalls that, under article 19, paragraph (c) of the Vienna Convention on the Law of Treaties, no reservation can be made that is incompatible with the object and purpose of this Convention.

The Belgian Government therefore opposes the aforementioned reservation made by the Kuwaiti Government to the International Convention for the Suppression of the Financing of Terrorism. This objection shall not preclude the entry into force of the Convention between Belgium and Kuwait.

The Kingdom of Belgium has carefully examined the reservation formulated by the Lebanese Republic upon its accession, on 29 August 2019, to the International Convention for the Suppression of the Financing of Terrorism (New York, 9 December 1999).

The Kingdom of Belgium considers that the aim of this reservation is to limit the scope of the Convention unilaterally and that it is contrary to the purpose and objective of the Convention, which is to suppress the financing of terrorism, wherever and by whomever committed.

Moreover, this declaration contravenes article 6 of the Convention, which states that "Each State Party shall adopt such measures as may be necessary, including, where appropriate, domestic legislation, to ensure that criminal acts within the scope of this Convention are under no circumstances justifiable by considerations of a political, philosophical, ideological, racial, ethnic, religious or other similar nature."

The Kingdom of Belgium recalls that, under article 19 of the Vienna Convention on the Law of Treaties, a State may not formulate a reservation incompatible with the object and purpose of a treaty.

The Kingdom of Belgium therefore objects to the aforementioned reservation made by the Lebanese Republic to the International Convention for the Suppression of the Financing of Terrorism. This objection shall not preclude the entry into force of the Convention between Belgium and Lebanon.

#### CANADA

"The Government of Canada has examined the Declaration made by [the] Hashemite Kingdom of Jordan at the time of its ratification of the International Convention for the Suppression of the Financing of

Terrorism and considers that the Declaration is, in fact, a reservation that seeks to limit the scope of the Convention on a unilateral basis and is contrary to the object and purpose of the Convention which is the suppression of the financing of terrorism, irrespective of who carries it out.

The Government of Canada considers the Declaration to be, furthermore, contrary to the terms of Article 6 of the Convention, according to which States Parties commit themselves to "adopt such measures as may be necessary, including, where appropriate, domestic legislation, to ensure that criminal acts within the scope of this Convention are under no circumstances justifiable by considerations of a political, philosophical, ideological, racial, ethnic, religious or other similar nature".

The Government of Canada considers that the above Declaration constitutes a reservation which is incompatible with the object and purpose of the International Convention for the Suppression of the Financing of Terrorism.

The Government of Canada recalls that, according to Article 19 (c) of the Vienna Convention on the Law of Treaties, a reservation incompatible with the object and purpose of the Convention shall not be permitted.

It is in the common interest of States that treaties to which they have chosen to become party are respected, as to their object and purpose, by all parties and that States are prepared to undertake any legislative changes necessary to comply with their obligations under the treaties.

The Government of Canada therefore object to the aforesaid reservation made by the Government of the Hashemite Kingdom of Jordan to the International Convention for the Suppression of the Financing of Terrorism. This objection shall not preclude the entry into force of the Convention between Canada and the Hashemite Kingdom of Jordan."

"The Government of Canada considers the Reservation to be contrary to the terms of Article 6 of the Convention, according to which States Parties commit themselves to ".....adopt such measures as may be necessary, including, where appropriate, domestic legislation, to ensure that criminal acts within the scope of this Convention are under no circumstances justifiable by considerations of a political, philosophical, ideological, racial, ethnic, religious or other similar nature."

The Government of Canada notes that, under established principles of international treaty law, as reflected in Article 19 (c) of the Vienna Convention on the Law of Treaties, a reservation that is incompatible with the object and purpose of the treaty shall not be permitted.

The Government of Canada therefore objects to the Reservation relating to Article 2 made by the Government of Belgium upon ratification of the International Convention for the Suppression of the Financing of Terrorism because it is contrary to the object and purpose of the Convention. This objection does not, however, preclude the entry into force of the Convention between Canada and Belgium."

"The Government of Canada has examined the Declaration made by the Government of the Arab Republic of Egypt at the time of its ratification of the International Convention for the Suppression of the Financing of Terrorism and considers that the Declaration is, in fact, a reservation that seeks to limit the scope of the Convention on a unilateral basis and is contrary to the object and purpose of the Convention which is the suppression of the financing of terrorism, irrespective of who carries it out.

The Government of Canada considers the declaration to be, furthermore, contrary to the terms of Article 6 of the Convention, according to which States Parties commit themselves to "adopt such measures as may be necessary, including, where appropriate, domestic legislation, to ensure that criminal acts within the scope of this Convention are under no circumstances justifiable by

considerations of a political, philosophical, ideological, racial, ethnic, religious or other similar nature".

The Government of Canada recalls that, according to Article 19 (c) of the Vienna Convention on the Law of Treaties, a reservation incompatible with the object and purpose of the Convention shall not be permitted.

It is in the common interest of States that treaties to which they have chosen to become party are respected, as to their object and purpose, by all parties and that States are prepared to undertake any legislative changes necessary to comply with their obligations under the treaties.

The Government of Canada therefore objects to the aforesaid reservation made by the Government of the Arab Republic of Egypt to the International Convention for the Suppression of the Financing of Terrorism. This objection shall not preclude the entry into force of the Convention between Canada and the Government of the Arab Republic of Egypt."

"The Government of Canada has examined the Reservation made by the Government of the Syrian Arab Republic at the time of its ratification of the International Convention for the Suppression of the Financing of Terrorism and considers that the Reservation seeks to limit the scope of the Convention on a unilateral basis and is contrary to the object and purpose of the Convention which is the suppression of the financing of terrorism, irrespective of who carries it out.

The Government of Canada considers the Resevaion to be, furthermore, contrary to the terms of Article 6 of the Convention, according to which States Parties commit themselves to "adopt such measures as may be necessary, including, where appropriate, domestic legislation, to ensure that criminal acts within the scope of this Convention are under no circumstances justifiable by considerations of a political, philosophical, ideological, racial, ethnic, religious or other similar nature".

The Government of Canada recalls that, according to Article 19 (c) of the Vienna Convention on the Law of Treaties, a reservation incompatible with the object and purpose of the Convention shall not be permitted.

It is in the common interest of States that treaties to which they have chosen to become party are respected, as to their object and purpose, by all parties and that States are prepared to undertake any legislative changes necessary to comply with their obligations under the treaties. The Government of Canada therefore objects to the aforesaid reservation made by the Government of the Syrian Arab Republic to the International Convention for the Suppression of the Financing of Terrorism. This objection shall not preclude the entry into force of the Convention between Canada and the Syrian Arab Republic."

"The Government of Canada has examined the "understanding" made by the People's Republic of Bangladesh at the time of its accession to the International Convention for the Suppression of the Financing of Terrorism and considers that the "understanding" is, in fact, a reservation that seeks to limit the scope of the Convention on a unilateral basis.

The Government of Canada recalls that, according to Article 19 (c) of the Vienna Convention on the Law of Treaties, a reservation incompatible with the object and purpose of the Convention shall not be permitted.

The Government of Canada therefore objects to the afoesaid reservation made by the People's Republic of Bangladesh to the International Convention for the Suppression of the Financing of Terrorism. This objection shall not preclude the entry into force of the Convention between Canada and the People's Republic of Bangladesh."

"The Permanent Mission informs the United Nations that the Government of Canada objects to the reservation put forward by the Republic of Namibia. The Government of Canada has examined the Reservation made by the

Republic of Namibia at the time of its ratification of the International Convention for the Suppression of the Financing of Terrorism and considers that the Reservation seeks to limit the scope of the Convention on a unilateral basis and is contrary to the object and purpose of the Convention, which is the suppression of the financing of terrorism, irrespective of who carries it out.

The Government of Canada considers the Reservation to be contrary to the terms of Article 6 of the Convention, according to which States Parties commit themselves to 'adopt such measures as may be necessary, including, where appropriate, domestic legislation, to ensure that criminal acts within the scope of this Convention are under no circumstances justifiable by considerations of a political, philosophical, ideological, racial, ethnic, religious or other similar nature'.

The Government of Canada notes that, under established principles of international treaty law, as reflected in Article 19 (c) of the Vienna Convention on the Law of Treaties, a reservation that is incompatible with the object and purpose of the treaty shall not be permitted.

It is in the common interest of States that treaties to which they have chosen to become party are respected, as to their object and purpose, by all parties and that States are prepared to undertake any legislative changes necessary to comply with their obligations under the treaties.

The Government of Canada therefore objects to the aforesaid reservation made by the Republic of Namibia to the International Convention for the Suppression of the Financing of Terrorism. This objection shall not preclude the entry into force of the Convention between Canada and Namibia."

Canada's Permanent Mission to the United Nations presents its compliments to the Secretary-General of the United Nations and has the honour to refer to the Secretary General's note C.N.467.2013.TREATIES-XVIII.11 (Depositary Notification) dated July 11, 2013, which communicated that the Secretary-General has received from the State of Kuwait an instrument of accession to the International Convention for the Suppression of the Financing of Terrorism 1999 "the Convention", with a proposed interpretive declaration submitted in accordance with Article 24, paragraph 2 of the Convention.

The Permanent Mission informs the United Nations that the Government of Canada objects to the interpretive declaration put forward by the State of Kuwait. The Government of Canada has examined the declaration made by the State of Kuwait at the time of its ratification of the International Convention for the Suppression of the Financing of Terrorism and considers that the interpretive declaration (which Canada considers amounts to a reservation) seeks to limit the scope of the Convention on a unilateral basis and is contrary to the object and purpose of the Convention, which is the suppression of the financing of terrorism, irrespective of who carries it out.

The Government of Canada considers the declaration to be contrary to the terms of Article 6 of the Convention, according to which States Parties commit themselves to "adopt such measures as may be necessary, including, where appropriate, domestic legislation, to ensure that criminal acts within the scope of this Convention are under no circumstances justifiable by considerations of a political, philosophical, ideological, racial, ethnic, religious or other similar nature".

The Government of Canada notes that, under established principles of international treaty law, as reflected in Article 19(c) of the Vienna Convention Law of Treaties, a reservation that is incompatible with the object and purpose of the treaty shall not be permitted.

It is in the common interest of States that treaties to which they have chosen to become Party are respected, as to their object and purpose, by all Parties and that States are prepared to undertake any legislative changes

necessary to comply with their obligations under the treaties.

The Government of Canada therefore objects to the aforesaid declaration made by the State of Kuwait to the International Convention for the Suppression of the Financing of Terrorism. This objection shall not preclude the entry into force of the Convention between Canada and Kuwait.

#### CROATIA

"The Republic of Croatia has carefully examined the reservation and statement made by the Lebanese Republic upon its accession to the International Convention for the Suppression of the Financing of Terrorism.

The Republic of Croatia considers that the reservation made by the Lebanese Republic in relation to Article 2 paragraph 1 (b) of the said Convention unilaterally limits the scope of the Convention and is contrary to the object and purpose of the Convention, which is the suppression of the financing of terrorist acts wherever and by whomever they may be committed.

The Republic of Croatia would like to recall that, according to Article 19 (c) of the Vienna Convention on the Law of Treaties, a reservation incompatible with the object and purpose of a treaty shall not be permitted.

The reservation is furthermore contrary to the terms of Article 6 of the Convention, according to which States Parties commit themselves to adopt such measures as may be necessary, including, where appropriate, domestic legislation, to ensure that criminal acts within the scope of this Convention are under no circumstances justifiable by considerations of a political, philosophical, ideological, racial, ethnic, religious or other similar nature.

It is in the common interest of States that treaties to which they have decided to become Parties are respected in relation to their object and purpose. The Republic of Croatia therefore objects to the aforementioned reservation made by the Lebanese Republic to the International Convention for the Suppression of the Financing of Terrorism. However, this objection shall not preclude the entry into force of the Convention between the Republic of Croatia and the Lebanese Republic in its entirety. The Convention will thus become operative between the two States without the Lebanese Republic benefiting from the aforementioned reservation."

#### CZECH REPUBLIC

"The Czech Republic has examined the reservation made by the Republic of Yemen on March 3, 2010, upon accession to the International Convention for the Suppression of the Financing of Terrorism of December 9, 1999, according to which the Republic of Yemen excludes the application of the provisions of Article 2, Paragraph 1 (b) of the Convention.

This reservation purports to exclude the suppression of the financing of acts of terrorism 'intended to cause death or serious bodily injury to a civilian, or to any other person not taking an active part in the hostilities in a situation of armed conflict'. The Czech Republic is of the view that the reservation made by the Republic of Yemen is incompatible with the object and purpose of the Convention, namely the suppression of the financing of all terrorist acts.

The Czech Republic wishes to recall that, according to customary international law as codified in the Vienna Convention on the Law of Treaties, a reservation incompatible with the object and purpose of a treaty shall not be permitted.

The Czech Republic, therefore, objects to the above-stated reservation. This objection shall not preclude the entry into force of the Convention between the Czech

Republic and the Republic of Yemen. The Convention enters into force in its entirety between the Czech Republic and the Republic of Yemen without the Republic of Yemen benefiting from its reservation.”

“The Government of the Czech Republic has examined the reservation made by the Government of the Republic of Namibia upon ratification of the International Convention for the Suppression of the Financing of Terrorism (hereinafter as the ‘Convention’), according to which the Government of the Republic of Namibia does not consider the armed struggle waged by people against colonialism, occupation, aggression and domination by foreign forces for the purpose of liberation or self-determination to be terrorist acts.

The Government of the Czech Republic considers this reservation to be incompatible with the object and purpose of the Convention, namely the suppression of the financing of terrorist acts, including the acts defined in paragraph 1 (b) of Article 2 of the Convention and directed against civilians or any other persons not taking an active part in the hostilities in a situation of armed conflict. Such acts cannot be justified with reference to the struggle for liberation or self-determination or to any other purpose and must be prosecuted irrespective of the circumstances or context in which they take place and who carries them out.

In addition, the Government of the Czech Republic is of the view that the reservation is contrary to the terms of Article 6 of the Convention, according to which States Parties commit themselves to adopt such measures as may be necessary to ensure that criminal acts within the scope of the Convention are under no circumstances justifiable by considerations of a political, philosophical, ideological, racial, ethnic, religious or similar nature.

The Government of the Czech Republic wishes to recall that, according to customary international law as codified in the Vienna Convention on the Law of Treaties, a reservation incompatible with the object and purpose of a treaty shall not be permitted and that such a reservation is null and void, and therefore devoid of any legal effect.

The Government of the Czech Republic therefore objects to the aforesaid reservation made by the Republic of Namibia to the International Convention for the Suppression of the Financing of Terrorism. This objection shall not preclude the entry into force of the Convention between the Republic of Namibia and the Czech Republic. The Convention enters into force between Namibia and the Czech Republic without the Republic of Namibia benefiting from its reservation.”

“The Government of the Czech Republic has examined the interpretative declaration formulated by the State of Kuwait upon its accession to the International Convention for the Suppression of the Financing of Terrorism, in which the State of Kuwait declares that the commitment of the State of Kuwait to the Convention is without prejudice to its Arab and Islamic obligations in respect of the definition of terrorism and the distinction between terrorism and legitimate national struggle against occupation.

The Government of the Czech Republic is of the view that the interpretative declaration in fact constitutes a reservation, as the declaration purports to exclude or to modify the legal effect of certain provisions of the Convention in their application to the State of Kuwait. The Government of the Czech Republic considers that the reservation is of general and vague nature, since it does not specify the content of the Arab and Islamic obligations of the State of Kuwait in respect of the definition of terrorism and the distinction between terrorism and legitimate national struggle against occupation. Therefore, the character and scope of the reservation cannot be properly assessed. The Government of the Czech Republic wishes to recall that reservations may not be general or vague, since such reservations, without indicating in precise terms their scope, make it

impossible to assess whether or not they are compatible with the object and purpose of the treaty.

In addition, the reservation formulated by the State of Kuwait leaves open the question whether it is compatible with the object and purpose of the Convention, namely to what extent the State of Kuwait commits itself to the binding definition of terrorist acts, including the acts which are defined in paragraph 1 (b) of Article 2 of the Convention and are directed against civilians or any other persons not taking an active part in the hostilities in a situation of armed conflict. Such acts cannot be justified with reference to the legitimate national struggle against occupation or with reference to any other purpose and must be prosecuted irrespective of the circumstances or context in which they take place and who carries them out. Thus, the reservation raises serious doubts as to the commitment of the State of Kuwait to the object and purpose of the Convention.

Therefore, the Government of the Czech Republic objects to the aforesaid reservation formulated by the State of Kuwait. This objection shall not preclude the entry into force of the Convention between the State of Kuwait and the Czech Republic, without the State of Kuwait benefiting from its reservation.”

“The Government of the Czech Republic has examined the reservation and statement made by the Lebanese Republic upon accession to the International Convention for the Suppression of the Financing of Terrorism of December 9, 1999, (hereinafter as the ‘Convention’), according to which the Government of the Lebanese Republic purports to exclude the application of the provisions of Article 2, paragraph 1 (b) of the Convention.

The Czech Republic considers that the statement also constitutes a reservation, as its aim is to subject the application of the Convention for the Lebanese Republic to a different, narrower definition of terrorism.

By excluding the definition of terrorism set forth in Article 2, paragraph 1 (b) of the Convention and applying a different definition, Lebanon seeks to limit the scope of the Convention on a unilateral basis.

The Government of the Czech Republic considers these reservations to be incompatible with the object and purpose of the Convention, which is the suppression of the financing of terrorist acts, irrespective of where they take place and of who carries them out.

In addition, the Government of the Czech Republic is of the view that the reservations are contrary to the terms of Article 6 of the Convention, according to which States Parties commit themselves to adopt such measures as may be necessary to ensure that criminal acts within the scope of the Convention are under no circumstances justifiable by considerations of a political, philosophical, ideological, racial, ethnic, religious or similar nature.

The Government of the Czech Republic wishes to recall that, according to customary international law as codified in the Vienna Convention on the Law of Treaties, a reservation incompatible with the object and purpose of a treaty shall not be permitted and that such a reservation is null and void, and therefore devoid of any legal effect.

The Government of the Czech Republic therefore objects to the aforesaid reservations made by the Lebanese Republic to the Convention. This objection shall not preclude the entry into force of the Convention between the Lebanese Republic and the Czech Republic. The Convention enters into force between Lebanon and the Czech Republic without the Lebanese Republic benefiting from its reservations.”

## DENMARK

".....the Kingdom of Denmark has examined the Declaration relating to paragraph 1 (b) of Article 2 of the International Convention for the Suppression of the Financing of Terrorism made by the Government of Jordan at the time of its ratification of the Convention. The Government of Denmark considers the declaration made by Jordan to be a reservation that seeks to limit the scope of the Convention on a unilateral basis and which is contrary to its object and purpose, namely the suppression of the financing of terrorist acts, irrespective of where they take place or who carries them out.

The Government of Denmark further considers the Declaration to be contrary to the terms of Article 6 of the Convention, according to which States Parties commit themselves to "adopt such measures as may be necessary, including, where appropriate, domestic legislation, to ensure that criminal acts within the scope of this Convention are under no circumstances justifiable by considerations of a political, philosophical, ideological, racial, ethnic, religious or other similar nature.

The Government of Denmark recalls that, according to Article 19 (c) of the Vienna Convention on the Law of Treaties, a reservation incompatible with the object and purpose of the Convention shall not be permitted.

The Government of Denmark therefore objects to the aforesaid reservation made by the Government of Jordan to the International Convention for the Suppression of the Financing of Terrorism. However, this objection shall not preclude the entry into force of the Convention between Denmark and Jordan."

"The Government of the Kingdom of Denmark has examined the reservation made by Government of the Syrian Arab Republic to the International Convention for the Suppression of the Financing of Terrorism upon accession to the Convention relating to Article 2 paragraph 1 (b) thereof.

The Government of Denmark considers that the reservation made by the Government of the Syrian Arab Republic unilaterally limits the scope of the Convention and that the reservation is contrary to the Convention's object and purpose, namely the suppression of the financing of terrorist acts, irrespective of where they take place or who carries them out.

The Government of Denmark further considers the reservation to be contrary to the terms of Article 6 of the Convention, according to which States Parties commit themselves to 'adopt such measures as may be necessary, including, where appropriate, domestic legislation, to ensure that criminal acts within the scope of this Convention are under no circumstances justifiable by considerations of a political, philosophical, ideological, racial, ethnic, religious or other similar nature'.

The Government of Denmark recalls that, according to Article 19(c) of the Vienna Convention on the Law of Treaties, a reservation incompatible with the object and purpose of the Convention shall not be permitted.

The Government of Denmark therefore objects to the aforesaid reservation made by the Government of the Syrian Arab Republic to the International Convention for the Suppression of the Financing of Terrorism. However, this objection shall not preclude the entry into force of the Convention as between the Kingdom of Denmark and the Syrian Arab Republic". "

"The Government of the Kingdom of Denmark has examined the Declaration Relating to paragraph 1 (b) of Article 2 of the International Convention for the Suppression of the Financing of Terrorism made by the Government of the Arab Republic of Egypt at the time of its ratification of the Convention. The Government of Denmark considers that the declaration made by the Government of the Arab Republic of Egypt to be a reservation that seeks to limit the scope of the Convention on a unilateral basis and which is contrary to its object and purpose, namely the suppression of the financing of

terrorist acts, irrespective of where they take place or who carries them out.

The Government of Denmark further considers the Declaration to be contrary to the terms of Article 6 of the Convention, according to which States Parties commit themselves to 'adopt such measures as may be necessary, including, where appropriate, domestic legislation, to ensure that criminal acts within the scope of this Convention are under no circumstances justifiable by considerations of a political, philosophical, ideological, racial, ethnic, religious or other similar nature'.

The Government of Denmark recalls that, according to Article 19(c) of the Vienna Convention on the Law of Treaties, a reservation incompatible with the object and purpose of the Convention shall not be permitted.

The Government of Denmark therefore objects to the aforesaid reservation made by the Government of the Arab Republic of Egypt to the International Convention for the Suppression of the Financing of Terrorism. However, this objection shall not preclude the entry into force of the Convention as between the Kingdom of Denmark and the Arab Republic of Egypt".

"The Government of the Kingdom of Denmark has carefully examined the interpretative declaration made by Kuwait upon accession to the International Convention for the Suppression of the Financing of Terrorism.

The Government of Denmark considers that the interpretative declaration made by Kuwait in substance constitutes a reservation limiting the scope of the Convention.

The Government of Denmark finds that with this reservation the application of the Convention is made subject to national legislation in force in Kuwait.

The Government of Denmark considers that with this reservation Kuwait unilaterally limits the scope of the Convention, contrary to its object and purpose of suppressing the financing of terrorist acts wherever and by whomever they may be committed.

The Government of Denmark further considers the reservation to be contrary to the terms of Article 6 of the Convention, according to which States Parties commit themselves to 'adopt such measures as may be necessary, including, where appropriate, domestic legislation, to ensure that criminal acts within the scope of this Convention are under no circumstances justifiable by considerations of a political, philosophical, ideological, racial, ethnic, religious or other similar nature'.

The Government of Denmark recalls that, according to Article 19 (c) of the Vienna Convention on the Law of Treaties, a reservation which is incompatible with the object and purpose of the Convention shall not be permitted.

The Government of Denmark therefore objects to the reservation of Kuwait to the International Convention for the Suppression of the Financing of Terrorism. This objection shall not preclude the entry into force of the Convention between Denmark and Kuwait."

## ESTONIA

"The Government of the Republic of Estonia has carefully examined the reservation relating to Article 2, paragraph 1, sub-paragraph (b) of the International Convention for the Suppression of the Financing of Terrorism made by the Syrian Arab Republic at the time of its accession to the Convention. The Government of Estonia considers the Syrian reservation to be contrary to the object and purpose of the Convention, namely the suppression of the financing of terrorist acts, irrespective of where they take place or who carries them out.

The object and purpose of the Convention is to suppress the financing of terrorist acts, including those defined in Article 2, paragraph 1, sub-paragraph (b). The Government of Estonia finds that such acts can never be justified with reference to resistance to foreign occupation.

Furthermore, the Government of Estonia is in the position that the reservation is contrary to the terms of Article 6 of the Convention, according to which States Parties commit themselves to "adopt such measures as may be necessary, including, where appropriate, domestic legislation, to ensure that criminal acts within the scope of this Convention are under no circumstances justifiable by considerations of a political, philosophical, ideological, racial, ethnic, religious or other similar nature".

The Government of Estonia recalls that according to Article 19, sub-paragraph (c) of the Vienna Convention on the Law of Treaties, a reservation incompatible with the object and purpose of the Convention shall not be permitted. It is in the common interest of states that all parties respect the treaties to which they have chosen to become parties as to their object and purpose, and that states are prepared to take all necessary measures to comply with their obligations under the treaties.

The Government of Estonia therefore objects to the aforementioned reservation made by the Syrian Arab Republic to the International Convention for the Suppression of the Financing of Terrorism. This objection shall not preclude the entry into force of the Convention between the Republic of Estonia and the Syrian Arab Republic."

"The Government of the Republic of Estonia has carefully examined the explanatory declaration relating to Article 2, paragraph 1, sub-paragraph (b) of the International Convention for the Suppression of the Financing of Terrorism made by the Government of the Arab Republic of Egypt at the time of its ratification of the Convention. The Government of Estonia considers the declaration made by Egypt to be in fact a reservation that seeks to limit unilaterally the scope of the Convention and is contrary to its object and purpose, namely the suppression of the financing of terrorist acts, irrespective of where they take place or who carries them out.

The object and purpose of the Convention is to suppress the financing of terrorist acts, including those defined in Article 2, paragraph 1, sub-paragraph (b). The Government of Estonia finds that such acts can never be justified with reference to resistance against foreign occupation and aggression with a view to liberation and self-determination.

Furthermore, the Government of Estonia is in the position that the explanatory declaration is contrary to the terms of Article 6 of the Convention, according to which States Parties commit themselves to "adopt such measures as may be necessary, including, where appropriate, domestic legislation, to ensure that criminal acts within the scope of this Convention are under no circumstances justifiable by considerations of a political, philosophical, ideological, racial, ethnic, religious or other similar nature".

The Government of Estonia recalls that according to Article 19, sub-paragraph (c) of the Vienna Convention on the Law of Treaties, a reservation incompatible with the object and purpose of the Convention shall not be permitted. It is in the common interest of States that all parties respect the treaties to which they have chosen to become parties as to their object and purpose, and that states are prepared to take all necessary measures to comply with their obligations under the treaties.

The Government of Estonia therefore objects to the aforementioned declaration made by the Government of Egypt to the International Convention for the Suppression of the Financing of Terrorism. This objection shall not preclude the entry into force of the Convention between the Republic of Estonia and the Arab Republic of Egypt."

"The Government of the Republic of Estonia has carefully examined the reservation made on 3 March 2010 by the Government of Yemen to Article 2 (1) (b) of the Convention.

The Government of Estonia wishes to recall that by acceding to the Convention, a State commits itself to

suppress the financing of all terrorist acts. The reservation purports to exclude the suppression of the financing of acts of terrorism 'intended to cause death or serious bodily injury to a civilian, or to any other person not taking an active part in the hostilities in a situation of armed conflict' and thus is contrary to the object and purpose of the Convention.

According to customary international law as codified in the Vienna Convention on the Law of Treaties, a reservation incompatible with the object and purpose of the Convention shall not be permitted.

The Government of Estonia therefore objects to the aforesaid reservations made by the Government of the Republic of Yemen to the Convention.

This objection shall not preclude the entry into force in its entirety of the Convention as between the Republic of Estonia and the Republic of Yemen."

"Estonia has carefully examined the reservation and statement made by the Lebanese Republic to Article 2, paragraph 1 (b) of the International Convention for the Suppression of the Financing of Terrorism made at the time of its accession to the Convention. Estonia considers that as the reservation and statement seeks to limit the scope of the Convention on a unilateral [basis], the reservation and statement is contrary to the object and purpose of the Convention. Estonia wishes to recall that by acceding to the Convention, a State commits itself to suppress the financing of all terrorist acts as [foreseen] by the Convention.

Furthermore, Estonia considers the reservation and statement to be also contrary to the terms of Article 6 of the Convention, according to which States Parties commit themselves to 'adopt such measures as may be necessary, including, where appropriate, domestic legislation, to ensure that criminal acts within the scope of this Convention are under no circumstances justifiable by considerations of a political, philosophical, ideological, racial, ethnic, religious or other similar nature.'

According to customary international law, as codified in the Vienna Convention on the Law of Treaties, a reservation incompatible with the object and purpose of the Convention shall not be permitted.

Estonia therefore objects to the aforesaid reservation and statement made by the Lebanese Republic to the Convention.

This objection shall not preclude the entry into force in its entirety of the Convention as between the Republic of Estonia and the Lebanese Republic."

#### FINLAND

"The Government of Finland has carefully examined the contents of the interpretative declaration relating to paragraph 1 (b) of the Convention for the Suppression of the Financing of Terrorism made by the Government of Jordan.

The Government of Finland is of the view that the declaration amounts to a reservation as its purpose is to unilaterally limit the scope of the Convention. The Government of Finland further considers the declaration to be in contradiction with the object and purpose of the Convention, namely the suppression of the financing of terrorist acts wherever and by whomever carried out.

The declaration is, furthermore, contrary to the terms of Article 6 of the Convention according to which States Parties commit themselves to adopt measures as may be necessary to ensure that criminal acts within the scope of the Convention are under no circumstances justifiable by considerations of a political, philosophical, ideological, racial, ethnic, religious or similar nature.

The Government of Finland wishes to recall that, according to the customary international law as codified in the Vienna Convention on the Law of the Treaties, a

reservation incompatible with the object and purpose of the Convention shall not be permitted.

It is in the common interest of states that treaties to which they have chosen to become parties are respected as to their object and purpose and that states are prepared to undertake any legislative changes necessary to comply with their obligations under the treaties.

The Government of Finland therefore objects to the above-mentioned interpretative declaration made by the Government of Jordan to the Convention.

This objection does not preclude the entry into force of the Convention between Jordan and Finland. The Convention will thus become operative between the two states without Jordan benefiting from its declaration."

"The Government of Finland has carefully examined the contents of the interpretative declaration relating to paragraph 1 (b) of article 2 of the Convention for the Suppression of the Financing of Terrorism made by the Government of the Arab Republic of Egypt.

The Government of Finland is of the view that the declaration amounts to a reservation as its purpose is to unilaterally limit the scope of the Convention. The Government of Finland further considers the declaration to be in contradiction with the object and purpose of the Convention, namely the suppression of the financing of terrorist acts wherever and by whomever they may be carried out.

The declaration is, furthermore, contrary to the terms of Article 6 of the Convention according to which State Parties commit themselves to adopt measures as may be necessary to ensure that criminal acts within the scope of the Convention are under no circumstances justifiable by considerations of a political, philosophical, ideological, racial, ethnic, religious or similar nature.

The Government of Finland wishes to recall that, according to the customary international law as codified in the Vienna Convention on the Law of the Treaties, a reservation incompatible with the object and purpose of the Convention shall not be permitted.

It is in the common interest of states that treaties to which they have chosen to become parties are respected as to their object and purpose and that states are prepared to undertake any legislative changes necessary to comply with their obligations under the treaties.

The Government of Finland therefore objects to the above-mentioned interpretative declaration made by the Government of the Arab Republic of Egypt to the Convention.

This objection does not preclude the entry into force of the Convention between the Arab Republic of Egypt and Finland. The Convention will thus become operative between the two states without the Arab Republic of Egypt benefiting from its declaration."

"The Government of Finland has carefully examined the contents of the reservation relating to paragraph 1 (b) of article 2 of the Convention for the Suppression of the Financing of Terrorism made by the Government of the Syrian Arab Republic.

The Government of Finland considers the reservation to be in contradiction with the object and purpose of the Convention, namely the suppression of the financing of terrorist acts wherever and by whomever they may be carried out.

The reservation is, furthermore, contrary to the terms of Article 6 of the Convention according to which State Parties commit themselves to adopt measures as may be necessary to ensure that criminal acts within the scope of the Convention are under no circumstances justifiable by considerations of a political, philosophical, ideological, racial, ethnic, religious or similar nature.

The Government of Finland wishes to recall that, according to the customary international law as codified in the Vienna Convention on the Law of the Treaties, a reservation incompatible with the object and purpose of the Convention shall not be permitted.

It is in the common interest of states that treaties to which they have chosen to become parties are respected as to their object and purpose and that states are prepared to undertake any legislative changes necessary to comply with their obligations under the treaties.

The Government of Finland therefore objects to the above-mentioned reservation made by the Government of the Syrian Arab Republic to the Convention.

This objection does not preclude the entry into force of the Convention between the Syrian Arab Republic and Finland. The Convention will thus become operative between the two states without the Syrian Arab Republic benefiting from its reservation."

"The Government of Finland has carefully examined the content of the reservation relating to subparagraph 1 (b) of Article 2 of the International Convention for the Suppression of the Financing of Terrorism made by the Republic of Yemen upon accession.

The reservation seeks to exclude from the scope of the Convention acts of terrorism defined in subparagraph 1 (b) of Article 2. The Government of Finland considers the reservation to be in contradiction with the object and purpose of the Convention, namely the suppression of the financing of terrorist acts wherever and by whomever they may be carried out.

The Government of Finland wishes to recall that, according to Article 19 (c) of the Vienna Convention on the Law of Treaties and customary international law, a reservation contrary to the object and purpose of a treaty shall not be permitted. It is in the common interest of States that treaties to which they have chosen to become parties are respected as to their object and purpose and that States are prepared to undertake any legislative changes necessary to comply with their obligations under the treaties.

The Government of Finland therefore objects to the reservation made by the Republic of Yemen in respect of subparagraph 1 (b) of Article 2 of the Convention. This objection shall not preclude the entry into force of the Convention between the Republic of Yemen and Finland. The Convention will thus become operative between the two states without the Republic of Yemen benefiting from its reservation."

"The Government of Finland has carefully examined the contents of this reservation. In view of the Government of Finland, it is in contradiction with the object and purpose of the Convention, namely the suppression of the financing of terrorist acts wherever and by whomever carried out. The reservation is, furthermore, contrary to the terms of article 6 of the Convention according to which States Parties commit themselves to adopt such measures as may be necessary to ensure that criminal acts within the scope of the Convention are under no circumstances justifiable by considerations of a political, philosophical, ideological, racial, ethnic, religious or other similar nature.

The Government of Finland wishes to recall that, according to customary international law as codified in the Vienna Convention on the Law of Treaties, a reservation incompatible with the object and purpose of the treaty is not permitted. It is in the common interest of States that treaties to which they have chosen to become parties are respected as to their object and purpose, and that States are prepared to undertake any legislative changes necessary to comply with their obligations under the treaties.

Therefore, the Government of Finland objects to the above-mentioned reservation made by Namibia to the Convention. This objection does not preclude the entry into force of the Convention between Finland and Namibia. The Convention will thus become operative between the two States without Namibia benefiting from its reservation."

The Government of Finland has carefully examined the contents of the interpretative declaration made by the State of Kuwait.

The Government of Finland is of the view that the declaration amounts to a reservation as it unilaterally limits the scope of the Convention. The Government of Finland further considers the reservation to be in contradiction with the object and purpose of the Convention, namely the suppression of the financing of terrorist acts wherever and by whomever carried out.

Moreover, the reservation is contrary to the terms of article 6 of the Convention according to which States Parties commit themselves to adopt such measures as may be necessary to ensure that criminal acts within the scope of the Convention are under no circumstances justifiable by considerations of a political, philosophical, ideological, racial, ethnic, religious or other similar nature.

The Government of Finland wishes to recall that, according to customary international law as codified in the Vienna Convention on the Law of Treaties, a reservation incompatible with the object and purpose of the treaty is not permitted. It is in the common interest of States that treaties to which they have chosen to become parties are respected as to their object and purpose, and that States are prepared to undertake any legislative changes necessary to comply with their obligations under the treaties.

Therefore, the Government of Finland objects to the above-mentioned reservation made by the State of Kuwait to the Convention. This objection does not preclude the entry into force of the Convention between Finland and Kuwait. The Convention will thus become operative between the two States without Kuwait benefitting from its reservation.

"The Government of Finland has carefully examined the contents of the reservation and statement relating to subparagraph 1 (b) of Article 2 of the International Convention for the Suppression of the Financing of Terrorism made by the Government of the Lebanese Republic upon accession.

The Government of the Lebanese Republic has made a general reservation to sub paragraph 1 (b) of Article 2, which is central in defining offences within the meaning of the Convention. Furthermore, the Government apparently seeks to subject the application of the Convention for the Lebanese Republic to its own definition of terrorism. If this is the intention of the Government of the Lebanese Republic, the Government of Finland considers that the statement part of the Lebanese submission constitutes a reservation as well. It seems clear that the Government of the Lebanese Republic seeks to limit the scope of the Convention on a unilateral basis.

The Government of Finland considers that reservations of this kind are in contradiction with the object and purpose of the Convention, which is the suppression of the financing of terrorist acts wherever and by whomever they may be carried out.

Furthermore, according to Article 6 of the Convention State Parties commit themselves to adopt measures as may be necessary, including, where appropriate, domestic legislation, to ensure that criminal acts within the scope of the Convention are under no circumstances justifiable by considerations of a political, philosophical, ideological, racial, ethnic, religious or other similar nature.

The Government of Finland wishes to recall that, according to customary international law as codified in the Vienna Convention on the Law of Treaties, a reservation incompatible with the object and purpose of the Convention shall not be permitted. It is in the common interest of states that treaties

to which they have chosen to become parties are respected as to their object and purpose and that states are prepared to undertake any legislative changes necessary to comply with their obligations under the treaties.

The Government of Finland therefore objects to the abovementioned reservation made by the Government of the Lebanese Republic to the International Convention for the Suppression of the Financing of Terrorism.

This objection shall not preclude the entry into force of the Convention between Finland and the Lebanese Republic. The Convention will thus become operative between the two states without the Lebanese Republic benefiting from its reservation."

#### FRANCE

The Government of the French Republic has examined the reservations made by the Government of the Democratic People's Republic of Korea on 12 November 2001, when it signed the International Convention on the Suppression of the Financing of Terrorism, which was opened for signature on 10 January 2000. By indicating that it does not consider itself bound by the provisions of article 2, paragraph 1, subparagraph (a), the Government of the Democratic People's Republic of Korea excludes from the definition of offences within the meaning of the Convention the financing of any act which constitutes an offence within the scope of and as defined in the treaties listed in the annex.

Under article 2, paragraph 2 (a), a State Party is entitled to exclude from the definition of offences within the meaning of the Convention the financing of acts which constitute offences within the scope of and as defined in any treaty listed in the annex to which it is not party; however, it is not entitled to exclude from the definition of offences within the meaning of the Convention the financing of acts which constitute offences within the scope of and as defined in any treaty listed in the annex to which it is party. It just so happens that the Democratic People's Republic of Korea is party to some of those treaties.

The Government of the French Republic lodges an objection to the reservation made by the Democratic People's Republic of Korea regarding article 2, paragraph 1 (a) of the Convention.

The Government of the French Republic has examined the declaration made by the Government of the Hashemite Kingdom of Jordan upon ratification of the International Convention for the Suppression of the Financing of Terrorism, of 9 December 1999. That declaration, the Hashemite Kingdom of Jordan states that it 'does not consider acts of national armed struggle and fighting foreign occupation in the exercise of people's right to self-determination as terrorist acts within the context of paragraph 1 (b) of article 2 of the Convention.' However, the Convention applies to the suppression of the financing of all acts of terrorism, and its article 6 specifies that States parties shall 'adopt such measures as may be necessary, including, where appropriate, domestic legislation, to ensure that criminal acts within the scope of this Convention are under no circumstances justifiable by considerations of a political, philosophical, ideological, racial, ethnic, religious or other similar nature.' The Government of the French Republic considers that the aforementioned declaration constitutes a reservation, and objects to that reservation. This objection shall not preclude the entry into force of the convention between France and Jordan.

The Government of the French Republic has examined the declaration made by the Government of the Arab Republic of Egypt upon ratification of the International Convention for the Suppression of the Financing of Terrorism of 9 December 1999, whereby Egypt "... does

not consider acts of national resistance in all its forms, including armed resistance against foreign occupation and aggression with a view to liberation and self-determination, as terrorist acts within the meaning of article 2, [paragraph 1], subparagraph (b), of the Convention ...". However, the Convention applies to the suppression of the financing of all acts of terrorism and states particularly in its article 6 that "each State Party shall adopt such measures as may be necessary, including, where appropriate, domestic legislation, to ensure that criminal acts within the scope of this Convention are under no circumstances justifiable by considerations of a political, philosophical, ideological, racial, ethnic, religious or other similar nature". The Government of the French Republic considers that the said declaration constitutes a reservation, contrary to the object and the purpose of the Convention and objects to that reservation. This objection does not preclude the entry into force of the Convention between the Arab Republic of Egypt and France.

The Government of the French Republic has examined the reservations made by the Government of the Syrian Arab Republic upon accession to the International Convention for the Suppression of the Financing of Terrorism of 9 December 1999, inasmuch as Syria considers, with regard to the provisions of article 2, paragraph 1 (b) of the Convention that "... Acts of resistance to foreign occupation are not included under acts of terrorism ...". However, the Convention applies to the suppression of the financing of all acts of terrorism and states particularly in its article 6 that "each State Party shall adopt such measures as may be necessary, including, where appropriate, domestic legislation, to ensure that criminal acts within the scope of this Convention are under no circumstances justifiable by considerations of a political, philosophical, ideological, racial, ethnic, religious or other similar nature". The Government of the French Republic considers that the said reservation is contrary to the object and the purpose of the Convention and objects to the reservation. This objection does not preclude the entry into force of the Convention between Syria and France.

The Government of the French Republic has examined the reservation made by Yemen upon accession to the International Convention for the Suppression of the Financing of Terrorism, of 9 December 1999, according to which Yemen excludes the application of the provisions of article 2, paragraph 1 (b), of the Convention. This reservation purports to exclude the suppression of the financing of acts of terrorism "intended to cause death or serious bodily injury to a civilian, or to any other person not taking an active part in the hostilities in a situation of armed conflict". The Government of the French Republic is of the view that the reservation made by Yemen is contrary to the object and purpose of the Convention, namely suppressing the financing of all terrorist acts. It therefore objects thereto, without however precluding the entry into force of the Convention as between Yemen and France.

... the Government of the French Republic has carefully examined the reservation and statement made by Lebanon upon accession to the Convention for the Suppression of the Financing of Terrorism of 9 December 1999.

The Government of the French Republic considers this statement and this reservation to amount, by their effect, to a reservation, the purpose of which is to limit, on a unilateral basis, the scope of the obligations set out in the Convention.

Since it relates to an essential provision of the Convention, namely the definition of terrorism, this reservation has a general scope that could affect all the obligations contained in the Convention.

Moreover, the Government of the French Republic considers that this reservation is contrary to Article 6 of the Convention, which states that 'Each State Party shall adopt such measures as may be necessary, including, where appropriate, domestic legislation, to ensure that criminal acts within the scope of this Convention are under no circumstances justifiable by considerations of a political, philosophical, ideological, racial, ethnic, religious or other similar nature.'

The Government of the French Republic points out that, according to customary international law codified in the Vienna Convention on the Law of Treaties of 23 May 1969, a reservation incompatible with the object and purpose of a treaty shall not be permitted.

The Government of the French Republic therefore objects to the reservation and statement made by the Government of Lebanon upon accession to the Convention. However, this objection shall not preclude the entry into force of the Convention between the French Republic and Lebanon.

#### GERMANY

The Government of the Federal Republic of Germany has carefully examined the substance of the declarations made by the Government of the Kingdom of Jordan upon ratification of the International Convention for the Suppression of the Financing of Terrorism, especially that part of the declarations in which the Government of the Kingdom of Jordan states that it "does not consider acts of national armed struggle and fighting foreign occupation in the exercise of people's right to self-determination as terrorist acts within the context of paragraph 1 (b) of article 2 of the Convention". The Government of the Federal Republic of Germany is of the opinion that this declaration in fact constitutes a reservation aimed at unilaterally limiting the scope of application of the Convention, and is thus contrary to the object and purpose of the Convention, namely the suppression of the financing of terrorism, regardless of by whom and to what end it is perpetrated.

In this respect, the declaration is furthermore in contravention of Article 6 of the Convention, under which the State Parties commit themselves to adopting "such measures as may be necessary, including, where appropriate, domestic legislation, to ensure that criminal acts within the scope of this Convention are under no circumstances justifiable by considerations of a political, philosophical, ideological, racial, ethnic, religious or other similar nature".

The Government of the Federal Republic of Germany therefore objects to the above reservation by the Government of the Kingdom of Jordan to the International Convention for the Suppression of the Financing of Terrorism. This objection does not preclude the entry into force of the Convention between the Federal Republic of Germany and the Kingdom of Jordan.

"The Government of the Federal Republic of Germany has carefully examined the reservation made by the Government of the Kingdom of Belgium upon ratification of the International Convention for the Suppression of the Financing of Terrorism with respect to its Article 14. With this reservation, the Government of the Kingdom of Belgium expresses that it reserves the right to refuse extradition or mutual legal assistance in respect of any offence which it considers to be politically motivated. In the opinion of the Government of the Federal Republic of Germany, this reservation seeks to limit the Convention's scope of application in a way that is incompatible with the objective and purpose of the Convention.

The Government of the Federal Republic of Germany therefore objects to the above-mentioned reservation

made by the Government of the Kingdom of Belgium to the International Convention for the Suppression of the Financing of Terrorism. This objection does not preclude the entry into force of the Convention between the Federal Republic of Germany and the Kingdom of Belgium."

The Government of the Federal Republic of Germany has carefully examined the reservation made by the Syrian Arab Republic to the International Convention for the Suppression of the Financing of Terrorism upon accession to the Convention relating to Article 2 paragraph 1 (b) thereof. It is of the opinion that this reservation unilaterally limits the scope of the Convention and is thus in contradiction to the object and purpose of the Convention, in particular the object of suppressing the financing of terrorist acts wherever and by whomever they may be committed.

The reservation is further contrary to the terms of Article 6 of the Convention, according to which States Parties commit themselves to adopt such measures as may be necessary, including, where appropriate, domestic legislation, to ensure that criminal acts within the scope of this Convention are under no circumstances justifiable by considerations of a political, philosophical, ideological, racial, ethnic, religious or other similar nature.

The Government of the Federal Republic of Germany recalls that, according to customary international law as codified in the Vienna Convention on the Law of Treaties, reservations that are incompatible with the object and purpose of a convention are not permissible.

The Government of the Federal Republic of Germany therefore objects to the above-mentioned reservation by the Syrian Arab Republic to the International Convention for the Suppression of the Financing of Terrorism. This objection shall not preclude the entry into force of the Convention as between the Federal Republic of Germany and the Syrian Arab Republic.

The Government of the Federal Republic of Germany has carefully examined the declaration made by the Arab Republic of Egypt to the International Convention for the Suppression of the Financing of Terrorism upon ratification of the Convention relating to Article 2 paragraph 1 (b) thereof. It is of the opinion that this declaration amounts to a reservation, since its purpose is to unilaterally limit the scope of the Convention. The Government of the Federal Republic of Germany is furthermore of the opinion that the declaration is in contradiction to the object and purpose of the Convention, in particular the object of suppressing the financing of terrorist acts wherever and by whomever they may be committed.

The declaration is further contrary to the terms of Article 6 of the Convention, according to which States Parties commit themselves to adopt such measures as may be necessary, including, where appropriate, domestic legislation, to ensure that criminal acts within the scope of this Convention are under no circumstances justifiable by considerations of a political, philosophical, ideological, racial, ethnic, religious or other similar nature.

The Government of the Federal Republic of Germany recalls that, according to customary international law as codified in the Vienna Convention on the Law of Treaties, reservations that are incompatible with the object and purpose of a convention are not permissible.

The Government of the Federal Republic of Germany therefore objects to the above-mentioned declaration by the Arab Republic of Egypt to the International Convention for the Suppression of the Financing of Terrorism. This objection shall not preclude the entry into force of the Convention as between the Federal Republic of Germany and the Arab Republic of Egypt.

"The Government of the Federal Republic of Germany has carefully examined the declaration made by the Government of the People's Republic of Bangladesh upon accession to the International Convention for the Suppression of the Financing of Terrorism. The People's

Republic of Bangladesh has declared that its accession to the Convention shall not be deemed to be inconsistent with its obligations under the Constitution of the country. The Government of the Federal Republic of Germany is of the opinion that this declaration raises questions as to which obligations the People's Republic of Bangladesh intends to give precedence to in the event of any inconsistency between the Convention and its Constitution.

Declarations that leave it uncertain to what extent that State consents to be bound by its contractual obligations are in the opinion of the Government of the Federal Republic of Germany to be treated, in effect, as vague and general reservations, which are not compatible with the object and purpose of a Convention.

The Government of the Federal Republic of Germany therefore objects to the above-mentioned declaration made by the Government of the People's Republic of Bangladesh to the International Convention for the Suppression of the Financing of Terrorism. This objection shall not preclude the entry into force of the Convention as between the Federal Republic of Germany and the People's Republic of Bangladesh."

"The Government of the Federal Republic of Germany has carefully examined the reservation made by the Republic of Yemen upon accession to the International Convention for the Suppression of the Financing of Terrorism with respect to Article 2, paragraph 1 b). The Federal Republic of Germany is of the opinion that the reservation of the Government of the Republic of Yemen seeks to limit the scope of application in a way that is contrary to the objective and purpose of the Convention, which aims at suppressing the financing of all terrorist acts.

According to customary international law, as codified in the Vienna Convention on the Law of Treaties of 23 May 1969, reservations that are not compatible with the object and purpose of a treaty shall not be permitted.

Therefore the Government of the Federal Republic of Germany objects to the above-mentioned reservation made by the Republic of Yemen to the International Convention for the Suppression of the Financing of Terrorism. The objection shall not preclude the entry into force of the Convention between the Federal Republic of Germany and the Republic of Yemen."

The Government of the Federal Republic of Germany has carefully examined the reservation made by the Republic of Namibia upon its ratification of the International Convention for the Suppression of the Financing of Terrorism of 9 December 1999.

It is the object and purpose of the Convention, to suppress the financing of terrorist acts, including those, defined in article 2 paragraph 1 (b). It follows from article 6 of the Convention that such acts may not be justified by considerations of a political, philosophical, ideological, racial, ethnic, religious or similar nature.

The Government of the Federal Republic of Germany therefore considers that the reservation made by the Republic of Namibia is incompatible with the object and purpose of the Convention and is hence to be deemed impermissible.

The Government of the Federal Republic of Germany therefore objects to that reservation. This objection shall not preclude the entry into force of the Convention between the Federal Republic of Germany and the Republic of Namibia.

"The Government of the Federal Republic of Germany has carefully examined the interpretative declaration made by the State of Kuwait upon its ratification of the International Convention for the Suppression of the Financing of Terrorism of 9 December 1999.

By means of this interpretative declaration the State of Kuwait makes the application of the Convention subject to its national legislation and thereby seeks to limit the legal effects of the Convention unilaterally in its application to the State of Kuwait. Therefore, the Government of the Federal Republic of Germany

considers the interpretative declaration made by the State of Kuwait to constitute in substance a reservation within the meaning of article 2 paragraph 1 (d) of the Vienna Convention on the Law of Treaties.

Moreover, it is the object and purpose of the Convention to suppress the financing of terrorist acts, including those defined in article 2 paragraph 1 (b). It follows from article 6 of the Convention that such acts may not be justified by considerations of a political, philosophical, ideological, racial, ethnic, religious or similar nature.

The Government of the Federal Republic of Germany is therefore of the opinion that the reservation made by the State of Kuwait is incompatible with the object and purpose of the Convention and is hence to be considered impermissible.

The Government of the Federal Republic of Germany therefore objects to this reservation. This objection shall not preclude the entry into force of the Convention between the Federal Republic of Germany and the State of Kuwait."

"... the Federal Government has carefully examined the reservation made by the Lebanese Republic upon accession to the Convention on August 29, 2019 to Article 2(1)(b) thereof.

It is of the opinion that this reservation unilaterally limits the scope of the Convention and is in contradiction to the object and purpose of the Convention, in particular the object of suppressing the financing of terrorist acts wherever and by whomever they may be committed.

The reservation is further contrary to the terms of Article 6 of the Convention, according to which States Parties commit themselves to adopt such measures as may be necessary, including, where appropriate, domestic legislation, to ensure that criminal acts within the scope of this Convention are under no circumstances justifiable by considerations of a political, philosophical, ideological, racial, ethnic, religious or other similar nature.

The Federal Government recalls that, according to customary international law as codified in the Vienna Convention on the Law of Treaties, reservations that are incompatible with the object and purpose of a convention are not permissible.

The Federal Government therefore objects to the above-mentioned reservation by the Lebanese Republic to the International Convention for the Suppression of the Financing of Terrorism. This objection shall not preclude the entry into force of the Convention between the Federal Republic of Germany and the Lebanese Republic in its entirety. The Convention will thus become operative between the two States without the Lebanese Republic benefitting from the aforementioned reservation."

#### GREECE

"The Government of the Hellenic Republic has examined the reservation formulated by Namibia upon ratification of the International Convention for the Suppression of the Financing of Terrorism.

The Government of the Hellenic Republic considers that this reservation seeks to limit the scope of the Convention in a way which is incompatible with its object and purpose, namely the suppression of the financing of terrorist acts wherever and by whomever they may be committed.

Furthermore, this reservation is considered to be contrary to the terms of Article 6 of the Convention according to which States Parties commit themselves to 'adopt such measures as may be necessary, including, where appropriate, domestic legislation, to ensure that criminal acts within the scope of this Convention are under no circumstances justifiable by considerations of a

political, philosophical, ideological, racial, ethnic, religious or other similar nature'.

The Government of the Hellenic Republic recalls that according to Article 19 (c) of the Vienna Convention on the Law of Treaties, a reservation incompatible with the object and purpose of a treaty shall not be permitted.

The Government of the Hellenic Republic therefore objects to the above reservation. This objection shall not preclude the entry into force of the Convention between Greece and Namibia."

"The Government of the Hellenic Republic has examined the reservation and statement made by Lebanon upon accession, on 29 August 2019, to the International Convention for the Suppression of the Financing of Terrorism.

Lebanon, through the above reservation and statement, excludes the definition of terrorism, set forth in Article 2, paragraph 1 (b) of the aforementioned Convention and endorses a different definition, thus seeking to unilaterally limit the scope of the Convention.

The Government of the Hellenic Republic considers that the said reservation and statement amount, by their effect, to a reservation contrary to the object and purpose of the Convention, namely, the suppression of the financing of terrorist acts wherever and by whomever they may be committed.

The Government of the Hellenic Republic also notes that such a reservation, to the extent that it is formulated in relation to an essential provision of the Convention, namely the definition of terrorism, is of a general scope that could affect the implementation of all the obligations set out in the Convention.

Furthermore, this reservation is considered to be contrary to the terms of Article 6 of the Convention, according to which States Parties commit themselves to 'adopt such measures as may be necessary, including, where appropriate, domestic legislation, to ensure that criminal acts within the scope of this Convention are under no circumstances justifiable by considerations of a political, philosophical, ideological, racial, ethnic, religious or other similar nature'.

The Government of the Hellenic Republic recalls that, according to customary international law, as codified by the Vienna Convention on the Law of the Treaties, a reservation incompatible with the object and purpose of a treaty shall not be permitted.

The Government of the Hellenic Republic, therefore, objects to the above reservation. This objection shall not preclude the entry into force of the Convention between the Hellenic Republic and Lebanon."

#### HUNGARY

"... The Government of the Republic of Hungary has examined the Declaration relating to paragraph 1 (b) of Article 2 of the International Convention for the Suppression of the Financing of Terrorism made by the Government of the Hashemite Kingdom of Jordan at the time of its ratification of the Convention. The Government of the Republic of Hungary considers that the declaration made by the Government of the Hashemite Kingdom of Jordan is in fact a reservation that seeks to limit the scope of the Convention on a unilateral basis and is therefore contrary to its object and purpose, which is the suppression of the financing of terrorist acts, irrespective of where they take place and of who carries them out.

The Declaration is furthermore contrary to the terms of Article 6 of the Convention, according to which States Parties commit themselves to "adopt such measures as

may be necessary, including, where appropriate, domestic legislation, to ensure that criminal acts within the scope of this Convention are under no circumstances justifiable by considerations of a political, philosophical, ideological, racial, ethnic, religious or other similar nature."

The Government of the Republic of Hungary recalls that, according to customary international law as codified in the Vienna Convention on the Law of Treaties, a reservation incompatible with the object and purpose of a treaty shall not be permitted.

The Government of the Republic of Hungary therefore objects to the aforesaid reservation made by the Government of the Hashemite Kingdom of Jordan to the International Convention for the Suppression of the Financing of Terrorism. However, this objection shall not preclude the entry into force of the Convention between the Republic of Hungary and the Hashemite Kingdom of Jordan."

"The Government of the Republic of Hungary has examined the declaration relating to paragraph 1 (b) of article 2 of the International Convention for the Suppression of the Financing of Terrorism made by the Government of the Syrian Arab Republic at the time of its accession to the Convention. The Government of the Republic of Hungary considers that the declaration made by the Government of the Syrian Arab Republic is in fact a reservation that seeks to limit the scope of the Convention on a unilateral basis and is therefore contrary to its object and purpose, which is the suppression of the financing of terrorist acts, irrespective of where they take place and of who carries them out.

The declaration is furthermore contrary to the terms of article 6 of the Convention according to which States Parties commit themselves to 'adopt such measures as may be necessary, including, where appropriate, domestic legislation, to ensure that criminal acts within the scope of this Convention are under no circumstances justifiable by considerations of a political, philosophical, ideological, racial, ethnic, religious or other similar nature'.

The Government of the Republic of Hungary recalls that, according to customary international law as codified in the Vienna Convention on the Law of Treaties, a reservation incompatible with the object and purpose of a treaty shall not be permitted.

The Government of the Republic of Hungary therefore objects to the aforesaid reservation made by the Government of the Syrian Arab Republic to the International Convention for the Suppression of the Financing of Terrorism. However, this objection shall not preclude the entry into force of the Convention between the Republic of Hungary and the Syrian Arab Republic."

"The Government of the Republic of Hungary has examined the explanatory declaration relating to paragraph 1 (b) of article 2 of the International Convention for the Suppression of the Financing of Terrorism made by the Government of the Arab Republic of Egypt at the time of its ratification of the Convention. The Government of the Republic of Hungary considers that the explanatory declaration made by the Government of the Arab Republic of Egypt is in fact a reservation that seeks to limit the scope of the Convention on a unilateral basis and is therefore contrary to its object and purpose, which is the suppression of the financing of terrorist acts, irrespective of where they take place and of who carries them out.

The explanatory declaration is furthermore contrary to the terms of article 6 of the Convention according to which States Parties commit themselves to 'adopt such measures as may be necessary, including, where appropriate, domestic legislation, to ensure that criminal acts within the scope of this Convention are under no circumstances justifiable by considerations of a political, philosophical, ideological, racial, ethnic, religious or other similar nature'.

The Government of the Republic of Hungary recalls that, according to customary international law as codified

in the Vienna Convention on the Law of Treaties, a reservation incompatible with the object and purpose of a treaty shall not be permitted.

The Government of the Republic of Hungary therefore objects to the aforesaid reservation made by the Government of the Arab Republic of Egypt to the International Convention for the Suppression of the Financing of Terrorism. However, this objection shall not preclude the entry into force of the Convention between the Republic of Hungary and the Arab Republic of Egypt."

"The Government of the Republic of Hungary has examined the Reservations relating to paragraph 1 (b) of Article 2 of the International Convention for the Suppression of the Financing of Terrorism made by the Government of the Republic of Yemen at the time of its ratification of the Convention.

The Government of the Republic of Hungary considers that the Reservations made by the Government of the Republic of Yemen seeks to limit the scope of the Convention on a unilateral basis and is therefore contrary to its object and purpose, which is the suppression of the financing of terrorist acts.

The Government of the Republic of Hungary recalls that according to customary international law as codified in the Vienna Convention on the Law of Treaties, a reservation incompatible with the object and purpose of a treaty shall not be permitted.

The Government of the Republic of Hungary therefore objects to the aforesaid Reservation made by the Government of the Republic of Yemen to the International Convention for the Suppression of the Financing of Terrorism. However, this objection shall not preclude the entry into force of the Convention between the Republic of Hungary and the Republic of Yemen."

"Hungary has examined the reservation and statement relating to paragraph 1 (b) of Article 2 of the International Convention for the Suppression of the Financing of Terrorism (adopted by the General Assembly of the United Nations on 9 December 1999) made by the Lebanese Republic at the time of its accession to the Convention.

Hungary considers that the reservation and statement made by the Lebanese Republic constitute in fact a reservation, that seeks to limit the scope of the Convention on a unilateral basis and is therefore contrary to its object and purpose, which is the suppression of the financing of terrorist acts irrespective of where they take place and of who carries them out.

Furthermore, the reservation is contrary to the terms of Article 6 of the Convention, according to which States Parties commit themselves to 'adopt such measures as may be necessary, including, where appropriate, domestic legislation, to ensure that criminal acts within the scope of this Convention are under no circumstances justifiable by considerations of a political, philosophical, ideological, racial, ethnic, religious or other similar nature.'

Hungary recalls that according to customary international law as codified in the Vienna Convention on the Law of Treaties, a reservation incompatible with the object and purpose of a treaty shall not be permitted.

Hungary therefore objects to the aforementioned reservation and statement made by the Government of the Lebanese Republic to the International Convention for the Suppression of the Financing of Terrorism. However, this objection shall not preclude the entry into force of the Convention between Hungary and the Lebanese Republic."

## IRELAND

"The Government of Ireland have examined the explanatory declaration made by the Government of the Arab Republic of Egypt upon ratification of the International Convention for the Suppression of the Financing of Terrorism, done at New York on 9 December 1999, according to which the Arab Republic of Egypt does not consider acts of national resistance in all its forms, including armed resistance against foreign occupation and aggression with a view to liberation and self-determination, as terrorist acts within the meaning of paragraph 1 (b) of Article 2 of the Convention.

The Government of Ireland are of the view that this explanatory declaration amounts to a reservation as its purpose is to unilaterally limit the scope of the Convention. The Government of Ireland are also of the view that this reservation is contrary to the object and purpose of the Convention, namely suppressing the financing of terrorist acts, including those defined in paragraph 1 (b) of Article 2 of the Convention, wherever and by whomever committed.

This reservation is contrary to the terms of Article 6 of the Convention, according to which States parties are under an obligation to adopt such measures as may be necessary, including, where appropriate, domestic legislation, to ensure that criminal acts within the scope of the Convention are under no circumstances justifiable by considerations of a political, philosophical, ideological, racial, ethnic, religious or other similar nature.

The Government of Ireland recall that, according to customary international law as codified in the Vienna Convention on the Law of Treaties, reservations that are incompatible with the object and purpose of a convention are not permissible. It is in the common interest of States that treaties to which they have chosen to become party are respected as to their object and purpose and that States prepared to undertake any legislative changes necessary to comply with their obligations under these treaties.

The Government of Ireland therefore object to the reservation made by the Arab Republic of Egypt to the International Convention for the Suppression of the Financing of Terrorism. This objection shall not preclude the entry into force of the Convention between Ireland and the Arab Republic of Egypt. The Convention enters into force between Ireland and the Arab Republic of Egypt, without the Arab Republic of Egypt benefiting from its reservation."

"The Government of Ireland has examined the reservation made by the Government of the Republic of Yemen upon accession to Article 2 (1) (b) of the International Convention for the Suppression of the Financing of Terrorism.

The Government of Ireland considers that the reservation entered by the Republic of Yemen seeks to exclude the suppression of the financing of terrorism intended 'to cause death or serious bodily injury to a civilian, or to any other person not taking an active part in the hostilities in a situation of armed conflict.' The Government of Ireland is of the view that such a reservation is contrary to the object and purpose of the Convention as a whole, the purpose of which is to suppress the financing of terrorism in all circumstances.

This reservation is contrary to the terms of Article 6 of the Convention, according to which States Parties are under an obligation to adopt such measures as may be necessary, including, where appropriate, domestic legislation, to ensure that criminal acts within the scope of the Convention are under no circumstances justifiable by considerations of a political, philosophical, ideological, racial, ethnic, religious or other similar nature.

The Government of Ireland recalls that, according to customary international law as codified in the Vienna Convention on the Law of Treaties, reservations that are

incompatible with the object and purpose of a convention are not permissible. It is in the common interest of States that treaties to which they have chosen to become party are respected as to their object and purpose of that States are prepared to undertake any legislative changes necessary to comply with their obligations under these treaties.

The Government of Ireland therefore objects to the aforesaid reservation made by the Republic of Yemen to Article 2 (1) (b) of the International Convention for the Suppression of the Financing of Terrorism. This objection shall not preclude the entry into force of the Convention between Ireland and the Republic of Yemen. The Convention enters into force between Ireland and the Republic of Yemen, without the Republic of Yemen benefiting from its reservation."

1. The Government of Ireland has examined the reservation contained in the instrument of ratification of the International Convention for the Suppression of the Financing of Terrorism, made by Namibia on 18 October 2012.

2. The Government of Ireland is of the view that this reservation is contrary to the object and purpose of the Convention, namely suppressing the financing of terrorist acts, including those defined in paragraph 1 (b) of Article 2 of the Convention, wherever and by whomever committed.

3. The Government of Ireland considers that this reservation is contrary to the terms of Article 6 of the Convention, according to which States Parties are under an obligation to adopt such measures as may be necessary, including, where appropriate, domestic legislation, to ensure that criminal acts within the scope of the Convention are under no circumstances justifiable by considerations of a political, philosophical, ideological, racial, ethnic, religious or other similar nature.

4. The Government of Ireland recalls that, according to customary international law as codified in the Vienna Convention on the Law of Treaties, reservations that are incompatible with the object and purpose of a convention are not permissible.

5. The Government of Ireland therefore objects to the aforesaid reservation made by Namibia to the International Convention for the Suppression of the Financing of Terrorism.

6. This objection shall not preclude the entry into force of the Convention between Ireland and Namibia.

1. The Government of Ireland has examined the interpretative declaration made by Kuwait upon accession to the International Convention for the Suppression of the Financing of Terrorism, according to which the Government of Kuwait declares that the commitment of the State of Kuwait to the Convention is without prejudice to its Arab and Islamic obligations in respect of the definition of terrorism and the distinction between terrorism and legitimate national struggle against occupation.

2. The Government of Ireland is of the view that this interpretative declaration amounts to a reservation, as its purpose is to unilaterally limit the scope of the Convention. The Government of Ireland is also of the view that this reservation is contrary to the object and purpose of the Convention, namely suppressing the financing of terrorist acts, including those defined in paragraph 1 (b) of Article 2 of the Convention, wherever and by whomever committed.

3. In the view of the Government of Ireland, a reservation should clearly define for the other States Parties to the Convention the extent to which the reserving State has accepted the obligations of the Convention. Reservations which consist of a general reference to a system of obligations without specifying their contents do not do so.

4. The Government of Ireland considers that this reservation is contrary to the terms of Article 6 of the Convention, according to which States Parties are under

an obligation to adopt such measures as may be necessary, including, where appropriate, domestic legislation, to ensure that criminal acts within the scope of the Convention are under no circumstances justifiable by considerations of a political, philosophical, ideological, racial, ethnic, religious or other similar nature.

5. The Government of Ireland recalls that, according to customary international law, as codified in the Vienna Convention on the Law of Treaties, reservations that are incompatible with the object and purpose of a convention are not permissible.

6. The Government of Ireland therefore objects to the aforesaid reservation made by Kuwait to the International Convention for the Suppression of the Financing of Terrorism.

7. This objection shall not preclude the entry into force of the Convention between Ireland and Kuwait.

"Ireland welcomes the accession of Lebanon to the International Convention for the Suppression of the Financing of Terrorism on 29 August 2019.

Ireland has examined the reservation and statement made by Lebanon to the International Convention for the Suppression of the Financing of Terrorism at the time of its accession to the Convention on 29 August 2019.

Ireland is of the view that the reservation and statement of Lebanon, regarding the definition for terrorism set forth in Article 2, paragraph 1 (b) of the Convention, in substance constitutes a reservation, which seeks to limit the scope of the Convention on a unilateral basis.

Ireland considers the reservation to be contrary to Article 6 of the Convention, according to which States Parties commit themselves to "adopt such measures as may be necessary, including, where appropriate, domestic legislation, to ensure that criminal acts within the scope of this Convention are under no circumstances justifiable by considerations of a political, philosophical, ideological, racial, ethnic, religious or other similar nature".

Ireland considers that the reservation is incompatible with the object and purpose of the Convention, namely the suppression of the financing of terrorist acts, irrespective of where they take place and who carries them out. Ireland recalls that under international treaty law a reservation incompatible with the object and purpose of the treaty shall not be permitted.

Ireland therefore objects to the aforesaid reservation made by Lebanon to the International Convention for the Suppression of the Financing of Terrorism.

This objection shall not preclude the entry into force of the Convention between Ireland and Lebanon."

#### ITALY

"The Government of Italy has examined the "declaration" relating to paragraph 1 (b) of article 2 of the International Convention for the Suppression of the Financing of Terrorism made by the Government of Jordan at the time of its ratification to the Convention. The Government of Italy considers the declaration made by Jordan to be a reservation that seeks to limit the scope of the Convention on a unilateral basis and which is contrary to its object and purpose, namely the suppression of the financing of terrorist acts, irrespective of where they take place and of who carries them out.

The declaration is furthermore contrary to the terms of Article 6 of the Convention, according to which States Parties commit themselves to "adopt such measures as may be necessary, including, where appropriate, domestic legislation, to ensure that criminal acts within the scope of

this Convention are under no circumstances justifiable by considerations of political, philosophical, ideological, racial, ethnic, religious or other similar nature".

The Government of Italy recalls that, according to Article 19 (c) of the Vienna Convention on the Law of Treaties, a reservation incompatible with the object and purpose of the Convention shall not be permitted.

The Government of Italy therefore objects to the aforesaid reservation made by the Government of Jordan to the International Convention for the Suppression of the Financing of Terrorism.

This objection shall not preclude the entry into force of the Convention between Italy and Jordan."

"The Government of Italy has examined the reservation to the International Convention for the Suppression of the Financing of Terrorism made by the Government of Belgium at the time of its ratification to the Convention. The Government of Italy considers the reservation by Belgium to be a unilateral limitation on the scope of the Convention, which is contrary to its object and purpose, namely the suppression of the financing of terrorism, irrespective of where it takes place and of who carries it out.

The Government of Italy recalls that, according to Article 19 (c) of the Vienna Convention on the Law of Treaties, a reservation incompatible with the object and purpose of the Convention shall not be permitted. The Government of Italy therefore objects to the aforementioned reservation made by the Government of Belgium to the International Convention for the Suppression of the Financing of Terrorism.

This objection shall not preclude the entry into force of the Convention between Italy and Belgium."

"The Government of Italy has examined the explanatory declaration made by the Government of the Arab Republic of Egypt upon ratification of the International Convention for the Suppression of the Financing of Terrorism, according to which the Arab Republic of Egypt does not consider acts of national resistance in all its forms, including armed resistance against foreign occupation and aggression with a view of liberation and self-determination, as terrorist acts within the meaning of paragraph 1 (b) of Article 2 of the Convention.

The Government of Italy recalls that the designation assigned to a statement whereby the legal effect of certain provisions of a treaty is excluded or modified does not determine its status as a reservation to the treaty. The Government of Italy considers that the declaration made by the Government of the Arab Republic of Egypt in substance constitutes a reservation.

The object and purpose of the Convention is to suppress the financing of terrorist acts, including those defined in paragraph 1 (b) of Article 2 of the Convention. Such acts can never be justified with reference to the exercise of people's right to self-determination.

The Government of Italy further considers the reservation to be contrary to the terms of Article 6 of the Convention, according to which the States parties are under an obligation to adopt such measures as may be necessary, including, where appropriate, domestic legislation, to ensure that criminal acts within the scope of the Convention are under no circumstances justifiable by considerations of a political, philosophical, ideological, racial, ethnic, religious or other similar nature.

The Government of Italy wishes to recall that, according to customary international law as codified in the Vienna Convention on the Law of Treaties, a reservation incompatible with the object and purpose of a treaty shall not be permitted. It is in the common interest of States that treaties to which they have chosen to become Parties are respected as to their object and purpose, and that States are prepared to undertake any legislative changes necessary to comply with their obligations under the treaties.

The Government of Italy therefore objects to the reservation made by the Arab Republic of Egypt to the International Convention for the Suppression of the Financing of Terrorism. This objection shall not preclude the entry into force of the Convention between the Arab Republic of Egypt and Italy. The Convention enters into force between the Arab Republic of Egypt and Italy without the Arab Republic of Egypt benefiting from its reservation."

"The Government of Italy has examined the reservation made by the Government of the Syrian Arab Republic upon accession to the International Convention for the Suppression of the Financing of Terrorism, according to which the Syrian Arab Republic considers that acts of resistance to foreign occupation are not included under acts of terrorism within the meaning of paragraph 1 (b) of Article 2 of the Convention.

The object and purpose of the Convention is to suppress the financing of terrorist acts, including those defined in paragraph 1 9B0 of Article 2 of the Convention. Such acts can never be justified with reference to the exercise of people's right to self-determination.

The Government of Italy further considers the reservation to be contrary to the terms of Article 6 of the Convention, according to which the States Parties are under an obligation to adopt such measures as may be necessary, including, where appropriate, domestic legislation, to ensure that criminal acts within the scope of the Convention are under no circumstances justifiable by considerations of a political, philosophical, ideological, racial, ethnic, religious or other similar nature.

The Government of Italy wishes to recall that, according to customary international law as codified in the Vienna Convention on the Law of Treaties, a reservation incompatible with the object and purpose of a treaty shall not be permitted. It is in the common interest of States that treaties to which they have chosen to become parties are respected as to their object and purpose, and that States are prepared to undertake any legislative changes necessary to comply with their obligations under the treaties.

The Government of Italy objects to the reservation made by the Syrian Arab Republic to the International Convention for the Suppression of the Financing of Terrorism. This objection shall not preclude the entry into force of the Convention between the Syrian Arab Republic and Italy. The Convention enters into force between the Syrian Arab Republic and Italy, without the Syrian Arab Republic benefiting from its reservation."

"The Government of Italy considers the reservation to be a unilateral limit on the scope of the Convention and thus in contradiction with its object and purpose, namely the suppression of the financing of terrorist acts, irrespective of where they take place and of who carries them out.

The reservation also contradicts the terms of Article 6 of the Convention, according to which States Parties commit themselves to 'adopt such measures as may be necessary, including, where appropriate, domestic legislation, to ensure that criminal acts within the scope of this Convention are under no circumstances justifiable by considerations of political, philosophical, ideological, racial, ethnic, religious or other similar nature.'

The Government of Italy recalls that, according to Article 19 (c) of the Vienna Convention on the Law of Treaties, a reservation incompatible with the object and purpose of the Convention shall not be permitted.

The Government of Italy therefore objects to the aforesaid reservation made by the Government of Yemen to the International Convention for the Suppression of the Financing of Terrorism. This objection shall not preclude the entry into force of the Convention between Italy and Yemen."

The Government of Italy has examined the interpretative declaration formulated by the State of Kuwait upon its accession to the International Convention for the Suppression of the Financing of Terrorism (9 December 1999) according to which the Government of Kuwait declares that the commitment of the State of Kuwait to the Convention is without prejudice to its Arab and Islamic obligations in respect of the definition of terrorism and the distinction between terrorism and legitimate national struggle against occupation.

The Government of Italy considers that this interpretative declaration amounts to a reservation which limits the scope of the Convention. The Government of Italy is also of the view that this reservation is in contradiction with the object and purpose of the Convention.

Moreover, the reservation is contrary to the terms of article 6 of the Convention according to which States Parties commit themselves to adopt such measures as may be necessary to ensure that criminal acts within the scope of the Convention are under no circumstances justifiable by considerations of a political, philosophical, ideological, [racial], ethnic, religious or other similar nature.

The Government of Italy recalls that according to customary international law, as codified in the Vienna Convention on the Law of Treaties, reservations that are incompatible with the object and purpose of a convention are not permissible.

For these reasons the Government of Italy objects to the abovementioned interpretative declaration formulated by the State of Kuwait.

This objection shall not preclude the entry into force of the Convention between Italy and the State of Kuwait.

#### JAPAN

"When depositing its instrument of accession, the Government of Syrian Arab Republic made a reservation which reads as follows: 'A reservation concerning the provisions of its article 2, paragraph 1 (b), inasmuch as the Syrian Arab Republic considers that acts of resistance to foreign occupation are not included under acts of terrorism'.

In this connection, the Government of Japan draws attention of the provisions of article 6 of the Convention, according to which each State Party shall adopt such measures as may be necessary, including, where appropriate, domestic legislation, to ensure that criminal acts within the scope of this Convention are under no circumstances justifiable by considerations of a political, philosophical, ideological, racial, ethnic, religious or other similar nature.

The Government of Japan considers that the aforementioned reservation made by the Syrian Arab Republic seeks to exclude acts of resistance to foreign occupation from application of the Convention and that such reservation constitutes a reservation which is incompatible with the object and purpose of the Convention. The Government of Japan therefore objects to the reservation made by the Syrian Arab Republic."

#### LATVIA

"The Government of the Republic of Latvia has examined the reservation made by the Syrian Arab Republic to the International Convention of the Suppression of the Financing of Terrorism upon accession to the Convention regarding Article 2 paragraph 1 (b) thereof.

The Government of the Republic of Latvia is of the opinion that this reservation unilaterally limits the scope of the Convention and is thus in contradiction to the objectives and purposes of the Convention to suppress the financing of terrorist acts wherever and by whomsoever they may be carried out.

Moreover, the Government of the Republic of Latvia considers that the reservation conflicts with the terms of Article 6 of the Convention setting out the obligation for State Parties to adopt such measures as may be necessary to ensure that criminal acts within the scope of the Convention are under no circumstances justifiable by considerations of a political, philosophical, ideological, racial, ethnic, religious or similar nature.

The Government of the Republic of Latvia recalls that customary international law as codified by Vienna Convention on the Law of Treaties, and in particular Article 19 (c), sets out that reservations that are incompatible with the object and purpose of a treaty are not permissible.

The Government of the Republic of Latvia therefore objects to the aforesaid reservation made by the Syrian Arab Republic to the International Convention for the Suppression of the Financing of Terrorism.

However, this objection shall not preclude the entry into force of the Convention between the Republic of Latvia and the Syrian Arab Republic. Thus, the Convention will become operative without the Syrian Arab Republic benefiting from its reservation."

"The Government of the Republic of Latvia has examined the explanatory reservation made by the Arab Republic of Egypt to the International Convention of the Suppression of the Financing of Terrorism upon accession to the Convention regarding Article 2 paragraph 1 (b) thereof.

The Government of the Republic of Latvia is of the opinion that this explanatory declaration is in fact unilateral act that is deemed to limit the scope of the Convention and therefore should be regarded as reservation. Thus, this reservation contradicts to the objectives and purposes of the Convention to suppress the financing of terrorist acts wherever and by whomsoever they may be carried out.

Moreover, the Government of the Republic of Latvia considers that the reservation conflicts with the terms of Article 6 of the Convention setting out the obligation for States Parties to adopt such measures as may be necessary to ensure that criminal acts within the scope of the Convention are under no circumstances justifiable by considerations of a political, philosophical, ideological, racial, ethnic, religious or similar nature.

The Government of the Republic of Latvia recalls that customary international law as codified by Vienna Convention on the Law of Treaties, and in particular Article 19 (c), sets out that reservations that are incompatible with the object and purpose of a treaty are not permissible.

The Government of the Republic of Latvia therefore objects to the aforesaid reservation made by the Arab Republic of Egypt to the International Convention for the Suppression of the Financing of Terrorism.

However, this objection shall not preclude the entry into force of the Convention between the Republic of Latvia and the Arab Republic of Egypt. Thus, the Convention will become operative without the Arab Republic of Egypt benefiting from its reservation."

"The Government of the Republic of Latvia has carefully examined the 'understanding' made by the People's Republic of Bangladesh to the International Convention for the Suppression of the Financing of Terrorism upon accession.

Thus, the Government of the Republic of Latvia is of the opinion that the understanding is in fact a unilateral act deemed to limit the scope of application of the International Convention for the Suppression of the Financing of Terrorism and therefore, it shall be regarded as a reservation.

Moreover, the Government of the Republic of Latvia has noted that the understanding does not make it clear to what extent the People's Republic of Bangladesh considers itself bound by the provisions of the International Convention for the Suppression of the

Financing of Terrorism and whether the way of implementation of the provisions of the aforementioned Convention is in line with the object and purpose of the Convention.

The Government of the Republic of Latvia therefore objects to the aforesaid reservation made by the People's Republic of Bangladesh to the International Convention for the Suppression of the Financing of Terrorism.

However, this objection shall not preclude the entry into force of the International Convention for the Suppression of the Financing of Terrorism between the Republic of Latvia and the People's Republic of Bangladesh. Thus, the International Convention for the Suppression of the Financing of Terrorism will become operative without People's Republic of Bangladesh benefiting from its reservation."

"The Government of the Republic of Latvia has carefully examined the reservation made by the Republic of Yemen to the International Convention upon accession regarding Article 2, paragraph 1(b).

The Government of the Republic of Latvia believes that the main aim of the International Convention is to prevent the commission of the terrorist attacks around the world. Taking into due account that the terrorist attack cannot be performed without sufficient funding, the International Community has elaborated this International Convention.

However, the International Community could not agree on one comprehensive definition of terrorism. Therefore, the approach defining the acts of terrorism in a manner set forth by Article 2, paragraph 1 has been applied. The so called 13 Universal Anti-Terrorism Conventions cover only the main offences for financing of which the penalty should be established under Article 4 of the International Convention. Also being aware, that the acts of terrorism may occur in different manners and forms of manifestation, the definition of terrorism given by this International Convention has been supplemented with paragraph (b), putting stress on the intention of the offender.

Therefore, the Government of the Republic of Latvia considers that the reservation to Article 2, paragraph 1(b) of the International Convention could not be considered to be in line with the aim and purpose of the International Convention.

Moreover, the Government of the Republic of Latvia recalls that the customary international law as codified by Vienna Convention on the Law of Treaties, and in particular Article 19 (c), set out that the reservation that is incompatible with the object and purpose of a treaty is not permitted.

Consequently, the Government of the Republic of Latvia objects to the reservation made by the Republic of Yemen to the Article 2, paragraph 1 (b) of the International Convention for the Suppression of the Financing of Terrorism.

However, this objection shall not preclude the entry into force of the International Convention between the Republic of Latvia and the Republic of Yemen. Thus, the International Convention will become operative without the Republic of Yemen benefiting from its reservation."

"The Government of the Republic of Latvia has examined the reservation made by the Republic of Namibia upon ratification of the International Convention for the Suppression of the Financing of Terrorism.

The Government of the Republic of Latvia considers that the aim of the said International Convention is to prevent and suppress the financing of terrorism by whomsoever it might be committed. Therefore, the legitimate rights of self-determination of people and rights to fight against the foreign occupation, as they are recognized by the principles of the international law, cannot be subject of the International Convention.

Moreover, the Government of the Republic of Latvia holds the opinion that the reservation conflicts with the terms of Article 6 of the International Convention setting

out the obligation for State Parties to adopt such measures as may be necessary to ensure that criminal acts within the scope of the International Convention are under no circumstances justifiable by considerations of a political, philosophical, ideological, racial, ethnic, religious or similar nature.

Furthermore, the Government of the Republic of Latvia recalls that customary international law as codified by the Vienna Convention on the Law of Treaties and in particular Article 19(c), sets out that reservations that are incompatible with the object and purpose of a treaty are not permissible.

Therefore, the Government of the Republic of Latvia objects to the aforesaid reservation made by the Republic of Namibia to the International Convention for the Suppression of the Financing of Terrorism.

However, this objection shall not preclude the entry into force of the International Convention between the Republic of Latvia and the Republic of Namibia. Thus, the International Convention will become operative without the Republic of Namibia benefiting from its reservation."

The Government of the Republic of Latvia has examined the interpretative declaration made by the State of Kuwait upon accession to the International Convention of the Suppression of the Financing of Terrorism.

The Government of the Republic of Latvia considers this unilateral statement, submitted by the State of Kuwait and named an interpretative declaration, modifies the legal effect on obligations arising from the International Convention for the State Parties.

Therefore, the Government of the Republic of Latvia consider[s] the interpretative declaration made by State of Kuwait a reservation as stipulated by Article 2(1)(d) of the Vienna Convention on the Law of Treaties.

Moreover, the Government of the Republic of Latvia holds the opinion that this reservation conflicts with the terms of Article 6 of the International Convention setting out the obligation for State Parties to adopt such measures as may be necessary to ensure that criminal acts within the scope of the International Convention are under no circumstances justifiable by considerations of a political, philosophical, ideological, racial, ethnic, religious or similar nature.

Thus, the Government of the Republic of Latvia recalls the customary international law as codified by the Vienna Convention on the Law of Treaties, and in particular Article 19 (c), setting out that reservation that is incompatible with the object and purpose of a treaty is not permissible.

Consequently, the Government of the Republic of Latvia objects to the aforesaid reservation named as an interpretative declaration made by the State of Kuwait to the International Convention for the Suppression of the Financing of Terrorism.

However, this objection shall not preclude the entry into force of the International Convention between the Republic of Latvia and the State of Kuwait. Thus, the International Convention will become operative without the State of Kuwait benefiting from its reservation.

#### LITHUANIA

The Government of the Republic of Lithuania has carefully examined the reservation with a statement made by the Lebanese Republic upon accession to the International Convention for the

Suppression of the Financing of Terrorism on 29 August 2019.

The Government of the Republic of Lithuania considers that [the] Lebanese reservation with statement regarding the definition of terrorism set forth in Article 2, paragraph 1 (b), of the Convention seeks to limit the scope of the Convention on a unilateral basis, which is

incompatible with the object and purpose of the Convention, namely, the suppression of the financing of terrorism.

Furthermore, the Government of the Republic of Lithuania considers the reservation with statement to be incompatible with Article 6 of the Convention, according to which [a] State Party shall adopt such measures as may be necessary, including, where appropriate, domestic legislation, to ensure that criminal acts within the scope of this Convention are under no circumstances justifiable by considerations of a political, philosophical, ideological, racial, ethnic, religious or other similar nature.

Therefore, the Government of the Republic of Lithuania objects to the aforesaid reservation with statement. This objection, however, shall not preclude the entry into force of the Convention between the Republic of Lithuania and the Lebanese Republic.

#### NETHERLANDS

"The Government of the Kingdom of the Netherlands has examined the reservations made by the Government of the Democratic People's Republic of Korea regarding article 2, paragraph 1 (a), and article 14 of the International Convention for the suppression of the financing of terrorism made at the time of its signature of the said Convention.

The Government of the Kingdom of the Netherlands considers that the reservations made by the Democratic People's Republic of Korea regarding article 2, paragraph 1 (a), and article 14 of the Convention are reservations incompatible with the object and purpose of the Convention.

The Government of the Kingdom of the Netherlands recalls that, according to Article 19 (c) of the Vienna Convention on the law of treaties, a reservation incompatible with the object and purpose of the Convention shall not be permitted.

It is in the common interest of States that treaties to which they have chosen to become party are respected, as to their object and purpose, by all parties and that States are prepared to undertake any legislative changes necessary to comply with their obligations under the treaties.

The Government of the Kingdom of the Netherlands therefore objects to the aforesaid reservations made by the Government of the Democratic People's Republic of Korea to the International Convention for the suppression of the financing of terrorism.

This objection shall not preclude the entry into force of the Convention between the Kingdom of the Netherlands and the Democratic People's Republic of Korea."

".....the Government of the Kingdom of the Netherlands has examined the Declaration relating to paragraph 1 (b) of Article 2 of the International Convention for the Suppression of the Financing of Terrorism made by the Government of Jordan at the time of its ratification of the Convention. The Government of the Kingdom of the Netherlands considers that the declaration made by Jordan is in fact a reservation that seeks to limit the scope of the Convention on a unilateral basis and which is contrary to its object and purpose, namely the suppression of the financing of terrorist acts, irrespective of where they take place or who carries them out.

The Government of the Kingdom of the Netherlands further considers the Declaration to be contrary to the terms of Article 6 of the Convention, according to which States Parties commit themselves to "adopt such measures as may be necessary, including, where appropriate, domestic legislation, to ensure that criminal acts within the scope of this Convention are under no circumstances justifiable by considerations of a political, philosophical,

ideological, racial, ethnic, religious or other similar nature".

The Government of the Kingdom of the Netherlands recalls that, according to Article 19 (c) of the Vienna Convention on the Law of Treaties, a reservation incompatible with the object and purpose of the Convention shall not be permitted.

It is in the common interest of the States that treaties to which they have chosen to become party are respected, as to their object and purpose, by all parties and that States are prepared to undertake any legislative changes necessary to comply with their obligations under the treaties.

The Government of the Kingdom of the Netherlands therefore objects to the aforesaid reservation made by the Government of Jordan to the International Convention for the Suppression of the Financing of Terrorism. This objection shall not preclude the entry into force of the Convention between the Kingdom of the Netherlands and Jordan."

"The Government of the Kingdom of the Netherlands has examined the reservation made by the Government of Belgium regarding Article 14 of the International Convention for the suppression of the financing of terrorism made at the time of its ratification of the Convention.

The Government of the Kingdom of the Netherlands notes that the reservation made by the Government of Belgium is expressed to apply only "in exceptional circumstances" and that, notwithstanding the application of the reservation, Belgium continues to be bound by the general legal principle of *aut dedere aut judicare*. The Government of the Kingdom of the Netherlands further notes that the exceptional circumstances that are envisaged in paragraph 1 of the reservation made by the Government of Belgium are not specified in the reservation.

The Government of the Kingdom of the Netherlands considers the offences set forth in Article 2 of the Convention to be of such grave nature, that the provisions of Article 14 should apply in all circumstances.

Furthermore the Government of the Kingdom of the Netherlands recalls the principle that claims of political motivation must not be recognised as grounds for refusing requests for the extradition of alleged terrorists.

The Government of the Kingdom of the Netherlands therefore objects to the reservation made by the Government of Belgium to the International Convention for the suppression of the financing of terrorism.

This objection shall not preclude the entry into force of the Convention between Belgium and the Kingdom of the Netherlands, without Belgium benefiting from its reservation."

"The Government of the Kingdom of the Netherlands has carefully examined the declaration made by the Arab Republic of Egypt to the International Convention for the Suppression of the Financing of Terrorism upon ratification of the Convention relating to Article 2 paragraph 1 (b) thereof. It is of the opinion that this declaration amounts to a reservation, since its purpose is to unilaterally limit the scope of the Convention. The Government of the Kingdom of the Netherlands is furthermore of the opinion that the declaration is in contradiction to the object and purpose of the Convention, in particular the object of suppressing the financing of terrorist acts wherever and by whomever they may be committed.

The declaration is further contrary to the terms of Article 6 of the Convention, according to which States Parties commit themselves to adopt such measures as may be necessary, including, where appropriate, domestic legislation, to ensure that criminal acts within the scope of this Convention are under no circumstances justifiable by considerations of a political, philosophical, ideological, racial, ethnic, religious or other similar nature.

The Government of the Kingdom of the Netherlands recalls that, according to customary international law as codified in the Vienna Convention on the Law of Treaties, reservations that are incompatible with the object and purpose of a convention are not permissible.

The Government of the Kingdom of the Netherlands therefore objects to the above-mentioned declaration by the Arab Republic of Egypt to the International Convention for the Suppression of the Financing of Terrorism. This objection shall not preclude the entry into force of the Convention as between the Kingdom of the Netherlands and the Arab Republic of Egypt."

"The Government of the Kingdom of the Netherlands has carefully examined the reservation made by the Syrian Arab Republic to the International Convention for the Suppression of the Financing of Terrorism upon accession to the Convention relating to Article 2 paragraph 1 (b) thereof. It is of the opinion that this reservation unilaterally limits the scope of the Convention and is in contradiction to the object and purpose of the Convention, in particular the object of suppressing the financing of terrorist acts wherever and by whomever they may be committed.

The reservation is further contrary to the terms of Article 6 of the Convention, according to which States Parties commit themselves to adopt such measures as may be necessary, including, where appropriate, domestic legislation, to ensure that criminal acts within the scope of this Convention are under no circumstances justifiable by considerations of a political, philosophical, ideological, racial, ethnic, religious or other similar nature.

The Government of the Kingdom of the Netherlands recalls that, according to customary international law as codified in the Vienna Convention on the Law of Treaties, reservations that are incompatible with the object and purpose of a convention are not permissible.

The Government of the Kingdom of the Netherlands therefore objects to the above-mentioned reservation by the Syrian Arab Republic to the International Convention for the Suppression of the Financing of Terrorism. This objection shall not preclude the entry into force of the Convention as between the Kingdom of the Netherlands and the Syrian Arab Republic."

"The Government of the Kingdom of the Netherlands has examined the declaration made by the Government of the People's Republic of Bangladesh upon accession to the International Convention for the Suppression of the Financing of Terrorism. The People's Republic of Bangladesh has declared that its accession to the Convention shall not be deemed to be inconsistent with its international obligations under the Constitution of the country. The Government of the Kingdom of the Netherlands is of the opinion that this declaration raises questions as to which obligations the People's Republic of Bangladesh intends to give precedence to in the event of any inconsistency between the Convention and its Constitution. Declarations that leave it uncertain to what extent a State consents to be bound by its contractual obligations are in the opinion of the Government of the Kingdom of the Netherlands to be treated, in effect, as general reservations, which are not compatible with the object and purpose of a Convention.

The Government of the Kingdom of the Netherlands therefore objects to the above-mentioned declaration made by the Government of the People's Republic of Bangladesh to the International Convention for the Suppression of the Financing of Terrorism. This objection shall not preclude the entry into force of the Convention as between the Kingdom of the Netherlands and the People's Republic of Bangladesh."

"The Government of the Kingdom of the Netherlands has examined the reservations of the Islamic Republic of Pakistan upon accession to the International Convention for the Suppression of the Financing of Terrorism.

The Government of the Kingdom of the Netherlands notes that the reservation with respect to Article 14 of the Convention would give precedence to domestic law in force in the Islamic Republic of Pakistan.

The Government of the Kingdom of the Netherlands considers that a reservation which consists of a general reference to national law, without specifying its contents, does not clearly define to other States Parties to the Convention to what extent the Islamic Republic of Pakistan considers itself bound by the obligations of the Convention and raises concerns as to the commitment of the Islamic Republic of Pakistan to the object and purpose of the Convention.

The Government of the Kingdom of the Netherlands considers that reservations of this kind must be regarded as incompatible with the object and purpose of the Convention and would recall that, according to customary international law, as codified in the Vienna Convention on the Law of Treaties, reservations incompatible with the object and purpose of the Convention shall not be permitted.

The Government of the Kingdom of the Netherlands therefore objects to the aforesaid reservation made by the Islamic Republic of Pakistan to the Convention.

This objection does not constitute an obstacle to the entry into force of the Convention between the Kingdom of the Netherlands and the Islamic Republic of Pakistan.”

“The Government of the Kingdom of the Netherlands has examined the reservation of the Republic of Yemen upon accession to the International Convention for the Suppression of the Financing of Terrorism, of 9 December 1999, in respect of Article 2, paragraph 1 (b), of the Convention.

The reservation of the Republic of Yemen excludes the financing of terrorist acts defined in Article 2, paragraph 1 (b), from the scope of the Convention.

The Government of the Kingdom of the Netherlands considers that this reservation is contrary to the object and purpose of the Convention, which aims to suppress the financing of all terrorist acts. According to customary international law, as codified in the Vienna Convention on the Law of Treaties, reservations incompatible with the object and purpose of the Convention shall not be permitted.

The Government of the Kingdom of the Netherlands therefore objects to the aforesaid reservation made by the Republic of Yemen to the Convention.

This objection does not constitute an obstacle to the entry into force of the Convention between the Kingdom of the Netherlands and the Republic of Yemen.”

“The Government of the Kingdom of the Netherlands has carefully examined the reservation made by Namibia upon ratification of the International Convention for the Suppression of the Financing of Terrorism.

The Government of the Kingdom of the Netherlands considers that with this reservation Namibia unilaterally limits the scope of the Convention, contrary to its object and purpose of suppressing the financing of terrorist acts wherever and by whomever they may be committed.

The Government of the Kingdom of the Netherlands further considers the reservation to be contrary to the terms of Article 6 of the Convention, according to which States Parties commit themselves to ‘adopt such measures as may be necessary, including, where appropriate, domestic legislation, to ensure that criminal acts within the scope of this Convention are under no circumstances justifiable by considerations of a political, philosophical, ideological, racial, ethnic, religious or other similar nature’.

The Government of the Kingdom of the Netherlands recalls that, according to customary international law as codified in the Vienna Convention on the Law of Treaties, a reservation incompatible with the object and purpose of the Convention shall not be permitted.

The Government of the Kingdom of the Netherlands therefore objects to the reservation of Namibia to the

International Convention for the Suppression of the Financing of Terrorism.

This objection shall not preclude the entry into force of the Convention between the Kingdom of the Netherlands and Namibia.”

“The Government of the Kingdom of the Netherlands has carefully examined the interpretative declaration made by Kuwait upon accession to the International Convention for the Suppression of the Financing of Terrorism.

The Government of the Kingdom of the Netherlands considers that the interpretative declaration made by Kuwait in substance constitutes a reservation limiting the scope of the Convention.

The Government of the Kingdom of the Netherlands considers that with this reservation the application of the Convention is made subject to national legislation in force in Kuwait.

The Government of the Kingdom of the Netherlands considers that with this reservation Kuwait unilaterally limits the scope of the Convention, contrary to its object and purpose of suppressing the financing of terrorist acts wherever and by whomever they may be committed.

The Government of the Kingdom of the Netherlands further considers the reservation to be contrary to the terms of Article 6 of the Convention, according to which States Parties commit themselves to ‘adopt such measures as may be necessary, including, where appropriate, domestic legislation, to ensure that criminal acts within the scope of this Convention are under no circumstances justifiable by considerations of a political, philosophical, ideological, racial, ethnic, religious or other similar nature’.

The Government of the Kingdom of the Netherlands recalls that, according to Article 19 (c) of the Vienna Convention on the Law of Treaties, a reservation incompatible with the object and purpose of the Convention shall not be permitted.

The Government of the Kingdom of the Netherlands therefore objects to the reservation of Kuwait to the International Convention for the Suppression of the Financing of Terrorism.

This objection shall not preclude the entry into force of the Convention between the Kingdom of the Netherlands and Kuwait.”

“The Government of the Kingdom of the Netherlands has carefully examined the reservation and statement made by Lebanon upon accession to the International Convention for the Suppression of the Financing of Terrorism on 29 August 2019, relating to Article 2, paragraph 1 (b), thereof.

The Government of the Kingdom of the Netherlands considers that with this reservation Lebanon unilaterally limits the scope of the Convention, contrary to its object and purpose of suppressing the financing of terrorist acts wherever and by whomever they may be committed.

The Government of the Kingdom of the Netherlands further considers the reservation to be contrary to the terms of Article 6 of the Convention, according to which States Parties commit themselves to ‘adopt such measures as may be necessary, including, where appropriate, domestic legislation, to ensure that criminal acts within the scope of this Convention are under no circumstances justifiable by considerations of a political, philosophical, ideological, racial, ethnic, religious or other similar nature’.

The Government of the Kingdom of the Netherlands recalls that, according to customary international law as codified in Article 19 (c) of the Vienna Convention on the Law of Treaties, reservations incompatible with the object and purpose of a treaty are not permissible.

The Government of the Kingdom of the Netherlands therefore objects to the reservation and statement of Lebanon to the International Convention for the Suppression of the Financing of Terrorism. This objection

shall not preclude the entry into force of the Convention between the Kingdom of the Netherlands and Lebanon.”

#### NORWAY

"The Government of Norway has examined the reservations made by the Government of the Democratic People's Republic of Korea upon signature of the International Convention for the Suppression of the Financing of Terrorism.

It is the position of the Government of Norway that the reservations with regard to paragraph 1 (a) of Article 2 and Article 14 are incompatible with the object and purpose of the Convention, as they purport to exclude the application of core provisions of the Convention. The Government of Norway recalls that, in accordance with well-established treaty law, a reservation incompatible with the object and purpose of the Convention shall not be permitted.

The Government of Norway therefore objects to the aforesaid reservations made by the Government of the Democratic People's Republic of Korea. This objection does not preclude the entry into force, in its entirety, of the Convention between the Kingdom of Norway and the Democratic People's Republic of Korea. The Convention thus becomes operative between the Kingdom of Norway and the Democratic People's Republic of Korea without the Democratic People's Republic of Korea benefiting from these reservations."

"The Government of Norway has examined the declaration relating to paragraph 1 (b) of Article 2 of the International Convention for the Suppression of the Financing of Terrorism made by the Government of Jordan.

The Government of Norway considers the declaration to be a reservation that seeks to limit the scope of the Convention on a unilateral basis and which is contrary to its object and purpose, namely the suppression of financing of terrorism, irrespective of where they take place and who carries them out.

The declaration is furthermore contrary to the terms of Article 6 of the Convention according to which State Parties commit themselves to adopt measures as may be necessary to ensure that criminal acts within the scope of the Convention are under no circumstances justifiable by considerations of a political, philosophical, ideological, racial, ethnic, religious or similar nature.

The Government of Norway recalls that, according to customary international law, a reservation incompatible with the object and purpose of the Convention shall not be permitted.

The Government of Norway therefore objects to the aforesaid reservation made by the Government of Jordan to the Convention. This objection shall not preclude the entry into force of the Convention between Norway and Jordan."

"The Government of Norway has examined the contents of the reservation relating to paragraph 1 (b) of article 2 to the Convention for the Suppression of the Financing of Terrorism made by the Syrian Arab Republic.

The Government of Norway considers the reservation to be in contradiction with the object and purpose of the Convention, namely the suppression of the financing of terrorist acts wherever and by whomever they may be carried out.

The reservation is, furthermore, contrary to the terms of Article 6 of the Convention according to which State Parties commit themselves to adopt measures as may be necessary to ensure that criminal acts within the scope of the Convention are under no circumstances justifiable by considerations of a political, ideological, racial, ethnic, religious or similar nature.

The Government of Norway wishes to recall that according to customary international law as codified in the Vienna Convention on the Law of Treaties a

reservation incompatible with the object and purposes of the Convention shall not be permitted.

It is in the common interest of states that treaties to which they have chosen to become parties are respected as to their object and purpose and that states are prepared to undertake any legislative changes necessary to comply with the obligations under the treaties.

The Government of Norway therefore objects to the above-mentioned reservations made by the Government of the Syrian Arab Republic to the Convention.

This objection does not preclude the entry into force of the Convention between the Syrian Arab Republic and Norway. The Convention will thus become operative between the two states without the Syrian Arab Republic benefiting from its declaration."

"The Government of Norway has examined the reservation made by the Republic of Namibia upon ratification of the International Convention for the Suppression of the Financing of Terrorism (hereinafter the 'Convention'). According to the reservation, Namibia does not consider the armed struggle waged by people against colonialism, occupation, aggression and domination by foreign forces for the purposes of liberation or self-determination to be terrorist acts.

The object and purpose of the Convention is to suppress the financing of terrorist acts, including those defined in paragraph 1 (b) of Article 2 of the Convention. Such acts can never be justified with reference to the exercise of people's right to self-determination.

The Government of Norway further considers the reservation to be contrary to the terms of Article 6 of the Convention, according to which State parties are under an obligation to adopt such measures as may be necessary, including, where appropriate, domestic legislation, to ensure that criminal acts within the scope of the Convention are under no circumstances justifiable by considerations of a political, philosophical, ideological, racial, ethnic, religious or other similar nature.

The Government of Norway wishes to recall that according to Article 19 (c) of the Vienna Convention on the Law of Treaties, a reservation incompatible with the object and purpose of a treaty shall not be permitted.

The Government of Norway therefore objects to the reservation made by the Government of the Republic of Namibia to the International Convention for the Suppression of the Financing of Terrorism. This objection shall not preclude the entry into force of the Convention between the Kingdom of Norway and the Republic of Namibia."

#### POLAND

"The Government of the Republic of Poland has examined the reservation made by the Government of the Syrian Arab Republic to the International Convention for the Suppression of the Financing of Terrorism relating to article 2, paragraph 1 (b) thereof.

The Government of the Republic of Poland considers that the reservation made by the Government of the Syrian Arab Republic unilaterally limits the scope of the Convention and it is, therefore, contrary to the object and purpose of the Convention.

The Government of the Republic of Poland considers that the reservation to be contrary to the terms of article 6 of the Convention, according to which States Parties commit themselves to 'adopt such measures as may be necessary, including, where appropriate, domestic legislation, to ensure that criminal acts within the scope of this Convention are under no circumstances justifiable by considerations of their political, philosophical, ideological, racial, ethnic, religious or other similar nature'.

The Government of the Republic of Poland wishes to recall that according to article 19 (c) of the Vienna Convention on the Law of Treaties, a reservation

incompatible with the object and purpose of a treaty shall not be permitted.

The Government of the Republic of Poland therefore objects to the aforesaid reservation made by the Government of the Syrian Arab Republic to the International Convention for the Financing of Terrorism. However, this objection shall not preclude the entry into force of the Convention between the Republic of Poland and the Syrian Arab Republic."

"The Government of the Republic of Poland has examined the explanatory declaration made by the Government of the Arab Republic of Egypt to the International Convention for the Suppression of the Financing of Terrorism relating to article 2, paragraph 1 (b) thereof.

The Government of the Republic of Poland considers that the declaration made by the Government of the Arab Republic of Egypt is in fact a reservation that seeks to limit the scope of the Convention on a unilateral basis and it is, therefore, contrary to the object and purpose of the Convention.

The Government of the Republic of Poland considers that the declaration to be contrary to the terms of article 6 of the Convention, according to which States Parties commit themselves to "adopt such measures as may be necessary, including, where appropriate, domestic legislation, to ensure that criminal acts within the scope of this Convention are under no circumstances justifiable by considerations of their political, philosophical, ideological, racial, ethnic, religious or other similar nature".

The Government of the Republic of Poland wishes to recall that according to article 19 (c) of the Vienna Convention on the Law of Treaties, a reservation incompatible with the object and purpose of a treaty shall not be permitted.

The Government of the Republic of Poland therefore objects to the aforesaid declaration made by the Government of the Arab Republic of Egypt to the International Convention for the Financing of Terrorism. However this objection shall not preclude the entry into force of the Convention between the Republic of Poland and the Arab Republic of Egypt."

"The Government of the Republic of Poland considers that the reservation made by the Republic of Yemen is incompatible with the purpose and object of the Convention, which are to provide effective and comprehensive manners of the suppression of the financing of international terrorism. The reservation is incompatible with the main purpose of the Convention, as it purports to exclude the application of the Article 2, paragraph 1 (b) of the Convention, which defines the act of the financing of terrorism.

Therefore the Government of the Republic of Poland wishes to recall that according to Article 19 letter c of the Vienna Convention on the Law of Treaties, done at Vienna on 23 May 1969 a reservation incompatible with the object and purpose of a treaty shall not be permitted.

The Government of the Republic of Poland therefore objects to the aforesaid reservation to the Convention made by the Republic of Yemen.

However, that objection shall not preclude the entry into force of the International Convention for the Suppression of the Financing of Terrorism done at New York on 9 December 1999 between the Republic of Poland and the Republic of Yemen."

"The Government of the Republic of Poland has examined the reservation made by the Government of the Republic of Namibia to the International Convention for the Suppression of the Financing of Terrorism relating to Article 2, paragraph 1 (b) thereof.

The Government of the Republic of Poland considers that the reservation made by the Government of the Republic of Namibia unilaterally limits the scope of the

Convention and it is, therefore, contrary to the object and to the purpose of the Convention.

The Government of the Republic of Poland considers the reservation to be contrary to the terms of Article 6 of the Convention, according to which States Parties commit themselves to "adopt such measures as may be necessary, including, where appropriate, domestic legislation, to ensure that criminal acts within the scope of this Convention are under no circumstances, justifiable by considerations of their political, philosophical, ideological, racial, ethnic, religious or other similar nature".

The Government of the Republic of Poland wishes to recall that according to Article 19 (c) of the Vienna Convention on the Law of Treaties, a reservation incompatible with the object and the purpose of a treaty shall not be permitted.

The Government of the Republic of Poland therefore objects to the aforesaid reservation made by the Government of the Republic of Namibia to the International Convention for the Financing of Terrorism. However this objection shall not preclude the entry into force of the Convention between the Republic of Poland and the Republic of Namibia."

"The Government of the Republic of Poland has examined the interpretative declaration made by the State of Kuwait to the International Convention for the Suppression of the Financing of Terrorism, adopted by the General Assembly of the United Nations on December 9, 1999.

The Government of the Republic of Poland considers that the interpretative declaration made by the State of Kuwait in substance constitutes a reservation and it unilaterally limits the scope of the Convention and it is, therefore, contrary to the object and to the purpose of the Convention.

The Government of the Republic of Poland considers the declaration to be contrary to the terms of Article 6 of the Convention, according to which States Parties commit themselves to "adopt such measures as may be necessary, including, where appropriate, domestic legislation, to ensure that criminal acts within the scope of this Convention are under no circumstances justifiable by considerations of a political, philosophical, ideological, racial, ethnic, religious or other similar nature".

The Government of the Republic of Poland wishes to recall that according to Article 19 (c) of the Vienna Convention on the Law of Treaties, a reservation incompatible with the object and the purpose of a treaty shall not be permitted.

The Government of the Republic of Poland therefore objects to the aforesaid declaration, which in substance constitutes a reservation, made by the State of Kuwait to the International Convention for the Suppression of the Financing of Terrorism, adopted by the General Assembly of the United Nations on December 9, 1999. However this objection shall not preclude the entry into force of the Convention between the Republic of Poland and the State of Kuwait."

"The Government of the Republic of Poland has examined the reservation made by the Lebanese Republic regarding the definition of terrorism set forth in Article 2, paragraph 1 (b) of the International Convention for the Suppression of the Financing of Terrorism adopted by the General Assembly of the United Nations on December 9, 1999.

The Government of the Republic of Poland considers that the reservation made by the Lebanese Republic unilaterally limits the scope of the Convention and it is contrary to the object and purpose of the Convention, which are to provide effective and comprehensive manners of the suppression of the financing of international terrorism. The reservation is incompatible with the main purpose of the convention, as it purports to exclude the application of the Article 2, paragraph 1 (b) of

the Convention, which defines the act of the financing terrorism.

The Government of the Republic of Poland wishes to recall that according to Article 19 (c) of the Vienna Convention on the Law of Treaties, reservations incompatible with the object and purpose of a treaty shall not be permitted.

The Government of the Republic of Poland therefore objects to the aforesaid reservation made by the Government of the Lebanese Republic to the International Convention for the Suppression of the Financing of Terrorism.

However, this objection shall not preclude the entry into force of the Convention between the Republic of Poland and the Lebanese Republic."

#### PORTUGAL

".....the Government of Portugal has examined the declaration relating to paragraph 1 (b) of the Article 2 of the International Convention for the Suppression of the Financing of Terrorism made by the Government of the Hashemite Kingdom of Jordan at the time of its ratification of the Convention. The Government of Portugal considers that the declaration made by the Government of the Hashemite Kingdom of Jordan is in fact a reservation that seeks to limit the scope of the convention on a unilateral basis and is therefore contrary to its object and purpose, which is the suppression of the financing of terrorist acts, irrespective of where they take place and who carries them out.

The declaration is furthermore contrary to the terms of the Article 6 of the Convention according to which State Parties commit themselves to "adopt such measures as may be necessary, including, where appropriate, domestic legislation to ensure that criminal acts within the scope of this Convention are under no circumstances justifiable by considerations of a political, philosophical, ideological, racial, ethnic, religious or other similar nature".

The Government of Portugal recalls that, according to customary international law as codified in the Vienna Convention on the Law of Treaties, a reservation incompatible with the object and purpose of the Convention shall not be permitted.

The Government of Portugal therefore objects to the aforesaid reservation made by the Government of the Hashemite Kingdom of Jordan to the International Convention for the Suppression of the Financing of Terrorism. However, this objection shall not preclude the entry into force of the Convention between Portugal and the Hashemite Kingdom of Jordan."

"The Government of Portugal considers that the declaration made by the Government of the Arab Republic of Egypt is in fact a reservation that seeks to limit the scope of the convention on a unilateral basis and is therefore contrary to its object and purpose, which is the suppression of the financing of terrorist acts, irrespective of where they take place and who carries them out.

The declaration is furthermore contrary to the terms of the Article 6 of the Convention according to which State Parties commit themselves to "adopt such measures as may be necessary, including, where appropriate, domestic legislation to ensure that criminal acts within the scope of this Convention are under no circumstances justifiable by considerations of a political, philosophical, ideological, racial, ethnic, religious or other similar nature".

The Government of Portugal recalls that, according to Article 19 (c) of the Vienna Convention on the Law of Treaties, a reservation incompatible with the object and purpose of the Convention shall not be permitted.

The Government of Portugal therefore objects to the aforesaid reservation made by the Government of the

Arab Republic of Egypt to the International Convention for the Suppression of the Financing of Terrorism. However, this objection shall not preclude the entry into force of the Convention between Portugal and the Arab Republic of Egypt."

"The Government of Portugal considers that the declaration made by the Government of the Syrian Arab Republic is in fact a reservation that seeks to limit the scope of the convention on a unilateral basis and is therefore contrary to its object and purpose, which is the suppression of the financing of terrorist acts, irrespective of where they take place and who carries them out.

The declaration is furthermore contrary to the terms of the Article 6 of the Convention according to which State Parties commit themselves to "adopt such measures as may be necessary, including, where appropriate, domestic legislation to ensure that criminal acts within the scope of this Convention are under no circumstances justifiable by considerations of a political, philosophical, ideological, racial, ethnic, religious or other similar nature".

The Government of Portugal recalls that, according to Article 19 (c) of the Vienna Convention on the Law of Treaties, a reservation incompatible with the object and purpose of the Convention shall not be permitted.

The Government of Portugal therefore objects to the aforesaid reservation made by the Government of the Syrian Arab Republic to the International Convention for the Suppression of the Financing of Terrorism. However, this objection shall not preclude the entry into force of the Convention between Portugal and the Syrian Arab Republic."

"The Government of the Portuguese Republic has examined the reservation made by the Government of the Republic of Yemen to Article 2, paragraph 1 (b), of the International Convention for the Suppression of the Financing of Terrorism, on 3 March 2010, upon its ratification.

The Government of the Portuguese Republic considers that the reservation made by the Government of Republic of Yemen is a reservation that seeks to limit the scope of the Convention on an unilateral basis and is therefore contrary to its object and purpose, which is the suppression of the financing of terrorist acts, irrespective of where they take place and who carries them out.

The reservation is furthermore contrary to the terms of Article 6 of the Convention according to which State Parties commit themselves to 'adopt such measures as may be necessary, including, where appropriate, domestic legislation to ensure that criminal acts within the scope of this Convention are under no circumstances justifiable by considerations of a political, philosophical, ideological, racial, ethnic, religious or other similar nature'.

The Government of the Portuguese Republic recalls that, according to customary international law as codified in the Vienna Convention on the Law of Treaties, a reservation incompatible with the object and purpose of the Convention shall not be permitted.

The Government of the Portuguese Republic therefore objects to the aforesaid reservation made by the Government of Republic of Yemen to Article 2, paragraph 1 (b), of the International Convention for the Suppression of the Financing of Terrorism.

However, this objection shall not preclude the entry into force of the Convention between the Portuguese Republic and the Republic of Yemen."

"The Government of the Portuguese Republic has examined the reservation made by the Republic of Namibia to Article 2, paragraph 1 (b), of the International Convention for the Suppression of the Financing of Terrorism, on 18 October 2012, upon its ratification;

The Government of the Portuguese Republic considers that the reservation made by the Government of Namibia seeks to limit the scope of the Convention on an unilateral basis and is therefore contrary to its object and purpose, which is the suppression of the financing of terrorist acts,

irrespective of where they take place and who carries them out.

The reservation is furthermore contrary to the terms of Article 6 of the Convention, according to which State Parties commit themselves to 'adopt such measures as may be necessary, including, where appropriate, domestic legislation, to ensure that criminal acts within the scope of this Convention are under no circumstances justifiable by considerations of a political, philosophical, ideological, racial, ethnic, religious or other similar nature'.

The Government of the Portuguese Republic recalls that, according to customary international law as codified in the Vienna Convention on the Law of Treaties, a reservation incompatible with the object and purpose of the Convention shall not be permitted.

The Government of the Portuguese Republic therefore objects to the aforesaid reservation made by the Government of Namibia to Article 2, paragraph 1 (b), of the International Convention for the Suppression of the Financing of Terrorism.

However, this objection shall not preclude the entry into force of the Convention between the Portuguese Republic and Namibia."

"The Government of the Portuguese Republic has examined the reservation and statement made by the Lebanese Republic to Article 2, paragraph 1 (b) of the International Convention for the Suppression of the Financing of Terrorism and considers that it amounts to a reservation that seeks to limit the scope of the [Convention] on a unilateral basis.

Furthermore, the Government of the Portuguese Republic considers that reservations by which a State limits its responsibilities under the International Convention for the Suppression of the Financing of Terrorism by not recognizing the definition of terrorism established therein and binding itself to a different definition raises doubts as to the commitment of the reserving State to the object and purpose of the Convention, as the reservation is likely to deprive the provisions of the Convention of their effect and [is] contrary to the object and purpose thereof.

The Government of the Portuguese Republic recalls that according to customary international law as codified in the Vienna Convention on the Law of Treaties, a reservation incompatible with the object and purpose of the Convention shall not be permitted.

Thus, the Government of the Portuguese Republic objects to this reservation. This objection shall not preclude the entry into force of the Convention between the Portuguese Republic and the Lebanese Republic."

#### ROMANIA

"The Government of Romania has examined the interpretative declaration made by the Government of Kuwait to the International Convention for the Suppression of Financing of Terrorism and appreciates that a declaration with reference to the provisions of Islamic law is of unlimited scope and undefined character.

Moreover, this interpretative declaration is contrary to the terms of article 6 of the Convention, according to which 'each State Party shall adopt such measures as may be necessary, including, where appropriate, domestic legislation, to ensure that criminal acts within the scope of this Convention are under no circumstances justifiable by considerations of a political, philosophical, ideological, racial, ethnic, religious or other similar nature'.

Consequently, the Government of Romania considers that the declaration is in fact a disguised reservation, incompatible with the object and purpose of the Convention (which consists in the suppression of financing of terrorism in whatever form is committed) and without effect under international law.

The objection shall not otherwise affect the entry into force of the Convention between Romania and Kuwait. Thus, the International Convention for the Suppression of the Financing of Terrorism will become operative without the Government of Kuwait benefitting from its reservation."

"The Government of Romania has examined the reservation and statement relating to paragraph 1 (b) of Article 2 of the International Convention for the Suppression of the Financing of Terrorism (New York, 9 December 1999) made by the Government of the Lebanese Republic at the time of its accession to this Convention.

The Government of Romania considers that the aforementioned reservation and statement constitute in fact a reservation that seeks to limit the scope of the Convention on a unilateral basis and is therefore contrary to its object and purpose, which is the suppression of the financing of terrorist acts, irrespective of where they take place and of who carries them out.

The reservation is furthermore contrary to Article 6 of the Convention, according to which States Parties commit themselves to 'adopt such measures as may be necessary, including where appropriate, domestic legislation, to ensure that criminal acts within the scope of this Convention are under no circumstances justifiable by considerations of a political, philosophical, ideological, racial, ethnic, religious or other similar nature'.

The Government of Romania recalls that, according to customary international law as codified in the Vienna Convention on the Law of Treaties, a reservation incompatible with the object and purpose of a treaty shall not be permitted.

The Government of Romania therefore objects to the aforementioned reservation made by the Government of the Lebanese Republic to the International Convention for the Suppression of the Financing of Terrorism. However, this objection shall not preclude the entry into force of the Convention between Romania and the Lebanese Republic."

#### SLOVAKIA

"The Slovak Republic has examined the reservation made by Yemen upon its accession to the International Convention for the Suppression of the Financing of Terrorism, of 9 December 1999, according to which Yemen excludes the application of the provisions of article 2, paragraph 1 (b), of the Convention.

The Slovak Republic considers that this reservation contradicts mainly the terms of:

1. Article 4 of the Convention according to which 'Each State Party shall adopt such measures as may be necessary:

(a) To establish as criminal offences under its domestic law the offences set forth in article 2;

(b) To make those offences punishable by appropriate penalties which take into account the grave nature of the offences.'

2. Article 6 of the Convention, according to which States Parties commit themselves to 'adopt such measures as may be necessary, including, where appropriate, domestic legislation, to ensure that criminal acts within the scope of this Convention are under no circumstances justifiable by considerations of political, philosophical, ideological, racial, ethnic, religious or other similar nature'.

3. Article 7 paragraph 1 of the Convention according to which 'Each State Party shall take such measures as may be necessary to establish its jurisdiction over the offences set forth in article 2 when:

(a) The offence is committed in the territory of that State;

(b) The offence is committed on board a vessel flying the flag of that State or an aircraft registered under the laws of that State at the time the offence is committed;

(c) The offence is committed by a national of that State’.

and it is incompatible with the object and purpose of the Convention.

The Slovak Republic recalls that the customary international law as codified by Vienna Convention of the Law of Treaties, and in particular Article 19 (c), set out that the reservation that is incompatible with the object and purpose of a treaty is not permitted.

The Slovak Republic, therefore, objects to the aforesaid reservation made by Yemen to the Convention. This objection shall not preclude the entry into force of the Convention between the Slovak Republic and Yemen, without Yemen benefiting from its reservation.”

“The Government of the Slovak Republic has carefully examined the reservation made by the Republic of Namibia upon its ratification of the International Convention for the Suppression of the Financing of Terrorism (1999). This reservation concerns the right of people to self-determination and according to the Republic of Namibia ‘a struggle waged by people in accordance with the principles of international law for their liberation or self-determination, including armed struggle against colonialism, occupation, aggression and domination by foreign forces, shall not be considered as terrorist acts.’

The Government of the Slovak Republic is of the view that the right of people to self-determination can never justify any act of terrorism in any form. The crimes falling within the scope of the International Convention for the Suppression of the Financing of Terrorism are defined under Article 2, paragraph 1 of this Convention. Firstly, it expressis verbis applies to any act which constitutes an offence within the scope of and as defined in one of the specific international treaties aimed at combatting terrorism. Moreover, the Convention also covers any other act intended to cause death or serious bodily injury to a civilian, or to any other person not taking an active part in the hostilities in a situation of armed conflict, when the purpose of such act, by its nature or context, is to intimidate a population, or to compel a government or an international organization to do or to abstain from doing any act. The latter is aimed at protection of civilians and other persons during any armed conflict including struggle for liberation or self-determination. In that regard, any terrorist act cannot be exculpated through the exercise of the right of people to self-determination.

Furthermore, the reservation of the Republic of Namibia is contrary to Article 6 of the Convention, as any criminal act within the scope of the Convention is under no circumstances justifiable by considerations of a political, philosophical, ideological racial, ethnic, religious or other similar nature.

Therefore, the Government of the Slovak Republic finds this reservation incompatible with the object and the purpose of the Convention and inadmissible under article 19 (c) of the Vienna Convention on the Law of Treaties. Subsequently, it shall not be permitted, in accordance with Article 24, paragraph 2 of the international Convention for the Suppression of the Financing of Terrorism.

For these reasons, the Government of the Slovak Republic objects to the above mentioned reservation made by the Republic of Namibia upon its ratification to the International Convention for the Suppression of the Financing of Terrorism.

This objection shall not preclude the entry into force of the International Convention for the Suppression of the Financing of Terrorism between the Slovak Republic and the Republic of Namibia. The Convention enters into force in its entirety between the Slovak Republic and the

Republic of Namibia, without the Republic of Namibia benefiting from its reservation.”

“The Government of the Slovak Republic has carefully examined the reservation made by Lebanon upon its accession to the International Convention for the Suppression of the Financing of Terrorism.

By seeking to exclude the application of Article 2, paragraph 1 (b) of that Convention, the reservation purports to alter the definition of terrorism set forth in the aforementioned provision, and endorses, instead, a different definition stemming from a regional instrument.

The Slovak Republic recalls that it is the object and purpose of the Convention to suppress the financing of terrorist acts, including those defined in Article 2, paragraph 1 (b). Therefore, limiting the scope of the Convention by means of excluding certain acts from its application contravenes the object and purpose of the Convention and is deemed impermissible.

The Slovak Republic therefore considers the reservation formulated by Lebanon incompatible with the object and purpose of the Convention and hereby objects to it. This objection shall not preclude the entry into force of the Convention between the Slovak Republic and Lebanon, without Lebanon benefiting from its reservation.”

#### SLOVENIA

“The Republic of Slovenia has carefully examined the reservation and statement made by the Lebanese Republic upon accession to the International Convention for the Suppression of the Financing of Terrorism, adopted in New York on 9 December 1999.

The Republic of Slovenia considers that this reservation regarding the exclusion of the application of Article 2, paragraph 1 (b) of the aforementioned Convention and of the definition of terrorism as an offence within the meaning of this Convention therein, seeks to limit the scope of the Convention. This is incompatible with the object and purpose of the treaty and therefore not permissible under Article 19 (c) of the Vienna Convention on the Law of Treaties. Furthermore, the option of reservations to paragraph 1 of the Article 2 of the Convention is not provided for in the Convention.

Therefore, the Republic of Slovenia objects to the reservation made by the Lebanese Republic to Article 2, paragraph 1 (b) of the aforementioned Convention. This objection shall not preclude the entry into force of the Convention between the Republic of Slovenia and the Lebanese Republic in its entirety. The Convention shall thus become operative between the two States without the Lebanese Republic benefiting from this reservation.”

#### SPAIN

The Government of Spain has examined the reservations made by the Government of the Democratic People's Republic of Korea on 12 November 2001 to articles 2, paragraph 1 (a), and 14 of the International Convention for the Suppression of the Financing of Terrorism (New York, 9 December 1999).

The Government of the Kingdom of Spain considers that those reservations are incompatible with the object and purpose of that Convention, since their aim is to release the People's Democratic Republic of Korea from any commitment with regard to two essential aspects of the Convention.

The Government of the Kingdom of Spain observes that according to the rule of customary law embodied in article 19 (c) of the 1969 Vienna Convention on the Law

of Treaties, reservations incompatible with the object and purpose of treaties are prohibited.

The Government of the Kingdom of Spain therefore objects to the aforementioned reservations made by the Government of the People's Democratic Republic of Korea to the International Convention for the Suppression of Financing of Terrorism.

This objection does not prevent the entry into force of the aforementioned Convention between the Kingdom of Spain and the People's Democratic Republic of Korea.

The Government of the Kingdom of Spain has examined the reservation made by the Government of the Kingdom of Belgium to article 14 of the International Convention for the Suppression of the Financing of Terrorism at the time of ratifying the Convention.

The Government of the Kingdom of Spain considers that the reservation is incompatible with the object and purpose of the Convention.

The Government of the Kingdom of Spain considers, in particular, that Belgium's reservation is incompatible with article 6 of the Convention, whereby States Parties undertake to adopt such measures as may be necessary, including, where appropriate, domestic legislation, to ensure that criminal acts within the scope of the Convention are under no circumstances justifiable by considerations of a political, philosophical, ideological, racial, ethnic, religious or other similar nature.

The Government of the Kingdom of Spain recalls that, under the norm of customary law laid down in the 1969 Vienna Convention on the Law of Treaties (article 19 c)), reservations which are incompatible with the object and purpose of a treaty are prohibited.

The Government of the Kingdom of Spain therefore objects to the reservation made by the Government of the Kingdom of Belgium to article 14 of the International Convention for the Suppression of the Financing of Terrorism.

This objection shall not impede the entry into force of the Convention between the Kingdom of Spain and the Kingdom of Belgium.

The Government of the Kingdom of Spain has examined the reservation entered by the Syrian Arab Republic to article 2, paragraph 1 (b), of the International Convention for the Suppression of the Financing of Terrorism upon ratifying that instrument.

The Government of the Kingdom of Spain considers that this reservation is incompatible with the object and purpose of the Convention.

The Government of the Kingdom of Spain considers, in particular, that the reservation entered by the Syrian Arab Republic is incompatible with article 6 of the Convention, whereby States parties undertake to adopt such measures as may be necessary, including, where appropriate, domestic legislation, to ensure that criminal acts within the scope of the Convention are under no circumstances justifiable by considerations of a political, philosophical, ideological, racial, ethnic, religious or other similar nature.

The Government of the Kingdom of Spain recalls that, under the customary-law provision enshrined in article 19 (c) of the 1969 Vienna Convention on the Law of Treaties, reservations that are incompatible with the object and purpose of the treaty concerned are not permitted.

Accordingly, the Government of the Kingdom of Spain objects to the reservation entered by the Syrian Arab Republic to article 2, paragraph 1 (b), of the International Convention for the Suppression of the Financing of Terrorism.

This objection shall not preclude the entry into force of the Convention between the Kingdom of Spain and the Syrian Arab Republic.

The Government of the Kingdom of Spain has examined the reservation to article 2, paragraph 1 (b), of the International Convention for the Suppression of the

Financing of Terrorism made by the Arab Republic of Egypt at the time of its ratification of the Convention.

The Government of the Kingdom of Spain considers that this reservation is contrary to the object and purpose of the Convention.

The Government of the Kingdom of Spain considers, in particular, that the reservation made by the Arab Republic of Egypt is contrary to article 6 of the Convention, according to which the States Parties pledge to adopt such measures as may be necessary, including, where appropriate, domestic legislation, to ensure that criminal acts within the scope of the Convention are under no circumstances justifiable by considerations of a political, philosophical, ideological, racial, ethnic, religious or other similar nature.

The Government of the Kingdom of Spain recalls that, according to customary international law as codified in the 1969 Vienna Convention on the Law of Treaties (article 19 (c)), a reservation incompatible with the object and purpose of a treaty shall not be permitted.

The Government of the Kingdom of Spain therefore objects to the reservation made by the Arab Republic of Egypt to article 2, paragraph 1 (b), of the International Convention for the Suppression of the Financing of Terrorism.

This objection shall not preclude the entry into force of the Convention between the Kingdom of Spain and the Arab Republic of Egypt.

The Government of the Kingdom of Spain has examined the reservation made by the Republic of Yemen to article 2, paragraph 1 (b), of the International Convention for the Suppression of the Financing of Terrorism (New York, 9 December 1999) upon ratifying the Convention.

The Government of the Kingdom of Spain considers that the reservation is contrary to the object and purpose of the Convention and contravenes article 6 of the Convention, whereby States parties undertake to adopt such measures as may be necessary, including, where appropriate, domestic legislation, to ensure that criminal acts within the scope of the Convention are under no circumstances justifiable by considerations of a political, philosophical, ideological, racial, ethnic, religious or other similar nature.

The Government of the Kingdom of Spain recalls that, according to customary law enshrined in the 1969 Vienna Convention on the Law of Treaties (article 19 (c)), reservations that are contrary to the object and purpose of international treaties shall not be permitted.

The Government of the Kingdom of Spain therefore objects to the reservation made by the Republic of Yemen to article 2, paragraph 1 (b), of the Convention.

This objection shall not preclude the entry into force of the Convention between the Government of the Kingdom of Spain and the Republic of Yemen.

The Kingdom of Spain has examined the reservation made by the Republic of Namibia at the time of expression of consent to the International Convention for the Suppression of the Financing of Terrorism (New York, 9 December 1999).

The Kingdom of Spain considers the aforesaid reservation to be contrary to the object and purpose of the Convention, and also contrary to article 6 thereof, whereby States parties undertake to adopt such measures as may be necessary, including, where appropriate, domestic legislation, to ensure that criminal acts within the scope of the Convention are under no circumstances justifiable by considerations of a political, philosophical, ideological, racial, ethnic, religious or other similar nature.

The Kingdom of Spain recalls that, under the customary-law provision enshrined in article 19 (c) of the 1969 Vienna Convention on the Law of Treaties, reservations that are incompatible with the object and purpose of an international treaty are not permitted.

The Kingdom of Spain therefore objects to the reservation formulated by Namibia. This objection shall not preclude the entry into force of the Convention between the Kingdom of Spain and Namibia.

The Kingdom of Spain has examined the interpretative declaration made by the State of Kuwait at the time of its consent to be bound by the International Convention for the Suppression of the Financing of Terrorism (New York, 9 December 1999).

The Kingdom of Spain considers that the aforesaid interpretative declaration constitutes a reservation that limits the application of the Convention, and that this reservation is contrary to the object and purpose of the Convention, and also contrary to article 6 thereof, whereby States parties undertake to adopt such measures as may be necessary, including, where appropriate, domestic legislation, to ensure that criminal acts within the scope of the Convention are under no circumstances justifiable by considerations of a political, philosophical, ideological, racial, ethnic, religious or other similar nature.

The Kingdom of Spain recalls that, under the rule of customary law enshrined in article 19 (c) of the 1969 Vienna Convention on the Law of Treaties, reservations that are incompatible with the object and purpose of an international treaty are not permitted.

The Kingdom of Spain therefore objects to the reservation formulated by Kuwait. This objection shall not preclude the entry into force of the Convention between the Kingdom of Spain and Kuwait.

The Kingdom of Spain has examined the reservation and statement made by the Lebanese Republic upon accession to the International Convention for the Suppression of the Financing of Terrorism (New York, 9 December 1999). The reservation is to article 2 (1) (b) of the Convention. The statement, which intends to limit the application of the Convention, also constitutes a reservation.

The Kingdom of Spain considers that the aforementioned reservations are contrary to the object and purpose of the Convention and also violate article 6 thereof, according to which States Parties undertake to adopt such measures as may be necessary, including, where appropriate, the adoption of domestic legislation, to ensure that criminal acts within the scope of the Convention are under no circumstances justifiable by considerations of a political, philosophical, ideological, racial, ethnic, religious or other similar nature.

The Kingdom of Spain recalls that, under the rule of customary law enshrined in article 19 (c) of the 1969 Vienna Convention on the Law of Treaties, reservations that are contrary to the object and purpose of international treaties shall not be permitted.

The Kingdom of Spain therefore objects to the reservation and statement made by the Lebanese Republic.

This objection does not preclude the entry into force of the Convention between the Kingdom of Spain and the Lebanese Republic.

#### SWEDEN

"The Government of Sweden has examined the reservation made by the Democratic People's Republic of Korea at the time of its signature of the International Convention for the Suppression of the Financing of Terrorism, regarding article 2, paragraph 1, sub-paragraph (a) and article 14 of the Convention.

The Government of Sweden considers those reservations made by the Democratic People's Republic of Korea incompatible with the object and purpose of the Convention.

The Government of Sweden would like to recall that, according to customary international law as codified in the Vienna Convention on the Law of Treaties, a reservation incompatible with the object and purpose of a treaty shall not be permitted.

It is in the common interest of States that treaties to which they have chosen to become parties are respected as to their object and purpose, by all parties, and that States are prepared to undertake any legislative changes necessary to comply with their obligations under the treaties.

The Government of Sweden therefore objects to the aforesaid reservation made by the Government of the Democratic People's Republic of Korea to the International Convention for the Suppression of the Financing of Terrorism. This objection shall not preclude the entry into force of the Convention between the Democratic People's Republic of Korea and Sweden. The Convention enters into force in its entirety between the two States, without the Democratic People's Republic of Korea benefiting from its reservation."

"The Government of Sweden has examined the declaration made by Israel regarding article 21 of the International Convention for the Suppression of the Financing of Terrorism, whereby Israel intends to exclude the Protocols Additional to the Geneva Conventions from the term international humanitarian law.

The Government of Sweden recalls that the designation assigned to a statement whereby the legal effect of certain provisions of a treaty is excluded or modified does not determine its status as a reservation to the treaty. The Government of Sweden considers that the declaration made by Israel in substance constitutes a reservation.

It is the view of the Government of Sweden that the majority of the provisions of the Protocols Additional to the Geneva Conventions constitute customary international law, by which Israel is bound. In the absence of further clarification, Sweden therefore objects to the aforesaid reservation by Israel to the International Convention for the Suppression of the Financing of Terrorism.

This objection shall not preclude the entry into force of the Convention between Israel and Sweden. The Convention enters into force in its entirety between the two States, without Israel benefiting from this reservation."

"The Government of Sweden has examined the declaration made by the Government of Jordan upon ratification of the International Convention for the Suppression of the Financing of Terrorism, according to which the Government of Jordan does not consider acts of national struggle and fighting foreign occupation in the exercise of people's right to self-determination as terrorist acts within the context of paragraph 1 (b) of Article 2 of the Convention.

The Government of Sweden recalls that the designation assigned to a statement whereby the legal effect of certain provisions of a treaty is excluded or modified does not determine its status as a reservation to the treaty. The Government of Sweden considers that the declaration made by the Government of Jordan in substance constitutes a reservation.

The object and purpose of the Convention is to suppress the financing of terrorist acts, including those defined in paragraph 1 (b) of Article 2 of the Convention. Such acts can never be justified with reference to the exercise of people's right to self-determination.

The Government of Sweden further considers the reservation to be contrary to the terms of Article 6 of the Convention, according to which States parties are under an obligation to adopt such measures as may be necessary, including, where appropriate, domestic legislation, to ensure that criminal acts within the scope of the Convention are under no circumstances justifiable by

considerations of a political, philosophical, ideological, racial, ethnic, religious or other similar nature.

The Government of Sweden wishes to recall that, according to customary international law as codified in the Vienna Convention on the Law of Treaties, a reservation incompatible with the object and purpose of a treaty shall not be permitted. It is in the common interest of States that treaties to which they have chosen to become parties are respected as to their object and purpose, by all parties, and that States are prepared to undertake any legislative changes necessary to comply with their obligations under the treaties.

The Government of Sweden therefore objects to the reservation made by the Government of Jordan to the International Convention for the Suppression of the Financing of Terrorism. This objection shall not preclude the entry into force of the Convention between Jordan and Sweden. The Convention enters into force between the two parties without Jordan benefiting from its reservation."

"The Government of Sweden has examined the explanatory declaration made by the Government of the Arab Republic of Egypt upon ratification of the International Convention for the Suppression of the Financing of Terrorism, according to which the Arab Republic of Egypt does not consider acts of national resistance in all its forms, including armed resistance against foreign occupation and aggression with a view of liberation and self-determination, as terrorist acts within the meaning of paragraph 1 (b) of Article 2 of the Convention.

The Government of Sweden recalls that the designation assigned to a statement whereby the legal effect of certain provisions of a treaty is excluded or modified does not determine its status as a reservation to the treaty. The Government of Sweden considers that the declaration made by the Government of the Arab Republic of Egypt in substance constitutes a reservation.

The object and purpose of the Convention is to suppress the financing of terrorist acts, including those defined in paragraph 1 (b) of Article 2 of the Convention. Such acts can never be justified with reference to the exercise of people's right to self-determination.

The Government of Sweden further considers the reservation to be contrary to the terms of Article 6 of the Convention, according to which the States parties are under an obligation to adopt such measures as may be necessary, including, where appropriate, domestic legislation, to ensure that criminal acts within the scope of the Convention are under no circumstances justifiable by considerations of a political, philosophical, ideological, racial, ethnic, religious or other similar nature.

The Government of Sweden wishes to recall that, according to customary international law as codified in the Vienna Convention on the Law of Treaties, a reservation incompatible with the object and purpose of a treaty shall not be permitted. It is in the common interest of States that treaties to which they have chosen to become parties are respected as to their object and purpose, and that States are prepared to undertake any legislative changes necessary to comply with their obligations under the treaties.

The Government of Sweden therefore objects to the reservation made by the Arab Republic of Egypt to the International Convention for the Suppression of the Financing of Terrorism. This objection shall not preclude the entry into force of the Convention between the Arab Republic of Egypt and Sweden. The Convention enters into force between the Arab Republic of Egypt and Sweden without the Arab Republic of Egypt benefiting from its reservation."

"The Government of Sweden has examined the reservation made by the Government of the Syrian Arab Republic upon accession to the International Convention for the Suppression of the Financing of Terrorism, according to which the Syrian Arab Republic considers

that acts of resistance to foreign occupation are not included under acts of terrorism within the meaning of paragraph 1 (b) of Article 2 of the Convention.

The object and purpose of the Convention is to suppress the financing of terrorist acts, including those defined in paragraph 1 (b) of Article 2 of the Convention. Such acts can never be justified with reference to the exercise of people's right to self-determination.

The Government of Sweden further considers the reservation to be contrary to the terms of Article 6 of the Convention, according to which the States parties are under an obligation to adopt such measures as may be necessary, including, where appropriate, domestic legislation, to ensure that criminal acts within the scope of the Convention are under no circumstances justifiable by considerations of a political, philosophical, ideological, racial, ethnic, religious or other similar nature.

The Government of Sweden wishes to recall that, according to customary international law as codified in the Vienna Convention on the Law of Treaties, a reservation incompatible with the object and purpose of a treaty shall not be permitted. It is in the common interest of States that treaties to which they have chosen to become parties are respected to their object and purpose, and that States are prepared to undertake any legislative changes necessary to comply with their obligations under the treaties.

The Government of Sweden therefore objects to the reservation made by the Syrian Arab Republic to the International Convention for the Suppression of the Financing of Terrorism. This objection shall not preclude the entry into force of the Convention between the Syrian Arab Republic and Sweden. The Convention enters into force between the Syrian Arab Republic and Sweden, without the Syrian Arab Republic benefiting from its reservation."

"...the Government of Sweden has examined the reservation made by the Government of the Republic of Yemen upon accession to the International Convention for the Suppression of the Financing of Terrorism, according to which the Republic of Yemen excludes the application of the provisions of paragraph 1 (b) of Article 2 of the Convention.

The Government of Sweden considers that the reservation is incompatible with the object and purpose of the Convention, namely the suppression of the financing of all terrorist acts.

The Government of Sweden wishes to recall that, according to customary international law as codified in the Vienna Convention on the Law of Treaties, a reservation incompatible with the object and purpose of a treaty shall not be permitted. It is in the common interest of States that treaties to which they have chosen to become parties are respected as to their object and purpose, and that States are prepared to undertake any legislative changes necessary to comply with their obligations under the treaties.

The Government of Sweden therefore objects to the reservation made by the Republic of Yemen to the International Convention for the Suppression of the Financing of Terrorism. This objection shall not preclude the entry into force of the Convention between the Republic of Yemen and Sweden. The Convention enters into force between the Republic of Yemen and Sweden, without the Republic of Yemen benefiting from its reservation."

"[...] The Government of Sweden has examined the reservation made by the Government of Namibia upon ratification of the Convention, according to which the Government of Namibia does not consider armed struggle against colonialism, occupation, aggression and domination by foreign forces for the purpose of liberation or self-determination to be acts of terrorism.

The object and purpose of the Convention is to suppress the financing of terrorist acts, including those

defined in paragraph 1 (b) of Article 2 of the Convention. Such acts can never be justified with reference to the exercise of people's right to self-determination.

The Government of Sweden further considers the reservation to be contrary to the terms of Article 6 of the Convention, according to which State parties are under an obligation to adopt such measures as may be necessary, including, where appropriate, domestic legislation, to ensure that criminal acts within the scope of the Convention are under no circumstances justifiable by considerations of a political, philosophical, ideological, racial, ethnic, religious or other similar nature.

The Government of Sweden wishes to recall that, according to customary international law as codified in the Vienna Convention on the Law of Treaties, a reservation incompatible with the object and purpose of a treaty shall not be permitted. It is in the common interest of States that treaties to which they have chosen to become parties are respected as to their object and purpose, by all parties, and that States are prepared to undertake any legislative changes necessary to comply with their obligations under the treaties.

The Government of Sweden therefore objects to the reservation made by Namibia to the International Convention for the Suppression of the Financing of Terrorism. This objection shall not preclude the entry into force of the Convention between Namibia and Sweden. The Convention enters into force between Namibia and Sweden without Namibia benefiting from its reservation."

"The Government of Sweden has examined the interpretative declaration made by the Government of Kuwait upon accession to the International Convention for the Suppression of Financing of Terrorism, according to which the Government of Kuwait declares that the commitment of the State of Kuwait to the Convention is without prejudice to its Arab and Islamic obligations in respect of the definition of terrorism and the distinction between terrorism and legitimate national struggle against occupation.

The Government of Sweden recalls that the designation assigned to a statement whereby the legal effect of certain provisions of a treaty is excluded or modified does not determine its status as a reservation to the treaty. The Government of Sweden considers that the interpretative declaration made by Kuwait in substance constitutes a reservation.

The object and purpose of the Convention is to suppress the financing of terrorist acts, including those defined in paragraph 1 (b) of Article 2 of the Convention. Such acts can never be justified with reference to the exercise of people's right to self-determination.

The Government of Sweden further considers the reservation to be contrary to the terms of Article 6 of the Convention, according to which State parties are under an obligation to adopt such measures as may be necessary, including, where appropriate, domestic legislation, to ensure that criminal acts within the scope of the Convention are under no circumstances justifiable by considerations of a political, philosophical, ideological, racial, ethnic, religious or other similar nature.

The Government of Sweden wishes to recall that, according to customary international law as codified in the Vienna Convention on the Law of Treaties, a reservation incompatible with the object and purpose of a treaty shall not be permitted. It is in the common interest of States that treaties to which they have chosen to become parties are respected as to their object and purpose, by all parties, and that States are prepared to undertake any legislative changes necessary to comply with their obligations under the treaties.

The Government of Sweden therefore objects to the reservation made by Kuwait to the International Convention for the Suppression of Financing of Terrorism. This objection shall not preclude the entry into force of the Convention between Kuwait and Sweden.

The Convention enters into force between Kuwait and Sweden without Kuwait benefiting from its reservation."

"The Government of Sweden has examined the content of the reservation and statement relating to subparagraph 1 (b) of Article 2 of the International Convention for the Suppression of the Financing of Terrorism made by the Government of the Lebanese Republic upon accession.

The Government of Sweden is of the view that the statement of Lebanon in substance constitutes a reservation, as it seeks to limit the scope of the Convention and to subject the application of the Convention for the Lebanese Republic to a different definition of terrorism.

The Government of Sweden considers that the reservations are incompatible with the object and purpose of the Convention.

The Government of Sweden wishes to recall that, according to customary international law as codified in the Vienna Convention on the Law of Treaties, a reservation incompatible with the object and purpose of a treaty shall not be permitted. It is in the common interest of States that treaties to which they have chosen to become parties are respected as to their object and purpose, and that States are prepared to undertake any legislative changes necessary to comply with their obligations under the treaties.

The Government of Sweden therefore objects to the reservations made by the Republic of Lebanon to the International Convention for the Suppression of the Financing of Terrorism. This objection shall not preclude the entry into force of the Convention between the Republic of Lebanon and Sweden. The Convention enters into force in its entirety between the Republic of Lebanon and Sweden, without the Republic of Lebanon benefiting from its reservations."

#### SWITZERLAND

The Swiss Federal Council has examined the reservation formulated by the Republic of Namibia upon its accession to the International Convention for the Suppression of the Financing of Terrorism of 9 December 1999, stating that a struggle waged by people in accordance with the principles of international law for their liberation or self-determination, including armed struggle against colonialism, occupation, aggression and domination by foreign forces, shall not be considered as terrorist acts.

The Federal Council considers that this reservation seeks to limit the scope of the Convention by limiting the definition of terrorist acts under the Convention. The Federal Council is of the view that such acts are under no circumstances justifiable on the basis of the right of peoples to self-determination. The reservation is therefore incompatible with the object and purpose of the Convention.

It is in the common interest of States that instruments to which they have chosen to become parties should be respected, as to their object and purpose, by all parties and that States should be prepared to undertake any legislative changes necessary to comply with their obligations under such instruments. The Swiss Federal Council considers that a reservation that is incompatible with the object and purpose of the Convention is invalid and has no legal effect.

The Swiss Federal Council objects to the reservation made by the Republic of Namibia. This objection shall not preclude the entry into force of the Convention in its entirety between Switzerland and the Republic of Namibia.

The Swiss Federal Council has examined the interpretative declaration made by the State of Kuwait

upon its accession to the International Convention for the Suppression of the Financing of Terrorism of 9 December 1999 stating that "the commitment of the State of Kuwait to the Convention is without prejudice to its Arab and Islamic obligations in respect of the definition of terrorism and the distinction between terrorism and legitimate national struggle against occupation".

The Federal Council considers that the interpretative declaration made by the State of Kuwait seeks to narrow the scope of the Convention by limiting the definition of acts of terrorism under the Convention. The interpretative declaration therefore in substance constitutes a reservation, despite its designation. The Federal Council is of the view that such acts are under no circumstances justifiable on the basis of legitimate national struggle against occupation. The reservation is therefore incompatible with the object and purpose of the Convention.

It is in the common interest of States that instruments to which they have chosen to become parties should be respected, as to their object and purpose, by all parties, and that States should be prepared to undertake any legislative changes necessary to comply with their obligations under such instruments. The Swiss Federal Council considers that a reservation that is incompatible with the object and purpose of the Convention is invalid and has no legal effect.

The Swiss Federal Council objects to the reservation of the State of Kuwait. This objection shall not preclude the entry into force of the Convention in its entirety between Switzerland and the State of Kuwait.

The Swiss Federal Council has examined the reservation and statement made by Lebanon upon its accession to the International Convention for the Suppression of the Financing of Terrorism of 9 December 1999, which read as follows: "... with a reservation regarding the definition of terrorism set forth in Article 2, paragraph 1 (b) of that Convention and an endorsement of the definition of terrorism set forth in articles 1 and 2 of the Arab counter-Terrorism Convention signed in Cairo on 22 April 1984".

The Federal Council considers that the reservation made by Lebanon has the effect of excluding from the scope of application of the Convention the financing of terrorist acts of "struggle ... against foreign occupation and aggression for liberation and self-determination...". Such an exception could legitimize the financing of attacks against civilians and other persons not taking part in the hostilities and, thus, restricts the scope of application of the Convention. Consequently, the reservation is incompatible with the object and purpose of the Convention.

It is in the common interest of States that instruments to which they have chosen to become parties are respected as to their object and purpose by all parties and that States are prepared to undertake any legislative changes to comply with their treaty obligations.

The Swiss Federal Council henceforth objects to the reservation by Lebanon. This objection shall not preclude the entry into force of the Convention, in its entirety, between Switzerland and Lebanon.

#### **UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND**

"The signature of the Democratic People's Republic of Korea was expressed to be subject to reservations in respect of Article 2 (1) (a), Article 14 and Article 24 (1) of the Convention. The United Kingdom objects to the reservations entered by the Democratic People's Republic of Korea in respect of Article 2 (1) (a) and Article 14 of

the Convention, which it considers to be incompatible with the object and purpose of the Convention."

"The Government of the United Kingdom of Great Britain and Northern Ireland have examined the Declaration relating to paragraph 1 (b) of Article 2 of the International Convention for the Suppression of the Financing of Terrorism made by the Government of Jordan at the time of its ratification of the Convention. The Government of the United Kingdom consider the declaration made by Jordan to be a reservation that seeks to limit the scope of the Convention on a unilateral basis and which is contrary to its object and purpose, namely the suppression of the financing of terrorist acts, irrespective of where they take place or who carries them out.

The Government of the United Kingdom further consider the Declaration to be contrary to the terms of Article 6 of the Convention, according to which States Parties commit themselves to "adopt such measures as may be necessary, including, where appropriate, domestic legislation, to ensure that criminal acts within the scope of this Convention are under no circumstances justifiable by considerations of a political, philosophical, ideological, racial, ethnic, religious or other similar nature".

The Government of the United Kingdom recall that, according to Article 19 (c) of the Vienna Convention on the Law of Treaties, a reservation incompatible with the object and purpose of the Convention shall not be permitted.

The Government of the United Kingdom therefore object to the aforesaid reservation made by the Government of Jordan to the International Convention for the Suppression of the Financing of Terrorism. However, this objection shall not preclude the entry into force of the Convention between the United Kingdom and Jordan."

"The Government of the United Kingdom of Great Britain and Northern Ireland have examined the reservation relating to Article 14 of the International Convention for the Suppression of the Financing of Terrorism made by the Government of Belgium at the time of its ratification of the Convention.

The Government of the United Kingdom note that the effect of the said reservation is to disapply the provisions of Article 14 in "exceptional circumstances". Article 14 provides that:

"None of the offences set forth in Article 2 shall be regarded for the purposes of extradition or mutual legal assistance as a political offence or as an offence connected with a political offence or as an offence inspired by political motives. Accordingly, a request for extradition or for mutual legal assistance based on such an offence may not be refused on the sole ground that it concerns a political offence or an offence inspired by political motives."

The Government of the United Kingdom note that the provisions of Article 14 reflect in part the principle that claims of political motivation must not be recognised as grounds for refusing requests for the extradition of alleged terrorists. The Government of the United Kingdom consider this principle to be an important measure in the fight against terrorism and the provisions of Article 14 of the Convention in particular to be an essential measure in States' efforts to suppress the financing of terrorist acts.

The Government of the United Kingdom note that paragraph 1 of the reservation made by the Government of Belgium is expressed to apply only "in exceptional circumstances" and that, notwithstanding the application of the reservation, Belgium continues to be bound by the principle of *aut dedere aut judicare* as set out in Article 10 of the Convention. The Government of the United Kingdom note further, however, that the exceptional circumstances that are envisaged are not specified in the reservation.

In light of the grave nature of the offences set forth in Article 2 of the Convention, the Government of the United Kingdom consider that the provisions of Article 14 should apply in all circumstances. A reservation that

seeks to disapply Article 14, even while reaffirming the application of the principle of *aut dedere aut iudicare*, undermines the effectiveness of the provisions of Article 14 of the Convention as a measure in States' efforts to suppress the financing of terrorist acts.

The Government of the United Kingdom therefore objects to the aforesaid reservation made by the Government of Belgium to the International Convention for the Suppression of the Financing of Terrorism. However, this objection shall not preclude the entry into force of the Convention between the United Kingdom and Belgium."

"The Government of the United Kingdom of Great Britain and Northern Ireland has examined the reservation relating to article 2, paragraph 1 (b) of the International Convention for the Suppression of the Financing of Terrorism made by the Government of the Syrian Arab Republic at the time of its accession to the Convention.

The Government of the United Kingdom objects to the aforesaid reservation."

"The Government of the United Kingdom of Great Britain and Northern Ireland have examined the explanatory declaration relating to article 2, paragraph 1 (b) of the International Convention for the Suppression of the Financing of Terrorism made by the Government of the Arab Republic of Egypt at the time of its ratification of the Convention. The Government of the United Kingdom consider the declaration made by Egypt to be a reservation that seeks to limit the scope of the Convention on a unilateral basis.

The Government of the United Kingdom objects to the aforesaid reservation."

"The Government of the United Kingdom of Great Britain and Northern Ireland have examined the 'understanding' of the International Convention for the Suppression of the Financing of Terrorism made by the Government of the People's Republic of Bangladesh at the time of its accession to the Convention. The Government of the United Kingdom consider the understanding made by Bangladesh to be a reservation that seeks to limit the scope of the Convention on a unilateral basis.

The Government of the United Kingdom objects to the aforesaid reservation."

"The Government of the United Kingdom of Great Britain and Northern Ireland has examined the said reservation. The reservation provides that, 'Extradition to other countries shall be subject to the domestic laws of Pakistan'. Reservations that leave it uncertain to what extent a State consents to be bound by its obligations are in the opinion of the Government of the United Kingdom to be treated as general reservations, which are not compatible with the object and purpose of a Convention.

The Government of the United Kingdom of Great Britain and Northern Ireland considers that the above reservation is of that character and therefore objects to it. This objection shall not preclude the entry into force of the Convention as between the United Kingdom and Pakistan."

"The Government of the United Kingdom of Great Britain and Northern Ireland has examined the said reservation and considers that it is contrary to the object and purpose of the Convention, namely the suppression of the financing of all terrorist acts. The Government of the United Kingdom recalls that, according to Article 19 (c) of the Vienna Convention on the Law of Treaties 1961, a reservation incompatible with the object and purpose of the Convention shall not be permitted.

The Government of the United Kingdom therefore objects to the aforesaid reservation. This objection shall not preclude the entry into force of the Convention as between the United Kingdom and Yemen."

"The Government of the United Kingdom of Great Britain and Northern Ireland have examined the Reservation made by the Government of Namibia, 'That a struggle waged by people in accordance with the

principles of international law for their liberation or self-determination, including armed struggle against colonialism, occupation, aggression and domination by foreign forces, shall not be considered as terrorist acts.'

The Government of the United Kingdom of Great Britain and Northern Ireland consider that the Reservation is not in compliance with Article 19 of the Vienna Convention on the Law of Treaties in that it is incompatible with the object and purpose of the International Convention for the Suppression of the Financing of Terrorism.

The purpose of the Convention is to suppress the financing of all terrorist acts, including those defined in paragraph 1 of Article 2 of the Convention. Furthermore, the Government of the United Kingdom of Great Britain and Northern Ireland consider the Reservation made by the Government of Namibia to be contrary to the terms of Article 6 of the Convention, under which States Parties are committed to 'adopt such measures as may be necessary, including, where appropriate, domestic legislation, to ensure that criminal acts within the scope of this Convention are under no circumstances justifiable by considerations of a political, philosophical, ideological, racial, ethnic, religious or other similar nature'.

The Government of the United Kingdom of Great Britain and Northern Ireland recall that, according to customary international law, as codified in the Vienna Convention on the Law of Treaties, a reservation incompatible with the object and purpose of the Convention shall not be permitted.

The Government of the United Kingdom of Great Britain and Northern Ireland therefore object to the Reservation made by Namibia to the International Convention for the Suppression of the Financing of Terrorism. This objection shall not preclude the entry into force of the Convention between Namibia and the United Kingdom."

"The Government of the United Kingdom of Great Britain and Northern Ireland consider that the Interpretative Declaration constitutes a Reservation limiting the scope of the Convention and that the Reservation is not in compliance with Article 19 of the Vienna Convention on the Law of Treaties in that it is incompatible with the object and purpose of the Convention.

The purpose of the Convention is to suppress the financing of all terrorist acts. The Government of the United Kingdom of Great Britain and Northern Ireland consider the Reservation made by the State of Kuwait to be contrary to the terms of Article 6 of the Convention, under which States Parties are committed to 'adopt such measures as may be necessary, including, where appropriate, domestic legislation, to ensure that criminal acts within the scope of this Convention are under no circumstances justifiable by considerations of political, philosophical, ideological, racial, ethnic, religious or other similar nature.'

The Government of the United Kingdom of Great Britain and Northern Ireland recall that, according to customary international law as codified in the Vienna Convention on the Law of Treaties, a reservation incompatible with the object and purpose of the Convention shall not be permitted.

The Government of the United Kingdom of Great Britain and Northern Ireland therefore object to the Interpretative Declaration made by the State of Kuwait to the Convention. This objection shall not preclude the entry into force of the Convention between Kuwait and the United Kingdom."

#### UNITED STATES OF AMERICA

"The Government of the United States of America, after careful review, considers the statement made by Jordan relating to paragraph 1 (b) of Article 2 of the Convention (the Declaration) to be a reservation that seeks to limit the scope of the offense set forth in the

Convention on a unilateral basis. The Declaration is contrary to the object and purpose of the Convention, namely, the suppression of the financing of terrorist acts, irrespective of where they take place or who carries them out.

The Government of the United States also considers the Declaration to be contrary to the terms of Article 6 of the Convention, which provides: "Each state party shall adopt such measures as may be necessary, including, where appropriate, domestic legislation, to ensure that criminal acts within the scope of this convention are under no circumstances justifiable by considerations of a political, philosophical, ideological, racial, ethnic, religious or other similar nature."

The Government of the United States notes that, under established principles of international treaty law, as reflected in Article 19 (c) of the Vienna Convention on the Law of Treaties, a reservation that is incompatible with the object and purpose of the treaty shall not be permitted.

The Government of the United States therefore objects to the Declaration relating to paragraph 1 (b) of Article 2 made by the Government of Jordan upon ratification of the International Convention for the Suppression of the Financing of Terrorism. This objection does not, however, preclude the entry into force of the Convention between the United States and Jordan."

"The Government of the United States of America has examined the reservation made by Belgium on 17 May 2004 at the time of ratification of the International Convention for the Suppression of the Financing of Terrorism. The Government of the United States objects to the reservation relating to Article 14, which provides that a request for extradition or mutual legal assistance may not be refused on the sole ground that it concerns a political offense or an offense connected with a political offense or an offense inspired by political motives. The Government of the United States understands that the intent of the Government of Belgium may have been narrower than apparent from its reservation in that the Government of Belgium would expect its reservation to apply only in exceptional circumstances where it believes that, because of the political nature of the offense, an alleged offender may not receive a fair trial. The United States believes the reservation is unnecessary because of the safeguards already provided for under Articles 15, 17 and 21 of the Convention. However, given the broad wording of the reservation and because the Government of the United States considers Article 14 to be a critical provision in the Convention, the United States is constrained to file this objection. This objection does not preclude entry into force of the Convention between the United States and Belgium."

"The Government of the United States of America, after careful review, considers the explanatory declaration made by Egypt to be a reservation that seeks to limit the scope of the Convention on a unilateral basis. The explanatory declaration is contrary to the object and purpose of the Convention, namely, the suppression of the financing of terrorist acts, irrespective of where they take place and who perpetrates them.

The Government of the United States also considers the explanatory declaration to be contrary to the terms of Article 6 of the Convention, which provides: "Each State Party shall adopt such measures as may be necessary, including, where appropriate, domestic legislation, to ensure that criminal acts within the scope of this Convention are under no circumstances justifiable by considerations of a political, philosophical, ideological, racial, ethnic, religious, or other similar nature."

The Government of the United States notes that, under established principles of international treaty law, as reflected in Article 19 (c) of the Vienna Convention on the Law of Treaties, a reservation that is incompatible with the object and purpose of the treaty shall not be permitted.

The Government of the United States of America therefore objects to the explanatory declaration relating to paragraph 1 (b) of Article 2 made by Egypt upon ratification of the International Convention for the Suppression of the Financing of Terrorism. This objection does not, however, preclude the entry into force of the Convention between the United States and Egypt."

"The Government of the United States of America, after careful review, considers the reservation contrary to the object and purpose of the Convention, namely, the suppression of the financing of terrorist acts, irrespective of where they take place and who perpetrates them.

The Government of the United States also considers the reservation to be contrary to the terms of Article 6 of the Convention, which provides: "Each State Party shall adopt such measures as may be necessary, including, where appropriate, domestic legislation, to ensure that criminal acts within the scope of this Convention are under no circumstances justifiable by considerations of a political, philosophical, ideological, racial, ethnic, religious, or other similar nature."

The Government of the United States notes that, under established principles of international treaty law, as reflected in Article 19(c) of the Vienna Convention on the Law of Treaties, a reservation that is incompatible with the object and purpose of the treaty shall not be permitted.

The Government of the United States therefore objects to the explanatory declaration relating to paragraph 1(b) of Article 2 made by the Government of Syria upon accession to the International Convention for the Suppression of the Financing of Terrorism. This objection does not, however, preclude the entry into force of the Convention between the United States and the Syrian Arab Republic."

"The Government of the United States of America, after careful review, considers the reservation to be contrary to the object and purpose of the Convention, namely, the suppression of the financing of terrorist acts, irrespective of where they take place and who carries them out.

The Government of the United States also considers the reservation to be contrary to the terms of Article 6 of the Convention, which provides: "Each State Party shall adopt such measures as may be necessary, including, where appropriate, domestic legislation, to ensure that criminal acts within the scope of this Convention are under no circumstances justifiable by considerations of a political, philosophical, ideological, racial, ethnic, religious or other similar nature."

The Government of the United States notes that, under established principles of international treaty law, as reflected in Article 19 (c) of the Vienna Convention on the Law of Treaties, a reservation that is incompatible with the object and purpose of the treaty shall not be permitted.

The Government of the United States therefore objects to the reservation made by the Government of Namibia upon ratification of the Convention. This objection does not, however, preclude the entry into force of the Convention between the United States and Namibia."

"The Government of the United States of America, after careful review, considers the declaration made by Kuwait to be a reservation that seeks to limit the scope of the Convention on a unilateral basis. The reservation is contrary to the object and purpose of the Convention, namely, the suppression of the financing of terrorist acts, irrespective of where they take place and who carries them out.

The Government of the United States also considers the reservation to be contrary to the terms of Article 6 of the Convention, which provides: "Each State Party shall adopt such measures as may be necessary, including, where appropriate, domestic legislation, to ensure that criminal acts within the scope of this Convention are under no circumstances justifiable by considerations of a

political, philosophical, ideological, racial, ethnic, religious or other similar nature."

The Government of the United States notes that, under established principles of international treaty law, as reflected in Article 19(c) of the Vienna Convention on the Law of Treaties, a reservation that is incompatible with the object and purpose of the treaty shall not be permitted.

The Government of the United States therefore objects to the reservation made by the Government of Kuwait upon ratification of the Convention. This objection does not, however, preclude the entry into force of the Convention between the United States and Kuwait."

"... [T]he Government of the United States of America, after careful review, considers Lebanon's reservation and statement to be a reservation that seeks to limit the scope of the Convention on a unilateral basis. The reservation is contrary to the object and purpose of the Convention, namely, the suppression of the financing of terrorist acts, irrespective of where they take place and who carries them out.

The Government of the United States also considers the reservation to be contrary to the terms of Article 6 of

the Convention, which provides: 'Each State Party shall adopt such measures as may be necessary, including, where appropriate, domestic legislation, to ensure that criminal acts within the scope of this Convention are under no circumstances justifiable by considerations of a political, philosophical, ideological, racial, ethnic, religious, or other similar nature.'

The Government of the United States of America notes that, under established principles of international treaty law, as reflected in Article 19(c) of the Vienna Convention on the Law of Treaties, a reservation that is incompatible with the object and purpose of the treaty shall not be permitted.

The Government of the United States therefore objects to the reservation and statement made by the Government of Lebanon upon accession to the Convention. This objection does not, however, preclude the entry into force of the Convention between the United States and Lebanon."

***Notifications made under article 7 (3)***  
***(Unless otherwise indicated, the notifications were made upon ratification, acceptance, approval or accession.)***

**ANDORRA**

In accordance with article 7, paragraph 3 of the Convention for the Suppression of the Financing of Terrorism, the Principality of Andorra declares that it has established its jurisdiction over the offences set forth in article 7, paragraph 2 of the Convention.

**ARGENTINA**

Article 7, paragraph 3:

In relation to article 7, paragraph 3, of the Convention, the Argentine Republic declares that the territorial scope of application of its criminal law is set forth in article 1 of the Argentine Penal Code (Act No. 11,729), which states:

"This Code shall apply:

1. To offences that are committed or that produce effects in the territory of the Argentine nation, or in places under its jurisdiction;
2. To offences that are committed abroad by agents or employees of the Argentine authorities during the performance of their duties"

The Argentine Republic shall therefore exercise jurisdiction over the offences defined in article 7, paragraph 2 (c), and over the offences defined in article 7, paragraph 2 (a), (b) and (d), when they produce effects in the territory of the Argentine Republic or in places under its jurisdiction, or when they were committed abroad by agents or employees of the Argentine authorities during the performance of their duties.

With regard to the offences referred to in article 7, paragraph 2 (e), jurisdiction over such offences shall be exercised in accordance with the legal provisions in force in the Argentine Republic. In this regard, reference should be made to article 199 of the Argentine Aeronautical Code, which states:

"Acts occurring, actions carried out, and offences committed in a private Argentine aircraft over Argentine territory or its jurisdictional waters, or where no State exercises sovereignty, shall be governed by the laws of the Argentine nation and tried by its courts.

Acts occurring, actions carried out, and offences committed on board a private Argentine aircraft over foreign territory shall also fall under the jurisdiction of the Argentine courts and the application of the laws of the nation if a legitimate interest of the Argentine State or of

persons domiciled therein are thereby injured or if the first landing, following the act, action or offence, occurs in the Republic".

**AUSTRALIA**

"... pursuant to article 7, paragraph 3 of the Convention, ... Australia has established jurisdiction in relation to all the circumstances referred to in article 7, paragraph 2 of the Convention."

**AZERBAIJAN**

".....in accordance with Article 7, paragraph 3, of the above-mentioned International Convention, the Republic of Azerbaijan declares that it establishes its jurisdiction in all the cases provided for in Article 7, paragraph 2, of the Convention."

**BELARUS**

The Republic of Belarus establishes its jurisdiction over all offenses set forth in article 2 of the Convention in the cases described in article 7, paragraphs 1 and 2.

**BELGIUM**

Belgium also wishes to make the following declaration of jurisdiction: In accordance with the provisions of article 7, paragraph 3, of the Convention, Belgium declares that, pursuant to its national legislation, it establishes its jurisdiction over offences committed in the situations referred to in article 7, paragraph 2 of the Convention."

**BOLIVIA (PLURINATIONAL STATE OF)**

... by virtue of the provisions of article 7, paragraph 3, of the International Convention for the Suppression of the Financing of Terrorism, the Republic of Bolivia states that it establishes its jurisdiction in accordance with its domestic law in respect of offences committed in the situations and conditions provided for under article 7, paragraph 2, of the Convention.

#### **BRAZIL**

"The Government of Brazil would like to inform that according to the provisions of Article 7, paragraph 3 of the International Convention for the Suppression of Financing of Terrorism, by ratifying that instrument the Federative Republic of Brazil will exercise jurisdiction over all hypotheses foreseen in items "a" to "e" of paragraph 2 of the same article."

#### **CHILE**

In accordance with article 7, paragraph 3, of the International Convention for the Suppression of the Financing of Terrorism, the Government of Chile declares that, in accordance with article 6, paragraph 8, of the Courts Organization Code of the Republic of Chile, crimes and ordinary offenses committed outside the territory of the Republic which are covered in treaties concluded with other Powers remain under Chilean jurisdiction.

#### **CHINA**

In accordance with paragraph 3 of Article 7 of the Convention, the People's Republic of China has established the jurisdiction over five offences stipulated in paragraph 2 of Article 7 of the Convention, but this jurisdiction shall not apply to the Hong Kong Special Administrative Region of the People's Republic of China.

#### **COOK ISLANDS**

".....the Government of the Cook Islands makes the following notification that pursuant to article 7, paragraph 3 of the Convention, the Cook Islands establishes its jurisdiction in relation to all cases referred to in article 7, paragraph 2 of the Convention."

#### **CROATIA**

"Pursuant to Article 7, paragraph 3 of the International Convention for the Suppression of the Financing of Terrorism the Republic of Croatia notifies the Secretary-General of the United Nations that it has established jurisdiction over the offence set forth in Article 2 in all the cases described in Article 7, paragraph 2 of the Convention."

#### **CYPRUS**

In accordance with paragraph 3 of Article 7, the Republic of Cyprus declares that by section 7.1 of the International Convention for the Suppression of the Financing of Terrorism (Ratification and other Provisions) Law No. 29 (III) of 2001, it has established jurisdiction over the offences set forth in Article 2 in all circumstances described in paragraph 2 of Article 7."

#### **CZECH REPUBLIC**

"In accordance with article 7, paragraph 3 of the Convention, the Czech Republic notifies that it has established its jurisdiction over the offences set forth in article 2 of the Convention in all cases referred to in article 7, paragraph 2 of the Convention."

#### **DENMARK**

"Pursuant to article 7, paragraph 3, of the International Convention for the Suppression of the Financing of Terrorism Denmark declares that section 6-12 of the Danish Criminal Code provide for Danish jurisdiction in respect of offences set forth in article 2 of the Convention in all the circumstances laid down in article 7, paragraph 2, of the Convention."

#### **EL SALVADOR**

... (2) pursuant to article 7, paragraph 3, the Republic of El Salvador notifies that it has established its jurisdiction in accordance with its national laws in respect of offences committed in the situations and under the conditions provided for in article 7, paragraph 2;

#### **ESTONIA**

"Pursuant to article 7, paragraph 3 of the Convention, the Republic of Estonia declares that in its domestic law it shall apply the jurisdiction set forth in article 7 paragraph 2 over offences set forth in article 2."

#### **FINLAND**

"Pursuant to article 7, paragraph 3 of the International Convention for the Suppression of the Financing of Terrorism, the Republic of Finland establishes its jurisdiction over the offences set forth in article 2 in all the cases provided for in article 7, paragraphs 1 and 2."

#### **FRANCE**

In accordance with article 7, paragraph 3, of the Convention, France states that it has established its jurisdiction over the offences set forth in article 2 in all cases referred to in article 7, paragraphs 1 and 2.

#### **GERMANY**

....pursuant to article 7 paragraph 3 thereof, that the Federal Republic of Germany has established jurisdiction over all offences described in article 7 paragraph 2 of the Convention.

#### **HUNGARY**

"The Republic of Hungary declares that it establishes its jurisdiction in all the cases provided for in Article 7, Paragraph 2 of the Convention."

#### **ICELAND**

"Pursuant to article 7, paragraph 3, of the International Convention for the Suppression of the Financing of Terrorism, Iceland declares that it has established its jurisdiction over the offences set forth in article 2 of the Convention in all the cases provided for in article 7, paragraph 2, of the Convention."

#### **ISRAEL**

Pursuant to Article 7, paragraph 3 of the Convention, the Government of the state of Israel hereby notifies the Secretary-General of the United Nations that it has established jurisdiction over the offences referred to in Article 2 in all the cases detailed in Article 7 paragraph 2.

#### **JAMAICA**

"Jamaica has established jurisdiction over the offences set forth in Article 2, with respect to the jurisdiction stated in Article 7(2) (c) which states:

"A State Party may also establish its jurisdiction over any such offence when:

... (c) The offence was directed towards or resulted in an offence referred to in Article 2, paragraph 1, subparagraph (a) or (b), committed in an attempt to compel that State to do or abstain from doing any act".

#### JORDAN

"Jordan decides to establish its jurisdiction over all offences described in paragraph 2 of article 7 of the Convention."

#### KUWAIT

In accordance with article 7, paragraph 3, the State of Kuwait establishes its full jurisdiction over all of the offences set out in article 7, paragraph 2, items a, b, c, d and e.

#### LATVIA

"In accordance with Article 7, paragraph 3 of the International Convention for the Suppression of the Financing of Terrorism, adopted at New York on 9th day of December 1999, the Republic of Latvia declares that it has established jurisdiction in all cases listed in Article 7, paragraph 2."

#### LIECHTENSTEIN

"In accordance with article 7, paragraph 3, of the International Convention for the Suppression of the Financing of Terrorism, the Principality of Liechtenstein declares that it has established its jurisdiction over the offences set forth in article 2 of the Convention in all the cases provided for in article 7, paragraph 2, of the Convention."

#### LITHUANIA

".....it is provided in paragraph 3 of Article 7 of the said Convention, the Seimas of the Republic of Lithuania declares that the Republic of Lithuania shall have jurisdiction over the offences set forth in Article 2 of the Convention in all cases specified in paragraph 2 of Article 7 of the Convention."

#### MAURITIUS

"Pursuant to Article 7, paragraph 3 of the said Convention, the Government of the Republic of Mauritius declares that it has established jurisdiction over the offences set forth in paragraph 2 of Article 7."

#### MEXICO

.....in accordance with article 7, paragraph 3, of the Convention, Mexico exercises jurisdiction over the offences defined in the Convention where:

(a) They are committed against Mexicans in the territory of another State party, provided that the accused is in Mexico and has not been tried in the country in which the offence was committed. Where it is a question of offences defined in the Convention but committed in the territory of a non-party State, the offence shall also be defined as such in the place where it was committed (art. 7, para. 2 (a));

(b) They are committed in Mexican embassies and on diplomatic or consular premises (art. 7, para. 2 (b));

(c) They are committed abroad but produce effects or are claimed to produce effects in the national territory (art. 7, para. 2 (c)).

#### MONACO

The Principality of Monaco reports, pursuant to article 7, paragraph 3, of the International Convention for the Suppression of the Financing of Terrorism adopted in New York on 9 December 1999, that it exercises very broad jurisdiction over the offences referred to in that Convention.

The jurisdiction of the Principality is thus established pursuant to article 7, paragraph 1, over:

(a) Offences committed in its territory: this is the case in Monaco in application of the general principle of territoriality of the law;

(b) Offences committed on board a vessel flying the Monegasque flag: this is the case in Monaco in application of article L.633-1 et seq. of the Maritime Code;

Offences committed on board an aircraft registered under Monegasque law: the Tokyo Convention of 14 September 1963, rendered enforceable in Monaco by Sovereign Order No. 7.963 of 24 April 1984, specifies that the courts and tribunals of the State of registration of the aircraft are competent to exercise jurisdiction over offences and acts committed on board it;

(c) Offences committed by a Monegasque national: the Code of Criminal Procedure states in articles 5 and 6 that any Monegasque committing abroad an act qualified as a crime or offence by the law in force in the Principality may be charged and brought to trial there.

The jurisdiction of the Principality is also established pursuant to article 7, paragraph 2 when:

(a) The offence was directed towards or resulted in the carrying out of a terrorist offence in its territory or against one of its nationals: articles 42 to 43 of the Criminal Code permit the Monegasque courts, in general terms, to punish accomplices of a perpetrator charged in Monaco with offences referred to in article 2 of the Convention;

(b) The offence was directed towards or resulted in the carrying out of a terrorist offence against a State or government facility, including diplomatic or consular premises: attacks aimed at bringing about devastation, massacres and pillage in Monegasque territory are punishable under article 65 of the Criminal Code; in addition, article 7 of the Code of Criminal Procedure provides for the charging and trial in Monaco of foreigners who, outside the territory of the Principality, have committed a crime prejudicial to the security of the State or a crime or offence against Monegasque diplomatic or consular agents or premises;

(c) The offence was directed towards or resulted in a terrorist offence committed in an attempt to compel the State to do or abstain from doing any act: the crimes and offences in question normally correspond to one of those referred to above, directly or through complicity;

(d) The offence was committed by a stateless person who had his or her habitual residence in Monegasque territory: application of the general principle of territoriality of the law permits the charging of stateless persons having their habitual residence in Monaco;

(e) The offence was committed on board an aircraft operated by the Monegasque Government: if the Monegasque Government directly operated an aircraft or an airline, its aircraft would have to be registered in Monaco, and the Tokyo Convention of 14 September 1963 referred to above would then apply

#### NORWAY

"Declaration: In accordance with article 7, paragraph 3 of the Convention, Norway hereby declares that it has established its jurisdiction over the offences set forth in article 2, of the Convention in all cases provided for in article 7, paragraph 2, of the Convention."

#### REPUBLIC OF KOREA

Pursuant to Article 7, Paragraph 3 of the International Convention for the Suppression of the Financing of Terrorism,

The Republic of Korea provides the following information on its criminal jurisdiction. Principles on the criminal jurisdiction are set out in the Chapter I of Part I

of the Korean Penal Code. The provisions have the following wording:

**Article 2 (Domestic Crimes)**

This Code shall apply to anyone, whether Korean or alien, who commits a crime within the territorial boundary of the Republic of Korea.

**Article 3 (Crimes by Koreans outside Korea)**

This Code shall apply to a Korean national who commits a crime outside the territorial boundary of the Republic of Korea.

**Article 4 (Crimes by Aliens on board Korean Vessel, etc., outside Korea)**

This Code shall apply to an alien who commits a crime on board a Korean vessel or a Korean aircraft outside the territorial boundary of the Republic of Korea.

**Article 5 (Crimes by Aliens outside Korea)**

This Code shall apply to an alien who commits any of the following crimes outside the territorial boundary of the Republic of Korea:

1. Crimes concerning insurrection;
2. Crimes concerning treason;
3. Crimes concerning the national flag;
4. Crimes concerning currency;
5. Crimes concerning securities, postage and revenue stamps;
6. Crimes specified in Articles 225 through 230 among crimes concerning documents; and
7. Crimes specified in Article 238 among crimes concerning seal.

**Article 6 (Foreign Crimes against the Republic of Korea and Koreans outside Korea)**

This Code shall apply to an alien who commits a crime, other than those specified in the preceding Article, against the Republic of Korea or its national outside the territorial boundary of the Republic of Korea, unless such act does not constitute a crime, or it is exempt from prosecution or execution of punishment under the *lex loci delictus*.

**Article 8 (Application of General Provisions)**

The provisions of the preceding Articles shall also apply to such crimes as are provided by other statutes unless provided otherwise by such statutes.

**REPUBLIC OF MOLDOVA**

".....pursuant to article 7, paragraph 3 of the Convention for the Suppression of the Financing of Terrorism, adopted on December 9, 1999, in New York, the Republic of Moldova has established its jurisdiction over the offenses set forth in article 2 in all cases referred to in article 7, paragraph 2."

**ROMANIA**

"In accordance with Article 7, paragraph 3 of the Convention, Romania declares that establishes its jurisdiction for the offences referred to in Article 2, in all cases referred to in Article 7, paragraphs 1 and 2, according with the relevant provisions of the internal law."

**RUSSIAN FEDERATION**

The Russian Federation, pursuant to article 7, paragraph 3, of the Convention, declares that it establishes its jurisdiction over the acts recognized as offences under article 2 of the Convention in the cases provided for in article 7, paragraphs 1 and 2, of the Convention.

**SAUDI ARABIA**

The Kingdom of Saudi Arabia has decided to establish its jurisdiction over all offences provided for in article 7, paragraph 2 of the Convention

**SINGAPORE**

In accordance with the provision of Article 7, paragraph 3, the Republic of Singapore gives notification that it has established jurisdiction over the offences set forth in Article 2 of the Convention in all the cases provided for in Article 7, paragraph 2 of the Convention."

**SLOVAKIA**

"Pursuant to article 7, paragraph 3, of the International Convention for the Suppression of the Financing of Terrorism, the Slovak Republic declares that it shall exercise its jurisdiction as provided for under article 7, paragraph 2, subparagraphs a) to e) of the Convention."

**SLOVENIA**

"Pursuant to Article 7, Paragraph 3 of the International Convention for the Suppression of the Financing of Terrorism, the Republic of Slovenia declares that it has established jurisdiction over the offences in accordance with Paragraph 2."

**SPAIN**

"In accordance with the provisions of article 7, paragraph 3, the Kingdom of Spain gives notification that its courts have international jurisdiction over the offences referred to in paragraphs 1 and 2, pursuant to article 23 of the Organization of Justice Act No. 6/1985 of 1 July 1985."

**SWEDEN**

"Pursuant to article 7 (3) of the International Convention for the Suppression of the Financing of Terrorism, Sweden provides the following information on Swedish criminal jurisdiction. Rules on Swedish criminal jurisdiction are laid down in Chapter 2 Section 1-5 in the Swedish Penal Code. The provisions have the following wording:

**Section 1**

Crimes committed in this Realm shall be adjudged in accordance with Swedish law and by a Swedish court. The same applies when it is uncertain where the crime was committed but grounds exist for assuming that it was committed within the Realm.

**Section 2**

Crimes committed outside the Realm shall be adjudged according to Swedish law and by a Swedish court when the crime has been committed:

1. by a Swedish citizen or an alien domiciled in Sweden,
2. by an alien not domiciled in Sweden who, after having committed the crime, has become a Swedish citizen or has acquired domicile in the Realm or who is a Danish, Finnish, Icelandic or Norwegian citizen and is present in the Realm, or
3. By any other alien who is present in the Realm, and the crime under Swedish Law can result in imprisonment for more than six months.

The first paragraph shall not apply if the act is not subject to criminal responsibility under the law of the place where it was committed or if it was committed within an area not belonging to any state and, under Swedish law, the punishment for the act cannot be more severe than a fine.

In cases mentioned in this Section, a sanction may not be imposed which is more severe than the most severe punishment provided for the crime under the law in the place where it was committed.

**Section 3**

Even in cases other than those listed in Section 2, crimes committed outside the Realm shall be adjudged according to Swedish law and by a Swedish court:

1. if the crime was committed on board a Swedish vessel or aircraft, or was committed in the course of duty by the officer in charge or by a member of its crew,

2. if the crime was committed by a member of the armed forces in an area in which a detachment of the armed forces was present, or if it was committed by some other person in such an area and the detachment was present for a purpose other than exercise,

3. if the crime was committed in the course of duty outside the Realm by a person employed in a foreign contingent of the Swedish armed forces,

3a. if the crime was committed in the course of duty outside the Realm by a policeman, custom officer or official employed at the coast guard, who performs boundless assignments according to an international agreement that Sweden has ratified,

4. if the crime committed was a crime against the Swedish nation, a Swedish municipal authority or other assembly, or against a Swedish public institution,

5. if the crime was committed in an area not belonging to any state and was directed against a Swedish citizen, a Swedish association or private institution, or against an alien domiciled in Sweden,

6. if the crime is hijacking, maritime or aircraft sabotage, airport sabotage, counterfeiting currency, an attempt to commit such crimes, a crime against international law, unlawful dealings with chemical weapons, unlawful dealings with mines or false or careless statement before an international court, or

7. if the least severe punishment prescribed for the crime in Swedish law is imprisonment for four years or more.

#### Section 3 a

Besides the cases described in Sections 1-3, crimes shall be adjudged according to Swedish law by a Swedish court in accordance with the provisions of the Act on International Collaboration concerning Proceedings in Criminal matters.

#### Section 4

A crime is deemed to have been committed where the criminal act was perpetrated and also where the crime was completed or in the case of an attempt, where the intended crime would have been completed.

#### Section 5

Prosecution for a crime committed within the Realm on a foreign vessel or aircraft by an alien, who was the officer in charge or member of its crew or otherwise travelled in it, against another alien or a foreign interest shall not be instituted without the authority of the Government or a person designated by the Government.

Prosecution for a crime committed outside the Realm may be instituted only following the authorisation referred to in the first paragraph. However, prosecution may be instituted without such an order if the crime consists of a false or careless statement before an international court or if the crime was committed:

1. on a Swedish vessel or aircraft or by the officer in charge or some member of its crew in the course of duty,

2. by a member of the armed forces in an area in which a detachment of the armed forces was present,

3. in the course of duty outside the Realm by a person employed by a foreign contingent of the Swedish armed forces,

4. in the course of duty outside the Realm by a policeman, custom officer or official employed at the coast guard, who performs boundless assignments according to an international agreement that Sweden has ratified,

5. in Denmark, Finland, Iceland or Norway or on a vessel or aircraft in regular commerce between places situated in Sweden or one of the said states, or

6. By a Swedish, Danish, Finnish, Icelandic or Norwegian citizen against a Swedish interest."

### SWITZERLAND

Pursuant to article 7, paragraph 3, of the International Convention for the Suppression of the Financing of Terrorism, Switzerland establishes its jurisdiction over the offences set forth in article 2 in all the cases provided for in article 7, paragraph 2.

### TUNISIA

The Republic of Tunisia,

In ratifying the International Convention for the Suppression of the Financing of Terrorism adopted on 9 December 1999 by the General Assembly at its fifty-fourth session and signed by the Republic of Tunisia on 2 November 2001, declares that it considers itself bound by the provisions of article 7, paragraph 2, of the Convention and decides to establish its jurisdiction when:

- The offence was directed towards or resulted in the carrying out of an offence referred to in article 2, paragraph 1, subparagraph (a) or (b), in the territory of Tunisia or against one of its nationals;

- The offence was directed towards or resulted in the carrying out of an offence referred to in article 2, paragraph 1, subparagraph (a) or (b), against a Tunisian State or government facility abroad, including Tunisian diplomatic or consular facilities;

- The offence was directed towards or resulted in an offence referred to in article 2, paragraph 1, subparagraph (a) or (b), committed in an attempt to compel Tunisia to do or abstain from doing any act;

- The offence is committed by a stateless person who has his or her habitual residence in Tunisian territory;

- The offence is committed on board an aircraft operated by the Government of Tunisia.

### TURKEY

".....pursuant to Article 7, paragraph 3 of the International Convention for the Suppression of the Financing of Terrorism, Turkey has established its jurisdiction in accordance with its domestic law in respect of offences set forth in Article 2 in all cases referred to in Article 7, paragraph 2."

### UKRAINE

"Ukraine exercises its jurisdiction over the offences set forth in article 2 of the Convention in cases provided for in paragraph 2 article 7 of the Convention."

### UZBEKISTAN

"Republic of Uzbekistan establishes its jurisdiction over offences referred to in article 2 of the Convention in all cases stipulated in article 7, paragraph 2 of the Convention."

### VENEZUELA (BOLIVARIAN REPUBLIC OF)

By virtue of the provisions of article 7, paragraph 3, of the International Convention for the Suppression of the Financing of Terrorism, the Bolivarian Republic of Venezuela declares that it has established jurisdiction under its domestic law over offences committed in the situations and under the conditions envisaged in article 7, paragraph 2, of the Convention.

**Notes:**

<sup>1</sup> On 28 January 2008, the Government of Belgium notified the Secretary-General of its intention to withdraw the reservation in respect of article 14 made upon ratification. The text of the reservation reads as follows:

1. In exceptional circumstances, the Government of Belgium reserves the right to refuse extradition or mutual legal assistance in respect of any offence set forth in article 2 which it considers to be a political offence or as an offence connected with a political offence or as an offence inspired by political motives.

2. In cases where the preceding paragraph is applicable, Belgium recalls that it is bound by the general legal principle *aut dedere aut judicare*, pursuant to the rules governing the competence of its courts.

<sup>2</sup> With a communication with respect to Hong Kong and Macao:

1. In accordance with the provisions of Article 153 of the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China and Article 138 of the Basic Law of the Macao Special Administrative Region of the People's Republic of China, the Government of the People's Republic of China decides that the Convention shall apply to the Hong Kong Special Administrative Region and the Macao Special Administrative Region of the People's Republic of China.

2. The reservation made by the People's Republic of China on paragraph 1 of Article 24 of the Convention shall apply to the Hong Kong Special Administrative Region and the Macao Special Administrative Region of the People's Republic of China.

3. The jurisdiction over five offences established by the People's Republic of China in accordance with paragraph 2 of Article 7 of the Convention shall not apply to the Hong Kong Special Administrative Region of the People's Republic of China.

4. As to the Macao Special Administrative Region of the People's Republic of China, the following three Conventions shall not be included in the annex referred to in Article 2, paragraph 1, subparagraph (a) of the Convention :

(1) Convention on the Physical Protection of Nuclear Material, adopted at Vienna on 3 March 1980.

(2) Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, done at Rome on 10 March 1988.

(3) Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms located on the Continental Shelf, done at Rome on 10 March 1988.

<sup>3</sup> With a territorial exclusion with respect of the Faroe Islands and Greenland.

<sup>4</sup> See note 1 under "Montenegro" in the "Historical Information" section in the front matter of this volume.

<sup>5</sup> For the Kingdom in Europe.

Subsequently, the Government of the Netherlands informed the Secretary-General on 23 March 2005 and 22 March 2010 that the Convention will apply to Aruba and to the Netherland Antilles, respectively, with the following declaration:

"The Kingdom of the Netherlands understands Article 10, paragraph 1, of the International Convention for the Suppression of Financing Terrorism to include the right of the competent judicial authorities to decide not to prosecute a person alleged to have committed such an offence, if, in the opinion of the competent judicial authorities grave considerations of procedural law indicate that effective prosecution will be impossible."

<sup>6</sup> With a territorial exclusion with respect to Tokelau to the effect that: "... consistent with the constitutional status of Tokelau and taking into account the commitment of the Government of New Zealand to the development of self-government for Tokelau through an act of self-determination under the Charter of the United Nations, this ratification shall not extend to Tokelau unless and until a Declaration to this effect is lodged by the Government of New Zealand with the Depository on the basis of appropriate consultation with that territory."

<sup>7</sup> On 20 October 2015, the Government of Ukraine made a communication. The text can be found here: C.N.609.2015.TREATIES-XVIII.11 of 20 October 2015.

<sup>8</sup> On 4 March 2022, the Government of Ukraine made a communication. The text can be found here: C.N.71.2022.TREATIES-XVIII.11 of 8 March 2022.

<sup>9</sup> In a communication received on 25 September 2008, the Government of the United Kingdom of Great Britain and Northern Ireland informed the Secretary-General of the following:

"... the Government of the United Kingdom of Great Britain and Northern Ireland wishes the United Kingdom's ratification of the Convention to be extended to the following territories for whose international relations the United Kingdom is responsible:

Bailiwick of Guernsey

Isle of Man

Jersey

The Government of the United Kingdom of Great Britain and Northern Ireland considers the extension of the Convention to the Bailiwick of Guernsey, the Isle of Man, and Jersey to take effect from the date of deposit of this notification ... ."

In a communication received on 17 May 2012, the Government of the United Kingdom of Great Britain and Northern Ireland informed the Secretary-General of the following:

"... The Government of the United Kingdom of Great Britain and Northern Ireland wishes the United Kingdom's ratification

of the [Convention for the Suppression of the Financing of Terrorism] to be extended to the following territory for whose international relations the United Kingdom is responsible:

#### British Virgin Islands

The Government of the United Kingdom of Great Britain and Northern Ireland considers the extension of the aforesaid Convention to the British Virgin Islands to enter into force on the thirtieth day after the deposit of this notification [i.e. on 16 June 2012].”

In a communication received on 3 October 2014, the Government of the United Kingdom of Great Britain and Northern Ireland informed the Secretary-General of the following:

“... the Government of the United Kingdom of Great Britain and Northern Ireland wishes the United Kingdom's Ratification of the Convention be extended to the territory of Bermuda for whose international relations the United Kingdom is responsible.

The Government of the United Kingdom of Great Britain and Northern Ireland considers the extension of the Convention to the territory of Bermuda to enter into force on the day of receipt of this notification by you for deposit...”

In a communication received on 20 April 2015, the Government of the United Kingdom of Great Britain and Northern Ireland informed the Secretary-General of the following:

“... the Government of the United Kingdom of Great Britain and Northern Ireland wishes the United Kingdom's Ratification of the Convention [to] be extended to the territory of Anguilla for whose international relations the United Kingdom is responsible.

The Government of the United Kingdom of Great Britain and Northern Ireland considers the extension of the Convention to Anguilla to enter into force from the day of deposit of this notification ...”

In a communication received on 23 March 2020, the Government of the United Kingdom of Great Britain and Northern Ireland informed the Secretary-General of the following:

“... the Government of the United Kingdom of Great Britain and Northern Ireland hereby extends the application of the United Kingdom's ratification of the Convention to Gibraltar, for whose international relations the United Kingdom is responsible.

The Government of the United Kingdom of Great Britain and Northern Ireland considers the extension of the Convention to Gibraltar to take effect on the date of deposit of this notification...”

In a communication received on 12 August 2021, the Government of the United Kingdom of Great Britain and Northern Ireland informed the Secretary-General of the following:

“... the Government of the United Kingdom of Great Britain and Northern Ireland hereby extends the application of the United Kingdom's ratification of the Convention to the territory of the Cayman Islands, for the international relations of which the United Kingdom is responsible.

The Government of the United Kingdom of Great Britain and Northern Ireland considers the extension of the Convention to the territory of the Cayman Islands to take effect on the date of deposit of this notification...”

<sup>10</sup> The Secretary-General received communications with regard to the reservation made by Belgium upon ratification from the following Governments on the dates indicated hereinafter:

#### *Russian Federation (7 June 2005):*

“Russia considers the Convention as an instrument designed to establish a solid and effective mechanism for cooperation between States in preventing and fighting the financing of terrorism regardless of its forms and motives. One of the basic rationales for the establishing of this mechanism is achievement of a common and impartial approach by States to the notion of an offence that consists in financing terrorists and terrorist organizations, as well as to the principles of prosecution and punishment of its perpetrators.

Russia notes that for the purposes of consistent prosecution and prevention of offences related to the financing of terrorism there is, inter alia, a clearly stipulated obligation of its States Parties under the Convention, when considering the issues of extradition based on this offence or mutual legal assistance, not to invoke any presumed connection of the committed offence with political motives.

In Russia's view, conceding to a State Party to the Convention the right to refuse extradition or mutual legal assistance on the ground that the committed offence is of political nature or connected with a political offence or inspired by political motives, impairs the rights and obligations of other States Parties to the Convention to establish their jurisdiction over the offences set forth in the Convention and prosecute perpetrators of such offences.

Moreover, defining an offence as political or connected with a political offence is not an objective criterion and introduces considerable uncertainty to the relations between the States Parties to the Convention.

Thus Russia is of the view that the reservation made by the Kingdom of Belgium can jeopardize the consistent implementation of the Convention and achievement of its key objectives, including creation of favourable conditions for concerted efforts by the international community to counter terrorism and crimes contributing to commitment of acts of terrorism.

Russia reiterates its unequivocal condemnation of all acts, methods and practices of terrorism in all its forms and manifestations as well as any kind of assistance (including financial) in commitment of such acts, and calls upon the Kingdom of Belgium to review its position expressed in the reservation."

*Argentina (22 August 2005):*

The Government of the Argentine Republic has examined the reservation made by the Government of the Kingdom of Belgium, whereby, in exceptional circumstances, that Government reserves the right to refuse extradition or mutual legal assistance in respect of any offence set forth in article 2 which it considers to be a political offence or an offence connected with a political offence or an offence inspired by political motives.

As its provisions make clear, the intent of article 14 is to establish the inoperability of the nature or political motives of the offence. Article 14 is thus categorical and does not allow for exceptions of any kind. The Government of the Argentine Republic therefore believes that a reservation of this nature is incompatible with the object and purpose of the Convention, and cannot accept it.

The effect of the reservation would not be offset by the affirmation of the principle *aut dedere aut judicare* in paragraph 2 of the reservation, since the application of this principle derives from the provisions of the Convention and does not require confirmation by States Parties. Moreover, the application of this principle, in the event that extradition does not take place, entails the exercise of local criminal jurisdiction, but the exclusion made by the Government of the Kingdom of Belgium rules out mutual legal assistance from the outset.

The Government of the Argentine Republic therefore objects to the reservation made by the Government of the Kingdom of Belgium concerning article 14 of the International Convention for the Suppression of the Financing of Terrorism. This objection shall not impede the entry into force of the Convention between the Argentine Republic and the Kingdom of Belgium.

<sup>11</sup> Within a period of one year from the date of the depositary notification transmitting the declaration (C.N.916.2009.TREATIES-3 of 29 December 2009), none of the Contracting Parties to the said Convention had notified the Secretary-General of an objection either to the deposit itself or to the procedure envisaged. Consequently, the declaration in question was accepted for deposit upon the above-stipulated one year period, that is on 29 December 2010.

<sup>12</sup> The Secretary-General received communications with regard to the declaration made by the Government of the Democratic People's Republic of Korea upon signature from the following Governments on the dates indicated hereinafter:

*Republic of Moldova (6 October 2003):*

"The Government of the Republic of Moldova has examined the reservations made by the Government of the Democratic People's Republic of Korea upon signature of the International Convention for the Suppression of Financing of Terrorism.

The Government of the Republic of Moldova considers that the reservations with regard to article 2, paragraph 1 (a), and

article 14 are incompatible with the object and purpose of the Convention, as they purport to exclude the application of core provisions of the Convention.

The Government of the Republic of Moldova recalls that, according to Article 19 (c) of the Vienna Convention on the Law of Treaties, a reservation incompatible with the object and purpose of the Convention shall not be permitted. It is in the common interest of States that treaties to which they have chosen to become parties are respected as to their object and purpose, by all parties, and that States are prepared to undertake any legislative changes necessary to comply with their obligations under the treaties.

The Government of the Republic of Moldova therefore objects to the aforesaid reservations made by the Government of the Democratic People's Republic of Korea to the International Convention for the Suppression of Financing of Terrorism. This objection shall not preclude the entry into force of the Convention between the Republic of Moldova and the Democratic People's Republic of Korea. The Convention enters into force in its entirety between the two States, without the Democratic People's Republic of Korea benefiting from its reservations."

*Germany (17 June 2004):*

The Government of the Federal Republic of Germany has carefully examined the reservations made by the Democratic People's Republic of Korea upon signature of the International Convention for the Suppression of the Financing of Terrorism. In the opinion of the Government of the Federal Republic of Germany the reservations with respect to article 2 paragraph 1 (a) and article 14 of the Convention are incompatible with the object and purpose of the Convention, since they are intended to exclude the application of fundamental provisions of the Convention.

The Government of the Federal Republic of Germany therefore objects to the aforementioned reservations made by the Government of the Democratic People's Republic of Korea to the International Convention for the Suppression of the Financing of Terrorism. This objection does not preclude the entry into force of the Convention between the Federal Republic of Germany and the Democratic People's Republic of Korea.

*Argentina (22 August 2005):*

The Government of the Argentine Republic has examined the reservation made by the Government of the Democratic People's Republic of Korea, whereby it does not consider itself bound by the provisions of article 2, paragraph 1 (a), of the Convention.

The effect of the reservation to article 2, paragraph 1 (a), would be to exclude from consent the financing of the acts of terrorism listed in the annex to the article. This means that the obligation to criminalize the financing of terrorism, provided for in article 2, paragraph 1, would be void, since that obligation necessarily refers to the acts mentioned in the annex to paragraph 1 (a). This reservation is therefore incompatible with the object and purpose of the Convention, since its legal consequence would be to exclude from consent the main obligation deriving from it.

The Government of the Argentine Republic has also examined the reservation made by the Government of the Democratic

People's Republic of Korea, whereby it does not consider itself bound by the provisions of article 14 of the Convention.

As its provisions make clear, the intent of article 14 is to establish the inoperability of the nature or political motives of the offence. Article 14 is thus categorical, and does not allow for exceptions of any kind. The Government of the Argentine Republic therefore believes that a reservation of this nature is incompatible with the object and purpose of the Convention, and cannot accept it.

The Government of the Argentine Republic therefore objects to the reservations made by the Government of the Democratic People's Republic of Korea concerning article 2, paragraph 1 (a), and article 14 of the International Convention for the Suppression of the Financing of Terrorism. This objection shall not impede the entry into force of the Convention between the Argentine Republic and the Democratic People's Republic of Korea.

<sup>13</sup> The Secretary-General received a communication with regard to the explanatory declaration made by Egypt upon ratification by the following Government on the date indicated hereinafter :

*Argentina (22 August 2005):*

With respect to the [declaration] made by the Arab Republic of Egypt [...] concerning article 2, paragraph 1 (b), and any similar declaration that other States may make in the future, the Government of the Argentine Republic considers that all acts of terrorism are criminal, regardless of their motives, and that all States must strengthen their cooperation in their efforts to combat such acts and bring to justice those responsible for them.

*Czech Republic (23 August 2006)*

"The Government of the Czech Republic has examined the explanatory declaration relating to paragraph 1 (b) of Article 2 of the International Convention for the Suppression of the Financing of Terrorism made by the Government of the Arab Republic of Egypt at the time of its ratification of the Convention.

The Government of the Czech Republic considers that the declaration amounts to a reservation, as its purpose is to unilaterally limit the scope of the Convention. The Government of the Czech Republic further considers the declaration to be incompatible with the object and purpose of the Convention, namely the suppression of the financing of terrorist acts, including those defined in paragraph 1 (b) of Article 2 of the Convention, irrespective of where they take place and who carries them out.

In addition, the Government of the Czech Republic is of the view that the declaration is contrary to the terms of Article 6 of the Convention, according to which States Parties commit themselves to adopt such measures as may be necessary to ensure that criminal acts within the scope of the Convention are under no circumstances justifiable by considerations of a political, philosophical, ideological, racial, ethnic, religious or similar nature.

The Government of the Czech Republic wishes to recall that, according to customary international law as codified in the Vienna Convention on the Law of Treaties, a reservation

incompatible with the object and purpose of a treaty shall not be permitted.

The Government of the Czech Republic therefore objects to the aforesaid reservation made by the Government of the Arab Republic of Egypt to the International Convention for the Suppression of the Financing of Terrorism. This objection shall not preclude the entry into force of the Convention between the Arab Republic of Egypt and the Czech Republic. The Convention enters into force between the Arab Republic of Egypt and the Czech Republic without the Arab Republic of Egypt benefiting from its reservation."

<sup>14</sup> On 30 March 2006, the Government of Estonia notified the Secretary-General that it had decided to withdraw its declaration made upon ratification. The text of the declaration reads as follows:

"... pursuant to article 2, paragraph 2 of the Convention, the Republic of Estonia declares, that she does not consider itself bound by the Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf, done at Rome, on 10 March 1988, annexed to the Convention;"....

<sup>15</sup> The Secretary-General received the following communication with regard to the declaration made by Israel upon ratification, by the following Government on the date indicated hereinafter:

*Argentina (22 August 2005):*

With respect to the declaration concerning article 21 of the Convention made by the State of Israel upon depositing the instrument of ratification, the Government of the Argentine Republic considers that the term 'international humanitarian law' covers the body of norms constituting customary and conventional law, including the provisions of the Geneva Conventions of 1949 and their Additional Protocols of 1977.

<sup>16</sup> The Secretary-General received the communications with regard to the declaration made by Jordan upon ratification from the following Governments on the dates indicated hereinafter:

*Belgium (23 September 2004):*

The Government of the Kingdom of Belgium has examined the declaration made by the Government of the Hashemite Kingdom of Jordan at the time of its ratification of the International Convention for the Suppression of the Financing of Terrorism, in particular the part of the declaration in which the Kingdom of Jordan states that it "does not consider acts of national armed struggle and fighting foreign occupation in the exercise of people's right to self-determination as terrorist acts within the context of paragraph 1 (b) of article 2 of the Convention". The Belgian Government considers this declaration to be a reservation that seeks to limit the scope of the Convention on a unilateral basis and which is contrary to its object and purpose, namely, the suppression of the financing of terrorist acts, irrespective of where they take place or who carries them out.

Moreover, the declaration contravenes article 6 of the Convention, according to which "Each State Party shall adopt such measures as may be necessary, including, where appropriate, domestic legislation, to ensure that criminal acts

within the scope of this Convention are under no circumstances justifiable by considerations of a political, philosophical, ideological, racial, ethnic, religious or other similar nature".

The Belgian Government recalls that, under article 19 (c) of the Vienna Convention on the Law of Treaties, a reservation incompatible with the object and purpose of the Convention shall not be permitted.

The Belgian Government therefore objects to the aforesaid reservation made by the Jordanian Government to the International Convention for the Suppression of the Financing of Terrorism. This objection shall not preclude the entry into force of the Convention between Belgium and Jordan.

*Russian Federation (1 March 2005):*

"Russia has examined the declaration made by the Hashemite Kingdom of Jordan upon ratification of the International Convention for the Suppression of the Financing of Terrorism (1999).

Russia assumes that every state, which has expressed its consent to be bound by the provisions of the Convention, has to adopt, in accordance with article 6, such measures as may be necessary to ensure that criminal acts, set forth in article 2, in particular acts intended to cause death or serious bodily injury to a civilian, or to any other person not taking an active part in the hostilities in a situation of armed conflict, when the purpose of such act, by its nature or context, is to intimidate a population or compel a government or an international organization to do or to abstain from doing any act, are under no circumstances justifiable by considerations of a political, philosophical, ideological, racial, ethnic, religious or other similar nature.

Sharing the purposes and principles of the Charter of the United Nations, Russia wishes to draw attention that the right of people to self-determination may not go against other fundamental principles of international law, such as the principle of settlement of disputes by peaceful means, the principle of the territorial integrity of states, the principle of respect for human rights and fundamental freedoms.

In Russia's view, the declaration by the Hashemite Kingdom of Jordan may endanger the implementation of the provisions of the Convention between the Hashemite Kingdom of Jordan and other States Parties and thus impede their interaction in the suppression of the financing of terrorism. It is of common interest to promote and enhance cooperation in devising and adopting effective practical measures to prevent terrorism financing, as well as to fight against terrorism through prosecution of and bringing to justice those involved in terrorist activity, keeping in mind that the number and seriousness of acts of international terrorism to a great extent depend on the financing that may be available to terrorists.

Russia reiterates its unequivocal condemnation of all acts, methods and practices of terrorism as criminal and unjustifiable in all its forms and manifestations, wherever and by whomsoever committed, and calls upon the Hashemite Kingdom of Jordan to review its position."

*Japan (14 July 2005):*

"When depositing its instrument of ratification, the Government of the Hashemite Kingdom of Jordan made a

declaration which reads as follows: "The Government of the Hashemite Kingdom of Jordan does not consider acts of national armed struggle and fighting foreign occupation in the exercise of people's right to self-determination as terrorist acts within the context of paragraph 1 (b) of article 2 of the Convention".

In this connection, the Government of Japan draws attention to the provisions of Article 6 of the Convention, according to which each State Party shall adopt such measures as may be necessary, including, where appropriate, domestic legislation, to ensure that criminal acts within the scope of this Convention are under no circumstances justifiable by considerations of a political, philosophical, ideological, racial, ethnic, religious or other similar nature.

The Government of Japan considers that the declaration made by the Hashemite Kingdom of Jordan seeks to exclude acts of national armed struggle and fighting foreign occupation in the exercise of people's right to self-determination from the application of the Convention and that such declaration constitutes a reservation which is incompatible with the object and purpose of the Convention. The Government of Japan therefore objects to the aforementioned reservation made by the Hashemite Kingdom of Jordan.

*Argentina (22 August 2005):*

With respect to the declarations made by the Hashemite Kingdom of Jordan and the Arab Republic of Egypt concerning article 2, paragraph 1 (b), and any similar declaration that other States may make in the future, the Government of the Argentine Republic considers that all acts of terrorism are criminal, regardless of their motives, and that all States must strengthen their cooperation in their efforts to combat such acts and bring to justice those responsible for them.

*Ireland (23 June 2006):*

"The Government of Ireland have examined the explanatory declaration made by the Government of the Hashemite Kingdom of Jordan upon ratification of the International Convention for the Suppression of the Financing of Terrorism, done at New York on 9 December 1999, according to which the Hashemite Kingdom of Jordan does not consider acts of national armed struggle and fighting foreign occupation in the exercise of people's right to self-determination as terrorist acts within the meaning of paragraph 1 (b) of Article 2 of the Convention.

The Government of Ireland are of the view that this declaration amounts to a reservation as its purpose is to unilaterally limit the scope of the Convention. The Government of Ireland are also of the view that this reservation is contrary to the object and purpose of the Convention, namely suppressing the financing of terrorist acts, including those defined in paragraph 1 (b) of Article 2 of the Convention, wherever and by whomever committed.

This reservation is contrary to the terms of Article 6 of the Convention, according to which States parties are under an obligation to adopt such measures as may be necessary, including, where appropriate, domestic legislation, to ensure that criminal acts within the scope of the Convention are under no circumstances justifiable by considerations of a political, philosophical, ideological, racial, ethnic, religious or other similar nature.

The Government of Ireland recall that, according to customary international law as codified in the Vienna Convention on the Law of Treaties, reservations that are incompatible with the object and purpose of a convention are not permissible. It is in the common interest of States that treaties to which they have chosen to become party are respected as to their object and purpose and that States are prepared to undertake any legislative changes necessary to comply with their obligations under these treaties.

The Government of Ireland therefore object to the reservation made by the Hashemite Kingdom of Jordan to the International Convention for the Suppression of the Financing of Terrorism. This objection shall not preclude the entry into force of the Convention between Ireland and the Hashemite Kingdom of Jordan. The Convention enters into force between Ireland and the Hashemite Kingdom of Jordan, without the Hashemite Kingdom of Jordan benefiting from its reservation

*Czech Republic (23 August 2006):*

"The Government of the Czech Republic has examined the declaration relating to paragraph 1 (b) of Article 2 of the International Convention for the Suppression of the Financing of Terrorism made by the Government of the Hashemite Kingdom of Jordan at the time of its ratification of the Convention.

The Government of the Czech Republic considers that the declaration amounts to a reservation, as its purpose is to unilaterally limit the scope of the Convention. The Government of the Czech Republic further considers the declaration to be incompatible with the object and purpose of the Convention, namely the suppression of the financing of terrorist acts, including those defined in paragraph 1 (b) of Article 2 of the Convention, irrespective of where they take place and who carries them out.

In addition, the Government of the Czech Republic is of the view that the declaration is contrary to the terms of Article 6 of the Convention, according to which States Parties commit themselves to adopt such measures as may be necessary to ensure that criminal acts within the scope of the Convention are under no circumstances justifiable by considerations of a political, philosophical, ideological, racial, ethnic, religious or similar nature.

The Government of the Czech Republic wishes to recall that, according to customary international law as codified in the Vienna Convention on the Law of Treaties, a reservation incompatible with the object and purpose of a treaty shall not be permitted.

The Government of the Czech Republic therefore objects to the aforesaid reservation made by the Government of the Hashemite Kingdom of Jordan to the International Convention for the Suppression of the Financing of Terrorism. This objection shall not preclude the entry into force of the Convention between the Hashemite Kingdom of Jordan and the Czech Republic. The Convention enters into force between the Hashemite Kingdom of Jordan and the Czech Republic without the Hashemite Kingdom of Jordan benefiting from its reservation."

<sup>17</sup> By 23 July 2009, i.e., within a period of one year from the date of depositary notification C.N.526.2008.TREATIES-5 of 23 July 2008, no objection had been notified to the Secretary-

General. Consequently, in keeping with the depositary practice followed in similar cases, the Secretary-General proposes to receive the reservation in question for deposit.

<sup>18</sup> In a communication received in 17 September 2012, the Government of the Union of Myanmar notified the Secretary-General of the withdrawal of the following reservation made upon ratification of the Convention:

"Regarding articles 13, 14 and 15 of the International Convention for the Suppression of the Financing of Terrorism, the Union of Myanmar reserves its right to extradite its own citizen or citizens.

<sup>19</sup> The Secretary-General received a communication with regard to the reservation made by the Syrian Arab Republic upon accession from the following Government on the date indicated hereinafter :

*Ireland (23 June 2006) :*

"The Government of Ireland have examined the reservation made by the Government of the Syrian Arab Republic upon accession to the International Convention for the Suppression of the Financing of Terrorism, done at New York on 9 December 1999, according to which the Syrian Arab Republic does not consider acts of resistance to foreign occupation as terrorist acts within the meaning of paragraph 1 (b) of Article 2 of the Convention. Ireland (23 June 2003): The Government of Ireland are of the view that this reservation is contrary to the object and purpose of the Convention, namely suppressing the financing of terrorist acts, including those defined in paragraph 1 (b) of Article 2 of the Convention, wherever and by whomever committed.

This reservation is contrary to the terms of Article 6 of the Convention, according to which States parties are under an obligation to adopt such measures as may be necessary, including, where appropriate, domestic legislation, to ensure that criminal acts within the scope of the Convention are under no circumstances justifiable by considerations of a political, philosophical, ideological, racial, ethnic, religious or other similar nature.

The Government of Ireland recall that, according to customary international law as codified in the Vienna Convention on the Law of Treaties, reservations that are incompatible with the object and purpose of a convention are not permissible. It is in the common interest of States that treaties to which they have chosen to become party are respected as to their object and purpose and that States are prepared to undertake any legislative changes necessary to comply with their obligations under these treaties.

The Government of Ireland therefore object to the reservation made by the Syrian Arab Republic to the International Convention for the Suppression of the Financing of Terrorism. This objection shall not preclude the entry into force of the Convention between Ireland and the Syrian Arab Republic. The Convention enters into force between Ireland and the Syrian Arab Republic, without the Syrian Arab Republic benefiting from its reservation."

*Czech Republic (23 August 2006) :*

"The Government of the Czech Republic has examined the reservation relating to paragraph 1 (b) of Article 2 of the International Convention for the Suppression of the Financing of Terrorism made by the Government of the Syrian Arab Republic at the time of its accession to the Convention.

The Government of the Czech Republic considers the reservation to be incompatible with the object and purpose of the Convention, namely the suppression of the financing of terrorist acts, including those defined in paragraph 1 (b) of Article 2 of the Convention, irrespective of where they take place and who carries them out.

In addition, the Government of the Czech Republic is of the view that the reservation is contrary to the terms of Article 6 of the Convention, according to which States Parties commit themselves to adopt such measures as may be necessary to ensure that criminal acts within the scope of the Convention are under no circumstances justifiable by considerations of a political, philosophical, ideological, racial, ethnic, religious or similar nature.

The Government of the Czech Republic wishes to recall that, according to customary international law as codified in the Vienna Convention on the Law of Treaties, a reservation incompatible with the object and purpose of a treaty shall not be permitted.

The Government of the Czech Republic therefore objects to the aforesaid reservation made by the Government of the Syrian Arab Republic to the International Convention for the Suppression of the Financing of Terrorism. This objection shall not preclude the entry into force of the Convention between the Syrian Arab Republic and the Czech Republic. The Convention enters into force between the Syrian Arab Republic and the Czech Republic without the Syrian Arab Republic benefiting from its reservation."

<sup>20</sup> The Secretary-General received on 14 February 2014 the following notification from the Government of the Socialist Republic of Viet Nam under article 2, paragraph 2 (a) regarding the declaration made upon accession that the provisions of the Convention shall not be applied with regard to the offences set forth in the following treaties:

"... from 8 February 2014, the declaration made by the Socialist Republic of Viet Nam in accordance with Article 2.2(a) of the International Convention for the Suppression of the Financing of Terrorism, adopted by the General Assembly of the United Nations on 9 December 1999, shall cease to have effect in respect of the following Conventions:

- International Convention against the Taking of Hostages, adopted by the General Assembly of the United Nations on 17 December 1979, and

- International Convention for the Suppression of Terrorist Bombings, adopted by the General Assembly of the United Nations on 15 December 1997..."

<sup>21</sup> The Secretary-General received a communication relating to the reservation made by Yemen upon accession from the following Government on the date indicated hereinafter :

*Belgium (25 March 2011)*

The Government of the Kingdom of Belgium has examined the reservation formulated by the Republic of Yemen upon ratification of the International Convention for the Suppression of the Financing of Terrorism, in particular the part of the reservation in which the Republic of Yemen excludes the application of "article 2, paragraph 1 (b)" of the Convention. This reservation purports to exclude suppression of the financing of terrorist acts "intended to cause death or serious bodily injury to a civilian, or to any other person not taking an active part in the hostilities in a situation of armed conflict".

The Government of Belgium considers that this reservation seeks to limit the scope of the Convention on a unilateral basis that is contrary to its object and purpose, namely, suppression of the financing of terrorist acts, wherever and by whomsoever committed.

Moreover, this reservation is contrary to article 6 of the Convention, according to which "each State Party shall adopt such measures as may be necessary, including, where appropriate, domestic legislation, to ensure that criminal acts within the scope of this Convention are under no circumstances justifiable by considerations of a political, philosophical, ideological, racial, ethnic, religious or other similar nature".

The Government of Belgium recalls that, according to article 19, paragraph (c) of the Vienna Convention on the Law of Treaties, a reservation that is incompatible with the object and purpose of the Convention may not be formulated.

The Government of Belgium therefore objects to the aforementioned reservation to the International Convention for the Suppression of the Financing of Terrorism made by the Republic of Yemen. This objection shall not preclude the entry into force of the Convention as between Belgium and Yemen.





# UNITED NATIONS CONVENTION AGAINST CORRUPTION





UNITED NATIONS OFFICE ON DRUGS AND CRIME  
Vienna

UNITED NATIONS CONVENTION  
AGAINST CORRUPTION



UNITED NATIONS  
New York, 2004



## Foreword

Corruption is an insidious plague that has a wide range of corrosive effects on societies. It undermines democracy and the rule of law, leads to violations of human rights, distorts markets, erodes the quality of life and allows organized crime, terrorism and other threats to human security to flourish.

This evil phenomenon is found in all countries—big and small, rich and poor—but it is in the developing world that its effects are most destructive. Corruption hurts the poor disproportionately by diverting funds intended for development, undermining a Government's ability to provide basic services, feeding inequality and injustice and discouraging foreign aid and investment. Corruption is a key element in economic underperformance and a major obstacle to poverty alleviation and development.

I am therefore very happy that we now have a new instrument to address this scourge at the global level. The adoption of the United Nations Convention against Corruption will send a clear message that the international community is determined to prevent and control corruption. It will warn the corrupt that betrayal of the public trust will no longer be tolerated. And it will reaffirm the importance of core values such as honesty, respect for the rule of law, accountability and transparency in promoting development and making the world a better place for all.

The new Convention is a remarkable achievement, and it complements another landmark instrument, the United Nations Convention against Transnational Organized Crime, which entered into force just a month ago. It is balanced, strong and pragmatic, and it offers a new framework for effective action and international cooperation.

The Convention introduces a comprehensive set of standards, measures and rules that all countries can apply in order to strengthen their legal and regulatory regimes to fight corruption. It calls for preventive measures and the criminalization of the most prevalent forms of corruption in both public and private sectors. And it makes a major breakthrough by requiring Member States to return assets obtained through corruption to the country from which they were stolen.

These provisions—the first of their kind—introduce a new fundamental principle, as well as a framework for stronger cooperation between States to prevent and detect corruption and to return the proceeds. Corrupt officials will in future find fewer ways to hide their illicit gains. This is a particularly important issue for many developing countries where corrupt high officials have

plundered the national wealth and where new Governments badly need resources to reconstruct and rehabilitate their societies.

For the United Nations, the Convention is the culmination of work that started many years ago, when the word corruption was hardly ever uttered in official circles. It took systematic efforts, first at the technical, and then gradually at the political, level to put the fight against corruption on the global agenda. Both the Monterrey International Conference on Financing for Development and the Johannesburg World Summit on Sustainable Development offered opportunities for Governments to express their determination to attack corruption and to make many more people aware of the devastating effect that corruption has on development.

The Convention is also the result of long and difficult negotiations. Many complex issues and many concerns from different quarters had to be addressed. It was a formidable challenge to produce, in less than two years, an instrument that reflects all those concerns. All countries had to show flexibility and make concessions. But we can be proud of the result.

Allow me to congratulate the members of the bureau of the Ad Hoc Committee for the Negotiation of a Convention against Corruption on their hard work and leadership, and to pay a special tribute to the Committee's late Chairman, Ambassador Héctor Charry Samper of Colombia, for his wise guidance and his dedication. I am sure all here share my sorrow that he is not with us to celebrate this great success.

The adoption of the new Convention will be a remarkable achievement. But let us be clear: it is only a beginning. We must build on the momentum achieved to ensure that the Convention enters into force as soon as possible. I urge all Member States to attend the Signing Conference in Merida, Mexico, in December, and to ratify the Convention at the earliest possible date.

If fully enforced, this new instrument can make a real difference to the quality of life of millions of people around the world. And by removing one of the biggest obstacles to development it can help us achieve the Millennium Development Goals. Be assured that the United Nations Secretariat, and in particular the United Nations Office on Drugs and Crime, will do whatever it can to support the efforts of States to eliminate the scourge of corruption from the face of the Earth. It is a big challenge, but I think that, together, we can make a difference.

*Kofi A. Annan*  
*Secretary-General*

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**General Assembly resolution 58/4  
of 31 October 2003**

**United Nations Convention  
against Corruption**

*The General Assembly,*

*Recalling* its resolution 55/61 of 4 December 2000, in which it established an ad hoc committee for the negotiation of an effective international legal instrument against corruption and requested the Secretary-General to convene an intergovernmental open-ended expert group to examine and prepare draft terms of reference for the negotiation of such an instrument, and its resolution 55/188 of 20 December 2000, in which it invited the intergovernmental open-ended expert group to be convened pursuant to resolution 55/61 to examine the question of illegally transferred funds and the return of such funds to the countries of origin,

*Recalling also* its resolutions 56/186 of 21 December 2001 and 57/244 of 20 December 2002 on preventing and combating corrupt practices and transfer of funds of illicit origin and returning such funds to the countries of origin,

*Recalling further* its resolution 56/260 of 31 January 2002, in which it requested the Ad Hoc Committee for the Negotiation of a Convention against Corruption to complete its work by the end of 2003,

*Recalling* its resolution 57/169 of 18 December 2002, in which it accepted with appreciation the offer made by the Government of Mexico to host a high-level political conference for the purpose of signing the convention and requested the Secretary-General to schedule the conference for a period of three days before the end of 2003,

*Recalling also* Economic and Social Council resolution 2001/13 of 24 July 2001, entitled "Strengthening international cooperation in preventing and combating the transfer of funds of illicit origin, derived from acts of corruption, including the laundering of funds, and in returning such funds",

*Expressing its appreciation* to the Government of Argentina for hosting the informal preparatory meeting of the Ad Hoc Committee for the Negotiation of a Convention against Corruption in Buenos Aires from 4 to 7 December 2001,

*Recalling* the Monterrey Consensus, adopted by the International Conference on Financing for Development, held in Monterrey, Mexico, from 18 to 22 March 2002,<sup>1</sup> in which it was underlined that fighting corruption at all levels was a priority,

*Recalling also* the Johannesburg Declaration on Sustainable Development, adopted by the World Summit on Sustainable Development, held in Johannesburg, South Africa, from 26 August to 4 September 2002,<sup>2</sup> in particular paragraph 19 thereof, in which corruption was declared a threat to the sustainable development of people,

*Concerned* about the seriousness of problems and threats posed by corruption to the stability and security of societies, undermining the institutions and values of democracy, ethical values and justice and jeopardizing sustainable development and the rule of law,

1. *Takes note* of the report of the Ad Hoc Committee for the Negotiation of a Convention against Corruption,<sup>3</sup> which carried out its work at the headquarters of the United Nations Office on Drugs and Crime in Vienna, in which the Ad Hoc Committee submitted the final text of the draft United Nations Convention against Corruption to the General Assembly for its consideration and action, and commends the Ad Hoc Committee for its work;

2. *Adopts* the United Nations Convention against Corruption annexed to the present resolution, and opens it for signature at the High-level Political Signing Conference to be held in Merida, Mexico, from 9 to 11 December 2003, in accordance with resolution 57/169;

3. *Urges* all States and competent regional economic integration organizations to sign and ratify the United Nations Convention against Corruption as soon as possible in order to ensure its rapid entry into force;

4. *Decides* that, until the Conference of the States Parties to the Convention established pursuant to the United Nations Convention against Corruption decides otherwise, the account referred to in article 62 of the Convention will be operated within the United Nations Crime Prevention and Criminal Justice Fund, and encourages Member States to begin making adequate voluntary contributions to the above-mentioned account for the provision to developing

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<sup>1</sup>*Report of the International Conference on Financing for Development, Monterrey, Mexico, 18-22 March 2002* (United Nations publication, Sales No. E.02.II.A.7), chap. I, resolution 1, annex.

<sup>2</sup>*Report of the World Summit on Sustainable Development, Johannesburg, South Africa, 26 August-4 September 2002* (United Nations publication, Sales No. E.03.II.A.1 and corrigendum), chap. I, resolution 1, annex.

<sup>3</sup>A/58/422 and Add.1.

countries and countries with economies in transition of the technical assistance that they might require to prepare for ratification and implementation of the Convention;

5. *Also decides* that the Ad Hoc Committee for the Negotiation of a Convention against Corruption will complete its tasks arising from the negotiation of the United Nations Convention against Corruption by holding a meeting well before the convening of the first session of the Conference of the States Parties to the Convention in order to prepare the draft text of the rules of procedure of the Conference of the States Parties and of other rules described in article 63 of the Convention, which will be submitted to the Conference of the States Parties at its first session for consideration;

6. *Requests* the Conference of the States Parties to the Convention to address the criminalization of bribery of officials of public international organizations, including the United Nations, and related issues, taking into account questions of privileges and immunities, as well as of jurisdiction and the role of international organizations, by, inter alia, making recommendations regarding appropriate action in that regard;

7. *Decides* that, in order to raise awareness of corruption and of the role of the Convention in combating and preventing it, 9 December should be designated International Anti-Corruption Day;

8. *Requests* the Secretary-General to designate the United Nations Office on Drugs and Crime to serve as the secretariat for and under the direction of the Conference of the States Parties to the Convention;

9. *Also requests* the Secretary-General to provide the United Nations Office on Drugs and Crime with the resources necessary to enable it to promote in an effective manner the rapid entry into force of the United Nations Convention against Corruption and to discharge the functions of secretariat of the Conference of the States Parties to the Convention, and to support the Ad Hoc Committee in its work pursuant to paragraph 5 above;

10. *Further requests* the Secretary-General to prepare a comprehensive report on the High-level Political Signing Conference to be held in Merida, Mexico, in accordance with resolution 57/169, for submission to the General Assembly at its fifty-ninth session.



## *Annex*

# **United Nations Convention against Corruption**

## **Preamble**

*The States Parties to this Convention,*

*Concerned* about the seriousness of problems and threats posed by corruption to the stability and security of societies, undermining the institutions and values of democracy, ethical values and justice and jeopardizing sustainable development and the rule of law,

*Concerned also* about the links between corruption and other forms of crime, in particular organized crime and economic crime, including money-laundering,

*Concerned further* about cases of corruption that involve vast quantities of assets, which may constitute a substantial proportion of the resources of States, and that threaten the political stability and sustainable development of those States,

*Convinced* that corruption is no longer a local matter but a transnational phenomenon that affects all societies and economies, making international co-operation to prevent and control it essential,

*Convinced also* that a comprehensive and multidisciplinary approach is required to prevent and combat corruption effectively,

*Convinced further* that the availability of technical assistance can play an important role in enhancing the ability of States, including by strengthening capacity and by institution-building, to prevent and combat corruption effectively,

*Convinced* that the illicit acquisition of personal wealth can be particularly damaging to democratic institutions, national economies and the rule of law,

*Determined* to prevent, detect and deter in a more effective manner international transfers of illicitly acquired assets and to strengthen international cooperation in asset recovery,

*Acknowledging* the fundamental principles of due process of law in criminal proceedings and in civil or administrative proceedings to adjudicate property rights,

*Bearing in mind* that the prevention and eradication of corruption is a responsibility of all States and that they must cooperate with one another, with the support and involvement of individuals and groups outside the public sector, such as civil society, non-governmental organizations and community-based organizations, if their efforts in this area are to be effective,

*Bearing also in mind* the principles of proper management of public affairs and public property, fairness, responsibility and equality before the law and the need to safeguard integrity and to foster a culture of rejection of corruption,

*Commending* the work of the Commission on Crime Prevention and Criminal Justice and the United Nations Office on Drugs and Crime in preventing and combating corruption,

*Recalling* the work carried out by other international and regional organizations in this field, including the activities of the African Union, the Council of Europe, the Customs Cooperation Council (also known as the World Customs Organization), the European Union, the League of Arab States, the Organisation for Economic Cooperation and Development and the Organization of American States,

*Taking note with appreciation* of multilateral instruments to prevent and combat corruption, including, inter alia, the Inter-American Convention against Corruption, adopted by the Organization of American States on 29 March 1996,<sup>1</sup> the Convention on the Fight against Corruption involving Officials of the European Communities or Officials of Member States of the European Union, adopted by the Council of the European Union on 26 May 1997,<sup>2</sup> the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, adopted by the Organisation for Economic Cooperation and Development on 21 November 1997,<sup>3</sup> the Criminal Law

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<sup>1</sup>See E/1996/99.

<sup>2</sup>*Official Journal of the European Communities*, C 195, 25 June 1997.

<sup>3</sup>See *Corruption and Integrity Improvement Initiatives in Developing Countries* (United Nations publication, Sales No. E.98.III.B.18).

Convention on Corruption, adopted by the Committee of Ministers of the Council of Europe on 27 January 1999,<sup>4</sup> the Civil Law Convention on Corruption, adopted by the Committee of Ministers of the Council of Europe on 4 November 1999,<sup>5</sup> and the African Union Convention on Preventing and Combating Corruption, adopted by the Heads of State and Government of the African Union on 12 July 2003,

*Welcoming* the entry into force on 29 September 2003 of the United Nations Convention against Transnational Organized Crime,<sup>6</sup>

*Have agreed as follows:*

## **Chapter I** **General provisions**

### *Article 1. Statement of purpose*

The purposes of this Convention are:

- (a) To promote and strengthen measures to prevent and combat corruption more efficiently and effectively;
- (b) To promote, facilitate and support international cooperation and technical assistance in the prevention of and fight against corruption, including in asset recovery;
- (c) To promote integrity, accountability and proper management of public affairs and public property.

### *Article 2. Use of terms*

For the purposes of this Convention:

- (a) “Public official” shall mean: (i) any person holding a legislative, executive, administrative or judicial office of a State Party, whether appointed or elected, whether permanent or temporary, whether paid or unpaid, irrespective of that person’s seniority; (ii) any other person who performs a public function, including for a public agency or public enterprise, or provides a public service, as defined in the domestic law of the State Party and as applied in the pertinent area of law of that State Party; (iii) any other person defined as a “public

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<sup>4</sup>Council of Europe, *European Treaty Series*, No. 173.

<sup>5</sup>*Ibid.*, No. 174.

<sup>6</sup>General Assembly resolution 55/25, annex I.

official” in the domestic law of a State Party. However, for the purpose of some specific measures contained in chapter II of this Convention, “public official” may mean any person who performs a public function or provides a public service as defined in the domestic law of the State Party and as applied in the pertinent area of law of that State Party;

(b) “Foreign public official” shall mean any person holding a legislative, executive, administrative or judicial office of a foreign country, whether appointed or elected; and any person exercising a public function for a foreign country, including for a public agency or public enterprise;

(c) “Official of a public international organization” shall mean an international civil servant or any person who is authorized by such an organization to act on behalf of that organization;

(d) “Property” shall mean assets of every kind, whether corporeal or incorporeal, movable or immovable, tangible or intangible, and legal documents or instruments evidencing title to or interest in such assets;

(e) “Proceeds of crime” shall mean any property derived from or obtained, directly or indirectly, through the commission of an offence;

(f) “Freezing” or “seizure” shall mean temporarily prohibiting the transfer, conversion, disposition or movement of property or temporarily assuming custody or control of property on the basis of an order issued by a court or other competent authority;

(g) “Confiscation”, which includes forfeiture where applicable, shall mean the permanent deprivation of property by order of a court or other competent authority;

(h) “Predicate offence” shall mean any offence as a result of which proceeds have been generated that may become the subject of an offence as defined in article 23 of this Convention;

(i) “Controlled delivery” shall mean the technique of allowing illicit or suspect consignments to pass out of, through or into the territory of one or more States, with the knowledge and under the supervision of their competent authorities, with a view to the investigation of an offence and the identification of persons involved in the commission of the offence.

### *Article 3. Scope of application*

1. This Convention shall apply, in accordance with its terms, to the prevention, investigation and prosecution of corruption and to the freezing, seizure, confiscation and return of the proceeds of offences established in accordance with this Convention.

2. For the purposes of implementing this Convention, it shall not be necessary, except as otherwise stated herein, for the offences set forth in it to result in damage or harm to state property.

#### *Article 4. Protection of sovereignty*

1. States Parties shall carry out their obligations under this Convention in a manner consistent with the principles of sovereign equality and territorial integrity of States and that of non-intervention in the domestic affairs of other States.

2. Nothing in this Convention shall entitle a State Party to undertake in the territory of another State the exercise of jurisdiction and performance of functions that are reserved exclusively for the authorities of that other State by its domestic law.

## **Chapter II Preventive measures**

#### *Article 5. Preventive anti-corruption policies and practices*

1. Each State Party shall, in accordance with the fundamental principles of its legal system, develop and implement or maintain effective, coordinated anti-corruption policies that promote the participation of society and reflect the principles of the rule of law, proper management of public affairs and public property, integrity, transparency and accountability.

2. Each State Party shall endeavour to establish and promote effective practices aimed at the prevention of corruption.

3. Each State Party shall endeavour to periodically evaluate relevant legal instruments and administrative measures with a view to determining their adequacy to prevent and fight corruption.

4. States Parties shall, as appropriate and in accordance with the fundamental principles of their legal system, collaborate with each other and with relevant international and regional organizations in promoting and developing the measures referred to in this article. That collaboration may include participation in international programmes and projects aimed at the prevention of corruption.

## *Article 6. Preventive anti-corruption body or bodies*

1. Each State Party shall, in accordance with the fundamental principles of its legal system, ensure the existence of a body or bodies, as appropriate, that prevent corruption by such means as:

(a) Implementing the policies referred to in article 5 of this Convention and, where appropriate, overseeing and coordinating the implementation of those policies;

(b) Increasing and disseminating knowledge about the prevention of corruption.

2. Each State Party shall grant the body or bodies referred to in paragraph 1 of this article the necessary independence, in accordance with the fundamental principles of its legal system, to enable the body or bodies to carry out its or their functions effectively and free from any undue influence. The necessary material resources and specialized staff, as well as the training that such staff may require to carry out their functions, should be provided.

3. Each State Party shall inform the Secretary-General of the United Nations of the name and address of the authority or authorities that may assist other States Parties in developing and implementing specific measures for the prevention of corruption.

## *Article 7. Public sector*

1. Each State Party shall, where appropriate and in accordance with the fundamental principles of its legal system, endeavour to adopt, maintain and strengthen systems for the recruitment, hiring, retention, promotion and retirement of civil servants and, where appropriate, other non-elected public officials:

(a) That are based on principles of efficiency, transparency and objective criteria such as merit, equity and aptitude;

(b) That include adequate procedures for the selection and training of individuals for public positions considered especially vulnerable to corruption and the rotation, where appropriate, of such individuals to other positions;

(c) That promote adequate remuneration and equitable pay scales, taking into account the level of economic development of the State Party;

(d) That promote education and training programmes to enable them to meet the requirements for the correct, honourable and proper performance of public functions and that provide them with specialized and appropriate training to enhance their awareness of the risks of corruption inherent in the

performance of their functions. Such programmes may make reference to codes or standards of conduct in applicable areas.

2. Each State Party shall also consider adopting appropriate legislative and administrative measures, consistent with the objectives of this Convention and in accordance with the fundamental principles of its domestic law, to prescribe criteria concerning candidature for and election to public office.

3. Each State Party shall also consider taking appropriate legislative and administrative measures, consistent with the objectives of this Convention and in accordance with the fundamental principles of its domestic law, to enhance transparency in the funding of candidatures for elected public office and, where applicable, the funding of political parties.

4. Each State Party shall, in accordance with the fundamental principles of its domestic law, endeavour to adopt, maintain and strengthen systems that promote transparency and prevent conflicts of interest.

#### *Article 8. Codes of conduct for public officials*

1. In order to fight corruption, each State Party shall promote, inter alia, integrity, honesty and responsibility among its public officials, in accordance with the fundamental principles of its legal system.

2. In particular, each State Party shall endeavour to apply, within its own institutional and legal systems, codes or standards of conduct for the correct, honourable and proper performance of public functions.

3. For the purposes of implementing the provisions of this article, each State Party shall, where appropriate and in accordance with the fundamental principles of its legal system, take note of the relevant initiatives of regional, interregional and multilateral organizations, such as the International Code of Conduct for Public Officials contained in the annex to General Assembly resolution 51/59 of 12 December 1996.

4. Each State Party shall also consider, in accordance with the fundamental principles of its domestic law, establishing measures and systems to facilitate the reporting by public officials of acts of corruption to appropriate authorities, when such acts come to their notice in the performance of their functions.

5. Each State Party shall endeavour, where appropriate and in accordance with the fundamental principles of its domestic law, to establish measures

and systems requiring public officials to make declarations to appropriate authorities regarding, inter alia, their outside activities, employment, investments, assets and substantial gifts or benefits from which a conflict of interest may result with respect to their functions as public officials.

6. Each State Party shall consider taking, in accordance with the fundamental principles of its domestic law, disciplinary or other measures against public officials who violate the codes or standards established in accordance with this article.

*Article 9. Public procurement and management  
of public finances*

1. Each State Party shall, in accordance with the fundamental principles of its legal system, take the necessary steps to establish appropriate systems of procurement, based on transparency, competition and objective criteria in decision-making, that are effective, inter alia, in preventing corruption. Such systems, which may take into account appropriate threshold values in their application, shall address, inter alia:

(a) The public distribution of information relating to procurement procedures and contracts, including information on invitations to tender and relevant or pertinent information on the award of contracts, allowing potential tenderers sufficient time to prepare and submit their tenders;

(b) The establishment, in advance, of conditions for participation, including selection and award criteria and tendering rules, and their publication;

(c) The use of objective and predetermined criteria for public procurement decisions, in order to facilitate the subsequent verification of the correct application of the rules or procedures;

(d) An effective system of domestic review, including an effective system of appeal, to ensure legal recourse and remedies in the event that the rules or procedures established pursuant to this paragraph are not followed;

(e) Where appropriate, measures to regulate matters regarding personnel responsible for procurement, such as declaration of interest in particular public procurements, screening procedures and training requirements.

2. Each State Party shall, in accordance with the fundamental principles of its legal system, take appropriate measures to promote transparency and accountability in the management of public finances. Such measures shall encompass, inter alia:

(a) Procedures for the adoption of the national budget;

- (b) Timely reporting on revenue and expenditure;
- (c) A system of accounting and auditing standards and related oversight;
- (d) Effective and efficient systems of risk management and internal control; and
- (e) Where appropriate, corrective action in the case of failure to comply with the requirements established in this paragraph.

3. Each State Party shall take such civil and administrative measures as may be necessary, in accordance with the fundamental principles of its domestic law, to preserve the integrity of accounting books, records, financial statements or other documents related to public expenditure and revenue and to prevent the falsification of such documents.

#### *Article 10. Public reporting*

Taking into account the need to combat corruption, each State Party shall, in accordance with the fundamental principles of its domestic law, take such measures as may be necessary to enhance transparency in its public administration, including with regard to its organization, functioning and decision-making processes, where appropriate. Such measures may include, inter alia:

- (a) Adopting procedures or regulations allowing members of the general public to obtain, where appropriate, information on the organization, functioning and decision-making processes of its public administration and, with due regard for the protection of privacy and personal data, on decisions and legal acts that concern members of the public;
- (b) Simplifying administrative procedures, where appropriate, in order to facilitate public access to the competent decision-making authorities; and
- (c) Publishing information, which may include periodic reports on the risks of corruption in its public administration.

#### *Article 11. Measures relating to the judiciary and prosecution services*

1. Bearing in mind the independence of the judiciary and its crucial role in combating corruption, each State Party shall, in accordance with the fundamental principles of its legal system and without prejudice to judicial independence, take measures to strengthen integrity and to prevent opportunities for corruption among members of the judiciary. Such measures may include rules with respect to the conduct of members of the judiciary.

2. Measures to the same effect as those taken pursuant to paragraph 1 of this article may be introduced and applied within the prosecution service in those States Parties where it does not form part of the judiciary but enjoys independence similar to that of the judicial service.

### *Article 12. Private sector*

1. Each State Party shall take measures, in accordance with the fundamental principles of its domestic law, to prevent corruption involving the private sector, enhance accounting and auditing standards in the private sector and, where appropriate, provide effective, proportionate and dissuasive civil, administrative or criminal penalties for failure to comply with such measures.

2. Measures to achieve these ends may include, inter alia:

(a) Promoting cooperation between law enforcement agencies and relevant private entities;

(b) Promoting the development of standards and procedures designed to safeguard the integrity of relevant private entities, including codes of conduct for the correct, honourable and proper performance of the activities of business and all relevant professions and the prevention of conflicts of interest, and for the promotion of the use of good commercial practices among businesses and in the contractual relations of businesses with the State;

(c) Promoting transparency among private entities, including, where appropriate, measures regarding the identity of legal and natural persons involved in the establishment and management of corporate entities;

(d) Preventing the misuse of procedures regulating private entities, including procedures regarding subsidies and licences granted by public authorities for commercial activities;

(e) Preventing conflicts of interest by imposing restrictions, as appropriate and for a reasonable period of time, on the professional activities of former public officials or on the employment of public officials by the private sector after their resignation or retirement, where such activities or employment relate directly to the functions held or supervised by those public officials during their tenure;

(f) Ensuring that private enterprises, taking into account their structure and size, have sufficient internal auditing controls to assist in preventing and detecting acts of corruption and that the accounts and required financial statements of such private enterprises are subject to appropriate auditing and certification procedures.

3. In order to prevent corruption, each State Party shall take such measures as may be necessary, in accordance with its domestic laws and regulations regarding the maintenance of books and records, financial statement disclosures and accounting and auditing standards, to prohibit the following acts carried out for the purpose of committing any of the offences established in accordance with this Convention:

- (a) The establishment of off-the-books accounts;
- (b) The making of off-the-books or inadequately identified transactions;
- (c) The recording of non-existent expenditure;
- (d) The entry of liabilities with incorrect identification of their objects;
- (e) The use of false documents; and
- (f) The intentional destruction of bookkeeping documents earlier than foreseen by the law.

4. Each State Party shall disallow the tax deductibility of expenses that constitute bribes, the latter being one of the constituent elements of the offences established in accordance with articles 15 and 16 of this Convention and, where appropriate, other expenses incurred in furtherance of corrupt conduct.

### *Article 13. Participation of society*

1. Each State Party shall take appropriate measures, within its means and in accordance with fundamental principles of its domestic law, to promote the active participation of individuals and groups outside the public sector, such as civil society, non-governmental organizations and community-based organizations, in the prevention of and the fight against corruption and to raise public awareness regarding the existence, causes and gravity of and the threat posed by corruption. This participation should be strengthened by such measures as:

- (a) Enhancing the transparency of and promoting the contribution of the public to decision-making processes;
- (b) Ensuring that the public has effective access to information;
- (c) Undertaking public information activities that contribute to non-tolerance of corruption, as well as public education programmes, including school and university curricula;
- (d) Respecting, promoting and protecting the freedom to seek, receive, publish and disseminate information concerning corruption. That freedom may be subject to certain restrictions, but these shall only be such as are provided for by law and are necessary:
  - (i) For respect of the rights or reputations of others;

- (ii) For the protection of national security or *ordre public* or of public health or morals.

2. Each State Party shall take appropriate measures to ensure that the relevant anti-corruption bodies referred to in this Convention are known to the public and shall provide access to such bodies, where appropriate, for the reporting, including anonymously, of any incidents that may be considered to constitute an offence established in accordance with this Convention.

#### *Article 14. Measures to prevent money-laundering*

1. Each State Party shall:

(a) Institute a comprehensive domestic regulatory and supervisory regime for banks and non-bank financial institutions, including natural or legal persons that provide formal or informal services for the transmission of money or value and, where appropriate, other bodies particularly susceptible to money-laundering, within its competence, in order to deter and detect all forms of money-laundering, which regime shall emphasize requirements for customer and, where appropriate, beneficial owner identification, record-keeping and the reporting of suspicious transactions;

(b) Without prejudice to article 46 of this Convention, ensure that administrative, regulatory, law enforcement and other authorities dedicated to combating money-laundering (including, where appropriate under domestic law, judicial authorities) have the ability to cooperate and exchange information at the national and international levels within the conditions prescribed by its domestic law and, to that end, shall consider the establishment of a financial intelligence unit to serve as a national centre for the collection, analysis and dissemination of information regarding potential money-laundering.

2. States Parties shall consider implementing feasible measures to detect and monitor the movement of cash and appropriate negotiable instruments across their borders, subject to safeguards to ensure proper use of information and without impeding in any way the movement of legitimate capital. Such measures may include a requirement that individuals and businesses report the cross-border transfer of substantial quantities of cash and appropriate negotiable instruments.

3. States Parties shall consider implementing appropriate and feasible measures to require financial institutions, including money remitters:

(a) To include on forms for the electronic transfer of funds and related messages accurate and meaningful information on the originator;

- (b) To maintain such information throughout the payment chain; and
- (c) To apply enhanced scrutiny to transfers of funds that do not contain complete information on the originator.

4. In establishing a domestic regulatory and supervisory regime under the terms of this article, and without prejudice to any other article of this Convention, States Parties are called upon to use as a guideline the relevant initiatives of regional, interregional and multilateral organizations against money-laundering.

5. States Parties shall endeavour to develop and promote global, regional, subregional and bilateral cooperation among judicial, law enforcement and financial regulatory authorities in order to combat money-laundering.

### **Chapter III** **Criminalization and law enforcement**

#### *Article 15. Bribery of national public officials*

Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:

(a) The promise, offering or giving, to a public official, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties;

(b) The solicitation or acceptance by a public official, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties.

#### *Article 16. Bribery of foreign public officials and officials of public international organizations*

1. Each State Party shall adopt such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally, the promise, offering or giving to a foreign public official or an official of a public international organization, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties, in order to obtain or retain business or other undue advantage in relation to the conduct of international business.

2. Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally, the solicitation or acceptance by a foreign public official or an official of a public international organization, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties.

*Article 17. Embezzlement, misappropriation or other diversion of property by a public official*

Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally, the embezzlement, misappropriation or other diversion by a public official for his or her benefit or for the benefit of another person or entity, of any property, public or private funds or securities or any other thing of value entrusted to the public official by virtue of his or her position.

*Article 18. Trading in influence*

Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:

(a) The promise, offering or giving to a public official or any other person, directly or indirectly, of an undue advantage in order that the public official or the person abuse his or her real or supposed influence with a view to obtaining from an administration or public authority of the State Party an undue advantage for the original instigator of the act or for any other person;

(b) The solicitation or acceptance by a public official or any other person, directly or indirectly, of an undue advantage for himself or herself or for another person in order that the public official or the person abuse his or her real or supposed influence with a view to obtaining from an administration or public authority of the State Party an undue advantage.

*Article 19. Abuse of functions*

Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally, the abuse of functions or position, that is, the performance of or failure to perform an act, in violation of laws, by a public official in the

discharge of his or her functions, for the purpose of obtaining an undue advantage for himself or herself or for another person or entity.

*Article 20. Illicit enrichment*

Subject to its constitution and the fundamental principles of its legal system, each State Party shall consider adopting such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally, illicit enrichment, that is, a significant increase in the assets of a public official that he or she cannot reasonably explain in relation to his or her lawful income.

*Article 21. Bribery in the private sector*

Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally in the course of economic, financial or commercial activities:

(a) The promise, offering or giving, directly or indirectly, of an undue advantage to any person who directs or works, in any capacity, for a private sector entity, for the person himself or herself or for another person, in order that he or she, in breach of his or her duties, act or refrain from acting;

(b) The solicitation or acceptance, directly or indirectly, of an undue advantage by any person who directs or works, in any capacity, for a private sector entity, for the person himself or herself or for another person, in order that he or she, in breach of his or her duties, act or refrain from acting.

*Article 22. Embezzlement of property in the private sector*

Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally in the course of economic, financial or commercial activities, embezzlement by a person who directs or works, in any capacity, in a private sector entity of any property, private funds or securities or any other thing of value entrusted to him or her by virtue of his or her position.

*Article 23. Laundering of proceeds of crime*

1. Each State Party shall adopt, in accordance with fundamental principles of its domestic law, such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:

- (a) (i) The conversion or transfer of property, knowing that such property is the proceeds of crime, for the purpose of concealing or disguising the illicit origin of the property or of helping any person who is involved in the commission of the predicate offence to evade the legal consequences of his or her action;
- (ii) The concealment or disguise of the true nature, source, location, disposition, movement or ownership of or rights with respect to property, knowing that such property is the proceeds of crime;
- (b) Subject to the basic concepts of its legal system:
  - (i) The acquisition, possession or use of property, knowing, at the time of receipt, that such property is the proceeds of crime;
  - (ii) Participation in, association with or conspiracy to commit, attempts to commit and aiding, abetting, facilitating and counselling the commission of any of the offences established in accordance with this article.

2. For purposes of implementing or applying paragraph 1 of this article:

(a) Each State Party shall seek to apply paragraph 1 of this article to the widest range of predicate offences;

(b) Each State Party shall include as predicate offences at a minimum a comprehensive range of criminal offences established in accordance with this Convention;

(c) For the purposes of subparagraph (b) above, predicate offences shall include offences committed both within and outside the jurisdiction of the State Party in question. However, offences committed outside the jurisdiction of a State Party shall constitute predicate offences only when the relevant conduct is a criminal offence under the domestic law of the State where it is committed and would be a criminal offence under the domestic law of the State Party implementing or applying this article had it been committed there;

(d) Each State Party shall furnish copies of its laws that give effect to this article and of any subsequent changes to such laws or a description thereof to the Secretary-General of the United Nations;

(e) If required by fundamental principles of the domestic law of a State Party, it may be provided that the offences set forth in paragraph 1 of this article do not apply to the persons who committed the predicate offence.

#### *Article 24. Concealment*

Without prejudice to the provisions of article 23 of this Convention, each State Party shall consider adopting such legislative and other measures as may

be necessary to establish as a criminal offence, when committed intentionally after the commission of any of the offences established in accordance with this Convention without having participated in such offences, the concealment or continued retention of property when the person involved knows that such property is the result of any of the offences established in accordance with this Convention.

#### *Article 25. Obstruction of justice*

Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:

(a) The use of physical force, threats or intimidation or the promise, offering or giving of an undue advantage to induce false testimony or to interfere in the giving of testimony or the production of evidence in a proceeding in relation to the commission of offences established in accordance with this Convention;

(b) The use of physical force, threats or intimidation to interfere with the exercise of official duties by a justice or law enforcement official in relation to the commission of offences established in accordance with this Convention. Nothing in this subparagraph shall prejudice the right of States Parties to have legislation that protects other categories of public official.

#### *Article 26. Liability of legal persons*

1. Each State Party shall adopt such measures as may be necessary, consistent with its legal principles, to establish the liability of legal persons for participation in the offences established in accordance with this Convention.

2. Subject to the legal principles of the State Party, the liability of legal persons may be criminal, civil or administrative.

3. Such liability shall be without prejudice to the criminal liability of the natural persons who have committed the offences.

4. Each State Party shall, in particular, ensure that legal persons held liable in accordance with this article are subject to effective, proportionate and dissuasive criminal or non-criminal sanctions, including monetary sanctions.

*Article 27. Participation and attempt*

1. Each State Party shall adopt such legislative and other measures as may be necessary to establish as a criminal offence, in accordance with its domestic law, participation in any capacity such as an accomplice, assistant or instigator in an offence established in accordance with this Convention.

2. Each State Party may adopt such legislative and other measures as may be necessary to establish as a criminal offence, in accordance with its domestic law, any attempt to commit an offence established in accordance with this Convention.

3. Each State Party may adopt such legislative and other measures as may be necessary to establish as a criminal offence, in accordance with its domestic law, the preparation for an offence established in accordance with this Convention.

*Article 28. Knowledge, intent and purpose  
as elements of an offence*

Knowledge, intent or purpose required as an element of an offence established in accordance with this Convention may be inferred from objective factual circumstances.

*Article 29. Statute of limitations*

Each State Party shall, where appropriate, establish under its domestic law a long statute of limitations period in which to commence proceedings for any offence established in accordance with this Convention and establish a longer statute of limitations period or provide for the suspension of the statute of limitations where the alleged offender has evaded the administration of justice.

*Article 30. Prosecution, adjudication and sanctions*

1. Each State Party shall make the commission of an offence established in accordance with this Convention liable to sanctions that take into account the gravity of that offence.

2. Each State Party shall take such measures as may be necessary to establish or maintain, in accordance with its legal system and constitutional principles, an appropriate balance between any immunities or jurisdictional

privileges accorded to its public officials for the performance of their functions and the possibility, when necessary, of effectively investigating, prosecuting and adjudicating offences established in accordance with this Convention.

3. Each State Party shall endeavour to ensure that any discretionary legal powers under its domestic law relating to the prosecution of persons for offences established in accordance with this Convention are exercised to maximize the effectiveness of law enforcement measures in respect of those offences and with due regard to the need to deter the commission of such offences.

4. In the case of offences established in accordance with this Convention, each State Party shall take appropriate measures, in accordance with its domestic law and with due regard to the rights of the defence, to seek to ensure that conditions imposed in connection with decisions on release pending trial or appeal take into consideration the need to ensure the presence of the defendant at subsequent criminal proceedings.

5. Each State Party shall take into account the gravity of the offences concerned when considering the eventuality of early release or parole of persons convicted of such offences.

6. Each State Party, to the extent consistent with the fundamental principles of its legal system, shall consider establishing procedures through which a public official accused of an offence established in accordance with this Convention may, where appropriate, be removed, suspended or reassigned by the appropriate authority, bearing in mind respect for the principle of the presumption of innocence.

7. Where warranted by the gravity of the offence, each State Party, to the extent consistent with the fundamental principles of its legal system, shall consider establishing procedures for the disqualification, by court order or any other appropriate means, for a period of time determined by its domestic law, of persons convicted of offences established in accordance with this Convention from:

- (a) Holding public office; and
- (b) Holding office in an enterprise owned in whole or in part by the State.

8. Paragraph 1 of this article shall be without prejudice to the exercise of disciplinary powers by the competent authorities against civil servants.

9. Nothing contained in this Convention shall affect the principle that the description of the offences established in accordance with this Convention

and of the applicable legal defences or other legal principles controlling the lawfulness of conduct is reserved to the domestic law of a State Party and that such offences shall be prosecuted and punished in accordance with that law.

10. States Parties shall endeavour to promote the reintegration into society of persons convicted of offences established in accordance with this Convention.

### *Article 31. Freezing, seizure and confiscation*

1. Each State Party shall take, to the greatest extent possible within its domestic legal system, such measures as may be necessary to enable confiscation of:

(a) Proceeds of crime derived from offences established in accordance with this Convention or property the value of which corresponds to that of such proceeds;

(b) Property, equipment or other instrumentalities used in or destined for use in offences established in accordance with this Convention.

2. Each State Party shall take such measures as may be necessary to enable the identification, tracing, freezing or seizure of any item referred to in paragraph 1 of this article for the purpose of eventual confiscation.

3. Each State Party shall adopt, in accordance with its domestic law, such legislative and other measures as may be necessary to regulate the administration by the competent authorities of frozen, seized or confiscated property covered in paragraphs 1 and 2 of this article.

4. If such proceeds of crime have been transformed or converted, in part or in full, into other property, such property shall be liable to the measures referred to in this article instead of the proceeds.

5. If such proceeds of crime have been intermingled with property acquired from legitimate sources, such property shall, without prejudice to any powers relating to freezing or seizure, be liable to confiscation up to the assessed value of the intermingled proceeds.

6. Income or other benefits derived from such proceeds of crime, from property into which such proceeds of crime have been transformed or converted or from property with which such proceeds of crime have been intermingled shall also be liable to the measures referred to in this article, in the same manner and to the same extent as proceeds of crime.

7. For the purpose of this article and article 55 of this Convention, each State Party shall empower its courts or other competent authorities to order that bank, financial or commercial records be made available or seized. A State Party shall not decline to act under the provisions of this paragraph on the ground of bank secrecy.

8. States Parties may consider the possibility of requiring that an offender demonstrate the lawful origin of such alleged proceeds of crime or other property liable to confiscation, to the extent that such a requirement is consistent with the fundamental principles of their domestic law and with the nature of judicial and other proceedings.

9. The provisions of this article shall not be so construed as to prejudice the rights of bona fide third parties.

10. Nothing contained in this article shall affect the principle that the measures to which it refers shall be defined and implemented in accordance with and subject to the provisions of the domestic law of a State Party.

### *Article 32. Protection of witnesses, experts and victims*

1. Each State Party shall take appropriate measures in accordance with its domestic legal system and within its means to provide effective protection from potential retaliation or intimidation for witnesses and experts who give testimony concerning offences established in accordance with this Convention and, as appropriate, for their relatives and other persons close to them.

2. The measures envisaged in paragraph 1 of this article may include, inter alia, without prejudice to the rights of the defendant, including the right to due process:

(a) Establishing procedures for the physical protection of such persons, such as, to the extent necessary and feasible, relocating them and permitting, where appropriate, non-disclosure or limitations on the disclosure of information concerning the identity and whereabouts of such persons;

(b) Providing evidentiary rules to permit witnesses and experts to give testimony in a manner that ensures the safety of such persons, such as permitting testimony to be given through the use of communications technology such as video or other adequate means.

3. States Parties shall consider entering into agreements or arrangements with other States for the relocation of persons referred to in paragraph 1 of this article.

4. The provisions of this article shall also apply to victims insofar as they are witnesses.

5. Each State Party shall, subject to its domestic law, enable the views and concerns of victims to be presented and considered at appropriate stages of criminal proceedings against offenders in a manner not prejudicial to the rights of the defence.

#### *Article 33. Protection of reporting persons*

Each State Party shall consider incorporating into its domestic legal system appropriate measures to provide protection against any unjustified treatment for any person who reports in good faith and on reasonable grounds to the competent authorities any facts concerning offences established in accordance with this Convention.

#### *Article 34. Consequences of acts of corruption*

With due regard to the rights of third parties acquired in good faith, each State Party shall take measures, in accordance with the fundamental principles of its domestic law, to address consequences of corruption. In this context, States Parties may consider corruption a relevant factor in legal proceedings to annul or rescind a contract, withdraw a concession or other similar instrument or take any other remedial action.

#### *Article 35. Compensation for damage*

Each State Party shall take such measures as may be necessary, in accordance with principles of its domestic law, to ensure that entities or persons who have suffered damage as a result of an act of corruption have the right to initiate legal proceedings against those responsible for that damage in order to obtain compensation.

#### *Article 36. Specialized authorities*

Each State Party shall, in accordance with the fundamental principles of its legal system, ensure the existence of a body or bodies or persons specialized in combating corruption through law enforcement. Such body or bodies or persons shall be granted the necessary independence, in accordance with the fundamental principles of the legal system of the State Party, to be able to carry out

their functions effectively and without any undue influence. Such persons or staff of such body or bodies should have the appropriate training and resources to carry out their tasks.

*Article 37. Cooperation with law enforcement authorities*

1. Each State Party shall take appropriate measures to encourage persons who participate or who have participated in the commission of an offence established in accordance with this Convention to supply information useful to competent authorities for investigative and evidentiary purposes and to provide factual, specific help to competent authorities that may contribute to depriving offenders of the proceeds of crime and to recovering such proceeds.

2. Each State Party shall consider providing for the possibility, in appropriate cases, of mitigating punishment of an accused person who provides substantial cooperation in the investigation or prosecution of an offence established in accordance with this Convention.

3. Each State Party shall consider providing for the possibility, in accordance with fundamental principles of its domestic law, of granting immunity from prosecution to a person who provides substantial cooperation in the investigation or prosecution of an offence established in accordance with this Convention.

4. Protection of such persons shall be, *mutatis mutandis*, as provided for in article 32 of this Convention.

5. Where a person referred to in paragraph 1 of this article located in one State Party can provide substantial cooperation to the competent authorities of another State Party, the States Parties concerned may consider entering into agreements or arrangements, in accordance with their domestic law, concerning the potential provision by the other State Party of the treatment set forth in paragraphs 2 and 3 of this article.

*Article 38. Cooperation between national authorities*

Each State Party shall take such measures as may be necessary to encourage, in accordance with its domestic law, cooperation between, on the one hand, its public authorities, as well as its public officials, and, on the other hand, its authorities responsible for investigating and prosecuting criminal offences. Such cooperation may include:

- (a) Informing the latter authorities, on their own initiative, where there are reasonable grounds to believe that any of the offences established in accordance with articles 15, 21 and 23 of this Convention has been committed; or
- (b) Providing, upon request, to the latter authorities all necessary information.

*Article 39. Cooperation between national authorities and the private sector*

1. Each State Party shall take such measures as may be necessary to encourage, in accordance with its domestic law, cooperation between national investigating and prosecuting authorities and entities of the private sector, in particular financial institutions, relating to matters involving the commission of offences established in accordance with this Convention.

2. Each State Party shall consider encouraging its nationals and other persons with a habitual residence in its territory to report to the national investigating and prosecuting authorities the commission of an offence established in accordance with this Convention.

*Article 40. Bank secrecy*

Each State Party shall ensure that, in the case of domestic criminal investigations of offences established in accordance with this Convention, there are appropriate mechanisms available within its domestic legal system to overcome obstacles that may arise out of the application of bank secrecy laws.

*Article 41. Criminal record*

Each State Party may adopt such legislative or other measures as may be necessary to take into consideration, under such terms as and for the purpose that it deems appropriate, any previous conviction in another State of an alleged offender for the purpose of using such information in criminal proceedings relating to an offence established in accordance with this Convention.

*Article 42. Jurisdiction*

1. Each State Party shall adopt such measures as may be necessary to establish its jurisdiction over the offences established in accordance with this Convention when:

- (a) The offence is committed in the territory of that State Party; or
- (b) The offence is committed on board a vessel that is flying the flag of that State Party or an aircraft that is registered under the laws of that State Party at the time that the offence is committed.

2. Subject to article 4 of this Convention, a State Party may also establish its jurisdiction over any such offence when:

- (a) The offence is committed against a national of that State Party; or
- (b) The offence is committed by a national of that State Party or a stateless person who has his or her habitual residence in its territory; or
- (c) The offence is one of those established in accordance with article 23, paragraph 1 (b) (ii), of this Convention and is committed outside its territory with a view to the commission of an offence established in accordance with article 23, paragraph 1 (a) (i) or (ii) or (b) (i), of this Convention within its territory; or
- (d) The offence is committed against the State Party.

3. For the purposes of article 44 of this Convention, each State Party shall take such measures as may be necessary to establish its jurisdiction over the offences established in accordance with this Convention when the alleged offender is present in its territory and it does not extradite such person solely on the ground that he or she is one of its nationals.

4. Each State Party may also take such measures as may be necessary to establish its jurisdiction over the offences established in accordance with this Convention when the alleged offender is present in its territory and it does not extradite him or her.

5. If a State Party exercising its jurisdiction under paragraph 1 or 2 of this article has been notified, or has otherwise learned, that any other States Parties are conducting an investigation, prosecution or judicial proceeding in respect of the same conduct, the competent authorities of those States Parties shall, as appropriate, consult one another with a view to coordinating their actions.

6. Without prejudice to norms of general international law, this Convention shall not exclude the exercise of any criminal jurisdiction established by a State Party in accordance with its domestic law.

## **Chapter IV**

### **International cooperation**

#### *Article 43. International cooperation*

1. States Parties shall cooperate in criminal matters in accordance with articles 44 to 50 of this Convention. Where appropriate and consistent with their domestic legal system, States Parties shall consider assisting each other in investigations of and proceedings in civil and administrative matters relating to corruption.

2. In matters of international cooperation, whenever dual criminality is considered a requirement, it shall be deemed fulfilled irrespective of whether the laws of the requested State Party place the offence within the same category of offence or denominate the offence by the same terminology as the requesting State Party, if the conduct underlying the offence for which assistance is sought is a criminal offence under the laws of both States Parties.

#### *Article 44. Extradition*

1. This article shall apply to the offences established in accordance with this Convention where the person who is the subject of the request for extradition is present in the territory of the requested State Party, provided that the offence for which extradition is sought is punishable under the domestic law of both the requesting State Party and the requested State Party.

2. Notwithstanding the provisions of paragraph 1 of this article, a State Party whose law so permits may grant the extradition of a person for any of the offences covered by this Convention that are not punishable under its own domestic law.

3. If the request for extradition includes several separate offences, at least one of which is extraditable under this article and some of which are not extraditable by reason of their period of imprisonment but are related to offences established in accordance with this Convention, the requested State Party may apply this article also in respect of those offences.

4. Each of the offences to which this article applies shall be deemed to be included as an extraditable offence in any extradition treaty existing between States Parties. States Parties undertake to include such offences as extraditable offences in every extradition treaty to be concluded between them. A State Party whose law so permits, in case it uses this Convention as the basis for extradition,

shall not consider any of the offences established in accordance with this Convention to be a political offence.

5. If a State Party that makes extradition conditional on the existence of a treaty receives a request for extradition from another State Party with which it has no extradition treaty, it may consider this Convention the legal basis for extradition in respect of any offence to which this article applies.

6. A State Party that makes extradition conditional on the existence of a treaty shall:

(a) At the time of deposit of its instrument of ratification, acceptance or approval of or accession to this Convention, inform the Secretary-General of the United Nations whether it will take this Convention as the legal basis for cooperation on extradition with other States Parties to this Convention; and

(b) If it does not take this Convention as the legal basis for cooperation on extradition, seek, where appropriate, to conclude treaties on extradition with other States Parties to this Convention in order to implement this article.

7. States Parties that do not make extradition conditional on the existence of a treaty shall recognize offences to which this article applies as extraditable offences between themselves.

8. Extradition shall be subject to the conditions provided for by the domestic law of the requested State Party or by applicable extradition treaties, including, *inter alia*, conditions in relation to the minimum penalty requirement for extradition and the grounds upon which the requested State Party may refuse extradition.

9. States Parties shall, subject to their domestic law, endeavour to expedite extradition procedures and to simplify evidentiary requirements relating thereto in respect of any offence to which this article applies.

10. Subject to the provisions of its domestic law and its extradition treaties, the requested State Party may, upon being satisfied that the circumstances so warrant and are urgent and at the request of the requesting State Party, take a person whose extradition is sought and who is present in its territory into custody or take other appropriate measures to ensure his or her presence at extradition proceedings.

11. A State Party in whose territory an alleged offender is found, if it does not extradite such person in respect of an offence to which this article applies

solely on the ground that he or she is one of its nationals, shall, at the request of the State Party seeking extradition, be obliged to submit the case without undue delay to its competent authorities for the purpose of prosecution. Those authorities shall take their decision and conduct their proceedings in the same manner as in the case of any other offence of a grave nature under the domestic law of that State Party. The States Parties concerned shall cooperate with each other, in particular on procedural and evidentiary aspects, to ensure the efficiency of such prosecution.

12. Whenever a State Party is permitted under its domestic law to extradite or otherwise surrender one of its nationals only upon the condition that the person will be returned to that State Party to serve the sentence imposed as a result of the trial or proceedings for which the extradition or surrender of the person was sought and that State Party and the State Party seeking the extradition of the person agree with this option and other terms that they may deem appropriate, such conditional extradition or surrender shall be sufficient to discharge the obligation set forth in paragraph 11 of this article.

13. If extradition, sought for purposes of enforcing a sentence, is refused because the person sought is a national of the requested State Party, the requested State Party shall, if its domestic law so permits and in conformity with the requirements of such law, upon application of the requesting State Party, consider the enforcement of the sentence imposed under the domestic law of the requesting State Party or the remainder thereof.

14. Any person regarding whom proceedings are being carried out in connection with any of the offences to which this article applies shall be guaranteed fair treatment at all stages of the proceedings, including enjoyment of all the rights and guarantees provided by the domestic law of the State Party in the territory of which that person is present.

15. Nothing in this Convention shall be interpreted as imposing an obligation to extradite if the requested State Party has substantial grounds for believing that the request has been made for the purpose of prosecuting or punishing a person on account of that person's sex, race, religion, nationality, ethnic origin or political opinions or that compliance with the request would cause prejudice to that person's position for any one of these reasons.

16. States Parties may not refuse a request for extradition on the sole ground that the offence is also considered to involve fiscal matters.

17. Before refusing extradition, the requested State Party shall, where appropriate, consult with the requesting State Party to provide it with ample

opportunity to present its opinions and to provide information relevant to its allegation.

18. States Parties shall seek to conclude bilateral and multilateral agreements or arrangements to carry out or to enhance the effectiveness of extradition.

#### *Article 45. Transfer of sentenced persons*

States Parties may consider entering into bilateral or multilateral agreements or arrangements on the transfer to their territory of persons sentenced to imprisonment or other forms of deprivation of liberty for offences established in accordance with this Convention in order that they may complete their sentences there.

#### *Article 46. Mutual legal assistance*

1. States Parties shall afford one another the widest measure of mutual legal assistance in investigations, prosecutions and judicial proceedings in relation to the offences covered by this Convention.

2. Mutual legal assistance shall be afforded to the fullest extent possible under relevant laws, treaties, agreements and arrangements of the requested State Party with respect to investigations, prosecutions and judicial proceedings in relation to the offences for which a legal person may be held liable in accordance with article 26 of this Convention in the requesting State Party.

3. Mutual legal assistance to be afforded in accordance with this article may be requested for any of the following purposes:

- (a) Taking evidence or statements from persons;
- (b) Effecting service of judicial documents;
- (c) Executing searches and seizures, and freezing;
- (d) Examining objects and sites;
- (e) Providing information, evidentiary items and expert evaluations;
- (f) Providing originals or certified copies of relevant documents and records, including government, bank, financial, corporate or business records;
- (g) Identifying or tracing proceeds of crime, property, instrumentalities or other things for evidentiary purposes;
- (h) Facilitating the voluntary appearance of persons in the requesting State Party;

(i) Any other type of assistance that is not contrary to the domestic law of the requested State Party;

(j) Identifying, freezing and tracing proceeds of crime in accordance with the provisions of chapter V of this Convention;

(k) The recovery of assets, in accordance with the provisions of chapter V of this Convention.

4. Without prejudice to domestic law, the competent authorities of a State Party may, without prior request, transmit information relating to criminal matters to a competent authority in another State Party where they believe that such information could assist the authority in undertaking or successfully concluding inquiries and criminal proceedings or could result in a request formulated by the latter State Party pursuant to this Convention.

5. The transmission of information pursuant to paragraph 4 of this article shall be without prejudice to inquiries and criminal proceedings in the State of the competent authorities providing the information. The competent authorities receiving the information shall comply with a request that said information remain confidential, even temporarily, or with restrictions on its use. However, this shall not prevent the receiving State Party from disclosing in its proceedings information that is exculpatory to an accused person. In such a case, the receiving State Party shall notify the transmitting State Party prior to the disclosure and, if so requested, consult with the transmitting State Party. If, in an exceptional case, advance notice is not possible, the receiving State Party shall inform the transmitting State Party of the disclosure without delay.

6. The provisions of this article shall not affect the obligations under any other treaty, bilateral or multilateral, that governs or will govern, in whole or in part, mutual legal assistance.

7. Paragraphs 9 to 29 of this article shall apply to requests made pursuant to this article if the States Parties in question are not bound by a treaty of mutual legal assistance. If those States Parties are bound by such a treaty, the corresponding provisions of that treaty shall apply unless the States Parties agree to apply paragraphs 9 to 29 of this article in lieu thereof. States Parties are strongly encouraged to apply those paragraphs if they facilitate cooperation.

8. States Parties shall not decline to render mutual legal assistance pursuant to this article on the ground of bank secrecy.

9. (a) A requested State Party, in responding to a request for assistance pursuant to this article in the absence of dual criminality, shall take into account the purposes of this Convention, as set forth in article 1;

(b) States Parties may decline to render assistance pursuant to this article on the ground of absence of dual criminality. However, a requested State Party shall, where consistent with the basic concepts of its legal system, render assistance that does not involve coercive action. Such assistance may be refused when requests involve matters of a *de minimis* nature or matters for which the cooperation or assistance sought is available under other provisions of this Convention;

(c) Each State Party may consider adopting such measures as may be necessary to enable it to provide a wider scope of assistance pursuant to this article in the absence of dual criminality.

10. A person who is being detained or is serving a sentence in the territory of one State Party whose presence in another State Party is requested for purposes of identification, testimony or otherwise providing assistance in obtaining evidence for investigations, prosecutions or judicial proceedings in relation to offences covered by this Convention may be transferred if the following conditions are met:

(a) The person freely gives his or her informed consent;

(b) The competent authorities of both States Parties agree, subject to such conditions as those States Parties may deem appropriate.

11. For the purposes of paragraph 10 of this article:

(a) The State Party to which the person is transferred shall have the authority and obligation to keep the person transferred in custody, unless otherwise requested or authorized by the State Party from which the person was transferred;

(b) The State Party to which the person is transferred shall without delay implement its obligation to return the person to the custody of the State Party from which the person was transferred as agreed beforehand, or as otherwise agreed, by the competent authorities of both States Parties;

(c) The State Party to which the person is transferred shall not require the State Party from which the person was transferred to initiate extradition proceedings for the return of the person;

(d) The person transferred shall receive credit for service of the sentence being served in the State from which he or she was transferred for time spent in the custody of the State Party to which he or she was transferred.

12. Unless the State Party from which a person is to be transferred in accordance with paragraphs 10 and 11 of this article so agrees, that person, whatever his or her nationality, shall not be prosecuted, detained, punished or subjected to any other restriction of his or her personal liberty in the territory

of the State to which that person is transferred in respect of acts, omissions or convictions prior to his or her departure from the territory of the State from which he or she was transferred.

13. Each State Party shall designate a central authority that shall have the responsibility and power to receive requests for mutual legal assistance and either to execute them or to transmit them to the competent authorities for execution. Where a State Party has a special region or territory with a separate system of mutual legal assistance, it may designate a distinct central authority that shall have the same function for that region or territory. Central authorities shall ensure the speedy and proper execution or transmission of the requests received. Where the central authority transmits the request to a competent authority for execution, it shall encourage the speedy and proper execution of the request by the competent authority. The Secretary-General of the United Nations shall be notified of the central authority designated for this purpose at the time each State Party deposits its instrument of ratification, acceptance or approval of or accession to this Convention. Requests for mutual legal assistance and any communication related thereto shall be transmitted to the central authorities designated by the States Parties. This requirement shall be without prejudice to the right of a State Party to require that such requests and communications be addressed to it through diplomatic channels and, in urgent circumstances, where the States Parties agree, through the International Criminal Police Organization, if possible.

14. Requests shall be made in writing or, where possible, by any means capable of producing a written record, in a language acceptable to the requested State Party, under conditions allowing that State Party to establish authenticity. The Secretary-General of the United Nations shall be notified of the language or languages acceptable to each State Party at the time it deposits its instrument of ratification, acceptance or approval of or accession to this Convention. In urgent circumstances and where agreed by the States Parties, requests may be made orally but shall be confirmed in writing forthwith.

15. A request for mutual legal assistance shall contain:

- (a) The identity of the authority making the request;
- (b) The subject matter and nature of the investigation, prosecution or judicial proceeding to which the request relates and the name and functions of the authority conducting the investigation, prosecution or judicial proceeding;
- (c) A summary of the relevant facts, except in relation to requests for the purpose of service of judicial documents;
- (d) A description of the assistance sought and details of any particular procedure that the requesting State Party wishes to be followed;

(e) Where possible, the identity, location and nationality of any person concerned; and

(f) The purpose for which the evidence, information or action is sought.

16. The requested State Party may request additional information when it appears necessary for the execution of the request in accordance with its domestic law or when it can facilitate such execution.

17. A request shall be executed in accordance with the domestic law of the requested State Party and, to the extent not contrary to the domestic law of the requested State Party and where possible, in accordance with the procedures specified in the request.

18. Wherever possible and consistent with fundamental principles of domestic law, when an individual is in the territory of a State Party and has to be heard as a witness or expert by the judicial authorities of another State Party, the first State Party may, at the request of the other, permit the hearing to take place by video conference if it is not possible or desirable for the individual in question to appear in person in the territory of the requesting State Party. States Parties may agree that the hearing shall be conducted by a judicial authority of the requesting State Party and attended by a judicial authority of the requested State Party.

19. The requesting State Party shall not transmit or use information or evidence furnished by the requested State Party for investigations, prosecutions or judicial proceedings other than those stated in the request without the prior consent of the requested State Party. Nothing in this paragraph shall prevent the requesting State Party from disclosing in its proceedings information or evidence that is exculpatory to an accused person. In the latter case, the requesting State Party shall notify the requested State Party prior to the disclosure and, if so requested, consult with the requested State Party. If, in an exceptional case, advance notice is not possible, the requesting State Party shall inform the requested State Party of the disclosure without delay.

20. The requesting State Party may require that the requested State Party keep confidential the fact and substance of the request, except to the extent necessary to execute the request. If the requested State Party cannot comply with the requirement of confidentiality, it shall promptly inform the requesting State Party.

21. Mutual legal assistance may be refused:

(a) If the request is not made in conformity with the provisions of this article;

(b) If the requested State Party considers that execution of the request is likely to prejudice its sovereignty, security, *ordre public* or other essential interests;

(c) If the authorities of the requested State Party would be prohibited by its domestic law from carrying out the action requested with regard to any similar offence, had it been subject to investigation, prosecution or judicial proceedings under their own jurisdiction;

(d) If it would be contrary to the legal system of the requested State Party relating to mutual legal assistance for the request to be granted.

22. States Parties may not refuse a request for mutual legal assistance on the sole ground that the offence is also considered to involve fiscal matters.

23. Reasons shall be given for any refusal of mutual legal assistance.

24. The requested State Party shall execute the request for mutual legal assistance as soon as possible and shall take as full account as possible of any deadlines suggested by the requesting State Party and for which reasons are given, preferably in the request. The requesting State Party may make reasonable requests for information on the status and progress of measures taken by the requested State Party to satisfy its request. The requested State Party shall respond to reasonable requests by the requesting State Party on the status, and progress in its handling, of the request. The requesting State Party shall promptly inform the requested State Party when the assistance sought is no longer required.

25. Mutual legal assistance may be postponed by the requested State Party on the ground that it interferes with an ongoing investigation, prosecution or judicial proceeding.

26. Before refusing a request pursuant to paragraph 21 of this article or postponing its execution pursuant to paragraph 25 of this article, the requested State Party shall consult with the requesting State Party to consider whether assistance may be granted subject to such terms and conditions as it deems necessary. If the requesting State Party accepts assistance subject to those conditions, it shall comply with the conditions.

27. Without prejudice to the application of paragraph 12 of this article, a witness, expert or other person who, at the request of the requesting State Party, consents to give evidence in a proceeding or to assist in an investigation, prosecution or judicial proceeding in the territory of the requesting State Party shall not be prosecuted, detained, punished or subjected to any other restriction of his or her personal liberty in that territory in respect of acts, omissions or

convictions prior to his or her departure from the territory of the requested State Party. Such safe conduct shall cease when the witness, expert or other person having had, for a period of fifteen consecutive days or for any period agreed upon by the States Parties from the date on which he or she has been officially informed that his or her presence is no longer required by the judicial authorities, an opportunity of leaving, has nevertheless remained voluntarily in the territory of the requesting State Party or, having left it, has returned of his or her own free will.

28. The ordinary costs of executing a request shall be borne by the requested State Party, unless otherwise agreed by the States Parties concerned. If expenses of a substantial or extraordinary nature are or will be required to fulfil the request, the States Parties shall consult to determine the terms and conditions under which the request will be executed, as well as the manner in which the costs shall be borne.

29. The requested State Party:

(a) Shall provide to the requesting State Party copies of government records, documents or information in its possession that under its domestic law are available to the general public;

(b) May, at its discretion, provide to the requesting State Party in whole, in part or subject to such conditions as it deems appropriate, copies of any government records, documents or information in its possession that under its domestic law are not available to the general public.

30. States Parties shall consider, as may be necessary, the possibility of concluding bilateral or multilateral agreements or arrangements that would serve the purposes of, give practical effect to or enhance the provisions of this article.

#### *Article 47. Transfer of criminal proceedings*

States Parties shall consider the possibility of transferring to one another proceedings for the prosecution of an offence established in accordance with this Convention in cases where such transfer is considered to be in the interests of the proper administration of justice, in particular in cases where several jurisdictions are involved, with a view to concentrating the prosecution.

#### *Article 48. Law enforcement cooperation*

1. States Parties shall cooperate closely with one another, consistent with their respective domestic legal and administrative systems, to enhance the

effectiveness of law enforcement action to combat the offences covered by this Convention. States Parties shall, in particular, take effective measures:

(a) To enhance and, where necessary, to establish channels of communication between their competent authorities, agencies and services in order to facilitate the secure and rapid exchange of information concerning all aspects of the offences covered by this Convention, including, if the States Parties concerned deem it appropriate, links with other criminal activities;

(b) To cooperate with other States Parties in conducting inquiries with respect to offences covered by this Convention concerning:

- (i) The identity, whereabouts and activities of persons suspected of involvement in such offences or the location of other persons concerned;
- (ii) The movement of proceeds of crime or property derived from the commission of such offences;
- (iii) The movement of property, equipment or other instrumentalities used or intended for use in the commission of such offences;

(c) To provide, where appropriate, necessary items or quantities of substances for analytical or investigative purposes;

(d) To exchange, where appropriate, information with other States Parties concerning specific means and methods used to commit offences covered by this Convention, including the use of false identities, forged, altered or false documents and other means of concealing activities;

(e) To facilitate effective coordination between their competent authorities, agencies and services and to promote the exchange of personnel and other experts, including, subject to bilateral agreements or arrangements between the States Parties concerned, the posting of liaison officers;

(f) To exchange information and coordinate administrative and other measures taken as appropriate for the purpose of early identification of the offences covered by this Convention.

2. With a view to giving effect to this Convention, States Parties shall consider entering into bilateral or multilateral agreements or arrangements on direct cooperation between their law enforcement agencies and, where such agreements or arrangements already exist, amending them. In the absence of such agreements or arrangements between the States Parties concerned, the States Parties may consider this Convention to be the basis for mutual law enforcement cooperation in respect of the offences covered by this Convention. Whenever appropriate, States Parties shall make full use of agreements or arrangements, including international or regional organizations, to enhance the cooperation between their law enforcement agencies.

3. States Parties shall endeavour to cooperate within their means to respond to offences covered by this Convention committed through the use of modern technology.

#### *Article 49. Joint investigations*

States Parties shall consider concluding bilateral or multilateral agreements or arrangements whereby, in relation to matters that are the subject of investigations, prosecutions or judicial proceedings in one or more States, the competent authorities concerned may establish joint investigative bodies. In the absence of such agreements or arrangements, joint investigations may be undertaken by agreement on a case-by-case basis. The States Parties involved shall ensure that the sovereignty of the State Party in whose territory such investigation is to take place is fully respected.

#### *Article 50. Special investigative techniques*

1. In order to combat corruption effectively, each State Party shall, to the extent permitted by the basic principles of its domestic legal system and in accordance with the conditions prescribed by its domestic law, take such measures as may be necessary, within its means, to allow for the appropriate use by its competent authorities of controlled delivery and, where it deems appropriate, other special investigative techniques, such as electronic or other forms of surveillance and undercover operations, within its territory, and to allow for the admissibility in court of evidence derived therefrom.

2. For the purpose of investigating the offences covered by this Convention, States Parties are encouraged to conclude, when necessary, appropriate bilateral or multilateral agreements or arrangements for using such special investigative techniques in the context of cooperation at the international level. Such agreements or arrangements shall be concluded and implemented in full compliance with the principle of sovereign equality of States and shall be carried out strictly in accordance with the terms of those agreements or arrangements.

3. In the absence of an agreement or arrangement as set forth in paragraph 2 of this article, decisions to use such special investigative techniques at the international level shall be made on a case-by-case basis and may, when necessary, take into consideration financial arrangements and understandings with respect to the exercise of jurisdiction by the States Parties concerned.

4. Decisions to use controlled delivery at the international level may, with the consent of the States Parties concerned, include methods such as intercepting and allowing the goods or funds to continue intact or be removed or replaced in whole or in part.

## Chapter V Asset recovery

### *Article 51. General provision*

The return of assets pursuant to this chapter is a fundamental principle of this Convention, and States Parties shall afford one another the widest measure of cooperation and assistance in this regard.

### *Article 52. Prevention and detection of transfers of proceeds of crime*

1. Without prejudice to article 14 of this Convention, each State Party shall take such measures as may be necessary, in accordance with its domestic law, to require financial institutions within its jurisdiction to verify the identity of customers, to take reasonable steps to determine the identity of beneficial owners of funds deposited into high-value accounts and to conduct enhanced scrutiny of accounts sought or maintained by or on behalf of individuals who are, or have been, entrusted with prominent public functions and their family members and close associates. Such enhanced scrutiny shall be reasonably designed to detect suspicious transactions for the purpose of reporting to competent authorities and should not be so construed as to discourage or prohibit financial institutions from doing business with any legitimate customer.

2. In order to facilitate implementation of the measures provided for in paragraph 1 of this article, each State Party, in accordance with its domestic law and inspired by relevant initiatives of regional, interregional and multilateral organizations against money-laundering, shall:

(a) Issue advisories regarding the types of natural or legal person to whose accounts financial institutions within its jurisdiction will be expected to apply enhanced scrutiny, the types of accounts and transactions to which to pay particular attention and appropriate account-opening, maintenance and record-keeping measures to take concerning such accounts; and

(b) Where appropriate, notify financial institutions within its jurisdiction, at the request of another State Party or on its own initiative, of the identity of particular natural or legal persons to whose accounts such institutions will be expected to apply enhanced scrutiny, in addition to those whom the financial institutions may otherwise identify.

3. In the context of paragraph 2 (a) of this article, each State Party shall implement measures to ensure that its financial institutions maintain adequate

records, over an appropriate period of time, of accounts and transactions involving the persons mentioned in paragraph 1 of this article, which should, as a minimum, contain information relating to the identity of the customer as well as, as far as possible, of the beneficial owner.

4. With the aim of preventing and detecting transfers of proceeds of offences established in accordance with this Convention, each State Party shall implement appropriate and effective measures to prevent, with the help of its regulatory and oversight bodies, the establishment of banks that have no physical presence and that are not affiliated with a regulated financial group. Moreover, States Parties may consider requiring their financial institutions to refuse to enter into or continue a correspondent banking relationship with such institutions and to guard against establishing relations with foreign financial institutions that permit their accounts to be used by banks that have no physical presence and that are not affiliated with a regulated financial group.

5. Each State Party shall consider establishing, in accordance with its domestic law, effective financial disclosure systems for appropriate public officials and shall provide for appropriate sanctions for non-compliance. Each State Party shall also consider taking such measures as may be necessary to permit its competent authorities to share that information with the competent authorities in other States Parties when necessary to investigate, claim and recover proceeds of offences established in accordance with this Convention.

6. Each State Party shall consider taking such measures as may be necessary, in accordance with its domestic law, to require appropriate public officials having an interest in or signature or other authority over a financial account in a foreign country to report that relationship to appropriate authorities and to maintain appropriate records related to such accounts. Such measures shall also provide for appropriate sanctions for non-compliance.

#### *Article 53. Measures for direct recovery of property*

Each State Party shall, in accordance with its domestic law:

(a) Take such measures as may be necessary to permit another State Party to initiate civil action in its courts to establish title to or ownership of property acquired through the commission of an offence established in accordance with this Convention;

(b) Take such measures as may be necessary to permit its courts to order those who have committed offences established in accordance with this Convention to pay compensation or damages to another State Party that has been harmed by such offences; and

(c) Take such measures as may be necessary to permit its courts or competent authorities, when having to decide on confiscation, to recognize another State Party's claim as a legitimate owner of property acquired through the commission of an offence established in accordance with this Convention.

*Article 54. Mechanisms for recovery of property through international cooperation in confiscation*

1. Each State Party, in order to provide mutual legal assistance pursuant to article 55 of this Convention with respect to property acquired through or involved in the commission of an offence established in accordance with this Convention, shall, in accordance with its domestic law:

(a) Take such measures as may be necessary to permit its competent authorities to give effect to an order of confiscation issued by a court of another State Party;

(b) Take such measures as may be necessary to permit its competent authorities, where they have jurisdiction, to order the confiscation of such property of foreign origin by adjudication of an offence of money-laundering or such other offence as may be within its jurisdiction or by other procedures authorized under its domestic law; and

(c) Consider taking such measures as may be necessary to allow confiscation of such property without a criminal conviction in cases in which the offender cannot be prosecuted by reason of death, flight or absence or in other appropriate cases.

2. Each State Party, in order to provide mutual legal assistance upon a request made pursuant to paragraph 2 of article 55 of this Convention, shall, in accordance with its domestic law:

(a) Take such measures as may be necessary to permit its competent authorities to freeze or seize property upon a freezing or seizure order issued by a court or competent authority of a requesting State Party that provides a reasonable basis for the requested State Party to believe that there are sufficient grounds for taking such actions and that the property would eventually be subject to an order of confiscation for purposes of paragraph 1 (a) of this article;

(b) Take such measures as may be necessary to permit its competent authorities to freeze or seize property upon a request that provides a reasonable basis for the requested State Party to believe that there are sufficient grounds for taking such actions and that the property would eventually be subject to an order of confiscation for purposes of paragraph 1 (a) of this article; and

(c) Consider taking additional measures to permit its competent authorities to preserve property for confiscation, such as on the basis of a foreign arrest or criminal charge related to the acquisition of such property.

*Article 55. International cooperation for purposes of confiscation*

1. A State Party that has received a request from another State Party having jurisdiction over an offence established in accordance with this Convention for confiscation of proceeds of crime, property, equipment or other instrumentalities referred to in article 31, paragraph 1, of this Convention situated in its territory shall, to the greatest extent possible within its domestic legal system:

(a) Submit the request to its competent authorities for the purpose of obtaining an order of confiscation and, if such an order is granted, give effect to it; or

(b) Submit to its competent authorities, with a view to giving effect to it to the extent requested, an order of confiscation issued by a court in the territory of the requesting State Party in accordance with articles 31, paragraph 1, and 54, paragraph 1 (a), of this Convention insofar as it relates to proceeds of crime, property, equipment or other instrumentalities referred to in article 31, paragraph 1, situated in the territory of the requested State Party.

2. Following a request made by another State Party having jurisdiction over an offence established in accordance with this Convention, the requested State Party shall take measures to identify, trace and freeze or seize proceeds of crime, property, equipment or other instrumentalities referred to in article 31, paragraph 1, of this Convention for the purpose of eventual confiscation to be ordered either by the requesting State Party or, pursuant to a request under paragraph 1 of this article, by the requested State Party.

3. The provisions of article 46 of this Convention are applicable, *mutatis mutandis*, to this article. In addition to the information specified in article 46, paragraph 15, requests made pursuant to this article shall contain:

(a) In the case of a request pertaining to paragraph 1 (a) of this article, a description of the property to be confiscated, including, to the extent possible, the location and, where relevant, the estimated value of the property and a statement of the facts relied upon by the requesting State Party sufficient to enable the requested State Party to seek the order under its domestic law;

(b) In the case of a request pertaining to paragraph 1 (b) of this article, a legally admissible copy of an order of confiscation upon which the request is

based issued by the requesting State Party, a statement of the facts and information as to the extent to which execution of the order is requested, a statement specifying the measures taken by the requesting State Party to provide adequate notification to bona fide third parties and to ensure due process and a statement that the confiscation order is final;

(c) In the case of a request pertaining to paragraph 2 of this article, a statement of the facts relied upon by the requesting State Party and a description of the actions requested and, where available, a legally admissible copy of an order on which the request is based.

4. The decisions or actions provided for in paragraphs 1 and 2 of this article shall be taken by the requested State Party in accordance with and subject to the provisions of its domestic law and its procedural rules or any bilateral or multilateral agreement or arrangement to which it may be bound in relation to the requesting State Party.

5. Each State Party shall furnish copies of its laws and regulations that give effect to this article and of any subsequent changes to such laws and regulations or a description thereof to the Secretary-General of the United Nations.

6. If a State Party elects to make the taking of the measures referred to in paragraphs 1 and 2 of this article conditional on the existence of a relevant treaty, that State Party shall consider this Convention the necessary and sufficient treaty basis.

7. Cooperation under this article may also be refused or provisional measures lifted if the requested State Party does not receive sufficient and timely evidence or if the property is of a *de minimis* value.

8. Before lifting any provisional measure taken pursuant to this article, the requested State Party shall, wherever possible, give the requesting State Party an opportunity to present its reasons in favour of continuing the measure.

9. The provisions of this article shall not be construed as prejudicing the rights of bona fide third parties.

#### *Article 56. Special cooperation*

Without prejudice to its domestic law, each State Party shall endeavour to take measures to permit it to forward, without prejudice to its own investigations, prosecutions or judicial proceedings, information on proceeds of offences

established in accordance with this Convention to another State Party without prior request, when it considers that the disclosure of such information might assist the receiving State Party in initiating or carrying out investigations, prosecutions or judicial proceedings or might lead to a request by that State Party under this chapter of the Convention.

*Article 57. Return and disposal of assets*

1. Property confiscated by a State Party pursuant to article 31 or 55 of this Convention shall be disposed of, including by return to its prior legitimate owners, pursuant to paragraph 3 of this article, by that State Party in accordance with the provisions of this Convention and its domestic law.

2. Each State Party shall adopt such legislative and other measures, in accordance with the fundamental principles of its domestic law, as may be necessary to enable its competent authorities to return confiscated property, when acting on the request made by another State Party, in accordance with this Convention, taking into account the rights of bona fide third parties.

3. In accordance with articles 46 and 55 of this Convention and paragraphs 1 and 2 of this article, the requested State Party shall:

(a) In the case of embezzlement of public funds or of laundering of embezzled public funds as referred to in articles 17 and 23 of this Convention, when confiscation was executed in accordance with article 55 and on the basis of a final judgement in the requesting State Party, a requirement that can be waived by the requested State Party, return the confiscated property to the requesting State Party;

(b) In the case of proceeds of any other offence covered by this Convention, when the confiscation was executed in accordance with article 55 of this Convention and on the basis of a final judgement in the requesting State Party, a requirement that can be waived by the requested State Party, return the confiscated property to the requesting State Party, when the requesting State Party reasonably establishes its prior ownership of such confiscated property to the requested State Party or when the requested State Party recognizes damage to the requesting State Party as a basis for returning the confiscated property;

(c) In all other cases, give priority consideration to returning confiscated property to the requesting State Party, returning such property to its prior legitimate owners or compensating the victims of the crime.

4. Where appropriate, unless States Parties decide otherwise, the requested State Party may deduct reasonable expenses incurred in investigations,

prosecutions or judicial proceedings leading to the return or disposition of confiscated property pursuant to this article.

5. Where appropriate, States Parties may also give special consideration to concluding agreements or mutually acceptable arrangements, on a case-by-case basis, for the final disposal of confiscated property.

#### *Article 58. Financial intelligence unit*

States Parties shall cooperate with one another for the purpose of preventing and combating the transfer of proceeds of offences established in accordance with this Convention and of promoting ways and means of recovering such proceeds and, to that end, shall consider establishing a financial intelligence unit to be responsible for receiving, analysing and disseminating to the competent authorities reports of suspicious financial transactions.

#### *Article 59. Bilateral and multilateral agreements and arrangements*

States Parties shall consider concluding bilateral or multilateral agreements or arrangements to enhance the effectiveness of international cooperation undertaken pursuant to this chapter of the Convention.

## **Chapter VI**

### **Technical assistance and information exchange**

#### *Article 60. Training and technical assistance*

1. Each State Party shall, to the extent necessary, initiate, develop or improve specific training programmes for its personnel responsible for preventing and combating corruption. Such training programmes could deal, inter alia, with the following areas:

(a) Effective measures to prevent, detect, investigate, punish and control corruption, including the use of evidence-gathering and investigative methods;

(b) Building capacity in the development and planning of strategic anti-corruption policy;

(c) Training competent authorities in the preparation of requests for mutual legal assistance that meet the requirements of this Convention;

(d) Evaluation and strengthening of institutions, public service management and the management of public finances, including public procurement, and the private sector;

(e) Preventing and combating the transfer of proceeds of offences established in accordance with this Convention and recovering such proceeds;

(f) Detecting and freezing of the transfer of proceeds of offences established in accordance with this Convention;

(g) Surveillance of the movement of proceeds of offences established in accordance with this Convention and of the methods used to transfer, conceal or disguise such proceeds;

(h) Appropriate and efficient legal and administrative mechanisms and methods for facilitating the return of proceeds of offences established in accordance with this Convention;

(i) Methods used in protecting victims and witnesses who cooperate with judicial authorities; and

(j) Training in national and international regulations and in languages.

2. States Parties shall, according to their capacity, consider affording one another the widest measure of technical assistance, especially for the benefit of developing countries, in their respective plans and programmes to combat corruption, including material support and training in the areas referred to in paragraph 1 of this article, and training and assistance and the mutual exchange of relevant experience and specialized knowledge, which will facilitate international cooperation between States Parties in the areas of extradition and mutual legal assistance.

3. States Parties shall strengthen, to the extent necessary, efforts to maximize operational and training activities in international and regional organizations and in the framework of relevant bilateral and multilateral agreements or arrangements.

4. States Parties shall consider assisting one another, upon request, in conducting evaluations, studies and research relating to the types, causes, effects and costs of corruption in their respective countries, with a view to developing, with the participation of competent authorities and society, strategies and action plans to combat corruption.

5. In order to facilitate the recovery of proceeds of offences established in accordance with this Convention, States Parties may cooperate in providing each other with the names of experts who could assist in achieving that objective.

6. States Parties shall consider using subregional, regional and international conferences and seminars to promote cooperation and technical assistance and to stimulate discussion on problems of mutual concern, including the special problems and needs of developing countries and countries with economies in transition.

7. States Parties shall consider establishing voluntary mechanisms with a view to contributing financially to the efforts of developing countries and countries with economies in transition to apply this Convention through technical assistance programmes and projects.

8. Each State Party shall consider making voluntary contributions to the United Nations Office on Drugs and Crime for the purpose of fostering, through the Office, programmes and projects in developing countries with a view to implementing this Convention.

*Article 61. Collection, exchange and analysis of information on corruption*

1. Each State Party shall consider analysing, in consultation with experts, trends in corruption in its territory, as well as the circumstances in which corruption offences are committed.

2. States Parties shall consider developing and sharing with each other and through international and regional organizations statistics, analytical expertise concerning corruption and information with a view to developing, insofar as possible, common definitions, standards and methodologies, as well as information on best practices to prevent and combat corruption.

3. Each State Party shall consider monitoring its policies and actual measures to combat corruption and making assessments of their effectiveness and efficiency.

*Article 62. Other measures: implementation of the Convention through economic development and technical assistance*

1. States Parties shall take measures conducive to the optimal implementation of this Convention to the extent possible, through international cooperation, taking into account the negative effects of corruption on society in general, in particular on sustainable development.

2. States Parties shall make concrete efforts to the extent possible and in coordination with each other, as well as with international and regional organizations:

(a) To enhance their cooperation at various levels with developing countries, with a view to strengthening the capacity of the latter to prevent and combat corruption;

(b) To enhance financial and material assistance to support the efforts of developing countries to prevent and fight corruption effectively and to help them implement this Convention successfully;

(c) To provide technical assistance to developing countries and countries with economies in transition to assist them in meeting their needs for the implementation of this Convention. To that end, States Parties shall endeavour to make adequate and regular voluntary contributions to an account specifically designated for that purpose in a United Nations funding mechanism. States Parties may also give special consideration, in accordance with their domestic law and the provisions of this Convention, to contributing to that account a percentage of the money or of the corresponding value of proceeds of crime or property confiscated in accordance with the provisions of this Convention;

(d) To encourage and persuade other States and financial institutions as appropriate to join them in efforts in accordance with this article, in particular by providing more training programmes and modern equipment to developing countries in order to assist them in achieving the objectives of this Convention.

3. To the extent possible, these measures shall be without prejudice to existing foreign assistance commitments or to other financial cooperation arrangements at the bilateral, regional or international level.

4. States Parties may conclude bilateral or multilateral agreements or arrangements on material and logistical assistance, taking into consideration the financial arrangements necessary for the means of international cooperation provided for by this Convention to be effective and for the prevention, detection and control of corruption.

## **Chapter VII**

### **Mechanisms for implementation**

#### *Article 63. Conference of the States Parties to the Convention*

1. A Conference of the States Parties to the Convention is hereby established to improve the capacity of and cooperation between States Parties to achieve the objectives set forth in this Convention and to promote and review its implementation.

2. The Secretary-General of the United Nations shall convene the Conference of the States Parties not later than one year following the entry into force of this Convention. Thereafter, regular meetings of the Conference of the States Parties shall be held in accordance with the rules of procedure adopted by the Conference.

3. The Conference of the States Parties shall adopt rules of procedure and rules governing the functioning of the activities set forth in this article, including rules concerning the admission and participation of observers, and the payment of expenses incurred in carrying out those activities.

4. The Conference of the States Parties shall agree upon activities, procedures and methods of work to achieve the objectives set forth in paragraph 1 of this article, including:

(a) Facilitating activities by States Parties under articles 60 and 62 and chapters II to V of this Convention, including by encouraging the mobilization of voluntary contributions;

(b) Facilitating the exchange of information among States Parties on patterns and trends in corruption and on successful practices for preventing and combating it and for the return of proceeds of crime, through, inter alia, the publication of relevant information as mentioned in this article;

(c) Cooperating with relevant international and regional organizations and mechanisms and non-governmental organizations;

(d) Making appropriate use of relevant information produced by other international and regional mechanisms for combating and preventing corruption in order to avoid unnecessary duplication of work;

(e) Reviewing periodically the implementation of this Convention by its States Parties;

(f) Making recommendations to improve this Convention and its implementation;

(g) Taking note of the technical assistance requirements of States Parties with regard to the implementation of this Convention and recommending any action it may deem necessary in that respect.

5. For the purpose of paragraph 4 of this article, the Conference of the States Parties shall acquire the necessary knowledge of the measures taken by States Parties in implementing this Convention and the difficulties encountered by them in doing so through information provided by them and through such supplemental review mechanisms as may be established by the Conference of the States Parties.

6. Each State Party shall provide the Conference of the States Parties with information on its programmes, plans and practices, as well as on legislative and administrative measures to implement this Convention, as required by the Conference of the States Parties. The Conference of the States Parties shall examine the most effective way of receiving and acting upon information, including, inter alia, information received from States Parties and from competent international organizations. Inputs received from relevant non-governmental organizations duly accredited in accordance with procedures to be decided upon by the Conference of the States Parties may also be considered.

7. Pursuant to paragraphs 4 to 6 of this article, the Conference of the States Parties shall establish, if it deems it necessary, any appropriate mechanism or body to assist in the effective implementation of the Convention.

#### *Article 64. Secretariat*

1. The Secretary-General of the United Nations shall provide the necessary secretariat services to the Conference of the States Parties to the Convention.

2. The secretariat shall:

(a) Assist the Conference of the States Parties in carrying out the activities set forth in article 63 of this Convention and make arrangements and provide the necessary services for the sessions of the Conference of the States Parties;

(b) Upon request, assist States Parties in providing information to the Conference of the States Parties as envisaged in article 63, paragraphs 5 and 6, of this Convention; and

(c) Ensure the necessary coordination with the secretariats of relevant international and regional organizations.

### **Chapter VIII** **Final provisions**

#### *Article 65. Implementation of the Convention*

1. Each State Party shall take the necessary measures, including legislative and administrative measures, in accordance with fundamental principles of its domestic law, to ensure the implementation of its obligations under this Convention.

2. Each State Party may adopt more strict or severe measures than those provided for by this Convention for preventing and combating corruption.

*Article 66. Settlement of disputes*

1. States Parties shall endeavour to settle disputes concerning the interpretation or application of this Convention through negotiation.

2. Any dispute between two or more States Parties concerning the interpretation or application of this Convention that cannot be settled through negotiation within a reasonable time shall, at the request of one of those States Parties, be submitted to arbitration. If, six months after the date of the request for arbitration, those States Parties are unable to agree on the organization of the arbitration, any one of those States Parties may refer the dispute to the International Court of Justice by request in accordance with the Statute of the Court.

3. Each State Party may, at the time of signature, ratification, acceptance or approval of or accession to this Convention, declare that it does not consider itself bound by paragraph 2 of this article. The other States Parties shall not be bound by paragraph 2 of this article with respect to any State Party that has made such a reservation.

4. Any State Party that has made a reservation in accordance with paragraph 3 of this article may at any time withdraw that reservation by notification to the Secretary-General of the United Nations.

*Article 67. Signature, ratification, acceptance, approval and accession*

1. This Convention shall be open to all States for signature from 9 to 11 December 2003 in Merida, Mexico, and thereafter at United Nations Headquarters in New York until 9 December 2005.

2. This Convention shall also be open for signature by regional economic integration organizations provided that at least one member State of such organization has signed this Convention in accordance with paragraph 1 of this article.

3. This Convention is subject to ratification, acceptance or approval. Instruments of ratification, acceptance or approval shall be deposited with the Secretary-General of the United Nations. A regional economic integration organization may deposit its instrument of ratification, acceptance or approval if at least one of its member States has done likewise. In that instrument of

ratification, acceptance or approval, such organization shall declare the extent of its competence with respect to the matters governed by this Convention. Such organization shall also inform the depositary of any relevant modification in the extent of its competence.

4. This Convention is open for accession by any State or any regional economic integration organization of which at least one member State is a Party to this Convention. Instruments of accession shall be deposited with the Secretary-General of the United Nations. At the time of its accession, a regional economic integration organization shall declare the extent of its competence with respect to matters governed by this Convention. Such organization shall also inform the depositary of any relevant modification in the extent of its competence.

#### *Article 68. Entry into force*

1. This Convention shall enter into force on the ninetieth day after the date of deposit of the thirtieth instrument of ratification, acceptance, approval or accession. For the purpose of this paragraph, any instrument deposited by a regional economic integration organization shall not be counted as additional to those deposited by member States of such organization.

2. For each State or regional economic integration organization ratifying, accepting, approving or acceding to this Convention after the deposit of the thirtieth instrument of such action, this Convention shall enter into force on the thirtieth day after the date of deposit by such State or organization of the relevant instrument or on the date this Convention enters into force pursuant to paragraph 1 of this article, whichever is later.

#### *Article 69. Amendment*

1. After the expiry of five years from the entry into force of this Convention, a State Party may propose an amendment and transmit it to the Secretary-General of the United Nations, who shall thereupon communicate the proposed amendment to the States Parties and to the Conference of the States Parties to the Convention for the purpose of considering and deciding on the proposal. The Conference of the States Parties shall make every effort to achieve consensus on each amendment. If all efforts at consensus have been exhausted and no agreement has been reached, the amendment shall, as a last resort, require for its adoption a two-thirds majority vote of the States Parties present and voting at the meeting of the Conference of the States Parties.

2. Regional economic integration organizations, in matters within their competence, shall exercise their right to vote under this article with a number of votes equal to the number of their member States that are Parties to this Convention. Such organizations shall not exercise their right to vote if their member States exercise theirs and vice versa.

3. An amendment adopted in accordance with paragraph 1 of this article is subject to ratification, acceptance or approval by States Parties.

4. An amendment adopted in accordance with paragraph 1 of this article shall enter into force in respect of a State Party ninety days after the date of the deposit with the Secretary-General of the United Nations of an instrument of ratification, acceptance or approval of such amendment.

5. When an amendment enters into force, it shall be binding on those States Parties which have expressed their consent to be bound by it. Other States Parties shall still be bound by the provisions of this Convention and any earlier amendments that they have ratified, accepted or approved.

#### *Article 70. Denunciation*

1. A State Party may denounce this Convention by written notification to the Secretary-General of the United Nations. Such denunciation shall become effective one year after the date of receipt of the notification by the Secretary-General.

2. A regional economic integration organization shall cease to be a Party to this Convention when all of its member States have denounced it.

#### *Article 71. Depositary and languages*

1. The Secretary-General of the United Nations is designated depositary of this Convention.

2. The original of this Convention, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.

IN WITNESS WHEREOF, the undersigned plenipotentiaries, being duly authorized thereto by their respective Governments, have signed this Convention.

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# Convention on Mutual Administrative Assistance in Tax Matters

Text amended by the provisions of the Protocol amending the Convention on Mutual Administrative Assistance in Tax Matters, which entered into force on 1<sup>st</sup> June 2011.

## **Preamble**

The member States of the Council of Europe and the member countries of the Organisation for Economic Co-operation and Development (OECD), signatories of this Convention,

Considering that the development of international movement of persons, capital, goods and services – although highly beneficial in itself – has increased the possibilities of tax avoidance and evasion and therefore requires increasing co-operation among tax authorities;

Welcoming the various efforts made in recent years to combat tax avoidance and tax evasion on an international level, whether bilaterally or multilaterally;

Considering that a co-ordinated effort between States is necessary in order to foster all forms of administrative assistance in matters concerning taxes of any kind whilst at the same time ensuring adequate protection of the rights of taxpayers;

Recognising that international co-operation can play an important part in facilitating the proper determination of tax liabilities and in helping the taxpayer to secure his rights;

Considering that fundamental principles entitling every person to have his rights and obligations determined in accordance with a proper legal procedure should be recognised as applying to tax matters in all States and that States should endeavour to protect the legitimate interests of taxpayers, including appropriate protection against discrimination and double taxation;

Convinced therefore that States should carry out measures or supply information, having regard to the necessity of protecting the confidentiality of information, and taking account of international instruments for the protection of privacy and flows of personal data;

Considering that a new co-operative environment has emerged and that it is desirable that a multilateral instrument is made available to allow the widest number of States to obtain the benefits of the new co-operative environment and at the same time implement the highest international standards of co-operation in the tax field;

Desiring to conclude a convention on mutual administrative assistance in tax matters,

Have agreed as follows:

## Chapter I – Scope of the Convention

### Article 1 – Object of the Convention and persons covered

- 1 The Parties shall, subject to the provisions of Chapter IV, provide administrative assistance to each other in tax matters. Such assistance may involve, where appropriate, measures taken by judicial bodies.
- 2 Such administrative assistance shall comprise:
  - a exchange of information, including simultaneous tax examinations and participation in tax examinations abroad;
  - b assistance in recovery, including measures of conservancy; and
  - c service of documents.
- 3 A Party shall provide administrative assistance whether the person affected is a resident or national of a Party or of any other State.

### Article 2 – Taxes covered

- 1 This Convention shall apply:
  - a to the following taxes:
    - i taxes on income or profits,
    - ii taxes on capital gains which are imposed separately from the tax on income or profits,
    - iii taxes on net wealth,imposed on behalf of a Party; and
  - b to the following taxes:
    - i taxes on income, profits, capital gains or net wealth which are imposed on behalf of political subdivisions or local authorities of a Party,
    - ii compulsory social security contributions payable to general government or to social security institutions established under public law, and
    - iii taxes in other categories, except customs duties, imposed on behalf of a Party, namely:
      - A. estate, inheritance or gift taxes,

- B. taxes on immovable property,
  - C. general consumption taxes, such as value added or sales taxes,
  - D. specific taxes on goods and services such as excise taxes,
  - E. taxes on the use or ownership of motor vehicles,
  - F. taxes on the use or ownership of movable property other than motor vehicles,
  - G. any other taxes;
- iv taxes in categories referred to in sub-paragraph iii. above which are imposed on behalf of political subdivisions or local authorities of a Party.
- 2 The existing taxes to which the Convention shall apply are listed in Annex A in the categories referred to in paragraph 1.
  - 3 The Parties shall notify the Secretary General of the Council of Europe or the Secretary General of OECD (hereinafter referred to as the "Depositaries") of any change to be made to Annex A as a result of a modification of the list mentioned in paragraph 2. Such change shall take effect on the first day of the month following the expiration of a period of three months after the date of receipt of such notification by the Depositary.
  - 4 The Convention shall also apply, as from their adoption, to any identical or substantially similar taxes which are imposed in a Contracting State after the entry into force of the Convention in respect of that Party in addition to or in place of the existing taxes listed in Annex A and, in that event, the Party concerned shall notify one of the Depositaries of the adoption of the tax in question.

## **Chapter II – General definitions**

### **Article 3 – Definitions**

- 1 For the purposes of this Convention, unless the context otherwise requires:
  - a the terms "applicant State" and "requested State" mean respectively any Party applying for administrative assistance in tax matters and any Party requested to provide such assistance;
  - b the term "tax" means any tax or social security contribution to which the Convention applies pursuant to Article 2;
  - c the term "tax claim" means any amount of tax, as well as interest thereon, related administrative fines and costs incidental to recovery, which are owed and not yet paid;

- d the term “competent authority” means the persons and authorities listed in Annex B;
- e the term “nationals” in relation to a Party means:
  - i all individuals possessing the nationality of that Party, and
  - ii all legal persons, partnerships, associations and other entities deriving their status as such from the laws in force in that Party.

For each Party that has made a declaration for that purpose, the terms used above will be understood as defined in Annex C.

- 2 As regards the application of the Convention by a Party, any term not defined therein shall, unless the context otherwise requires, have the meaning which it has under the law of that Party concerning the taxes covered by the Convention.
- 3 The Parties shall notify one of the Depositaries of any change to be made to Annexes B and C. Such change shall take effect on the first day of the month following the expiration of a period of three months after the date of receipt of such notification by the Depositary in question.

### **Chapter III – Forms of assistance**

#### **Section I – Exchange of information**

##### **Article 4 – General provision**

- 1 The Parties shall exchange any information, in particular as provided in this section, that is foreseeably relevant for the administration or enforcement of their domestic laws concerning the taxes covered by this Convention.
- 2 Deleted.
- 3 Any Party may, by a declaration addressed to one of the Depositaries, indicate that, according to its internal legislation, its authorities may inform its resident or national before transmitting information concerning him, in conformity with Articles 5 and 7.

##### **Article 5 – Exchange of information on request**

- 1 At the request of the applicant State, the requested State shall provide the applicant State with any information referred to in Article 4 which concerns particular persons or transactions.
- 2 If the information available in the tax files of the requested State is not sufficient to enable it to comply with the request for information, that State shall take all relevant measures to provide the applicant State with the information requested.

#### **Article 6 – Automatic exchange of information**

With respect to categories of cases and in accordance with procedures which they shall determine by mutual agreement, two or more Parties shall automatically exchange the information referred to in Article 4.

#### **Article 7 – Spontaneous exchange of information**

- 1 A Party shall, without prior request, forward to another Party information of which it has knowledge in the following circumstances:
  - a the first-mentioned Party has grounds for supposing that there may be a loss of tax in the other Party;
  - b a person liable to tax obtains a reduction in or an exemption from tax in the first-mentioned Party which would give rise to an increase in tax or to liability to tax in the other Party;
  - c business dealings between a person liable to tax in a Party and a person liable to tax in another Party are conducted through one or more countries in such a way that a saving in tax may result in one or the other Party or in both;
  - d a Party has grounds for supposing that a saving of tax may result from artificial transfers of profits within groups of enterprises;
  - e information forwarded to the first-mentioned Party by the other Party has enabled information to be obtained which may be relevant in assessing liability to tax in the latter Party.
- 2 Each Party shall take such measures and implement such procedures as are necessary to ensure that information described in paragraph 1 will be made available for transmission to another Party.

#### **Article 8 – Simultaneous tax examinations**

- 1 At the request of one of them, two or more Parties shall consult together for the purposes of determining cases and procedures for simultaneous tax examinations. Each Party involved shall decide whether or not it wishes to participate in a particular simultaneous tax examination.
- 2 For the purposes of this Convention, a simultaneous tax examination means an arrangement between two or more Parties to examine simultaneously, each in its own territory, the tax affairs of a person or persons in which they have a common or related interest, with a view to exchanging any relevant information which they so obtain.

### **Article 9 – Tax examinations abroad**

- 1 At the request of the competent authority of the applicant State, the competent authority of the requested State may allow representatives of the competent authority of the applicant State to be present at the appropriate part of a tax examination in the requested State.
- 2 If the request is acceded to, the competent authority of the requested State shall, as soon as possible, notify the competent authority of the applicant State about the time and place of the examination, the authority or official designated to carry out the examination and the procedures and conditions required by the requested State for the conduct of the examination. All decisions with respect to the conduct of the tax examination shall be made by the requested State.
- 3 A Party may inform one of the Depositories of its intention not to accept, as a general rule, such requests as are referred to in paragraph 1. Such a declaration may be made or withdrawn at any time.

### **Article 10 – Conflicting information**

If a Party receives from another Party information about a person's tax affairs which appears to it to conflict with information in its possession, it shall so advise the Party which has provided the information.

## **Section II - Assistance in recovery**

### **Article 11 – Recovery of tax claims**

- 1 At the request of the applicant State, the requested State shall, subject to the provisions of Articles 14 and 15, take the necessary steps to recover tax claims of the first-mentioned State as if they were its own tax claims.
- 2 The provision of paragraph 1 shall apply only to tax claims which form the subject of an instrument permitting their enforcement in the applicant State and, unless otherwise agreed between the Parties concerned, which are not contested.

However, where the claim is against a person who is not a resident of the applicant State, paragraph 1 shall only apply, unless otherwise agreed between the Parties concerned, where the claim may no longer be contested.

- 3 The obligation to provide assistance in the recovery of tax claims concerning a deceased person or his estate, is limited to the value of the estate or of the property acquired by each beneficiary of the estate, according to whether the claim is to be recovered from the estate or from the beneficiaries thereof.

### **Article 12 – Measures of conservancy**

At the request of the applicant State, the requested State shall, with a view to the recovery of an amount of tax, take measures of conservancy even if the claim is contested or is not yet the subject of an instrument permitting enforcement.

### **Article 13 – Documents accompanying the request**

- 1 The request for administrative assistance under this section shall be accompanied by:
  - a a declaration that the tax claim concerns a tax covered by the Convention and, in the case of recovery that, subject to paragraph 2 of Article 11, the tax claim is not or may not be contested,
  - b an official copy of the instrument permitting enforcement in the applicant State, and
  - c any other document required for recovery or measures of conservancy.
- 2 The instrument permitting enforcement in the applicant State shall, where appropriate and in accordance with the provisions in force in the requested State, be accepted, recognised, supplemented or replaced as soon as possible after the date of the receipt of the request for assistance, by an instrument permitting enforcement in the latter State.

### **Article 14 – Time limits**

- 1 Questions concerning any period beyond which a tax claim cannot be enforced shall be governed by the law of the applicant State. The request for assistance shall give particulars concerning that period.
- 2 Acts of recovery carried out by the requested State in pursuance of a request for assistance, which, according to the laws of that State, would have the effect of suspending or interrupting the period mentioned in paragraph 1, shall also have this effect under the laws of the applicant State. The requested State shall inform the applicant State about such acts.
- 3 In any case, the requested State is not obliged to comply with a request for assistance which is submitted after a period of 15 years from the date of the original instrument permitting enforcement.

### **Article 15 – Priority**

The tax claim in the recovery of which assistance is provided shall not have in the requested State any priority specially accorded to the tax claims of that State even if the recovery procedure used is the one applicable to its own tax claims.

### **Article 16 – Deferral of payment**

The requested State may allow deferral of payment or payment by instalments if its laws or administrative practice permit it to do so in similar circumstances, but shall first inform the applicant State.

### **Section III – Service of documents**

#### **Article 17 – Service of documents**

- 1 At the request of the applicant State, the requested State shall serve upon the addressee documents, including those relating to judicial decisions, which emanate from the applicant State and which relate to a tax covered by this Convention.
- 2 The requested State shall effect service of documents:
  - a by a method prescribed by its domestic laws for the service of documents of a substantially similar nature;
  - b to the extent possible, by a particular method requested by the applicant State or the closest to such method available under its own laws.
- 3 A Party may effect service of documents directly through the post on a person within the territory of another Party.
- 4 Nothing in the Convention shall be construed as invalidating any service of documents by a Party in accordance with its laws.
- 5 When a document is served in accordance with this article, it need not be accompanied by a translation. However, where it is satisfied that the addressee cannot understand the language of the document, the requested State shall arrange to have it translated into or a summary drafted in its or one of its official languages. Alternatively, it may ask the applicant State to have the document either translated into or accompanied by a summary in one of the official languages of the requested State, the Council of Europe or the OECD.

### **Chapter IV – Provisions relating to all forms of assistance**

#### **Article 18 – Information to be provided by the applicant State**

- 1 A request for assistance shall indicate where appropriate:
  - a the authority or agency which initiated the request made by the competent authority;
  - b the name, address, or any other particulars assisting in the identification of the person in respect of whom the request is made;
  - c in the case of a request for information, the form in which the applicant State wishes the information to be supplied in order to meet its needs;
  - d in the case of a request for assistance in recovery or measures of conservancy, the nature of the tax claim, the components of the tax claim and the assets from which the tax claim may be recovered;

- e in the case of a request for service of documents, the nature and the subject of the document to be served;
  - f whether it is in conformity with the law and administrative practice of the applicant State and whether it is justified in the light of the requirements of Article 21.2.g.
- 2 As soon as any other information relevant to the request for assistance comes to its knowledge, the applicant State shall forward it to the requested State.

#### **Article 19 – Deleted**

#### **Article 20 – Response to the request for assistance**

- 1 If the request for assistance is complied with, the requested State shall inform the applicant State of the action taken and of the result of the assistance as soon as possible.
- 2 If the request is declined, the requested State shall inform the applicant State of that decision and the reason for it as soon as possible.
- 3 If, with respect to a request for information, the applicant State has specified the form in which it wishes the information to be supplied and the requested State is in a position to do so, the requested State shall supply it in the form requested.

#### **Article 21 – Protection of persons and limits to the obligation to provide assistance**

- 1 Nothing in this Convention shall affect the rights and safeguards secured to persons by the laws or administrative practice of the requested State.
- 2 Except in the case of Article 14, the provisions of this Convention shall not be construed so as to impose on the requested State the obligation:
- a to carry out measures at variance with its own laws or administrative practice or the laws or administrative practice of the applicant State;
  - b to carry out measures which would be contrary to public policy (*ordre public*);
  - c to supply information which is not obtainable under its own laws or its administrative practice or under the laws of the applicant State or its administrative practice;
  - d to supply information which would disclose any trade, business, industrial, commercial or professional secret, or trade process, or information the disclosure of which would be contrary to public policy (*ordre public*);
  - e to provide administrative assistance if and insofar as it considers the taxation in the applicant State to be contrary to generally accepted taxation principles or to the provisions of a convention for the avoidance of double taxation, or of any other convention which the requested State has concluded with the applicant State;

- f to provide administrative assistance for the purpose of administering or enforcing a provision of the tax law of the applicant State, or any requirement connected therewith, which discriminates against a national of the requested State as compared with a national of the applicant State in the same circumstances;
  - g to provide administrative assistance if the applicant State has not pursued all reasonable measures available under its laws or administrative practice, except where recourse to such measures would give rise to disproportionate difficulty;
  - h to provide assistance in recovery in those cases where the administrative burden for that State is clearly disproportionate to the benefit to be derived by the applicant State.
- 3 If information is requested by the applicant State in accordance with this Convention, the requested State shall use its information gathering measures to obtain the requested information, even though the requested State may not need such information for its own tax purposes. The obligation contained in the preceding sentence is subject to the limitations contained in this Convention, but in no case shall such limitations, including in particular those of paragraphs 1 and 2, be construed to permit a requested State to decline to supply information solely because it has no domestic interest in such information.
- 4 In no case shall the provisions of this Convention, including in particular those of paragraphs 1 and 2, be construed to permit a requested State to decline to supply information solely because the information is held by a bank, other financial institution, nominee or person acting in an agency or a fiduciary capacity or because it relates to ownership interests in a person.

#### **Article 22 – Secrecy**

- 1 Any information obtained by a Party under this Convention shall be treated as secret and protected in the same manner as information obtained under the domestic law of that Party and, to the extent needed to ensure the necessary level of protection of personal data, in accordance with the safeguards which may be specified by the supplying Party as required under its domestic law.
- 2 Such information shall in any case be disclosed only to persons or authorities (including courts and administrative or supervisory bodies) concerned with the assessment, collection or recovery of, the enforcement or prosecution in respect of, or the determination of appeals in relation to, taxes of that Party, or the oversight of the above. Only the persons or authorities mentioned above may use the information and then only for such purposes. They may, notwithstanding the provisions of paragraph 1, disclose it in public court proceedings or in judicial decisions relating to such taxes.

- 3 If a Party has made a reservation provided for in sub-paragraph a. of paragraph 1 of Article 30, any other Party obtaining information from that Party shall not use it for the purpose of a tax in a category subject to the reservation. Similarly, the Party making such a reservation shall not use information obtained under this Convention for the purpose of a tax in a category subject to the reservation.
- 4 Notwithstanding the provisions of paragraphs 1, 2 and 3, information received by a Party may be used for other purposes when such information may be used for such other purposes under the laws of the supplying Party and the competent authority of that Party authorises such use. Information provided by a Party to another Party may be transmitted by the latter to a third Party, subject to prior authorisation by the competent authority of the first-mentioned Party.

#### **Article 23 – Proceedings**

- 1 Proceedings relating to measures taken under this Convention by the requested State shall be brought only before the appropriate body of that State.
- 2 Proceedings relating to measures taken under this Convention by the applicant State, in particular those which, in the field of recovery, concern the existence or the amount of the tax claim or the instrument permitting its enforcement, shall be brought only before the appropriate body of that State. If such proceedings are brought, the applicant State shall inform the requested State which shall suspend the procedure pending the decision of the body in question. However, the requested State shall, if asked by the applicant State, take measures of conservancy to safeguard recovery. The requested State can also be informed of such proceedings by any interested person. Upon receipt of such information the requested State shall consult on the matter, if necessary, with the applicant State.
- 3 As soon as a final decision in the proceedings has been given, the requested State or the applicant State, as the case may be, shall notify the other State of the decision and the implications which it has for the request for assistance.

### **Chapter V – Special provisions**

#### **Article 24 – Implementation of the Convention**

- 1 The Parties shall communicate with each other for the implementation of this Convention through their respective competent authorities. The competent authorities may communicate directly for this purpose and may authorise subordinate authorities to act on their behalf. The competent authorities of two or more Parties may mutually agree on the mode of application of the Convention among themselves.
- 2 Where the requested State considers that the application of this Convention in a particular case would have serious and undesirable consequences, the competent authorities of the requested and of the applicant State shall consult each other and endeavour to resolve the situation by mutual agreement.

- 3 A co-ordinating body composed of representatives of the competent authorities of the Parties shall monitor the implementation and development of this Convention, under the aegis of the OECD. To that end, the co-ordinating body shall recommend any action likely to further the general aims of the Convention. In particular it shall act as a forum for the study of new methods and procedures to increase international co-operation in tax matters and, where appropriate, it may recommend revisions or amendments to the Convention. States which have signed but not yet ratified, accepted or approved the Convention are entitled to be represented at the meetings of the co-ordinating body as observers.
- 4 A Party may ask the co-ordinating body to furnish opinions on the interpretation of the provisions of the Convention.
- 5 Where difficulties or doubts arise between two or more Parties regarding the implementation or interpretation of the Convention, the competent authorities of those Parties shall endeavour to resolve the matter by mutual agreement. The agreement shall be communicated to the co-ordinating body.
- 6 The Secretary General of OECD shall inform the Parties, and the Signatory States which have not yet ratified, accepted or approved the Convention, of opinions furnished by the co-ordinating body according to the provisions of paragraph 4 above and of mutual agreements reached under paragraph 5 above.

#### **Article 25 – Language**

Requests for assistance and answers thereto shall be drawn up in one of the official languages of the OECD and of the Council of Europe or in any other language agreed bilaterally between the Contracting States concerned.

#### **Article 26 – Costs**

Unless otherwise agreed bilaterally by the Parties concerned:

- a ordinary costs incurred in providing assistance shall be borne by the requested State;
- b extraordinary costs incurred in providing assistance shall be borne by the applicant State.

### **Chapter VI – Final provisions**

#### **Article 27 – Other international agreements or arrangements**

- 1 The possibilities of assistance provided by this Convention do not limit, nor are they limited by, those contained in existing or future international agreements or other arrangements between the Parties concerned or other instruments which relate to co-operation in tax matters.

- 2 Notwithstanding paragraph 1, those Parties which are member States of the European Union can apply, in their mutual relations, the possibilities of assistance provided for by the Convention in so far as they allow a wider co-operation than the possibilities offered by the applicable European Union rules.

#### **Article 28 – Signature and entry into force of the Convention**

- 1 This Convention shall be open for signature by the member States of the Council of Europe and the member countries of OECD. It is subject to ratification, acceptance or approval. Instruments of ratification, acceptance or approval shall be deposited with one of the Depositaries.
- 2 This Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date on which five States have expressed their consent to be bound by the Convention in accordance with the provisions of paragraph 1.
- 3 In respect of any member State of the Council of Europe or any member country of OECD which subsequently expresses its consent to be bound by it, the Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date of the deposit of the instrument of ratification, acceptance or approval.
- 4 Any member State of the Council of Europe or any member country of OECD which becomes a Party to the Convention after the entry into force of the Protocol amending this Convention, opened for signature on 27<sup>th</sup> May 2010 (the “2010 Protocol”), shall be a Party to the Convention as amended by that Protocol, unless they express a different intention in a written communication to one of the Depositaries.
- 5 After the entry into force of the 2010 Protocol, any State which is not a member of the Council of Europe or of the OECD may request to be invited to sign and ratify this Convention as amended by the 2010 Protocol. Any request to this effect shall be addressed to one of the Depositaries, who shall transmit it to the Parties. The Depositary shall also inform the Committee of Ministers of the Council of Europe and the OECD Council. The decision to invite States which so request to become Party to this Convention shall be taken by consensus by the Parties to the Convention through the co-ordinating body. In respect of any State ratifying the Convention as amended by the 2010 Protocol in accordance with this paragraph, this Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date of deposit of the instrument of ratification with one of the Depositaries.
- 6 The provisions of this Convention, as amended by the 2010 Protocol, shall have effect for administrative assistance related to taxable periods beginning on or after 1 January of the year following the one in which the Convention, as amended by the 2010 Protocol, entered into force in respect of a Party, or where there is no taxable period, for administrative assistance related to charges to tax arising on or after 1 January of the year following the one in which the Convention, as amended by the 2010 Protocol, entered into force in respect of a Party. Any two or more Parties may mutually agree that the Convention, as amended by the 2010 Protocol, shall have effect for administrative assistance related to earlier taxable periods or charges to tax.

- 7 Notwithstanding paragraph 6, for tax matters involving intentional conduct which is liable to prosecution under the criminal laws of the applicant Party, the provisions of this Convention, as amended by the 2010 Protocol, shall have effect from the date of entry into force in respect of a Party in relation to earlier taxable periods or charges to tax.

#### **Article 29 – Territorial application of the Convention**

- 1 Each State may, at the time of signature, or when depositing its instrument of ratification, acceptance or approval, specify the territory or territories to which this Convention shall apply.
- 2 Any State may, at any later date, by a declaration addressed to one of the Depositaries, extend the application of this Convention to any other territory specified in the declaration. In respect of such territory the Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date of receipt of such declaration by the Depositary.
- 3 Any declaration made under either of the two preceding paragraphs may, in respect of any territory specified in such declaration, be withdrawn by a notification addressed to one of the Depositaries. The withdrawal shall become effective on the first day of the month following the expiration of a period of three months after the date of receipt of such notification by the Depositary.

#### **Article 30 – Reservations**

- 1 Any State may, at the time of signature or when depositing its instrument of ratification, acceptance or approval or at any later date, declare that it reserves the right:
- a not to provide any form of assistance in relation to the taxes of other Parties in any of the categories listed in sub-paragraph b. of paragraph 1 of Article 2, provided that it has not included any domestic tax in that category under Annex A of the Convention;
  - b not to provide assistance in the recovery of any tax claim, or in the recovery of an administrative fine, for all taxes or only for taxes in one or more of the categories listed in paragraph 1 of Article 2;
  - c not to provide assistance in respect of any tax claim, which is in existence at the date of entry into force of the Convention in respect of that State or, where a reservation has previously been made under sub-paragraph a. or b. above, at the date of withdrawal of such a reservation in relation to taxes in the category in question;
  - d not to provide assistance in the service of documents for all taxes or only for taxes in one or more of the categories listed in paragraph 1 of Article 2;

- e not to permit the service of documents through the post as provided for in paragraph 3 of Article 17;
  - f to apply paragraph 7 of Article 28 exclusively for administrative assistance related to taxable periods beginning on or after 1 January of the third year preceding the one in which the Convention, as amended by the 2010 Protocol, entered into force in respect of a Party, or where there is no taxable period, for administrative assistance related to charges to tax arising on or after 1 January of the third year preceding the one in which the Convention, as amended by the 2010 Protocol, entered into force in respect of a Party.
- 2 No other reservation may be made.
  - 3 After the entry into force of the Convention in respect of a Party, that Party may make one or more of the reservations listed in paragraph 1 which it did not make at the time of ratification, acceptance or approval. Such reservations shall enter into force on the first day of the month following the expiration of a period of three months after the date of receipt of the reservation by one of the Depositaries.
  - 4 Any Party which has made a reservation under paragraphs 1 and 3 may wholly or partly withdraw it by means of a notification addressed to one of the Depositaries. The withdrawal shall take effect on the date of receipt of such notification by the Depositary in question.
  - 5 A Party which has made a reservation in respect of a provision of this Convention may not require the application of that provision by any other Party; it may, however, if its reservation is partial, require the application of that provision insofar as it has itself accepted it.

#### **Article 31 – Denunciation**

- 1 Any Party may, at any time, denounce this Convention by means of a notification addressed to one of the Depositaries.
- 2 Such denunciation shall become effective on the first day of the month following the expiration of a period of three months after the date of receipt of the notification by the Depositary.
- 3 Any Party which denounces the Convention shall remain bound by the provisions of Article 22 for as long as it retains in its possession any documents or information obtained under the Convention.

#### **Article 32 – Depositaries and their functions**

- 1 The Depositary with whom an act, notification or communication has been accomplished, shall notify the member States of the Council of Europe and the member countries of OECD and any Party to this Convention of:
  - a any signature;

- b the deposit of any instrument of ratification, acceptance or approval;
  - c any date of entry into force of this Convention in accordance with the provisions of Articles 28 and 29;
  - d any declaration made in pursuance of the provisions of paragraph 3 of Article 4 or paragraph 3 of Article 9 and the withdrawal of any such declaration;
  - e any reservation made in pursuance of the provisions of Article 30 and the withdrawal of any reservation effected in pursuance of the provisions of paragraph 4 of Article 30;
  - f any notification received in pursuance of the provisions of paragraph 3 or 4 of Article 2, paragraph 3 of Article 3, Article 29 or paragraph 1 of Article 31;
  - g any other act, notification or communication relating to this Convention.
- 2 The Depositary receiving a communication or making a notification in pursuance of the provisions of paragraph 1 shall inform immediately the other Depositary thereof.

In witness whereof the undersigned, being duly authorised thereto, have signed the Convention.

Established by the Depositaries the 1<sup>st</sup> day of June 2011 pursuant to Article X.4 of the Protocol amending the Convention on Mutual Administrative Assistance in Tax Matters, in English and French, both texts being equally authentic, in two copies of which one shall be deposited in the archives of each Depositary. The Depositaries shall transmit a certified copy to each Party to the Convention as amended by the Protocol and to each State entitled to become a party.

**Neutral Citation No. [2004] EWCA Crim 868**

**IN THE SUPREME COURT OF JUDICATURE**

**COURT OF APPEAL (CRIMINAL DIVISION)**

Royal Courts of Justice

Strand, London, WC2A 2LL

Date: 7<sup>th</sup> April, 2004

**Before :**

**LORD JUSTICE PILL**

**MR JUSTICE HUGHES**

and

**MR JUSTICE AIKENS**

-----  
**ATTORNEY GENERAL'S**

**REFERENCE**

**NO. 3 OF 2003**  
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**MR DAVID PERRY & MR G PATTERSON** for the Attorney General

**MR JEREMY BAKER QC & MR S R CROSSLEY** for the Respondents

Hearing dates : 29/30 January 2004  
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**JUDGMENT**

Lord Justice Pill:

### The reference

1. This is an Attorney General's reference under Section 36 of the Criminal Justice Act 1972, as amended. The Attorney General seeks the opinion of the Court on points of law which have arisen in a case in which ND, and other police officers, were acquitted, by direction of the judge, upon charges of manslaughter and of misconduct in a public office. On the manslaughter charges, the allegation was of conduct amounting to gross negligence. The "misconduct in a public office" charges alleged that each defendant "misconducted himself whilst serving as a police officer, by wilfully failing to take reasonable and proper care of [CA], an arrested person in police custody". The case was opened to the jury on the basis that the principal allegations were those of manslaughter by gross negligence and that the counts alleging misconduct in a public office were included in the indictment as alternatives to those charges.
2. The questions for the opinion of the court are:
  - i. "What are the ingredients of the common law offence of misconduct in a public office ?
  - ii. In particular is it necessary, in proceedings for an offence of misconduct in a public office, for the prosecution to prove "bad faith" and, if so, what does bad faith mean in this context ?"

### The facts

3. CA, an apparently healthy man, aged 37, died in the custody suite of a police station on 1 April 1998. He had been punched in the face outside a nightclub and fell to the ground hitting his head against the roadway. He was taken to hospital and it was claimed that he was abusive and aggressive to the staff who tried to treat him. Police officers who attended the hospital, with a view to investigating the assault upon him, arrested him on the ground of an apprehended breach of the peace. They were told by a doctor in answer to their specific enquiry that he was fit to be detained. He was told he could return to the hospital when he had calmed down. He (the deceased) had not been x-rayed or treated fully for his injury.
4. CA was taken to the police station in a police van. On arrival at the police station, though still seated in the position in which he had been placed, he did not respond to police officers. At 3.46am he was carefully placed on the floor of the custody suite in a semi face-down position, not the recovery position, and was left in that position while he breathed less and less. Handcuffs were removed at 3:50am. His breathing was audibly obstructed and gasping and at 3.56am he stopped breathing. That he had stopped was observed by a police officer 45 seconds later. Attempts at resuscitation failed. The events in the custody suite were recorded by closed circuit television and, for present purposes, it is not necessary to set them out in further detail or comment upon them. They provide the context in which the Reference has been made; the context in which the issue which gave difficulty at the trial arose and was perceived as requiring the attention of this Court. The prosecution case was that the officers had recklessly breached their duty of care to CA

5. There was very considerable medical investigation into the cause of death and the contribution, if any, to the death of the acts or omissions of the police officers. We are told that the allegations against the officers relevant for present purposes were essentially that, during the 11 minute period between 3.46am and 3.57am, the officers failed to put CA in a better position, failed to ensure that his airway was clear and failed to obtain medical assistance.
6. For the Attorney General, Mr Perry has told the Court that what has given rise to the reference is the need for guidance as to the mental element involved in the offence of misconduct in a public office, a description preferred to that of misfeasance in a public office used in some of the cases. It is common ground that there is such an offence at common law and we consider later in this judgment, as requested, the other elements of the offence, and in particular the standard to be applied to the conduct involved. The conduct must be that of a public officer acting as such, though this ingredient has not been the subject of specific submission. Clearly, in the present case, the police officers owed a duty of care to a person in their custody. The moral basis of the offence, it is submitted, is the protection of the public against the disregard by public officers of duties imposed upon them.
7. The burden of the lengthy legal arguments before the judge, and much of the submission to this court, has been upon the scope of the concept of recklessness in relation to the conduct of defendants in circumstances such as the present and in particular recklessness as to the consequences of acts or omissions. In the test subjective or objective? Where it is asserted by the prosecution that the public officer has been guilty of misconduct and has been reckless concerning his misconduct, what constitutes recklessness for the purpose of this offence? Because much of the argument before us, as before the judge, concerned this issue, we will consider it first, as a discrete issue, and in relation to the expressions wilful neglect and wilful misconduct. We then turn to the more general question raised by the terms of the Reference. The trial took place before the House of Lords in *R v G & Anr* [2003] UK HL 50 ("*G*") had considered the meaning of recklessness and departed from its earlier decision in *R v Caldwell* [1982] AC 341.

#### The judge's direction

8. Submissions of no case to answer were made at the close of the prosecution case. Having heard submissions for 3 days, Roderick Evans J explained to the jury his reasons for directing a verdict of not guilty on the counts both of manslaughter and of misconduct in a public office. As to manslaughter, the judge ruled that there was no case to answer because although there was a prima facie case of gross negligence, causation was not established.

"In my judgment the evidence does not take the case beyond the de minimis principle and there is no evidence upon which a jury could safely conclude that the conduct of a defendant ..... more than minimally caused his death. I am, therefore, going to direct the jury to acquit of manslaughter ....."

9. The judge considered the ingredients of the misconduct offence and also of the tort of misfeasance in public office. He referred to the submission of the prosecution that the necessary element of wilfulness is "that referred to..... by the majority of the House of Lords in *Sheppard* [[1981] AC 394]." The judge stated:

"It is, in my judgment, clearly desirable that there be consistency between the tort and the crime, if that is possible. It is, however, often difficult to identify the precise

ingredients and limits of old common law offences such as this one, as Professor John Smith QC observed in his commentary on *Bowden* [1996] Crim. L.R. 56. Indeed one has to note that some of the ingredients set out in the formulation of the offence in *Dytham* [[1979] 1 QB 722] are not easy to identify in earlier authorities or texts. One potential cause of difficulty in defining the offence is the great variety of circumstances in which the offence can be committed and the direction to the jury in each case has to be tailored to reflect the circumstances of the evidence before them and the nature of the misconduct alleged.

When the House of Lords considered "wilfully" as used in the statutory context in which it had appeared before them in *Sheppard* the then comparatively recently decided case of *Dytham* was not cited in argument, nor it seems was the word considered specifically as an ingredient of a common law offence. However in the *Three Rivers* case [[2003] 2 AC1] *Dytham* was cited to their Lordships and both Lord Hobhouse, at page [230], and Lord Millett, at page [237], referred to *Dytham* as an example of the tort.

Applying these authorities, my conclusion is that in the circumstances of this case the appropriate direction to the jury on the requirement of recklessness would be to require proof of *Cunningham* [[1957] 2 QB 396] recklessness.

I turn now to deal with the evidence. Submissions have been made on behalf of each Defendant that, whatever be the appropriate test of recklessness in this case, the evidence, when looked at in its entirety, is not such that a jury, properly directed, could safely convict any defendant as the necessary mens rea is absent. The Prosecution submit to the contrary."

10. The judge then considered the evidence before him in the context of the "mens rea contended for by the Crown" and stated:

"There is, in my judgment, no evidence which could safely found a conviction on the basis of the recklessness propounded by the Crown, which Mr Curtis has characterised as "could not care less whether or not there was a risk to CA's welfare". If the test of *Sheppard* recklessness is not met in the case of any Defendant, it follows that the test for *Cunningham* recklessness is not met either.

I shall accordingly direct the Jury also to acquit these Defendants of the misconduct counts."

#### Recklessness, wilful neglect and wilful misconduct

11. Subject to a fresh point raised by Mr Perry as to a duty situation, the reason for the reference was the perceived need to decide whether "*Cunningham* recklessness" or "*Sheppard* recklessness" is appropriate to the present offence. The test stated in *Cunningham*, at p 399, citing Professor Kenny's *Outlines of Criminal Law* 16<sup>th</sup> Edition (J W Cecil Turner) was to require:
- i. "an actual intention to do the particular kind of harm that in fact was done; or
  - ii. recklessness as to whether such harm should occur or not (i.e. the accused has foreseen that the particular kind of harm might be done and yet has gone on to take the risk of it)."

12. The issue as to the proper approach to the concept of recklessness in the criminal law appears to us to have been resolved by the decision of the House of Lords in *G*. Although the case was concerned with the definition of recklessness in Section 1 of the Criminal Damage Act 1971 ("the 1971 Act"), general principles were laid down. It was established that a defendant could not be culpable under the criminal law of doing something involving a risk of injury to another or damage to property if he genuinely did not perceive the risk.
13. In *G*, Lord Bingham of Cornhill considered the meaning of the word "reckless" in section 1 of the 1971 Act and the manner in which it had been construed, by the majority, in *Caldwell*. Reference was made to *Cunningham*. Lord Bingham stated that "in treating this authority as irrelevant to the construction of "reckless" the majority [in *Caldwell*] fell into understandable but clearly demonstrable error. No relevant change in the mens rea necessary for proof of the offence was intended, and in holding otherwise the majority misconstrued section 1 of the Act" (paragraph 29). Lord Bingham added at paragraph 32,:

" First, it is a salutary principle that conviction of serious crime should depend on proof not simply that the defendant caused (by act or omission) an injurious result to another but that his state of mind when so acting was culpable. This, after all, is the meaning of the familiar rule *actus non facit reum nisi mens sit rea*. The most obviously culpable state of mind is no doubt an intention to cause the injurious result, but knowing disregard of an appreciated and unacceptable risk of causing an injurious result or a deliberate closing of the mind to such risk would be readily accepted as culpable also. It is clearly blameworthy to take an obvious and significant risk of causing injury to another. But it is not clearly blameworthy to do something involving a risk of injury to another if (for reasons other than self-induced intoxication: *R v Majewski* ([1977] AC 443) one genuinely does not perceive the risk. Such a person may fairly be accused of stupidity or lack of imagination, but neither of those failings should expose him to conviction of serious crime or the risk of punishment."

14. Lord Bingham's conclusion, at paragraph 41, was:

"A person acts recklessly within the meaning of section 1 of the Criminal Damage Act 1971 with respect to – (i) a circumstance when he is aware of a risk that it exists or will exist; (ii) a result when he is aware of a risk that it will occur; and it is, in the circumstances known to him, unreasonable to take the risk."

15. When expressing agreement with the reasons given by Lord Bingham for departing from *Caldwell*, Lord Steyn stated, at paragraph 58,:

"That brings me to the question whether the subjective interpretation of recklessness might allow wrongdoers who ought to be convicted of serious crime to escape conviction. Experience before *Caldwell* did not warrant such a conclusion. In any event, as Lord Edmund-Davies explained, if a defendant closes his mind to a risk he must realise that there is a risk and, on the evidence, that will usually be decisive: [412C]. One can trust the realism of trial judges, who direct juries, to guide juries to sensible verdicts and juries can in turn be relied on to apply robust common sense to the evaluation of ridiculous defences. Moreover, the endorsement by Parliament of the Law Commission proposals could not seriously have been regarded as a charter for the acquittal of wrongdoers."

16. Lord Steyn also referred, at paragraph 55, to "....the general tendency in modern times of our criminal law. The shift is towards adopting a subjective approach. It is generally necessary to look at the matter in the light of how it would have appeared to the defendant".
17. In agreeing with Lord Bingham, Lord Rodger of Earlsferry stated, at paragraph 70, that "if Parliament now thinks it preferable for the 1971 Act to cover culpably inadvertent as well as advertent wrongdoers, it can so enact". Lord Browne-Wilkinson agreed with Lord Bingham and Lord Hutton with Lord Bingham and Lord Steyn.
18. Mr Perry submits that, where a duty situation exists, the *Cunningham* approach, cited favourably in *G*, should not be followed. The court should adopt the approach of the majority in *Sheppard* where the House of Lords considered the mental element required in an offence under Section 1 of the Children and Young Persons 1933 ("the 1933 Act"). Lord Bingham did, at paragraph 28 in *G*, underline that he was not addressing the meaning of "reckless" in any statutory or common law context other than section 1 of the Criminal Damage Act 1971. That section does not include the expression "wilful neglect" which appears in the 1933 Act and in some of the learning on misconduct in a public office. In deference to the submissions of Counsel, and because the expression under consideration in *Sheppard* was "wilfully neglects", an expression appropriate in our view to the offence of misconduct in a public office, we consider the case in some detail.
19. Section 1 of the 1933 Act provides, in so far as is material:

"(1) If any person who has attained the age of 16 years and has the custody, charge, or care of any child or young person under that age, wilfully..... neglects ..... him..... in a manner likely to cause him unnecessary suffering or injury to health..... that person shall be guilty of a misdemeanour ..... (2) For the purposes of this section (a) a parent or other person legally liable to maintain a child or young person shall be deemed to have neglected him in a manner likely to cause injury to his health if he has failed to provide adequate..... medical aid ...."

20. Allowing an appeal against conviction by parents who failed to seek medical assistance for their child, the majority in the House found unacceptable an objective test of fault, that is whether a reasonable parent, with knowledge of the facts known to those parents, would appreciate that failure to have the child medically examined was likely to cause unnecessary suffering or injury to health. The proposition that wilfulness followed automatically from their undoubted failure was rejected.
21. Referring to the expression "wilful neglect", Lord Diplock stated, at page 404H, that "such a failure as it seems to me could not properly be described as "wilful" unless the parent either (1) had directed his mind to the question whether there was some risk (though it might fall far short of a probability) that the child's health might suffer unless he were examined by a doctor and provided with such curative treatment as the examination might reveal as necessary, and had made a conscious decision, for whatever reason, to refrain from arranging for such medical examination; or (2) had so refrained because he did not care whether the child might be in need of medical treatment or not."
22. Lord Edmund-Davies accepted, at p 412A, the proposition that "the requirement of wilfulness means, or should mean, that a parent who omits to call in the doctor to his child is not guilty of the offence if he does not know that the child needs assistance" and continued (at 412C):

"But to that must be added that a parent reckless about the state of his child's health, not caring whether or not he is at risk, cannot be heard to say that he never

gave the matter a thought and was therefore not wilful in not calling in a doctor. In such circumstances recklessness constitutes mens rea no less than positive awareness of the risk involved in failure to act."

23. However, this paragraph, cited with approval by Lord Steyn in *G*, is followed (412F) by the comment that "the stronger the objective indications of neglect, the more difficult for defendants to repel the conclusion that they *must* have known of the plight of the children in their charge, or at least that they had been recklessly regardless of their welfare.

24. The third member of the majority, Lord Keith of Kinkel, stated, at p 418:

"I turn now to consider the meaning of the adverb "wilfully" which governs and qualifies "neglects" and all the other verbs in section 1(1). This is a word which ordinarily carries a perjorative sense. It is used here to describe the mental element, which, in addition to the fact of neglect, must be proved in order to establish an offence under the sub-section. The primary meaning of "wilful" is "deliberate". So a parent who knows that his child needs medical care and deliberately, that is by conscious decision, refrains from calling a doctor, is guilty under the subsection. As a matter of general principle, recklessness is to be equated with deliberation. A parent who fails to provide medical care which his child needs because he does not care whether it is needed or not is reckless of his child's welfare. He too is guilty of an offence. But a parent who has genuinely failed to appreciate that his child needs medical care, through personal inadequacy or stupidity or both, is not guilty."

25. Mr Perry submits that misconduct in public office is a 'conduct' crime and not a 'results' crime; the crime is constituted by the misconduct itself rather than the result that follows from it. The prosecution need only show, it is submitted, that there has been misconduct by the defendant and he is indifferent as to whether the acts or omissions constituting the misconduct may have any consequences. Mr Perry further submits that, in *Sheppard*, the majority sought to ensure that the indifferent actor, who did not foresee the consequences of his acts, could not escape liability by reason of his indifference. Misconduct in public office also involves a duty situation and the same approach should be adopted so that the officer could not escape liability by not advertent to what his responsibilities were. The callous should not escape, it is submitted, and the judge was in error in failing to include the official, who does not advert to the risk of harm to particular individuals, within the category of offenders.

26. Whether *Sheppard*, which was not cited in *Caldwell* and in which Lord Edmund-Davies did not, as in *Caldwell* a few months later, dissent, is consistent with *Cunningham* (not cited in *Sheppard*) and *G*, may be arguable, though, for present purposes, we greatly doubt whether there is any material difference. Lord Diplock is likely to have taken the view that the expression "wilful neglect", in section 1 of the 1933 Act, required a subjective element not required in his view in *Caldwell* but, with the demise of *Caldwell*, the distinction is immaterial.

27. In *Sheppard*, it was "parents who through ignorance or lack of intelligence are genuinely unaware that their child's health is at risk" with whose acquittal Lord Diplock was concerned (p408 C-D). That category of defendant is unlikely to feature in the present context. Lord Diplock also expressed his confidence (at p408 D) that juries would "not readily be hoodwinked" by false claims that it did not occur to the defendant that there was a risk, an observation reflected by Lord Steyn in paragraph 58 of *G*, already cited. We do not accept the submission that *Sheppard* imposes a lower duty on the prosecution than does *G*. Indeed, we do not accept the submission that, in the present context, there is any material difference between them and, in our view, the approach to

recklessness in *G* can be incorporated into a direction on wilfulness in relation to this offence.

28. In *Graham v Teesdale & Anr* [1981] 81 LGR 117, Webster J considered the meaning of the expression "wilful misconduct" in section 161 of the Local Government Act 1972. The case was concerned with the audit of local authority accounts by a district auditor. Webster J stated, at page 123, that wilful misconduct means "deliberately doing something which is wrong knowing it to be wrong or with reckless indifference as to whether it is wrong or not". That statutory construction has been approved by the Court of Appeal and the House of Lords in *Lloyd v McMahon* [1987] AC 625 and *Porter v Magill* [2002] AC 357 (per Lord Bingham of Cornhill at page 464, giving the references in *Lloyd*). We regard that direction as helpful in present circumstances, considering as we do that the concept of wilful misconduct is apt to the offence of misconduct in public office (see *Dytham* below). A *G* direction upon the meaning of reckless would of course need to be incorporated.
29. Before turning to broader issues, we note that the judge, in his ruling, anticipated the approach in *G* by preferring the approach to recklessness stated in *Cunningham*. Clearly the labelling of recklessness as "*Cunningham* recklessness" or "*Sheppard* recklessness" is overtaken by the decision in *G*.
30. The issue which was perceived to have caused the problem at trial, and the principal question perceived to have resulted from the judge's ruling, has, in our view, been resolved by the decision in *G*. There must be an awareness of the duty to act or a subjective recklessness as to the existence of the duty. The recklessness test will apply to the question whether in particular circumstances a duty arises at all as well as to the conduct of the defendant if it does. The subjective test applies both to reckless indifference to the legality of the act or omission and in relation to the consequences of the act or omission.

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#### The elements of the offence

31. We have some reluctance in embarking upon the exercise required by the question posed especially when we see that in *R v Llewellyn-Jones* [1967] 1 QB 429 both the trial judge Widgery J, and a constitution of this court presided over by Lord Parker CJ, declined to "attempt to give an exhaustive definition of what was covered by misbehaviour in a public office". However, we are prepared to attempt to meet the request and mainly because the mental element, which gave rise to the request, is interwoven with other ingredients of the offence, as stated in the authorities. The mental element must be considered in relation to particular circumstances and consequences.

#### The authorities

32. The offence of misconduct in public office was defined in *Russell On Crime*, 12<sup>th</sup> Edition (1964) (J W Cecil Turner) in this way:

"Where a public officer is guilty of misbehaviour in office by neglecting a duty imposed upon him either at common law or by statute, he commits a misdemeanour and is liable to indictment unless another remedy is substituted by statute. The liability exists whether he is a common law or a statutory officer; and a person holding an office of important trust and of consequence to the public, under letters

patent or derivatively from such authority, is liable to indictment for not faithfully discharging the office."

33. In relation to constables, it was stated, at page 366:

"An indictment lies at common law against a constable for neglecting the duties required of him by common law or by statute; and when a statute requires him to do what without the statute has been his duty, it is not imposing a new duty, and he is indictable at common law for the neglect"

Reference was made to *Crouther's* case (1599) 2 *Hawk* PC 116 where a constable was indicted for refusing to make a hue and cry after notice of a burglary committed in the night.

34. In *R v Wyatt* (1705) 1 Salk 380, it was held, that where an officer [a constable] neglects a duty incumbent upon him, either by common law or statute, he is for his default indictable.

35. Lord Mansfield stated in *R v Bembridge* (1783) 3 Doug K B 32:

"Here there are two principles applicable: first, that a man accepting an office of trust concerning the public, especially if attended with profit, is answerable criminally to the King for misbehaviour in his office; this is true, by whomsoever and in whatsoever way the officer is appointed..... secondly, where there is a breach of trust, fraud or imposition, in a matter concerning the public, though as between individuals it would only be actionable, yet as between the King and the subject it is indictable. That such should be the rule is essential to the existence of the country".

36. In *R v Borron* (1820) 3 B&Ald 432, a criminal information was applied for against a magistrate. Abbott CJ stated, at page 434:

".....They [magistrates] are indeed, like every other subject of this kingdom, answerable to the law for the faithful and upright discharge of their trust and duties. But, whenever they have been challenged upon this head, either by way of indictment, or application to this Court for a criminal information, the question has always been, not whether the act done might, upon full and mature investigation, be found strictly right, but from what motive it had proceeded; whether from a dishonest, oppressive, or corrupt motive, under which description, fear and favour may generally be included, or from mistake or error. In the former case, alone, they have become the objects of punishment. To punish as a criminal any person who, in the gratuitous exercise of a public trust, may have fallen into error or mistake belongs only to the despotic ruler of an enslaved people, and is wholly abhorrent from the jurisprudence of this kingdom."

37. In *R v Llewellyn-Jones* [1968] 1 QB 429, the Registrar of a County Court was convicted of offences of misbehaviour in a public office. The indictment charged "misbehaviour in a public office, contrary to common law" and alleged that court orders had been made "with the intention of gaining improper personal advantage and without proper regard to the interest of [a named person]". On appeal to this court, it was submitted that, in the absence of allegations of fraud or dishonesty in the counts of the indictment, the ingredients necessary to constitute a criminal offence were not present. Giving the

judgment of the court, Lord Parker CJ referred to *Bembridge* and to *Borron* and stated, at page 436G:

"Accordingly the court proposed to take the same line as the trial judge did when he came to rule on the argument presented before him, when he said that he did not propose to attempt to give an exhaustive definition of what was covered by misbehaviour in a public office, it being sufficient to say that in his opinion what was alleged and what he proposed should be alleged in the count was sufficient. This court proposed to take the same line and to look at the words of the indictment, and looking at those words the court is satisfied that at any rate what is there alleged, if proved, would constitute the offence at common law of misbehaviour in a public office.

Assuming in [Counsel's] favour that there must be some element of dishonesty involved, a dishonest motive, a fraudulent motive, it seems to this court that that is inherent in the words of the count. It is really impossible to conceive of a case in which action of this sort is not taken with the intention of gaining personal advantage and without regard to the interests of the beneficiary. It is true the word "dishonestly" or "fraudulently" does not there appear, but it is inherent in the description of the offence."

38. In *R v Dytham* [1979] 1 QB 723, a constable was 30 yards away from the entrance to a club, from which he saw a man ejected. There was a fight involving cries and screams and the man was beaten and kicked to death in the gutter outside the club. The constable made no move to intervene. He drove away when the hubbub had died down stating that he was due off and was going off. The constable was charged with misconduct of an officer of justice. He demurred to the indictment on the ground that it disclosed no offence since misconduct of an officer of justice involved malfeasance or at least a misfeasance involving an element of corruption and not merely non-feasance as alleged in the indictment.
39. The judgment of this court was prepared by Shaw LJ and delivered by Lord Widgery CJ. Reference was made to *Wyat*, *Bembridge* and *Llewellyn-Jones*. The court referred, at page 726, to the ruling which the Lord Chief Justice, as Widgery J, had given in *Llewellyn-Jones*:

"..... it is not easy to lay down with precision the exact limits of the kind of misconduct or misbehaviour which can result in an indictment under this rule....."

What would be sufficient to justify a conviction, stated Widgery J, was if it could be shown that the order was made "with intent to obtain personal benefit for himself and in circumstances in which there were no grounds for supposing that he would not have made the order but for his personal interest and expectation."

40. Widgery J had added:

"On the other hand I have reached an equally clear view that it is not enough to bring a County Court Registrar within the principle merely to show that, when making an order which was within his powers and which he could make for perfectly proper motives, he knew that by a side wind, as it were, he was going to gain some personal benefit. The mere fact that he knows of his personal interest is, in my view, a very good ground for his declining to exercise jurisdiction and for his arranging for

someone else, such as the judge, to make an order for him. Everyone in judicial office knows how unwise it is to deal with a case in which personal interests are raised, but I would not be prepared to say that it would be misconduct for this purpose for a registrar to make a decision which did affect his personal interests, merely because he knew that his interests were so involved, if the decision was made honestly and in a genuine belief that it was a proper exercise of his jurisdiction so far as the beneficiaries and other persons concerned came into it."

41. The Court referred, at page 727, to the definition of the offence in *Stephen's Digest of the Criminal Law*, 9<sup>th</sup> ed (1950), p1145, Art 145, with its reference to the "wilful" neglect to perform a duty. Stephen stated:

"Every public officer commits a misdemeanour who wilfully neglects to perform any duty which he is bound either by common law or by statute to perform provided that the discharge of such duty is not attended with greater danger than a man of ordinary firmness and activity may be expected to encounter."

The Court added the comment (p727G) that "the neglect must be wilful and not merely inadvertent; and it must be culpable in the sense that it is without reasonable cause or justification."

42. Considering the facts in *Dytham*, the Court added that "the allegation made was not of mere non-feasance but of deliberate failure and wilful neglect":

"This involves an element of culpability which is not restricted to corruption or dishonesty but which must be of such a degree that the misconduct impugned is calculated to injure the public interest so as to call for condemnation and punishment. Whether such a situation is revealed by the evidence is a matter that a jury has to decide. It puts no heavier burden upon them than when in more familiar contexts they are called upon to consider whether driving is dangerous or a publication is obscene or a place of public resort is a disorderly house : see *R. v Quinn*[1962] 2 QB 245."

Had the defendant given evidence, it would no doubt have been put to him that he was recklessly indifferent to the consequences of his inactivity.

43. In *Shum Kwok Sher v HKSAR* [2002] 5 HKCSAR 381, the question arose in the Court of Final Appeal in Hong Kong whether the common law offence of misconduct in a public office was so imprecise as to be unconstitutional under the Basic Law. In a judgment with which the other members of the court agreed, Sir Anthony Mason NPJ held that the offence was not arbitrary or imprecise or vague as to violate the relevant requirements.
44. Having referred to English and Australian authority, Sir Anthony Mason stated, at page 409:

"84. In my view, the elements of the offence of misconduct in public office are:

- (1) a public official;
- (2) who in the course of or in relation to his public office;
- (3) wilfully and intentionally;

(4) culpably misconducts himself.

A public official culpably misconducts himself if he wilfully and intentionally neglects or fails to perform a duty to which he is subject by virtue of his office or employment without reasonable excuse or justification. A public official also culpably misconducts himself if, with an improper motive, he wilfully and intentionally exercises a power or discretion which he has by virtue of his office or employment without reasonable excuse or justification. Subject to two qualifications, this statement of the elements of the offence accords with the respondent's submission.

85. The first qualification is that, although the respondent submits that the misconduct must be either "wilful" or "intentional", I consider that the misconduct must be "wilful" as well as "intentional". In *R v Sheppard* [1981] AC 394, the House of Lords considered a statutory provision which made it an offence "wilfully" to neglect a child in a manner likely to cause him unnecessary suffering or injury to health. By majority it was held that a person "wilfully" fails to provide medical attention for a child if he (i) deliberately does so, knowing that the child's health may suffer unless he receives attention; or (ii) does so because he does not care whether the child may need medical attention or not. In other words, "wilfully" signifies knowledge or advertence to the consequences, as well as intent to do an act or refrain from doing an act. Wilfulness in this sense is the requisite mental element in the offence of misconduct in public office, most notably in cases of non-feasance. There is no reason why the same mental element should not be requisite in cases of misfeasance and other forms of misconduct in public office. For this reason "wilfully" and "intentionally" are not employed disjunctively in the statement of the elements of the offence in the preceding paragraph.

86. The second qualification which I attach to the elements of the offence stated in the previous paragraph is that the misconduct complained of must be serious misconduct. Whether it is serious misconduct in this context is to be determined having regard to the responsibilities of the office and the officeholder, the importance of the public objects which they serve and the nature and extent of the departure from those responsibilities."

45. We share, with respect, counsels' difficulty in understanding, upon the first qualification, the need for conduct to be both wilful *and* intentional. The need for both was considered important by Sir Anthony Mason and also by Bokhary PJ. The explanation may be in the reference to "the intent to do an act or refrain from doing an act" so that the conduct must be deliberate rather than accidental. The judge was also underlining what he had said earlier, at paragraph 82, that "mere inadvertence is not enough". Having cited the two limbs of the test in *Sheppard* as disjunctive, it is unlikely that Sir Anthony Mason would require intent as distinct from recklessness in relation to advertence to the consequences. If there is a difference, we adopt the approach in *G*, which in any event binds us. The decision of the Final Court of Appeal in *Shum Kwok Sher* of course precedes that decision.
46. Where we have, with respect, found Sir Anthony Mason's judgment valuable is in his approval of the general test in *Dytham* and his reference, at paragraph 86, to a second qualification. Having considered the authorities, we agree that the misconduct complained of must be serious misconduct. Whether it is of a sufficiently serious nature will depend on the factors stated by Sir Anthony Mason along with the seriousness of the consequences which may follow from an act or omission. An act or omission which may have as its consequence a death, viewed in terms of the need for maintenance of public

standards to be marked and the public interest to be asserted, is likely to be more serious than one which would cause a trivial injury. This factor is likely to have less significance where, as in *Shum Kwok Sher*, the allegation is of corruption where the judgment upon the conduct may not vary directly in proportion to the amount of money involved.

47. Before expressing conclusions, we refer to *Three Rivers District Council v Governor & Company of the Bank of England (No.3)* [2003] 2 AC 1 where the tort of misfeasance in public office was comprehensively analysed in the House of Lords. It was claimed that the Bank was liable to former depositors with BCCI for the tort of misfeasance in public office because of the Bank's failure in its responsibilities for supervising banking activities in the United Kingdom.
48. Lord Steyn stated, at page 191A, that "the tort bears some resemblance to the crime of misconduct in public office". We venture the comment, however, that there must be differences between the crime and the tort in that the crime is committed upon an affront to the Crown, that is in this context the public interest, whereas the tort requires a balancing of interests as between public officers and individual members of the public or organisations seeking private remedies having asserted a loss which must be proved. The approach in *Three Rivers* to the mental element appears to us, however, to be consistent with that we find appropriate to the criminal offence. Lord Steyn, at page 193C, noted the acceptance by counsel that only reckless indifference in a subjective sense will be sufficient, reliance on the *Caldwell* test having perceptively been abandoned.
49. Considering the nature of the tort, Lord Steyn referred, at page 193C, to "a meaningful requirement of bad faith in the exercise of public powers [being] the *raison d'être* of the tort" and to "the unifying element of conduct amounting to an abuse of power accompanied by subjective bad faith".
50. Lord Hobhouse of Woodborough stated, [2003] 2 AC 1 at page 230F:

".... The official concerned must be shown not to have had an honest belief that the was acting lawfully; this is sometimes referred to as not having acted in good faith... Another way of putting it is that he must be shown either to have known that he was acting unlawfully or to have wilfully disregarded the risk that his act was unlawful. This requirement is therefore one which applies to the state of mind of the official concerning the lawfulness of his act and covers both a conscious and a subjectively reckless state of mind, either of which could be described as bad faith or dishonest."

Having referred to "targeted malice" Lord Hobhouse went on to consider what he described as "untargeted malice", p 230H:

"Here the official does the act intentionally being aware that it will in the ordinary course directly cause loss to the plaintiff or an identifiable class to which the plaintiff belongs. The element of knowledge is an actual awareness but is not the knowledge of an existing fact or an inevitable certainty. It relates to a result which has yet to occur. It is the awareness that a certain consequence will follow as a result of the act unless something out of the ordinary intervenes. The act is not done with the intention or purpose of causing such a loss but is an unlawful act which is intentionally done for a different purpose notwithstanding that the official is aware that such injury will, in the ordinary course, be one of the consequences: *Garrett v Attorney General* [1997] 2 NZLR 332, 349-350.

Thirdly there is reckless untargeted malice. The official does the act intentionally being aware that it risks directly causing loss to the plaintiff or an identifiable class to

which the plaintiff belongs and the official wilfully disregards that risk. What the official is here aware of is that there is a risk of loss involved in the intended act. His recklessness arises because he chooses wilfully to disregard that risk."

51. Lord Hutton, at page 225A cited a passage in the judgment of Brennan J in the High Court of Australia in *Northern Territory of Australia v Mengel* 69 ALJR 527, at page 547:

"It is the absence of an honest attempt to perform the functions of the office that constitutes the abuse of the office. Misfeasance in public office consists of a purported exercise of some power or authority by a public officer otherwise than in an honest attempt to perform the functions of his or her office whereby loss is caused to a plaintiff. Malice, knowledge and reckless indifference are states of mind that stamp on a purported but invalid exercise of power the character of abuse of or misfeasance in public office ..."

52. Lord Millett referred, at page 235B, to the core concept as being abuse of power and stated, at page 237C:

"In conformity with the character of the tort, the failure to act must be deliberate, not negligent or inadvertent or arising from a misunderstanding of the legal position. In my opinion, a failure to act can amount to misfeasance in public office only where (i) the circumstances are such that the discretion whether to act can only be exercised in one way so that there is effectively a duty to act; (ii) the official appreciates this but nevertheless makes a conscious decision not to act; and (iii) he does so with intent to injure the plaintiff or in the knowledge that such injury will be the natural and probable consequence of his failure to act."

53. In so far as comparisons between the criminal offence and the tort are relevant, and in particular the required mental element and the extent of the required departure from proper standards, the approach in *Three Rivers* appears to us to be consistent with that in the criminal cases and in our conclusions. Neither the mental element associated with the misconduct, nor the threshold of misconduct should be set lower for the crime than for the tort.

### Conclusions

54. Roderick Evans J rightly acknowledged the "great variety of circumstances" in which the offence of misconduct in a public office may be charged. It is clear from the authorities that the defendant must be a public officer acting as such. In the absence of submissions on those ingredients, which may in some circumstances present problems of definition, we do not propose to elaborate on them.
55. There must be a breach of duty by the officer. It may consist of an act of commission or one of omission. The conduct must be wilful, in the sense already considered.
56. The approach in *Three Rivers* also demonstrates the many-faceted nature of the tort, as of the crime. It supports the view expressed in the criminal cases, from *Borron* to *Shum Kwok Sher*, that there must be a serious departure from proper standards before the criminal offence is committed; and a departure not merely negligent but amounting to an affront to the standing of the public office held. The threshold is a high one requiring conduct so far below acceptable standards as to amount to an abuse of the public's trust in the office holder. A mistake, even a serious one, will not suffice. The motive with which a public officer acts may be relevant to the decision whether the public's trust is

abused by the conduct. As Abbott CJ illustrated in *Borron*, a failure to insist upon a high threshold, a failure to confine the test of misconduct as now proposed, would place a constraint upon the conduct of public officers in the proper performance of their duties which would be contrary to the public interest.

57. As Lord Widgery CJ put it in *Dytham*, the leading modern criminal case: the element of culpability "must be of such a degree that the misconduct impugned is calculated to injure the public interest so as to call for condemnation and punishment". The constitutional context has changed but the rationale for the offence remains that stated by Lord Mansfield in *Bembridge*: those who hold public office carry out their duties for the benefit of the public as a whole and, if they abuse their office, there is a breach of the public's trust. By way of example, the failure of the constable in *Dytham* to act, in the absence of a justification or excuse, crossed the threshold for this offence.
58. It will normally be necessary to consider the likely consequences of the breach in deciding whether the conduct falls so far below the standard of conduct to be expected of the officer as to constitute the offence. The conduct cannot be considered in a vacuum: the consequences likely to follow from it, viewed subjectively as in *G*, will often influence the decision as to whether the conduct amounted to an abuse of the public's trust in the officer. A default where the consequences are likely to be trivial may not possess the criminal quality required; a similar default where the damage to the public or members of the public is likely to be great may do so. In a case like the present, for example, was the death or serious injury of the man arrested the likely consequence, viewed subjectively, of inaction, or was it merely an uncomfortable night? There will be some conduct which possesses the criminal quality even if serious consequences are unlikely but it is always necessary to assess the conduct in the circumstances in which it occurs.
59. The consequences of some conduct, such as corrupt conduct, may be obvious; the likely consequences of other conduct of public officers will be less clear but it is impossible to gauge the seriousness of defaulting conduct without considering the circumstances in which the conduct occurs and its likely consequences. The whole should be considered in the context of the nature of the office and, as Sir Anthony Mason stated in *Shum Kwok Sher*, the responsibilities of the office and office holder.
60. The failure to meet standards must occur without justification or excuse, a further requirement, though not one which has been the subject of detailed submissions.
61. The circumstances in which the offence may be committed are broad and the conduct which may give rise to it is diverse. A summary of its elements must be considered on the basis of the contents of the preceding paragraphs. The elements of the offence of misconduct in a public office are:
  1. A public officer acting as such (paragraph 54).
  2. Wilfully neglects to perform his duty and/or wilfully misconducts himself (paragraphs 28, 30, 45 and 55).
  3. To such a degree as to amount to an abuse of the public's trust in the office holder (paragraphs 46 and 56 to 59).
  4. Without reasonable excuse or justification (paragraph 60).

As with other criminal charges, it will be for the judge to decide whether there is evidence capable of establishing guilt of the offence and, if so, for the jury to decide whether the offence is proved.

62. Mr Baker QC, for the defendants at the trial, raised the point that public functions are now frequently carried out by employees in private employment, for example those concerned with security at courts and the transport of defendants. There is an unfairness and illogicality, he submits, if those holding a public office, such as police officers, are to be liable to a sanction not applicable to those in private employment who do similar work. This potential unfairness adds weight, in our view, to the conclusion that the offence should be strictly confined but we do not propose to develop the point or to consider further the question of what, for present purposes, constitutes a public office.
63. As to question (ii) in the Reference, we do not favour the introduction of the expression "bad faith" routinely into the summing-up to the jury of the ingredients of the offence of misconduct in public office. We understand the emphasis placed upon it in a civil context in *Three Rivers* but consider the terminology we have expressed would better indicate to the jury the test to be applied. In a case such as the present, for example, the introduction of the doctrine of bad faith, more appropriate to a consideration of commercial dealings, might confuse the jury and deflect them from their task of deciding whether the office of constable had been abused by the conduct of the constables. There may, however, be cases in which the concept of bad faith may be relevant to an assessment of the standard of the defendant's conduct.
64. While this is not intended as a comment upon the present case, it will be clear from what we have said that we do not consider that, in future, in circumstances such as the present, a charge of misconduct in public office should routinely be added, as an alternative, to a charge of manslaughter by gross negligence on the basis that it may be difficult to establish causation. This offence is quite different from manslaughter and, as appears from the authorities, different considerations apply when considering whether to allege it.



## **JUDGMENT**

**The Attorney General of Trinidad and Tobago v  
Carmel Smith**

**From the Court of Appeal of the Republic of Trinidad  
and Tobago**

before

**Lord Phillips  
Lord Rodger  
Lord Walker  
Lord Brown  
Lord Mance**

**JUDGMENT DELIVERED BY  
LORD WALKER  
ON**

**14 December 2009**

**Heard on 13 October 2009**

*Appellant*

James Guthrie QC

(Instructed by Charles  
Russell LLP)

*Respondent*

Sir Fenton Ramsahoye SC  
Anand Ramlogan

(Instructed by Bankside  
Law)

## LORD WALKER

### *The issue*

1. This appeal turns on a procedural issue, that is the proper party to be defendant to a claim for constitutional redress under section 14 of the Constitution of Trinidad and Tobago. The claim alleges that the Statutory Authorities Service Commission (“SASC”) discriminated against Mrs Carmel Smith (who is the claimant, and the respondent to this appeal) and treated her unequally in violation of her rights under section 4(b) (equality before the law) and (d) (equality of treatment by a public authority).

2. Although the events complained of occurred more than seven years ago, and there have been previous proceedings by way of judicial review, the merits of the claim have still to be investigated. Nothing in this judgment should be taken as expressing any view on the merits. The factual background is sufficiently summarised by recording that from 1996 Mrs Smith was the Acting Director of the National Lotteries Control Board (“NLCB”) which she had joined as Secretary to the Board of Directors in 1989. In 2000 she was formally appointed as Deputy Director but remained as Acting Director. In August 2002 she was on an extended period of vacation when she received a letter from the Chairman telling her to remain on vacation leave because accountants’ reports had provided “evidence of matters of concern, which bear on the performance of your duties.”

3. Shortly afterwards she was told that the matter had been referred to SASC, and on 2 September 2002 an executive officer of SASC wrote to her referring to an allegation of misconduct. The letter stated:

“In accordance with the provisions of Regulation 88(1) and (2) of the Statutory Authorities’ Service Commission Regulations Chapter 24: 01, the Statutory Authorities’ Service Commission has directed that you cease to report for duty with effect from August 5, 2002, until further notice.”

There was then considerable delay (a matter which was ventilated in the judicial review proceedings but is not relevant to this appeal). On 31 March 2004 Mrs Smith received from SASC a formal charge under Regulation 90(6) of the SASC Regulations:

“Statement of Charge;

Misconduct contrary to an implied term in your contract of employment;

Particulars of Charge:

That you, Carmel Smith, Deputy Director, National Lotteries Control Board did an act in breach of an implied term of your contract of employment namely not to exercise your authority unreasonably when during 2000 and 2002 you received a benefit above and beyond your entitlement as acting Director, by accepting and using motor vehicle registration number PBJ 3133 while enjoying an upkeep allowance on your personally owned motor vehicle.”

On 16 April 2004 Mrs Smith wrote formally denying the charge.

4. On 31 March 2006 Mrs Smith issued an originating motion claiming redress under section 14 of the Constitution. Her affidavit in support of the motion referred, in support of her allegation of discrimination, to SASC’s decision not to suspend another (less senior) male employee of NLCB against whom SASC had at the end of 2005 brought seven separate charges of sexual harassment (all these incidents having allegedly occurred in August 2004 and involving a single female employee).

5. The Attorney General of Trinidad and Tobago was made the sole defendant to Mrs Smith’s originating motion. He objected that (although entitled to be given notice of the proceedings, under section 3 of the Supreme Court of Judicature Act, Chapter 4: 01) he could not be made a party without his consent, and that the proper defendant was SASC. This point was heard as a preliminary issue. On 18 February 2008 Moosai J upheld the Attorney General’s objection and gave leave for the amendment of the proceedings, striking out the Attorney General and adding SASC. On 21 July 2008 the Court of Appeal (Hamel-Smith, Kangaloo and Weekes JJA) allowed Mrs Smith’s appeal and struck out the judge’s order, so that the Attorney General again became the sole defendant in place of SASC. The Attorney General appeals to the Board with final leave granted on 2 February 2009.

6. It is a matter for regret that considerable delay and expense has been incurred over this purely procedural point, with the substance of Mrs Smith’s claim being held in suspense. The procedural point is however of some importance to both parties. The Attorney General wishes to have the law clarified, to avoid similar delay and expense in future proceedings for constitutional redress. Mrs Smith has anxieties (whether or not well-founded) about the recovery of any damages and costs that may eventually be awarded to her, if the Attorney General himself is not a party to the proceedings.

#### *Relevant provisions of the Constitution*

7. The Constitution of Trinidad and Tobago came into force on 1 August 1976. Chapter 1 (Recognition and protection of fundamental human rights and freedoms) contains sections 4 and 14, to which reference has already been made. Section 14 (Enforcement of the protective provisions) provides:

“(1) For the removal of doubts it is hereby declared that if any person alleges that any of the provisions of this Chapter has been, is being, or is likely to be contravened in relation to him, then without prejudice to any other action with respect to the same matter which is lawfully available, that person may apply to the High Court for redress by way of originating the motion.

(2) The High Court shall have original jurisdiction

(a) to hear and determine any application made by any person in pursuance of subsection (1); and

(b) to determine any question arising in the case of any person which is referred to it in pursuance of subsection (4),

and may, subject to subsection (3), make such orders, issue such writs and give such directions as it may consider appropriate for the purpose of enforcing, or securing the enforcement of, any of the provisions of this Chapter to the protection of which the person concerned is entitled.

(3) The State Liability and Proceedings Act shall have effect for

the purpose of any proceedings under this section.”

The State Liability and Proceedings Act (Chapter 8: 02) is concerned with proceedings by and against the State. The Judicial Committee has considered the effect of section 14(3) in *Durity v Attorney General of Trinidad and Tobago* [2003] 1 AC 405, explaining (para 24 of the judgment delivered by Lord Nicholls):

“On this the first point to note is that the express but general reference to the State Liability and Proceedings Act in section 14(3) of the Constitution cannot be read as meaning that every provision of that Act is incorporated into the Constitution for the purposes of constitutional proceedings . . . Thus, section 14(3) of the Constitution has to be read as applying to constitutional proceedings such of the provisions of the State Liability and Proceedings Act as are *capable* of being applied for this purpose.”

8. Section 76(2) of the Constitution provides for the office of Attorney General:

“The Attorney General shall, subject to section 79 [relating to temporary incapacity], be responsible for the administration of legal affairs in Trinidad and Tobago and legal proceedings for and against the State shall be taken –

(a) in the case of civil proceedings, in the name of the Attorney General;

(b) in the case of criminal proceedings, in the name of the State”.

In the Constitution the expression “the State” is not defined (other than by reference to its geographical extent in section 1(2)). Nor is the expression “civil proceedings” defined; in particular, there is no restrictive definition such as is found in the State Liability and Proceedings Act (para 12 below).

9. There are some other definition provisions in the Constitution that may be relevant, although they were not relied on in counsel’s submissions. In section 3(1) “public office” and “public officer” are defined by reference (directly or indirectly) to the public service, which is defined, subject to subsections (4) and (5), as service in a civil capacity of the Government of Trinidad and Tobago (or of the Tobago House of Assembly). “Service Commission” means the Judicial and Legal Service Commission, the Public Service Commission, the Police Service Commission and the Teaching Service Commission. Section 3(4) provides that a person shall not be considered to hold an office in the public service by reason only that

“(b) he holds the office of –”

...

(iii) Ombudsman or member of the Integrity Commission or member of any other Commission established by this Constitution;

...

(v) member of any board, commission, committee or similar body, whether incorporated or not, established by any enactment.”

10. The Constitution provides for the establishment and functioning of a number of Commissions to oversee appointments, promotions, removals and terms of service for those working in the public sector in Trinidad and Tobago. These are the four Service Commissions already mentioned, that is the Judicial and Legal Service Commission (Chapter 7, sections 110-111); and (all in Chapter 9, sections 120-129) the Public

Service Commission, the Police Service Commission and the Teaching Service Commission. There are two Commissions with more limited and specialised functions, the Integrity Commission (Chapter 10, sections 138-139) and the Salaries Review Commission (Chapter 11, sections 140-141). There is also a Public Service Appeal Board (Chapter 9, sections 130-137). Some at least of these Commissions had been in existence before the coming into force of the present Constitution in 1976. None of them appears to be a corporate body.

11. Lord Diplock has described the constitutional purpose of these Commissions in an appeal relating to the former (1962) Constitution, *Thomas v Attorney General of Trinidad and Tobago* [1982] AC 113, 124:

“The whole purpose of Chapter VIII of the Constitution which bears the rubric ‘The Public Service’ is to insulate members of the civil service, the teaching service and the police service in Trinidad and Tobago from political influence exercised directly upon them by the government of the day. The means adopted for doing this was to vest in autonomous commissions, to the exclusion of any other person or authority, power to make appointments to the relevant service, promotions and transfers within the service and power to remove and exercise disciplinary control over members of the service. These autonomous commissions, although public authorities, are excluded by section 105(4)(c) from forming part of the service of the Crown.”

Section 3(4) of the present Constitution is the counterpart of section 105(4)(c) of the former Constitution.

#### *Other statutory provisions*

12. The SASC was established by the State Authorities Act (Chapter 24:01). That Act was enacted in 1966 and came into force on 1 January 1967. It was therefore in existence several years before the present Constitution came into force, but it is not mentioned in the Constitution. The functions of the SASC (tersely set out in section 5) are exercisable in relation to officers (that is, under the definition in section 2, pensionable, monthly paid personnel) of statutory authorities as defined in the same section:

“‘Statutory Authority’ means a local authority and any commission, board, committee, council or body (whether corporate or unincorporated) established by or under an Act other than the Companies Ordinance declared by the President under section 3 to be subject to the provisions of this Act.”

Section 3 gives no further guidance as to the principles on which the President should exercise his power to make such a declaration, but the context (and the word “authority” itself) indicate that statutory authorities are to be statutory bodies operating in the public sector and exercising some degree of control over particular activities (such as the supervision of the national lottery exercised by the NLCB). In short SASC’s functions in relation to statutory authorities are similar to those exercisable by the four Service Commissions in relation to the respective branches of the public sector for which the Constitution gives them responsibility. The SASC, like the other Service Commissions, the Integrity Commission and the Salaries Review Commission, is not established as a corporate body.

13. The State Liability and Proceedings Act (originally named the Crown Liability and Proceedings Act) was enacted in 1966 and came into force on 28 September 1968 (so that it too antedates the present Constitution, and the reference to it in section 14(3) has appeared in the Constitution since its inception). Section 2(1) contains some definitions to which reference was made in argument:

“‘agent’ in relation to the State includes an independent contractor employed by the State but does not include a statutory corporation except where the State has entered into an express contract of agency with the corporation;

‘civil proceedings’ includes proceedings in the High Court of Justice or a petty civil court for the recovery of fines or penalties, but does not include proceedings analogous to proceedings on the Crown side of the Queen’s Bench Division in England;

...

‘servant’ in relation to the State, includes an officer who is a member of the public service and any servant of the State, . . . [but does not include] –

...

(f) any officer, employee or servant of a statutory corporation;

...

‘the State’ means the Republic of Trinidad and Tobago.”

The definition of “agent” is relevant mainly to section 4 (liability of the State in tort) and does not assist the resolution of this appeal. Section 2(3) provides:

“Any reference in Parts III or IV to civil proceedings by or against the State, or to civil proceedings to which the State is a party, shall be construed as including a reference to civil proceedings to which the Attorney General is a party; but the State shall not for the purposes of Parts III and IV be deemed to be a party to any proceedings by reason only that they are brought by the Attorney General upon the relation of some other person.”

Parts III and IV of the Act deal with matters such as enforcement, discovery and limitation. Section 2(3) does not therefore amount to a general widening of the concept of proceedings by or against the State, nor is it circular (as it might be if it applied for the purposes of Part II of the Act).

14. Section 19 of the Act is of central importance. Counsel for Mrs Smith based their argument on section 19(2):

“Subject to this Act and to any other written law, proceedings against the State shall be instituted against the Attorney General.”

They contended that SASC’s actions are the actions of the State, nonetheless because of its independence from Government control. Against that counsel for the Attorney General relied on section 19(8) and (9), added by amendment in 1998:

“(8) Proceedings against an authority established by the Constitution or a member thereof arising out of or in connection with the exercise of the powers of the authority or the performance of its functions or duties are deemed to be proceedings against the State.

(9) In this section, ‘authority’ means a Service Commission as defined in section 3(1) of the Constitution.”

Counsel for the Attorney General rely on an implicit but clear distinction between the four Service Commissions referred to in section 19(9), on the one hand, and the

Integrity Commission, the Salaries Review Commission and the SASC, on the other hand.

15. The Act has one puzzling complication that needs to be noted, but only in order to clear it out of the way. Apart from the definition of “civil proceedings” in section 2 (1) and the special provisions in section 2 (3), section 25 contains further provisions limiting the meaning of “civil proceedings” for the purposes of Part II only (which includes section 19). These provisions are obscure, but their most important practical effect is that judicial review proceedings may still be brought, despite section 19 (8) and (9), against any of the Service Commissions in its own name. But they do not have that effect in relation to a motion for constitutional relief under section 14 of the Constitution.

### *State responsibility*

16. The proper scope and function of the State is a topic which has engaged political philosophers for many centuries. In the context of English law the concept of the State has traditionally been associated with the Crown, and the public service with Crown Service. Although Trinidad and Tobago has been a republic for over 30 years its Constitution still reflects this historical background. The traditional approach has always been that Crown Service is limited to the military or civil service of central government. Those employed in local government or statutory corporations are working in the public sector (a much wider expression) but are not in Crown service. Denning LJ summarised the position in *Tamlin v Hannaford* [1950] 1KB 18, a case concerned with the British Transport Commission, which took over the British railway industry when it was nationalised by the Transport Act 1947. After referring to the Minister’s power to give general policy directions to the Commission, Denning LJ said (at p24):

“These are great powers but still we cannot regard the corporation as being his agent, any more than a company is the agent of the shareholders, or even of a sole shareholder. In the eye of the law, the corporation is its own master and is answerable as fully as any other person or corporation. It is not the Crown and has none of the immunities or privileges of the Crown. Its servants are not civil servants, and its property is not Crown property.”

17. In the last generation the influence of European law has produced new contexts in which a broader concept of state responsibility is called for. The Court of Justice of the European Communities has held that a body such as a statutory hospital authority or a statutory gas corporation is an “emanation of the state” so as to found state responsibility for its shortcomings in compliance with European directives: *Marshall v Southampton and South West Hampshire Area Health Authority* [1986] QB 401; *Foster v British Gas Plc* [1991] 1 QB 405. The same approach of broadening state responsibility for failure to respect human rights underlies the concept of “public

authority” in the United Kingdom Human Rights Act 1998. *Marshall and Fisher* were referred to in the impressive judgment of Aboud J (Ag) in *Boxhill v Port Authority of Trinidad and Tobago* (2004) on the issue of whether the Port Authority is a public authority within the meaning of section 4(d) of the Constitution. But that is a different and broader issue than the procedural issue now before the Board. The procedural issue is one of statutory construction which depends on the language of the Constitution and the State Liability and Proceedings Act, construed in a purposive and practical way.

18. When the new Constitution was being drafted and considered the Service Commissions were already in existence, carrying out the important functions described by Lord Diplock in *Thomas v Attorney General of Trinidad and Tobago*. SASC was already in existence carrying out similar functions in relation to statutory authorities. The fact that the former but not the latter were given constitutional status may reflect Parliament’s view that the functions of the Service Commissions are closer to what are sometimes called “core functions”. That view would tend to be confirmed by the amendments to section 19 of the State Liability and Proceedings Act made by Parliament in 1998. But whether or not that is correct (and whether or not the amendments were inspired by the Judicial Committee’s decision in *Rees v Crane* [1994] 2 AC 173) it is inconceivable that Parliament did not have it well in mind, in making the amendments, that they were making an important procedural distinction between the four Service Commissions, on the one hand, and the Integrity Commission, the Salaries Review Commission, and the SASC, on the other hand.

#### *Lack of incorporation*

19. In his spirited address following his leader, Mr Ramlogan placed great emphasis on the fact that SASC is an unincorporated body. This point seems not to have been taken below (indeed the judge recorded in paragraph 20 of his judgment, “it is common ground that the SASC is a legal entity capable of being sued”). Nevertheless it must be considered to see whether it has any merit.

20. In the Board’s opinion the point has no merit. An unincorporated body (by definition) has no legal personality, and can sue or be sued only through one or more natural persons representing it. But this happens as a matter of course both in private law (where partners, clubs, trustees and personal representatives are often parties to litigation) and in public law (where unincorporated authorities of all sorts, including tribunals, school governors, and visitors to educational charities) are often parties to judicial review or other proceedings. A striking example is the well-known case of *R v Panel on Take-overs and Mergers ex parte Datafin Plc* [1987] 1 QB 815, in which Sir John Donaldson observed at the beginning of his judgment (at pp 824-825):

“The Panel is an unincorporated association without legal personality and, so far as can be seen, has only about 12 members. [The members were then identified] It has no statutory, prerogative or common law powers and it is not in

contractual relationship with the financial market or with those who deal in that market.”

Nevertheless the Panel was amenable to judicial review.

21. It should perhaps be added, for completeness, that if an unincorporated body has only a shadowy existence that may be a reason for the Court to refuse to allow it to be represented, either in judicial review or any other proceedings. As Mr Ockleton said when sitting as a deputy High Court judge in *Proud v Buckingham Pub Watch Scheme* [2008] EWHC 224 (Admin), quoted in *R (Boyle) v Haverhill Pub Watch* [2009] EWHC 2441 (Admin), para 38:

“It seems to me in the highest degree unlikely that an entity which has . . . no constitution, no finances, no fixed membership, no rules and whose decisions are binding on its members only to the extent that they treat them as binding, on which again there are no rules – that an entity of that sort can be amenable to judicial review or can be a person exercising public functions under section 6 of the Human Rights Act.”

But that has no application to this case. SASC is a statutory body with functions, powers and responsibilities clearly defined by Parliament.

#### *Capacity to pay*

22. Mr Ramlogan also relied on the practicalities of the matter. He submitted that even if SASC was to be reinstated as a defendant, the Attorney General should remain as a party in order to ensure that Mrs Smith, if ultimately successful, would be able to recover any damages and costs awarded to her. He drew attention to the decision of the Judicial Committee in *Jhagroo v Teaching Service Commission* [2002] UKPC 63, in which (para 45) it was accepted by both sides that any damages awarded would be payable by the Government of Trinidad and Tobago, rather than the Teaching Service Commission.

23. Mr Guthrie QC (for the Attorney General) did not quarrel with the suggestion that lawyers in his department might continue to be involved in the case in any event, and indicated that any damages and costs awarded were *likely* (Mr Guthrie went no further than that) to be met through his department. It may be that individual members of SASC (as well as Mrs Smith) will want to take that matter further with the Attorney General’s Department. These considerations cannot however carry weight in the determination of the issue of statutory construction, as against the scheme and language of the State Liability and Proceedings Act.

### *Conclusion*

24. In the Board's opinion the scheme and language are clear. The Attorney General is to represent the State (in effect, Central Government). The Attorney General is also to represent (except in judicial review proceedings) statutory bodies which (presumably because of their core functions) are deemed by section 19(8) and (9) to be part of the State. Other statutory bodies, even if public authorities amenable to constitutional redress proceedings under section 14 of the Constitution, are not part of the State, and are not deemed to be part of the State.

25. The Board will therefore allow the appeal and reinstate the order of Moosai J. The parties have 14 days in which to submit written submissions as to costs.

## Douglas and Others v Pindling

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JUDICIAL COMMITTEE OF THE PRIVY COUNCIL  
LORD KEITH OF KINKEL, LORD JAUNCEY OF TULLICHETTLE, LORD BROWNE-  
WILKINSON, LORD NICHOLLS OF BIRKENHEAD and SIR JOHN MAY  
18th MARCH, 13th MAY 1996

c

*Appeal – Privy Council, to – Appeal as of right – Appeal against decision of Court of Appeal on appeal against final decision in relation to redress of constitutional rights – Need for appeal to concern constitutional issue – Constitution of the Bahamas, articles 28, 104(2)*

d

*Banking – Evidence – Bankers' books – Inspection by order of the court – Provision for special cause – Need for special cause not precluding evidence as to contents of bankers' books – Bankers' Books Act, Cap 53 [Bahamas], section 6*

e

*Banking – Bank account – No disclosure of information without consent – Disclosure by order of court – Public interest in disclosure – Disclosure to commission of inquiry – Banks and Trust Companies Regulation (Amendment) Act 1965 [Bahamas], section 10 – Banks and Trust Companies Regulation (Amendment)*

f

*Act 1980 [Bahamas], section 2*

*Banking – Evidence – Bankers' books – Inspection by authority of summons issued by president of commission of inquiry – Criteria on which summons should be issued – Review of exercise of president's powers by court – Commissions of Inquiry Act, Cap 172 [Bahamas], section 10(3)*

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Section 104 of the Constitution of the Bahamas provides:

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“(1) An appeal to the Court of Appeal shall lie as of right from final decisions of the Supreme Court given in exercise of the jurisdiction conferred on the Supreme Court by article 28 of this Constitution (which relates to the enforcement of fundamental rights and freedoms).

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“(2) An appeal shall lie as of right to the Judicial Committee of Her Majesty's Privy Council or to such other court as may be prescribed by Parliament under article 105(3) of this Constitution from any decision given by the Court of Appeal in any such case.”

On the true construction of article 104(2) of the Constitution of the Bahamas, an appeal as of right under that provision lies only where

the appeal involves the determination of a constitutional issue under article 28.

a

On an appeal against an order quashing summonses issued by the president of a duly constituted commission of inquiry (acting under the Commissions of Inquiry Act, section 10(3)) to two banks under the Bankers' Evidence Act requiring the disclosure of a customer's banking records,

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**Held**, advising that the appeal should be allowed, (1) that section 6 of the Bankers' Evidence Act did not require "special cause" to be shown before evidence could be given as to the contents of a banker's books.

c

(2) That if the public interest appeared on good grounds to require the disclosure of a customer's banking records, the customer's right to non-disclosure without consent (cf. the Banks and Trust Companies Regulation (Amendment) Act 1965, section 10, as substituted) must yield to the public interest.

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(3) That if there was material before a commission of inquiry which induced its members to believe bona fide that a banker's records might cast light on matters falling within the commission's terms of reference, it was the duty of the commission to issue a summons seeking access to the bankers' books; it was not necessary that the commission should believe that the records would in fact have such a result; if the commission's decision to issue a summons should be challenged on appeal, the court would approach the matter upon the traditional judicial review basis applying the *Wednesbury* principles.

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*Associated Provincial Picture Houses Ltd v Wednesbury Corporation* [1948] 1 KB 223 applied.

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*Ross v Costigan* (1982) 41 ALR 319 and *Commission of inquiry v Maynard* (unreported) civil appeals 6 and 7 of 1984 approved.

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#### Cases referred to in the advice of the Board

*Associated Provincial Picture Houses Ltd v Wednesbury Corporation* [1948] 1 KB 223, [1947] 2 All ER 680, England CA.

*Commission of inquiry v Maynard* (unreported) civil appeals 6 and 7 of 1984, Bahamas CA.

*Pollock v Garle* [1898] 1 Ch 1, 66 LJ Ch 788, 77 LT 415, England CA.

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*Ross v Costigan* (1982) 41 ALR 319, Australia Federal Court.

*Ross v Costigan (No 2)* (1982) 41 ALR 337, Australia Federal Court, General Division.

**Appeal**

- a** The Rt Hon Sir William Randolph Douglas, Edwin P. Minnis and Gerald Montes de Oca (the members of a commission of inquiry) and the Attorney-General of the Bahamas appealed to the Privy Council (appeal 9 of 1995) against the order of the Court of Appeal of the Bahamas (Melville P, Campbell JA and Worrell acting JA) on 15th July 1995
- b** quashing summonses issued by Sir William Douglas, the chairman of the commission, acting under the Commissions of Inquiry Act, section 10(3), requiring the Bank of Nova Scotia and the Barclays Bank in Nassau to produce all banking records relating the Rt Hon Sir Lynden Oscar Pindling (the respondent to the appeal); the Court of Appeal also granted an
- c** injunction preventing the commission from compelling the attendance before it of any officer of the two banks or of the respondent for the purpose of giving information about the respondent's bank accounts. The facts are set out in the advice of the Board delivered by Lord Keith of Kinkel.
- d** *Sir Godfray le Quesne QC, Michael Hamilton*, Director of Legal Affairs of the Bahamas, and *James Dingemans* (instructed by Charles Russell) for the appellants.
- e** *Dr Lloyd Barnett* and *Philip Davis* (instructed by McKenna & Co) for the respondent.

Their lordships took time for consideration.

- f** **Lord Keith of Kinkel** delivered the advice of the Board. The first appellants are the members of a commission of inquiry appointed by the Governor-General of the Bahamas under letters patent dated 30th December 1992 and 11th February 1993. The second appellant is the Attorney-General of the Bahamas.
- g** The letters patent required the commission to make a diligent and full inquiry into the methods employed in the conduct and operation of certain corporations, including the Hotel Corporation of the Bahamas, with specific reference to various matters set out, of which the following are
- h** relevant for present purposes:
- “(a) the expenditure of public funds allocated to or received by them;
- “(b) the awarding of contracts by them;
- “(c) in relation to the Hotel Corporation of the Bahamas, the
- j** acquisition, repair, construction, renovation, refurbishment and operation of its various properties, including in particular (but not limited to) the Holiday Inn and the Lucayan Beach Hotels in Grand Bahama, the Ambassador Beach, Cable Beach and Balmoral Beach Hotels in New Providence, the Emerald Palms by the Sea Hotel in Driggs Hill, Andros,

the Andros Town Yacht Club and Marina in Fresh Creek, Andros and the Winding Bay Beach Resort in Eleuthera; . . .

“(f) their procurement policies and practices;

“(g) their employment practices including but not restricted to the employment and dismissal of staff;

“(h) any and all allegations of fraud, corruption, breach of trust, conflict of interest or any wrongdoing whatsoever made by anyone against any person whatsoever arising out of and in connection with any or all of the affairs of . . . the Hotel Corporation of the Bahamas . . .

“(i) the examination of all banking arrangements entered into by them, and their financial activities generally, and more specifically the management, care and conduct of their financial affairs;

“(j) the examination, analysis and consideration of their practices, procedures, policies, systems and mechanisms, financial and otherwise, with a view to making such recommendations as may be considered appropriate in respect of any abuses or wrongdoings, or that would prevent any future abuse and wrongdoing and ensure the proper functioning and administration of the afore-named public entities.”

The letters patent granted to the commission all the powers conferred on commissioners by the Commissions of Inquiry Act. Section 10(1) of that Act, so far as relevant, provides:

“Subject to the provisions of this Act, any commissioner shall have the powers of a justice of the Supreme Court to – (a) summon and compel the attendance of witnesses; (b) call for the production of documents or things including the power to retain and examine the same; (c) examine persons appearing before them on oath; . . .”

Section 10(3) provides:

“For the purpose of the exercise by a commissioner of any of the powers mentioned in subsection (1) references to a justice of the Supreme Court in any other law applicable thereto shall, subject to this Act, have effect as including such a commissioner save that, where any such power is exercised in respect to the summoning of any person to give or produce evidence as to any banker’s book within the meaning of the Bankers’ Books Evidence Act, such summons shall only be issued by the president of the commission.”

The respondent was head of the Government of the Bahamas from 16th January 1967 to 21st August 1992, first as Premier and then as Prime Minister. From 1st January 1975 until 24th January 1984 and again from 27th June 1987 until 1st October 1990 he was chairman of the Hotel Corporation of the Bahamas, a corporation established by Act of Parliament.

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a After having heard evidence from a number of witnesses about the affairs of the Hotel Corporation, the commission by letter dated 7th January 1994 made a request to the respondent for co-operation in giving access to all his bank accounts and other accounts over which he had control. The reasons for the request were stated to be:

b “(1) To determine whether or not there is any evidence to support or dispel any suspicion that you have benefited in any way out of the sale/purchase of the Emerald Palms by the Sea Hotel.

c “(2) To determine whether or not there is any evidence to support or dispel rumours that you have received payments in connection with the awarding of contracts by the Hotel Corporation of the Bahamas.”

d The respondent replied by letter dated 10th January 1994 stating that such information as the commission had was speculation and no more than suspicion or rumours propagated for political reasons. Counsel to the commission then wrote to the respondent on 19th January 1994 setting out as grounds for suspicion that the respondent might have benefited from the purchase or sale of the Emerald Palms by the Sea Hotel, certain matters relating to the purchase of the hotel by a Mr Benjamin Forbes and the subsequent sale of it by him to the Hotel Corporation.

e On 15th March 1994 the president of the commission, Sir William Randolph Douglas, issued to the manager of the Bank of Nova Scotia in Nassau and to the respondent a summons requiring production of all the banking records of the respondent from 1st January 1976 to 31st December 1993. A similar summons was issued to the manager of Barclays Bank in Nassau on 31st March 1994.

f The respondent then filed an originating summons seeking various forms of relief including (1) a declaration that the summonses to the banks were *ultra vires* the commission, (2) a declaration that the issue of these summonses contravened the respondent's constitutional rights, and (3) an injunction restraining the commission from compelling the attendance of any officer of the banks or the respondent himself before the inquiry for the purpose of providing information about the respondent's bank accounts.

g On 18th May 1994 Strachan J gave judgment dismissing the respondent's action. The respondent appealed, and by order dated 15th July 1994 the Court of Appeal of the Bahamas (Melville P, Campbell JA and Worrell acting JA) allowed the appeal. The order quashed the summonses issued by the commission to the bank managers and to the respondent, granted an injunction against the commission compelling the attendance before it of any officer of the banks or of the respondent for the purpose of giving information about the respondent's bank accounts, and required the commission to return to the Bank of Nova Scotia certain banking records which, as it happened, the commission had already obtained. The reasons for the Court of Appeal's order were not made available until 21st October 1994. In the meantime the appellants, within twenty-one days of the date

of the order, as required by section 3 of the Bahamas Islands (Procedure in Appeals to the Privy Council) Order 1964 (SI 1964 No 2042) ("the 1964 Order"), applied to Gonsalves-Sabola CJ as a single judge of the Court of Appeal for leave to appeal to Her Majesty in Council, and he granted conditional leave on the usual terms on 11th August 1994. The Chief Justice granted final leave on 23rd November 1994. The reasons for the decision of the Court of Appeal, when delivered on 21st October 1994, revealed that the respondent's appeal had failed so far as the claim for constitutional relief was concerned, but had succeeded as regards the application of the Bankers' Books Evidence Act.

In the circumstances Dr Barnett, for the respondent, argued as a preliminary point before the Board that the conditional leave to appeal granted to the appellants by the single judge of the Court of Appeal was invalid, since no appeal as of right was available to them.

The relevant enactments are these:

*Article 28(1) of the Constitution of the Bahamas*

"If any person alleges that any of the provisions of articles 16 to 27 (inclusive) of this Constitution has been, is being or is likely to be contravened in relation to him then, without prejudice to any other action with respect to the same matter which is lawfully available, that person may apply to the Supreme Court for redress."

*Article 104 of the Constitution*

"(1) An appeal to the Court of Appeal shall lie as of right from final decisions of the Supreme Court given in exercise of the jurisdiction conferred on the Supreme Court by article 28 of this Constitution (which relates to the enforcement of fundamental rights and freedoms).

"(2) An appeal shall lie as of right to the Judicial Committee of Her Majesty's Privy Council or to such other court as may be prescribed by Parliament under article 105(3) of this Constitution from any decision given by the Court of Appeal in any such case."

*Section 19 of the Court of Appeal Act*

"(1) An appeal shall lie to Her Majesty in Council from any judgment or order of the court upon appeal from the Supreme Court in a civil action in which the amount sought to be recovered by any party or the value of the property in dispute is of the amount of \$4000 or upwards, and with the leave of the court but subject nevertheless to such restrictions, limitations and conditions as may be prescribed in relation thereto by Her Majesty in Council, in any other proceedings on the Common Law, Equity, Admiralty or Divorce and Matrimonial sides of the jurisdiction of the Supreme Court.

"(2) Save as is provided in this section the decision of the court in any civil proceedings brought before it on appeal shall be final.

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a “(3) Nothing in this section contained shall be deemed to restrict or derogate from the right of Her Majesty in Council in any case to grant special leave to appeal from the decision of the court in any cause or matter.”

Section 5 of the 1964 Order provides:

b “A single judge of the Court [of Appeal] shall have power and jurisdiction – (a) to hear and determine any application to the court for leave to appeal in any case where under any provision of law an appeal lies as of right from a decision of the court . . .”

c Dr Barnett argued that the case did not fall within article 104(2) of the Constitution because, although the respondent’s originating summons had sought relief under article 28, the judgment of the Court of Appeal had refused such relief and granted it only on common-law grounds. There was  
d no cross-appeal against the refusal of constitutional relief, and no constitutional point was involved in the appellants’ appeal. That appeal could accordingly lie only under section 19(1) of the Court of Appeal Act, and since it did not involve a dispute about property of the value of \$4000 or upwards, or indeed  
e any property, it could be brought only with the leave of the Court of Appeal. Thus section 5 of the 1964 Order did not apply, and the single judge had no jurisdiction to grant leave to appeal.

It appears that on 27th January 1995 the full Court of Appeal was moved by the appellants to vary or confirm the leave to appeal granted by the single judge, but declined to interfere.

f Sir Godfray le Quesne QC, for the appellants, argued that article 104(2) of the Constitution applied so as to give the appellants an appeal as of right to Her Majesty in Council because the case in which the Court of Appeal had given its decision was one in which a claim for relief under article 28 of the Constitution had been made, and there had been an adjudication  
g upon that claim under the jurisdiction conferred upon the court under that article.

Their lordships are of opinion that the true intendment of article 104(2) is that an appeal as of right under it should lie only where the appeal would involve the determination of a constitutional issue under article 28.  
h Otherwise, the jurisdiction exercised would not be the article 28 jurisdiction, but simply the ordinary jurisdiction of the Supreme Court.

However, Sir Godfray submitted that if his arguments on this point were unsuccessful the case was nevertheless a suitable one for the grant of special leave to appeal. Dr Barnett did not object to this application being made  
j without the presentation of a separate petition for special leave. Their lordships considered it appropriate that they should advise Her Majesty to grant special leave, since the case raises important issues regarding the right test to be applied by a commission of inquiry in deciding to issue a summons under the Bankers’ Books Evidence Act, and the nature of the supervisory

jurisdiction of the court over a decision to issue such a summons. They proceeded to hear argument on the merits of the appeal on that basis.

It is convenient to start by setting out the relevant provisions of the Bankers' Books Evidence Act, namely sections 3 to 7:

"3. Subject to the provisions of this Act, a copy of any entry in a banker's book shall in all legal proceedings be received as prima facie evidence of such entry, and of the matters, transactions and accounts therein recorded.

"4. A copy of an entry in a banker's book shall not be received in evidence under this Act unless it be first proved that the book was at the time of the making of the entry one of the ordinary books of the bank, and that the entry was made in the usual and ordinary course of business, and that the book is in the custody or control of the bank.

"Such proof may be given by a partner or officer of the bank, and may be given orally or by an affidavit sworn before any notary public or justice of the peace or person authorised to take affidavits.

"5. A copy of an entry in a banker's book shall not be received in evidence under this Act unless it be further proved that the copy has been examined with the original entry and is correct.

"Such proof shall be given by some person who has examined the copy with the original entry, and may be given either orally or by an affidavit sworn before any notary public or justice of the peace or person authorised to take affidavits.

"6. A banker or officer of a bank shall not, in any legal proceedings to which the bank is not a party, be compellable to produce any banker's book the contents of which can be proved under this Act, or to appear as a witness to prove the matters, transactions and accounts therein recorded, unless by order of a judge made for special cause.

"7. On the application of any party to a legal proceeding a court may order that such party be at liberty to inspect and take copies of any entries in a banker's book for any of the purposes of such proceedings. An order under this section may be made either with or without summoning the bank or any other party, and shall be served on the bank three clear days before the same is to be obeyed, unless the court otherwise directs."

The judges of the Court of Appeal took the view that the effect of section 6 was that no evidence about the contents of a banker's books could be given otherwise than in pursuance of an order of a judge made for "special cause". This was erroneous.

The purpose of sections 3, 4, 5 and 6 was to enable attested copies of entries in a banker's books to be made available in evidence without the necessity of the books themselves being produced in court together with an officer of the bank to speak to them. In relation to the United Kingdom Bankers' Books Evidence Act 1879, which is in substantially identical

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a terms to the Bahamian Act, Lindley MR said in *Pollock v Garle* [1898]  
1 Ch 1 at page 4:

b “The Bankers’ Books Evidence Acts were passed for the obvious  
purpose of getting over a difficulty and hardship as to the production of  
c bankers’ books. If such books contained anything which would be  
evidence for either of the parties, the banker or his clerk had to produce  
d them at the trial under a *subpoena duces tecum*, which was an intolerable  
inconvenience to bankers when the books were in daily use. The leading  
e object of the Acts was to protect bankers from that inconvenience. This  
is accomplished by the first six sections of the Act of 1879, which enable  
f bankers to send attested copies of entries in their books instead of  
g producing the books.”

d Since attested copies of entries in the books were by the Act made capable  
of being given in evidence it would be only in exceptional cases that the  
e books themselves could be required to be produced in court, together with  
an officer of the bank to speak to them. That is the significance of the  
reference to “special cause” in section 6. Section 7 enables a party to legal  
proceedings to obtain from the court an order allowing him to inspect  
f entries in a banker’s books and take copies for any of the purposes of the  
proceedings. That provision is not apt to cover the situation where a  
g commission of inquiry desires to obtain access to entries in a banker’s books,  
there being no legal proceedings to which anyone is a party. Yet section  
10(3) of the Commissions of Inquiry Act is clearly designed to enable a  
commission to obtain such access in appropriate cases. The summons issued  
h by the president in this case took the form of requiring the managers of the  
banks to attend before the commission and produce the books for the  
specified period. Having regard, however, to the terms of sections 3 to 6  
of the Act, the summons is to be interpreted as requiring the sending of  
i attested copies of entries in the books, as indicated by Lindley MR in the  
passage cited from *Pollock v Garle*, and it seems that that is what the Bank  
of Nova Scotia in fact did in this case.

Given that no hurdle in the shape of special cause requires to be  
surmounted, consideration falls to be given to the manner in which a  
commission of inquiry should direct itself in deciding whether or not to  
h issue a summons giving it access to entries in a banker’s books. In their  
lordships’ opinion it is not helpful to approach the matter by drawing  
analogies with the rules which apply to discovery in contested civil  
litigation or with the approach adopted by the courts in connection with  
the production of bankers’ books evidence in criminal trials. In contested  
j civil litigation there are specific issues identified by the pleadings which  
require adjudication, and the relevance to these issues of bankers’ book  
evidence may not be too difficult to determine. The same is basically true  
of criminal trials where specific charges are the subject of investigation. By  
contrast, a commission of inquiry starts with no specific issues or charges.

It has only its terms of reference, which may be extremely wide, as they are in the present case. Its function is inquisitorial, not adversarial. It must pursue lines of inquiry and in doing so may find that other lines of inquiry appear to be requisite, including investigation into some individual's or company's bank account. Bank accounts are subject to an obligation of confidence owed to the customer, and that confidence should not lightly be interfered with. Dr Barnett for the respondent relied strongly on the Banks and Trust Companies Regulation (Amendment) Act 1965. Section 10 of that Act (as substituted by section 2 of the Banks and Trust Companies Regulation (Amendment) Act 1980) forbids, under pain of penalties, the disclosure without the consent of the customer by any officer of a bank of information about the customer's banking affairs. There is an exception where the disclosure is lawfully required by any court of competent jurisdiction. No doubt this Act was passed in the public interest, as tending to promote confidence in the Bahamas as an important financial centre. But in their lordships' opinion it does not have the effect of requiring any balance of competing public interests in a case where a court is considering whether to make an order for disclosure. The confidentiality continues to be personal to the customer in the same way as if the Act had not been passed. The only balance which requires to be made is that between the public interest in the administration of justice or the promotion of the work of a commission of inquiry and the customer's personal interest. If the public interest appears on good grounds to require disclosure, the customer's interest must give way.

In *Commission of inquiry v Maynard* (unreported) the commission had been appointed to inquire into the extent and methods employed in the illegal use of the Bahamas for the trans-shipment of drugs. The commission had evidence from one Garcia, a self-confessed drug smuggler, that he had given a bribe to Senator Maynard to get himself removed from a stop list for entry into the Bahamas. The commission issued a summons for production of Senator Maynard's banking records over a long period. The Chief Justice quashed the summons on the ground that, while it might have been valid if confined to a short period before and after the date of the alleged bribe, it was invalid as covering too long a period. The Court of Appeal allowed an appeal by the commission. The leading judgment was delivered by da Costa JA. He found assistance in *Ross v Costigan* (1982) 41 ALR 319, a decision of the Federal Court of Australia. A royal commission had been appointed to inquire into certain conduct by members of a trade union. The commissioner proposed to investigate allegations of a conspiracy to breach certain provisions of the New South Wales Companies Act 1961, in the context of tax minimisation schemes. The applicants sought review of that proposal and the commissioner's decision to summon and question certain witnesses in relation to it, upon the ground (*inter alia*) that the proposed decision was an improper exercise of the powers

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a conferred on the commission. In this connection Ellicott J considered whether the matter proposed to be investigated was relevant to the inquiry. He said (at pages 334, 335):

b “In determining what is relevant to a royal commission inquiry, regard must be had to its investigatory character. Where broad terms of reference are given to it, as in this case, the commission is not determining issues between parties but conducting a thorough investigation into the subject matter. It may have to follow leads. It is not bound by rules of evidence. There is no set order in which evidence must be adduced before it. The links in a chain of evidence will usually be dealt with separately. c Expecting to prove all the links in a suspected chain of events, the commission or counsel assisting, may nevertheless fail to do so. But if the commission bona fide seeks to establish a relevant connection between certain facts and the subject matter of the inquiry, it should not be regarded as outside its terms of reference in doing so. This flows from the very nature of the inquiry being undertaken. d

e “In *McGuinness v Attorney-General of Victoria*, 63 CLR at page 86, Latham CJ said: ‘The royal commissioner was appointed to inquire into a specified subject matter, namely the suggested bribery of Members of Parliament. He was not appointed to determine an issue between the Crown and a party, or between other parties. The commission was appointed to conduct an investigation for the purpose of discovering whether there was any evidence of the suggested bribery. Such an investigation may be, and ought to be, a searching investigation – an inquisition as distinct from the determination of an issue. In the course of such an inquiry it would or at least might be a valuable step forward if the identity of the persons giving information to the editor of the newspaper could be discovered so that they could be summoned for the purpose of giving evidence on oath as to their knowledge, or as to the source of their information if they had no direct personal knowledge of the matters in question’. This does not mean, of course, that a commission can go off on a frolic of its own. f

g “However, I think a court if it has power to do so, should be very slow to restrain a commission from pursuing a particular line of questioning and should not do so unless it is satisfied, in effect, that the commission is going off on a frolic of its own. If there is a real as distinct from a fanciful possibility that a line of questioning may provide information directly or even indirectly relevant to the matters which the commission is required to investigate under its letters patent, such a line of questioning should, in my opinion, be treated as relevant to the inquiry.” h

j The decision of Ellicott J was affirmed by the General Division of the Federal Court (*Ross v Costigan (No 2)* (1982) 41 ALR 337). In dealing with an argument for the applicants that there was no evidence linking them with the trade union or any relevant illegality, the court said (at page 351):

“This provides no reason why the commissioner should not inquire further, and require further evidence from them, if he considers these courses desirable in the performance of his function. We should add that ‘relevance’ may not strictly be the appropriate term; what the commissioner can look to is what he bona fide believes will assist him in his inquiry.”

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Having quoted certain extracts from these judgments, da Costa JA in the *Maynard* case concluded (at page 40 of the transcript):

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“Unless it is shown that the commission has gone off on a frolic of its own or is acting mala fide, *certiorari* ought not to go to the commission.”

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Henry JA said (at page 5 of the transcript):

“The issue here is whether in requiring the production of the documents specified in the summonses the commission exceeded its jurisdiction. In this regard, it is important to bear in mind the terms of reference of the commission because in my view the commission is entitled to issue such summonses and to require the production of such documents or evidence as might be reasonably expected to be relevant to the subject matter of the inquiry which it is required to undertake. It cannot therefore arbitrarily require from a bank the production of all the accounts in that bank, nor can it arbitrarily require the production of a particular account. If however, for example, the commission has reason to believe that a particular account or the operator of a particular account directly or indirectly is involved in the illegal use of the Bahamas for the trans-shipment of dangerous drugs destined for the USA, the commission would be entitled to require the production of that account by the bank, and *certiorari* would not in those circumstances lie against the commission. Because the commission is an investigative body it must necessarily embark on what might otherwise be regarded as ‘fishing’.”

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In their lordships’ opinion these passages correctly indicate the considerations which should guide a commission of inquiry in deciding on the issue of summonses for production of the banking records of an individual or a company. If there is material before the commission which induces in the members of it a bona fide belief that such records may cast light on matters falling within the terms of reference, then it is the duty of the commission to issue the summonses. It is not necessary that the commission should believe that the records will in fact have such a result. The commission can do no more than pursue lines of inquiry that appear promising. These lines may or may not in the end prove productive.

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As regards the function of the court in the event that the commission’s decision to issue a summons is challenged, the matter is to be approached upon the traditional judicial review basis. The applicable criteria are those set out in the judgment of Lord Greene MR in *Associated Provincial Picture*

a *Houses Ltd v Wednesbury Corporation* [1948] 1 KB 223. In particular, the decision of the commission should not be set aside unless it is such as no reasonable commission, correctly directing itself in law, could properly arrive at. It would appear that this is the test which Ellicott J had in mind in *Ross v Costigan* when he spoke of a commission going off “on a frolic of its own”.

b In their lordships’ opinion the respondent has not established that this test is satisfied in the present case. Prior to the issue of the summonses the commission had before it a substantial body of evidence from various witnesses about certain aspects of the affairs of the Hotel Corporation of the Bahamas during the periods when the respondent was chairman of the corporation. In October 1981, the board of the corporation had under consideration the awarding of contracts for the construction of the Cable Beach Casino. Bids had previously been received from three contractors for certain works planned by the board’s architect. The three contractors were E. R. Hanna/Stresscon, B & A/BAM and Blount/Cavalier. The bids were all in the region of \$16,000,000 to \$18,000,000 which was considerably above the budgeted figure. But at the same time Blount/Cavalier had made a proposal for the construction of more elaborate works at a cost of some \$32,700,000. The board desired that the other two contractors should submit bids for the more elaborate works subject to minor exclusions, and they did so: E. R. Hanna/Stresscon in the sum of \$30,247,442, and B & A/BAM in the sum of \$31,088,066. The Blount/Cavalier bid revised to take account of the exclusions came to \$30,300,000. At its meeting on 14th October 1981 the board considered the matter in some depth and eventually decided that the respondent should negotiate with Blount/Cavalier and report back to it. The respondent did not report back, but on 16th December 1981 signed and sent to Blount/Cavalier a letter of intent for construction by it of various works for the Cable Beach Casino at the price of \$33,425,000, and on 12th May 1982 the respondent on behalf of the corporation executed a contract with Blount/Cavalier for the construction of the works at that price. It does not seem that the respondent ever informed the board of the corporation of what he had done, although he attended a meeting of the board on 13th May 1982.

g A further matter related to transactions in connection with the Emerald Palms by the Sea Hotel and four adjoining cottages. In February 1986 they were owned by a company called Crow Hill Development Co Ltd, controlled by a Mr Everette Bannister, a close friend of the respondent. In that month the hotel was agreed to be purchased from Crow Hill by a Mr Benjamin Forbes through a company called Ocean View Developers Ltd. The purchase was made on the advice of the respondent, who was not at the time the chairman of the Hotel Corporation of the Bahamas. The purchase price was \$550,000. Mr Forbes financed this by a loan of \$300,000 from the Bahamas Development Bank and one of \$250,000 raised elsewhere. There was evidence that the Development Bank was initially reluctant to grant the loan of \$300,000 but eventually did so by reason of interest shown

in the matter by the respondent, who as holding at the time the portfolio of Minister of Finance had responsibilities for the Development Bank. Mr Forbes's tenure of the hotel was not a success, an occupancy rate of no more than 10 per cent being achieved. In 1989, when the respondent was the chairman of the Hotel Corporation, the corporation purchased the Emerald Palms Hotel from Mr Forbes's company for \$650,000. There appear to be no minutes of the board of the Hotel Corporation relating to the purchase.

After the purchase, substantial renovation work on the Emerald Palms Hotel was carried out by a company called Bro-kell Construction Ltd, controlled by a Mr Kelly, the contract price being \$1,600,000. It does not appear that competitive tenders were invited. About the same time, Bro-kell Construction was also doing work on two of the four cottages which adjoined the hotel, which were still owned by Mr Bannister's company. Cottage No 1 was occupied by the manager of the hotel and his wife. The Hotel Corporation paid Bro-kell Construction \$26,760 for work on this cottage. Cottage No 2 was used by the respondent, upon terms which are not clear. Bro-kell Construction, on the instructions of the respondent, carried out certain work on this cottage also, for which, according to Mr Kelly, the respondent paid about \$12,000. There was evidence from Mr Hingston, an independent surveyor, suggesting that the value of the work may have been significantly more. In December 1992, after the respondent had ceased to be the chairman of the Hotel Corporation, he purchased the four cottages from Mr Bannister's company for the price of \$50,000 through a company which he controlled called Dev-Pin Investments Ltd.

Finally, there was evidence before the commission regarding the award of contracts worth many millions of dollars, although not all during the respondent's chairmanship of the Hotel Corporation, to a concern called Penn's Hotel Renovations Co. In some instances, contracts were awarded to that company when it was not necessarily the lowest bidder and in others when no bids had been invited. The respondent was personally acquainted with Mr Penn.

The foregoing represents only a brief summary of the relevant evidence which was before the commission when it issued its summonses. The totality of the evidence was very voluminous, and it was for the commission which heard it to assess its veracity and reliability, or the reverse, and the inferences capable of being drawn from it. The summary suffices to show that in connection with transactions involving very large sums of public money, in which the respondent played a prominent part, there were a number of unconventional features such as to raise doubts about the manner in which the affairs of the Hotel Corporation, under the respondent's aegis, were conducted. The commission was well justified in deciding that investigation into the respondent's banking records was desirable in order to promote its inquiry, with a view to ascertaining whether or not the respondent had received any benefits or favours in connection with the transactions in question.

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*a* For these reasons their lordships will humbly advise Her Majesty that special leave to appeal should be granted, that the appeal should be allowed and that the order of Strachan J should be restored. The respondent must pay the appellants' costs before the Court of Appeal and their lordships' Board.

*Advice that appeal be allowed with costs.*

**George et al**  
**and**  
**McIntyre et al**  
June 24, 2003

Mitchell, J.

*Judicial Review - Application to challenge the findings by a Commission of Inquiry of criminal misconduct and other grave improprieties — Whether the commission had the power to make assertions of criminal charges — There is a difference between the findings of a commission and a conviction of a court of law — The Commission did not find anyone guilty of an offence — The Commissioners were entitled in the course of their inquiry to inquire into the conduct of the claimants and express whether they considered that breaches of criminal law or professional duties had occurred — The Salmon letters were intra vires the terms of reference of the Commission — Application dismissed.*

**Appearances:**

Dr Henry Browne, Sherfield Bowen and Kelvin John with him, for the claimants.

Stanley I Marcus QC, Carla Brooks-Harris with him, for the defendants.

Mitchell, J

1.

These three consolidated cases arise from separate challenges brought by the claimants against findings by a Commission of Inquiry of serious misconduct, including criminal misconduct and other grave improprieties, on their parts, in connection with the Medical Benefits Scheme of Antigua and Barbuda. The principal issue as submitted on behalf of the claimants is whether the Commission had the power to make assertions and/or findings amounting to charges of criminal conspiracy, fraud and other forms of criminal misconduct on their part. Other issues they raise are whether there was sufficient evidence of a probative value to make such findings; and, whether the Commission had given them a proper opportunity of answering the allegations made against them. At the hearing, Dr Browne also raised the question whether the findings of the Commission amount to a breach of the principle of separation of powers.

2.

In Antigua and Barbuda, there is a medical benefits scheme established by law. It was set up in 1978 by the Medical Benefits Act, Cap 217, as later amended. All employers and employees, including Government, are supposed to contribute to it. The employer and the employee both contribute 3  $\frac{1}{2}$ % of wages paid. The Medical Benefits Regulations 1980 as later amended spell out the persons who are entitled to claim medical benefits. The Act provides for a Board of Control which is responsible for administering the Scheme. There is also a Superintendent who is responsible subject to the direction of the Board for the direction of staff and the management of the Scheme. The Minister of Health appoints the members of the Board and from among them the Chairman and Deputy Chairman. Section 3 of the Act defines the purpose of the Scheme as being the provision of such financial and other assistance towards the cost of medical benefits to such class or classes of persons in such circumstances and subject to such conditions as may be prescribed by Regulations.

**THE REPORT**

3.

Over an extended period of time, public disquiet in Antigua and Barbuda began to be expressed concerning the conduct of certain officials in relation to the management of the funds of the Scheme. Radio talk-shows on the subject became heated. Articles in newspapers and letters to the editor became more and more extreme in their accusations. As a result of all this public criticism of the management of the Scheme, His Excellency the Governor General on 9 July 2001 appointed the three defendants as a Commission of Inquiry under the Commissions of Inquiry Act, Cap 91, to conduct an inquiry into the management of the Scheme. The Instrument of Appointment charged the Commissioners specifically: to inquire into the conduct and management of the Medical Benefits Scheme from the coming into effect of the Medical Benefits Act, Cap 271 of the Laws of Antigua

and Barbuda on the first day of October 1978 and in particular to inquire into the question as to whether there have been any violations of the Medical Benefits Act and Regulations made thereunder and the Loans (Mount St John Hospital Construction and Equipping) Act 1998 and Standard Accounting Practices in respect of:

They were further charged:

to make a full, faithful and impartial inquiry into the matters aforementioned and to report upon all the facts relating to the same and any other matter connected therewith which may be brought to your notice and to submit such conclusions, recommendations and observations as you see fit ...

- (i) The disbursement of funds from each account established and operated under the Medical Benefits Scheme;
- (ii) The procurement policies and practices of the Medical Benefits Scheme for administrative, medical and pharmaceutical supplies and equipment, with special regard to weakness and abuses of the said policies and practices;
- (iii) The disbursement of funds from any account held in the name of the Medical Benefits Scheme to the Mount St John Medical Centre, or its order, under the Loans (Mount St John Hospital Construction and Equipping) Act, 1998;
- (iv) The overall financing of the construction of the Medical Benefits Pharmacy building and Community Clinics, and in particular, to make inquiry as to whether the projected costs were exceeded and if so the reasons therefore;
- (v) The disbursement of funds to persons not qualified for benefits pursuant to the Medical Benefits Act and for purposes not in ... [words missing]
- (vi) The overall operation of the Medical Benefits Scheme with a view to making recommendations for the improvement in the management of the Scheme.

4.

The Commission was assisted by special counsel Dr Richard Cheltenham QC. It invited members of the public to testify before it and it issued a number of Salmon Letters and witness summonses. The hearing was held at the Multi-Cultural Centre and the proceedings were broadcast live over the local radio stations. The hearings began in December 2001, some five months after the Commission was appointed and began its investigation in July 2001, and ended in June 2002. Among the witnesses who were represented by counsel and testified were the 1st claimant, Mr. Dave George, of George & George Construction Ltd (on 16, 17, and 23 April 2002). George & George did construction work for the Scheme. Also testifying was the 2nd claimant, the Honourable Hilroy Humphreys, former Minister of Health (4 December 2001, and 17, 19, and 22 April 2002). He had held ministerial responsibility for the Scheme during a part of the period in question. Also testifying was the 3rd claimant, Mr. Wilbur Harrigan, Senior Partner in the accounting firm of Pannel Kerr Forster (10 and 11 December 2001, and 16 and 17 January 2002). Pannel Kerr Forster had been the external auditors of the Scheme from the date of its inception. The Commission tendered its Report to the Governor General on 25 July 2002. It was subsequently published and was widely circulated in the community. Due to an unfortunate typing error it mistakenly describes itself as the "Report of the Royal Commission of Inquiry into the Medical Benefits Scheme." It was not a Royal Commission of Inquiry.

5.

The Report makes findings on each of the various matters raised in the terms of reference. It recites what might be described as a scandalous state of affairs over the management of the Scheme going back for many years, from its inception. As an example, so far as contributions were concerned, the Commission found that the Scheme has been run on private sector contributions only. Government had never paid any of the deductions made from the salaries of civil servants, far less its own contributory share. This government debt as of December 1999 amounted to over EC\$120 million, less any set-off that might exist. Meanwhile, ministers and senior officials had exercised little or no restraint in making claims on the funds of the Scheme. Management staff had approved and disbursed large sums of money without prior reference to the Board. The Minister and the management had mainly interacted with each other, leaving the Board outside of the loop. The most elementary accounting procedures had never been observed. Virtually no financial controls had been put in place. So, there had been no financial or accounting manuals to guide the management and staff of the Scheme. Cheques had been frequently issued without supporting documentation. Payments had been authorised and paid without checking whether the items ordered had been received.

6.

So far as the three claimants are concerned, and without going into unnecessary detail, the principal findings of the Report were as follows. Dave George: Mr. George, we have seen, is the owner of George & George, one of the principle building contractors used by the Ministry of Health to construct clinics and do other construction work for which the Scheme was made to pay. The Commissioners found that he was a friend of Mr. Humphreys, the Minister. Over the period 1994 to 2001, the Scheme had financed through grants to the Ministry of Health projects involving a total cost of approximately EC\$40 million. In the period 1996 to 2001 George & George had been awarded contracts totalling approximately EC\$5.7 million (paragraph 2.4.2). None of the contracts awarded to George & George had been through the Tenders Board, a statutory requirement. George & George had received contract work for the Scheme essentially from Mr Humphreys, the then Minister. Some of George & George's invoices or cost estimates had been prepared by an employee of the Scheme. These had been approved by Mr. Humphreys for payment without any evidence of his Permanent Secretary having been involved. George & George's invoices had been paid without the appropriate Job Completion Certificates, merely a signature on an invoice approving payment. There was no evidence the Commissioners found of any checks by the officials of the Ministry of Works of the estimates proposed, or of any certification that the work had been satisfactorily completed. The Report describes Mr George as a self-confessed liar and concludes that the evidence indicated that he had conspired with Mr Humphreys and others to commit fraud and other breaches of the criminal law in relation to various cheques, as well as in respect of construction contracts in which he was involved (Appendix 40). It is these findings that Mr. George protests about.

7.

Hilroy Humphreys: Mr. Humphreys had been for some years the Minister responsible for the Scheme. The Commissioners found from the evidence that he had acted improperly in relation to a number of matters that they identify and itemise in their Report and Conclusions (paragraphs 5.3, 5.6, 7.1, Appendix 40). They describe his conduct as having been grossly improper. In their findings they express themselves convinced that he had forged the signatures of persons; that he had conspired with the senior management of the Scheme to pay benefits to persons on questionable grounds, the proceeds of which payments he had converted to his own use; that he had conspired with the contractors including Mr. George to defraud the Scheme by authorising payments without certified documents regarding the cost of construction, the procedure for award of contracts, or verification of completion of jobs. They found him to have been patently dishonest and reckless with the truth, and that he had misused and abused his office of public trust for personal gain, and in that regard had committed criminal offences. In their view, his conduct was the worst example of how a public official should behave in office.

8.

In their Recommendations, the Commissioners conclude that the contracts entered into between George & George Construction and other builders are classic illustrations of improper conduct and abuse of office on the part of Mr. Humphreys (paragraph 8.2). They recommend that the Director of Public Prosecutions should take a very close look at these matters with a view to deciding whether Hilroy Humphreys, Dave George and others should be charged with conspiracy to defraud the Scheme and/or other breaches of the criminal law. It is these findings and those above that Mr Humphreys protests at.

9.

Wilbur Harrigan: Mr. Harrigan, we have seen, is the principle partner in Pannel Kerr Forster, the external auditors of the Scheme from its inception. The external auditor of a corporation performs a vital monitoring and supervisory role. The external auditor is required to express an opinion as to the presentation, fairness and compliance with general accounting principles of the financial statements. This role is particularly important when it comes to public funds. The external auditor might be said to owe a duty not just to persons dealing with the public corporation: it owes a duty to every member of the public at large.

10.

The Commissioners were unable to examine the accounts beyond the year 1998. The financial statements for the year 1999 were still in draft, and those for the years 2000 and 2001 had not been completed when the Report came to be written. From the accounts and the evidence before it, the Commission found that the virtual absence of financial controls, and the non-observance of standard accounting practices, ran like a thread

throughout the organization of the Scheme. The new Mount St John Medical Centre is the largest and most expensive capital project ever carried out in the State, estimated to cost some US\$60 million. Although the Scheme's money was being used to repay the loan for the construction of the Centre, the item was not properly reflected in the financial statements. The Commission describes the sloppiness of the financial systems and procedures at the Scheme and their lack of transparency as simply astounding.

11.

The testimony before the Commission was that Mr. Harrigan had assigned a Mr. Andy Jacobs, one of his qualified employees and his firm's Senior Auditor, to do the auditing of the accounts of the Scheme. The evidence before the Commissioners was that from the year 1998 Mr. Jacobs had become involved in a conflict of interest situation in which monies in excess of \$500,000.00 had been paid to him personally for accounting services he had provided to the management of the Scheme. This had been contrary to the terms of his contract of employment, contrary to good professional practice, and grounds for immediate dismissal.

12.

Not only did the evidence before the Commission indicate that Mr. Jacobs had used his contacts in the Scheme to line his pockets, he had not uncovered or attempted to stop improprieties committed by senior management that must have come to his attention as he worked over the years at the offices of the Scheme both on the audit and on his own private services to the management of the Scheme. The Commissioners list examples of related-party and questionable financial transactions that they found in the evidence relating to the accounts (paragraphs 3.1, 3.2, 5.6). In effect, the Commissioners found that he had helped in covering them up. All this he had done while working as an auditor with Mr. Harrigan's firm and supposedly under Mr. Harrigan's supervision.

13.

In their findings, the Commissioners conclude that Mr. Harrigan had been very negligent as Senior Partner in his inadequate supervision of Mr Jacobs. They held him responsible especially as he had signed off on the work done by Mr. Jacobs on the accounts of the Scheme. They cite him for his being unaware of gross financial malpractices, even of fraud, taking place at the Scheme. They conclude that Pannel Kerr Forster as auditors and Mr Harrigan as Senior Partner displayed conduct unbecoming of Auditors and a professional, occupying positions of trust and high responsibility (paragraphs 2.2, 2.4.1, 7.1, Appendix 40). They were of the view that under no circumstances should the Scheme continue to retain Pannel Kerr Forster as its external auditors. It is these findings that Mr. Harrigan protests at.

14.

Having made their findings, the Commissioners made their recommendations as requested on the various issues set out in their terms of reference. It is not necessary for the purposes of this suit to set out the many and varied findings or recommendations. Only one recommendation needs to be mentioned at this point. The Commissioners further recommended that the DPP should pursue the questions raised, examine the matters they have referred to, and determine whether the persons involved should be charged with infringements of the criminal law and the matters placed before the courts. In view of the high workload they anticipate in following up on their recommendations, they further recommend that the DPP should be provided with a highly experienced investigative team and a special prosecutor to assist him.

#### **THE ROLE OF A COMMISSION OF INQUIRY**

15.

The most authoritative analysis of the role of a Commission such as this is the report of the Royal Commission on Tribunals of Inquiry 1966, known after the name of its chairman as the Salmon Report. At paragraphs 27-30 of that report there are set out some of the principal observations concerning such a Tribunal. I adopt the learning in those paragraphs and repeat that the exceptional inquisitorial powers conferred upon a Commission necessarily exposes the ordinary citizen to the risk of having aspects of his private life uncovered which would otherwise remain private, and to the risk of baseless allegations made against him, causing distress and injury to reputation. For this reason, the inquisitorial machinery set up under the Act is never to be used for matters of local or minor public importance, but always confined to matters of vital public

importance concerning which there is something in the nature of a nation-wide crisis of confidence. In such cases no other method of investigation would be adequate.

16.

Normally, persons cannot be brought before a tribunal and questioned save in civil or criminal proceedings. Such proceedings are hedged about by long standing and effective safeguards to protect the individual. An inquisitorial procedure is alien to the concept of justice generally accepted in Antigua and Barbuda. There are, however, exceptional cases in which such procedures must be used to protect the purity and integrity of our public life without which a successful democracy is impossible. It is essential that on the very rare occasions when crises of public confidence occur, the evil, if it exists, shall be exposed so that it may be rooted out; or if it does not exist, the public shall be satisfied that in reality there is no substance to the prevalent rumours and suspicions by which they have been disturbed. This would be difficult if not impossible without public investigation by an inquisitorial tribunal possessing the powers given to it by the Commissions of Inquiry Act.

17.

The Salmon Report sets out at paragraph 32 the six cardinal principles that must be followed if the rules of natural justice are to be followed when a Commission of Inquiry is being conducted. I adopt these principles and set them out as follows:

1. Before any person becomes involved in an inquiry, the Commission must be satisfied that there are circumstances which affect him and which the Commission proposes to investigate;
2. Before any person who is involved in an inquiry is called as a witness he should be informed of any allegations which are made against him and the substance of the evidence in support of them;
3. He should be given an adequate opportunity of preparing his case and of being assisted by an attorney at law;
4. He should have the opportunity of being examined by his own attorney and of stating his case in public at the inquiry;
5. Any material witnesses he wishes called at the inquiry should, if reasonably practical, be heard;
6. He should have the opportunity of testing by cross-examination conducted by his own attorney any evidence which may affect him.

#### **THE SALMON LETTERS**

18.

It is in pursuance of the second principal above that Salmon Letters had been sent out by the Commissioners to the persons they wished to attend before them and about whom allegations had been made. A Salmon Letter is designed to inform the witness of any allegations which had been made against him and the substance of the evidence in support of them. It is named after the Salmon Report and is intended to satisfy the second principle described above at paragraph [17] above. The contents of the Salmon Letters sent to the three claimants have been challenged. It is, therefore, necessary to quote each of them at length.

19.

The Salmon Letter to Dave George advised him as follows:

You have been issued a Witness Summons to attend the session of oral hearings of the Commission of Inquiry scheduled for the period 8th to 26th April 2002.

Your attention is here particularly directed to five (5) cheques drawn by the Medical Benefits Scheme in favour of Newton Jacobs, Theophilus George, Hezekiah Jacobs, Icilma Hackett and Cathy Ann Nelson; all of which were endorsed on the reverse side of the cheques and deposited to your account No 3061 at Antigua Commercial Bank.

The documentary and other material available to the Commission lead to the strong suspicion that you were involved in a scheme to defraud the Medical Benefits.

Accordingly, you are hereby invited to show cause in the course of your testimony on these matters why the Commission ought not to report adversely on you in that it would appear that sometime between the 19th August 1998 and 17th January 1999 you along with Elmeade

Jarvis, Cavelle John and others conspired to defraud the Medical Benefits Scheme of the sum of \$81,211.50.

You are asked to take note of the foregoing and be guided accordingly.

20.

The Salmon Letter to Mr. Humphreys let him know that the Commissioners required him to explain three issues. It read:

As you are aware, you have been issued a Witness Summons in relation to the oral hearings before the Commission of Inquiry scheduled to commence on April 8th, 2002 concerning your knowledge surrounding the following issues:-

- (a) The circumstances in which you endorsed a cheque dated 24th August 2000 drawn on the account of the Medical Benefits Scheme in favour of George & George construction by writing "Please endorse to H Humphreys" and signed Dave George. The cheque was then deposited to Hilroy Humphrey's account.
- (b) The circumstances in which you received and handed a cheque No 3601 drawn by the Medical Benefits Scheme on March 15th, 2000 in favour of Jennifer Joseph to the said Jennifer Joseph in the sum of \$9,509.15 and instructed her to encash the said cheque and hand you the proceeds thereof.
- (c) The circumstances in which you instructed the MBS to hire the services of Quality Builders as building contractor for the BMS Pharmacy Building and your further instructions to MBS to give the said Quality Builders an advance of \$40,000.00.

In the face of the evidentiary material available to the Commission, you are hereby served notice that you ought in the course of your testimony to show cause why the Commission ought not to comment adversely upon you in its report and for the following reasons:-

He was warned in the Letter that he should show cause why the Commission ought not to comment adversely on him in its Report in that in the matter in (a) above he had behaved in an improper and fraudulent manner

1. That in endorsing the cheque drawn in favour of George & George Construction by writing "Please pay to H Humphreys" and thereafter signing the name Dave George, you behaved in an improper and fraudulent manner.
2. That in handing to Jennifer Joseph a cheque drawn in her favour by the MBS when Ms Joseph had no good reason to receive an MBS cheque, and by requesting that she encash the said cheque and return the proceeds to you, you along with Elmeade Jarvis, Mrs Cavelle John and others conspired to defraud the MBS of the sum of \$9,509.15.
3. That in directing MBS's Building Committee to use the services of Quality Builders as contractor and by writing Quality Builders a letter suggesting a contract sum for the project, and by further directing the Building Committee to make Quality Builders an advance of \$40,000.00, you acted contrary to law, improperly and not in the best interests of the MBS and people of Antigua and Barbuda.

21.

The Salmon Letter sent to Mr. Harrigan dated 12 December 2001 is the only one exhibited by Mr. Harrigan. In his claim he raises complaints about another of 26 November 2001, and it is listed in the table of contents of his trial bundle. But, no copy of it was in fact included in the bundle, so that I cannot be certain what its contents were. So far as that of 12 December is concerned, it read as follows:

I refer to the letter of provisional criticism dated December 3rd last sent to you as senior partner in the firm of Pannel Kerr Forster, external auditors of the Medical Benefits Scheme.

Apart from the two (2) cheques referred to in the letter of December 3rd last, two additional cheques were drawn to the attention of the Commission, namely, one written by the Medical Benefits Scheme in favour of the Accountant General for EC\$1,400,000.00 and dated September 28, 1999 []; and another one written by the Medical Benefits Scheme to the Accountant General and dated November 3rd, 1999. Both of these cheques were classified in the 1999 Financial Statements as payments in favour of COMPLANT and were further classified as grants to the Ministry of Health.

The documentary material and witness statements available to the Commission suggests that they ought properly to have been classified as 14

receivables from COMPLANT to the Medical Benefits Scheme.

For the reasons indicated, the Commission requests that when next you return to the witness stand to complete your testimony, you come prepared to show cause why the Commission in its Report ought not to comment adversely on Pannel Kerr Forster for its negligence in the treatment of the additional cheques mentioned herein.

22.

As mentioned above, a copy of the Salmon Letter to Mr. Harrigan dated 26 November 2001 was not included in Mr. Harrigan's record in the suit. However, a copy of his original witness summons was. It throws light on what the issues were that the Commissioners were at first inquiring about of Mr Harrigan. The summons reads:

You are hereby summoned to appear ... with specific reference to:

1. Work performed by Andy Jacobs for the Medical Benefits Scheme while he was at the same time the field auditor working for the Medical Benefits Scheme as a senior representative of the firm of external auditors: Pannel Kerr Forster; and that you knew or ought to have known that he was working for Medical Benefits Scheme and that it represented a conflict of interest.
2. The fact that you were not only negligent in the handling of the matter but that you connived with Andy Jacobs in relation to his personal contract with the Medical Benefits Scheme.
3. All allegations against you as enunciated in the whole of the enclosed Salmon Letter dated 26th November 2001.

#### **THE LAW SUIT**

23.

The three claimants are dissatisfied with the findings and recommendations in the Report so far as they are affected. They seek Administrative Orders setting aside or quashing those findings, recommendations and conclusions, and a declaration that they be struck from the Report. They have filed affidavits in support of their applications. The Commissioners have not retained their own counsel. The Hon Attorney-General has entered an appearance on their behalf and has retained overseas counsel to argue on their behalf and in defence of their Report. They have not filed any affidavit in response in any of the cases, so the claimants' evidence on these matters stands unchallenged. The claimants contend that the Salmon Letters they received were ultra vires the power of the Commission in so far as the Commission sought to enquire into the crimes of fraud and conspiracy. They submit that there was no sufficient or probative evidence to support the provisional criticisms or to justify the upholding of those criticisms by the Commission. Mr. Harrigan, in particular, argues that the questions raised by the Commission about the inaccuracies in the 1999 financial statements are unfair to him and his firm in that they were only draft financial statements and amenable to change, variation and amendment. He disputes the accounting principles applied and the conclusions come to by the Commissioners. One of his principal complaints is that he is repeatedly accused in the Report of not turning up to testify when he had promised to do so. There does appear to be some justification for this complaint as nowhere in the record does it appear that he or his counsel was ever notified of a day or time when he was to return to testify.

24.

Mr. Humpheys and Mr. George complain that the Salmon Letters sent to them make it plain that they are now the subjects of the inquiry. They submit that the terms of the letters show that the Commissioners have pre-judged the issues in that they are still liable to an adverse report. They submit that it shows that the Commissioners have come to grave conclusions of criminal conduct without having heard any evidence whatever and before they have had an opportunity to be heard. As I understand the Report, the Commissioners reviewed such evidence as they could in the period between 6 July 2001, the date of the opening statement made by the Chairman, and December 2001 when the oral hearings began. Before the oral hearings began they conducted their investigations. It was only after they had collected the evidence during this preparatory period that the witnesses who were required to testify and to explain themselves were given the necessary witness summonses and Salmon Letters. The issue is whether the putting to the claimants of various charges and allegations amounted to evidence of a pre-judging of the issues.

25.

Some of Dr. Browne's more interesting submissions were raised for the first time in his reply to Mr Marcus' submissions. It is unfortunate that as a result Mr. Marcus did not have an opportunity to reply to them. So, in his reply, Dr. Browne submitted on behalf of Mr. George and Mr. Humphreys that the findings of guilt with respect to criminal offences go beyond the legitimate bounds of inquiry, especially as in his view they were not supported by the evidence. Further, he submitted that none of the alleged crimes fall under the statutes referred to in the terms of reference. Nor were they directly alleged in the Salmon Letters. The submission is that it was not put either to Mr. George or Mr. Humphreys directly, either in the Salmon Letters or in questioning that they had been engaged in a conspiracy to defraud the Scheme. The crimes had not been the subject of direct enquiry at the public hearings. The testimony of some of the witnesses was incomplete when the inquiry came to an end, so that it fell to reason that the Commissioners had pre-determined the results they had arrived at in relation to the accusations of criminal offences. Dr. Browne submitted that they should have resisted making such drastic findings; further, that the frequency with which the Commissioners galloped towards unjustifiable findings of criminal misconduct undermined the integrity of the Report; that the findings bordered on the perverse; that the findings of criminal misconduct were beyond the powers of the Commissioners, were arrived at contrary to the principles of natural justice, and in a manner unfair to the claimants Mr. George and Mr. Humphreys, and with a predetermination at least approximating to bias.

26.

Dr Brown further submitted in his reply as follows. The Commissioners were appointed by the Governor General. The Governor General is part of the Executive, not of the Judiciary. Findings of criminal guilt are committed exclusively to the courts of justice established under the Constitution of Antigua and Barbuda and the Supreme Court Order and the local Supreme Court Act without any input from the Executive. Parliament cannot transfer from the Judiciary to any executive or statutory body whose members are not appointed under the Supreme Court Order a power to determine the guilt of an individual. A finding of "criminal misconduct," he submitted, was an integral part of the administration of justice and as such could not have been committed to the Commissioners who did not constitute a Court of Law. It followed, he submitted, that the findings of criminal misconduct were unlawful and without the jurisdiction of the Commissioners. If it were to be successfully contended, he submitted, that the Commission of Inquiry Act authorised the establishing of a Commission of Inquiry to inquire and arrive at findings of "guilt" concerning criminal misconduct, then to the extent that it purportedly did so, it was unconstitutional. Thus, he urged that the Salmon Letters, to the extent they sought to investigate crime and arrive at findings of criminal misconduct would constitute an investigation and findings unauthorised by law.

27.

A further submission raised by Dr. Browne was that neither Mr. George nor Mr. Humphreys had received adequate notice of any allegation of criminal misconduct against them. He urged that this was unfair as they did not have an adequate opportunity to answer the allegations of criminal misconduct.

#### **THE LAW**

28.

The governing statute is the Commissions of Inquiry Act, Cap 91 of the Laws of Antigua and Barbuda. This is the old Leeward Islands Act of 29 July 1880 as amended. It provides at section 1 that the Governor-General may issue a commission appointing commissioners and authorising them to inquire into the conduct of any department of the public service or of any public officer or of any parish or district, or into any matter in which an inquiry would, in the opinion of the Governor-General be for the public welfare. The section goes on among other things to provide that the commission shall specify the subject of inquiry.

29.

Several Commonwealth cases dealing with the role and duties of Commissions of Inquiry were referred to in argument. Some of the more relevant ones include the following. In the Bahamian Privy Council case of *Bethel v. Douglas* (1995) 46 WIR 15 the Governor General appointed a commission of inquiry with terms of reference to inquire among other things into allegations of fraud, corruption, breach of trust, conflict of interest or any wrongdoing arising out of the affairs of three corporations. The appellant challenged the validity of the appointment of the commission and

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its powers to summon him to give evidence. The Privy Council held, dismissing the appeal and upholding the decisions of the trial judge and the Court of Appeal, that the objection could not be sustained on the ground that the commission superseded the ordinary courts of justice as the commission had no power to find anyone guilty of any offence.

30.

In the Ceylonese Privy Council case of *Ratnagopal v. Attorney-General* [1970] AC 974 the Governor-General appointed a commissioner to inquire into and report on whether there had been abuses during a particular period in connection with such tenders and such contracts as the commissioner should in his absolute discretion deem to be of sufficient importance in the public welfare to warrant an inquiry or report. The Privy Council held, setting aside the order of the Supreme Court of Ceylon, that the Act required the Governor-General to limit the scope of the inquiry, and as the commissioner had been entrusted with deciding what tenders and contracts required to be inquired into so that the scope of the inquiry was left entirely to the commissioner's discretion and the power of selection of the ambit of the inquiry had been delegated to the commissioner, his appointment was *ultra vires* the Act and his appointment could not stand.

31.

In the New Zealand Court of Appeal case of *Re Erebus (No 2)* [1981] 1 NZLR 618 a Royal Commission was appointed to inquire into "the causes and circumstances of the crash." The commissioner found that "the single dominant cause of the disaster was the mistake made by airline officials who programmed the aircraft to fly directly at Mt Erebus and omitted to tell the aircrew." He went on to make findings of misconduct against certain airline officials. He found that there had been "a predetermined plan of deception" at the inquiry before him and an "orchestrated litany of lies." These charges had not been put to the officials, nor had they been given an opportunity to answer them. The airline and its officials sought judicial review proceedings seeking orders quashing the commissioner's findings and conclusions as to the improprieties quoted above. The issue before the Court of Appeal was whether the commissioner had powers, implied as being reasonably incidental to his legitimate functions of inquiry into the causes and circumstances of the crash, to make assertions amounting to charges of conspiracy to perjure at the inquiry itself, and whether he had given the employees affected a proper opportunity of answering the allegations made against them. The Court of Appeal held that in making the allegations of a "predetermined plan of deception" and "an orchestrated litany of lies" the commissioner had acted in excess of jurisdiction and contrary to the rules of natural justice.

32.

The New Zealand Court of Appeal decision *In re The Royal Commission on Licensing* [1945] NZLR 665 is authority, if any were needed, for the proposition that the words in the Instrument of Appointment of the commissioners "...to make a full, faithful and impartial inquiry into the matters aforementioned and to report upon all the facts relating to the same and any other matter connected therewith which may be brought to your notice..." do not extend the scope of the Commission's authority so as to add to the task defined by the earlier words another task of a fundamentally different nature. In the words of Callan J, they add something to the scope of the authority conferred by the earlier words. At the very least they prevent certain doubts and difficulties as to the scope of the authority conferred which might have arisen had they, or some such words, not been used.

33.

A number of cases have dealt with the difference between the findings of a Commission of Inquiry and a conviction by a court of law. So in *Douglas v. Pindling* (1996) 48 WIR 1, the court noted that in that case the totality of the evidence had been very voluminous, and it had been for the Commission which heard it to assess its veracity and reliability, or the reverse, and the inferences capable of being drawn from it. The Inquiry had received evidence that showed that in connection with transactions involving very large sums of public money, in which the respondent had played a prominent part, there were a number of unconventional features such as to raise doubts about the manner in which the affairs had been conducted.

34.

The High Court has no jurisdiction to adjudicate on any factual questions which were committed to the Commissioners for inquiry and report. This 17

is not an appeal against the conclusions reached. There is no right of appeal against reports of Commissions of Inquiry. Nevertheless, as the judgment in the Erebus Case emphasised, Commissions may greatly influence public and government opinion and have a devastating effect on personal reputations. That is why in appropriate proceedings the courts must be ready if necessary in relation to Commissions of Inquiry just as to public bodies and officials to ensure that they keep within the limits of their lawful powers and comply with any applicable rules of natural justice.

## CONCLUSIONS

35.

Applying the law to the circumstances of this case, I am satisfied that the Salmon Letter to Dave George was *intra vires* the Commission. It dealt with the drawing of cheques from an account of the Scheme made payable to individuals all of which cheques were deposited to his company's account. Unlike in the Erebus Case he is alerted of all the allegations made against him, including that they amount to an accusation of fraud on his part. If there was some good reason for the transactions, he was given the opportunity to explain. If he had not been alerted and given this opportunity and adverse comments were made about him in the Report, then he would, on the authorities, have had a good reason to complain.

36.

The first allegation in the Salmon Letter to Mr. Humphreys dealt with the disbursement of funds from an account of the Scheme. The second dealt with the disbursements of funds to a person not qualified for benefits. The third dealt with the construction of the Medical Benefits Pharmacy building. These matters are specifically within the terms of reference of the Commission. The allegations of fraud, conspiracy and improper conduct on the part of Mr. Humphreys arise tangentially and as a consequence of the information gathered in the investigation of the specified matters. The evidence having come to light and the allegations having been made, natural justice required that Mr. Humphreys be notified so that he could have every opportunity to explain and justify himself. Not to have put these allegations into the Salmon Letter but to have raised them for the first time in the Report would have been to do an injustice to Mr. Humphreys about which all the authorities agree he would be entitled to complain. Not to have raised them in the Report would have amounted to a failure on the part of the Commissioners to have carried out their terms of reference, and might have had the effect of rendering their Report incomplete and incomprehensible. Unlike in the Erebus Case Mr. Humphreys was given early notice that allegations amounting to criminal misconduct had been made against him. I am satisfied that the Salmon Letter sent to Mr. Humphreys was *intra vires* the Commission.

37.

Similarly, so far as the one Salmon Letter to Wilbur Harrigan that has been shown to me is concerned, it dealt with the alleged misclassification of cheques one of which at least was for a large amount of money. This issue of the disbursement of the Scheme's funds had been specifically included in the terms of reference of the Commissioners. The auditing of a corporation's accounts is a fundamental part of the management of the funds and the business of the corporation. All persons who deal with the corporation are entitled to rely on the integrity, professionalism and accuracy of the auditors in performing their duties. The complaint against Mr. Harrigan is not as to any criminal conduct but to his professional obligations as senior partner in the firm of accountants responsible for auditing the public funds of the Medical Benefits Scheme. It is clear from the earlier witness summons quoted above that he had received an earlier Salmon Letter raising the question of his responsibility for the wrongful behaviour of his employee, Mr. Jacobs. He had been given an opportunity to put his side of the story. The Commissioners were entitled to listen to all the evidence and to come to such conclusions and make such recommendations as they saw fit. Not to have alerted him to this suggestion of the impropriety of one of his employees and of the resulting charge of negligence on his part, and not to have given him an opportunity to respond and to defend himself, but merely to have mentioned it in the Report for the first time, would have given Mr. Harrigan something to complain about. To have omitted to have dealt with the responsibility of the auditing firm and of its managing partner would have been to have avoided dealing with their terms of reference, and to have risked leaving the Report incomplete if not incomprehensible.

38.

The only principle in the Salmon Report that it is alleged was infringed was the second. As we have seen, the claimants allege that the Salmon Letters were *ultra vires* the power of the Commissioners and/or in excess of their jurisdiction. The claimants have submitted that the Commissioners went outside their terms of reference by making findings amounting to charges of criminal conspiracy, fraud and other forms of criminal conduct

against them and in breach of the doctrine of separation of powers. The role of a Commission of Inquiry is well settled and not open to doubt. Its duty is to investigate and to report. Its activities are inquisitorial and it does not give judgment or reach the sort of conclusion required of a court. Its conclusion in a case of this kind is a broad one, registering an opinion. Once the Commissioners were called upon to inquire into any violation of the Act and Regulations as well as the disbursement of funds the distinct possibility arose that the evidence might reveal violations amounting to criminal acts. In the Chairman's opening statement when the Commissioners began their work, and repeatedly throughout the Report, the Commission makes it clear that it is aware that it is not a court of law. They point out (at pages 12 and 13 particularly) that they do not have the authority to determine that anyone is guilty of a criminal offence. They explained that their job was to collect and evaluate information on the operation of the Scheme and to point to any reasonable suspicions of criminal offences or conspiracy to commit such offences. Applying the principles of the Bethel Case above, I am satisfied that the findings and recommendations of the Commissioners do not constitute an infringement of the doctrine of separation of powers. I have set out above the steps the Commissioners took to meet the requirements of the principle, and why I am satisfied that they did so in every respect. The Commissioners did not find anyone guilty of any offence. They found evidence that breaches of the criminal law had occurred. They recommended that the Director of Public Prosecutions investigate the matters and bring the necessary prosecutions. This was the proper thing for them to have done based on their findings. I am satisfied that the Commissioners have met the test of the six cardinal principles set out in the Salmon Report and repeated at paragraph [17] above.

39.

I am satisfied that in this case the terms of reference of the Commissioners were specific and met all the requirements of the Act. If during the course of a legitimate inquiry it becomes necessary for the Commissioners, in answering the inquiry and in order to enable them to make a report on the matters referred to them, to consider the question whether criminal offences had been committed, then that is merely incidental to the legitimate inquiry. If this could not be done, as Kennedy J put it in the case of *In re The Royal Commission*, then inquiry and investigation would be stultified. I am satisfied that the Commissioners were entitled in the course of their inquiry to inquire into the conduct of the three claimants as that conduct related to their terms of reference, and to express their opinion on whether they considered that breaches of the criminal law or of professional duties and responsibilities had occurred, if that is what their investigation revealed.

40.

The claimants have submitted briefly that the contents of the Salmon Letters indicate that the Commission pre-judged the case against them. I find that there is no substance to that argument. It was the duty of the Commissioners in light of the rules of natural justice and the second principle of the Salmon Report to alert the parties against whom allegations had been made during the investigation that had taken place prior to the beginning of the oral testimony sessions of the nature of the allegations and of the evidence produced so as to give them an opportunity to defend themselves and to bring any contradictory or exculpatory evidence before the Commissioners so as to avert the Commissioners making findings and recommendations adverse to them in the Report. This had not been to pre-judge the issues. There was nothing in the Report or in the conduct of the inquiry that would have led a fair-minded person and informed observer to conclude that there was a real possibility that the Commissioners had been biased against any of the claimants. When they came to write their Report, they were required by the law and by their terms of reference to give their opinion on the matters within their terms of reference. If in doing so they gave it as their opinion that offences had been committed, that was not in law a determination that anyone was guilty of a criminal offence.

41.

The three applications are dismissed with costs to the defendants assessed in each case at \$10,000.00 to be paid by each of the three claimants.

Don Mitchell, QC

High Court Judge

**SAINT LUCIA**

**IN THE HIGH COURT OF JUSTICE  
(CIVIL)  
A.D. 1997**

SUIT NO: 854 OF 1997

**IN THE MATTER of the Commissions  
of Inquiry Ordinance Chapter 5 of  
the Revised Laws of St. Lucia 1957**

**and**

**IN THE MATTER of the Establishment  
of a Commission of Inquiry pursuant  
to the Commissions of Inquiry  
Ordinance, Chapter 5 of the Revised  
Laws of St. Lucia, 1957**

**and**

**IN THE MATTER of the appointment  
of Ms. Monica Joseph as the  
Commissioner of the said  
Commission of Inquiry**

**and**

**IN THE MATTER of the Rules of the  
Supreme Court 1970**

**BETWEEN:**

**DR. VAUGHN A. LEWIS**

**APPLICANT**

**AND**

**1. THE ATTORNEY GENERAL OF ST. LUCIA**

**1st RESPONDENT**

**2. MONICA JOSEPH**

**2nd RESPONDENT**

Appearances:

Dr. Richard Cheltenham Q.C. and with him Mr. Kenneth Monplaisir Q.C.  
and Mrs. Cynthia Hinkson-Ouhla for the Applicant

Mr. Allan Alexander S.C. and with him Mr. Dexter Theodore for the First  
and Second Respondents

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1997: NOVEMBER 10, 11 and 25

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## JUDGEMENT

### FARARA J

On 21st October, 1997 I granted leave to the Applicant, pursuant to Order 44 r. 1(1) of the Rules of the Supreme Court, to apply for an Order of Certiorari in terms of the Summons filed 20th October, 1997, for the purpose of -

- (1) removing and bringing into the High Court of Justice and quashing and invalidating the appointment made by the Governor-General of Saint Lucia of Monica Joseph, the Second Respondent, as Commissioner of the Commission of Inquiry established pursuant to the provisions of the Commission of Inquiry Ordinance, Chapter 5 of the Revised Laws of Saint Lucia, 1957 and published in the Extra-Ordinary Gazette Volume 166 No. 65 dated 18th September, 1997 on the grounds of bias conscious or unconscious in the said Second Respondent;
- (2) quashing a decision and/or determination made by the Second Respondent in her capacity as such Commissioner on 15th October, 1997 in ruling that neither the former Prime Minister Sir John Compton nor the Applicant herein is entitled as of right to be represented before the Commission of Inquiry since neither of them is the subject of the investigation or is in any way implicated or concerned in the matters under the said Inquiry;
- (3) further quashing the decision of the Second Respondent as such Commissioner to continue sitting on the grounds that the said decision was wrong in law when once the grounds of bias were drawn to her attention and the challenge to the very foundation of the Commission indicated;
- (4) a declaration that the Applicant is entitled to have the reasonable costs of his representation before the Commission paid by the Government of St. Lucia; and
- (5) an Order prohibiting the Second Respondent as Commissioner from continuing to preside over the Commission of Inquiry until the application is heard on its merits or until further order.

In support of his application for leave the Applicant on 20th October, 1997 filed an affidavit in support comprising some twenty-seven (27) numbered paragraphs with exhibits. He did not exhibit a copy of the gazetted appointment and terms of reference of the Commission of Inquiry.

As required by Order 44 r. 1(2) the Applicant also filed with his application for leave, a Statement setting out the reliefs sought, which included an order staying the proceedings of the Commission until the hearing and determination of this matter. The Statement give some five (5) grounds upon which relief was sought.

In granting leave, I made an Order, inter alia, that the substantive hearing be placed on the expedited hearing list for hearing on 10th November, 1997.

I had, in a previous but related application by Sir John G. M. Compton in Suit 846 of 1997, granted leave in identical terms but also made an Order staying all proceedings of the Commission of Inquiry until determination of Sir John's application for an order of certiorari. As a result, in the instant matter, there was no necessity to make a similar order for stay.

On 30th October, 1997 the Applicant filed an Originating Notice of Motion herein for an Order of Certiorari on the grounds set out in the Statement filed with his application for leave.

The grounds (as amended November 10, 1997) upon which the Applicant seeks relief are that -

- (1) there is a real danger of bias on the part of the Commissioner [Second Respondent] arising from the circumstances surrounding her retirement as High Court Judge and the role played by the Applicant;
- (2) the decision of the Authority of the O.E.C.S. not to agree to the request of the Second Respondent to have her time of service extended beyond the retirement age directly and adversely affected her in a pecuniary manner;
- (3) broadly viewed the Commission is an inquiry into aspects of the administration over which the Applicant presided and in particular,

the subject of Inquiry involving his wife Mrs. Shirley Lewis directly concerns him in so far as he was not only Head of Administration but also Head of Finance. Further, that the Second Respondent erred in law in ruling that the Applicant is not entitled as of right to legal representation within the meaning of Section 18 of the Commissions of Inquiry Ordinance, Chapter 5 of the Laws of St. Lucia;

- (4) in making the decision in continuing to preside as Commissioner and to hear evidence at the Inquiry after the allegations of bias were made against her was wrong in law; and
- (5) in the circumstances of the application of Section 18 of the Commissions of Inquiry Ordinance, Chapter 5, the Applicant is entitled to reasonable costs of legal representation incurred in defending himself before the Commission.

In his somewhat lengthy affidavit, the Applicant deposes that between 1982 to 1996 he was the Director-General of the O.E.C.S. headquartered in St. Lucia and between 2nd April, 1996 and 23rd May, 1997 he was Prime Minister of St. Lucia, with the usual responsibilities attendant thereto, including presiding over the Cabinet of Ministers.

His affidavit continues in paragraphs 4 to 27 as follows:-

4. As Director-General of the O.E.C.S. I had *inter alia* the responsibility of advising the Heads of Government who met in the Authority at least twice a year on all matters which fell to be determined by them. It was also part of my duties to communicate all decisions made by the body to the relevant persons and/or institutions.
5. In 1995 an application came before the Authority of the O.E.C.S. unanimously supported by the Judicial and Legal Services Commission seeking to extend beyond the determined age the period of service of Miss Monica Joseph, Respondent No. 2, who was then serving in St. Vincent and the Grenadines as High Court Judge. It was indicated that she particularly needed the extension so as to allow her to complete fifteen (15) years of service which would have entitled her to full pension.
6. The application did not meet with the full concurrence of all the members of the Authority and it was therefore denied.
7. On 18th December, 1995 I communicated the decision of the Authority to the Chairman of the Judicial and Legal Services

Commission (See Letter from the Director-General of the O.E.C.S. to the Chairman of the Judicial and Legal Services Commission dated 18th December, 1995 here displayed and marked **VL1**).

8. Subsequent to that decision Miss Joseph requested of the Judicial and Legal Services Commission she be transferred to Dominica where legislation provided for retirement of Judges at age 65. Dominica is the only country in the O.E.C.S. that provides for the retirement of Judges at age 65. (See letter of 1st January, 1996 from Miss Joseph to the Chairman of Judicial and Legal Services Commission here displayed and marked **VL2**).
9. This request of Miss Joseph of the Judicial and Legal Services Commission was refused on the ground that the Judicial and Legal Services Commission did not consider it right and prudent to grant the transfer in the face of the letter at 18th December, 1995 from the Director-General of the O.E.C.S. conveying the refusal to agree to the extension of time sought. (See letter of 4th January, 1996 from the Chairman of the Judicial and Legal Services Commission to Miss Joseph here displayed and marked **VL3**).
10. These decisions of the Authority and of the Judicial and Legal Services Commission affected Miss Joseph significantly in relation to her retirement benefits of gratuity and pension. Besides, it disappointed her in expectations and dislocated her domestic and personal planning. (See letter of 8th January, 1996 from Miss Joseph to Chief Justice of the Eastern Caribbean Court of Appeal here displayed and marked **VL4**).
11. The matter of the refusal of the Authority to agree to her extension of service became a political matter in St. Vincent and the Grenadines. Besides, the Bar Association of St. Vincent and the Grenadines and of Dominica met in emergency sessions and expressed dissatisfaction with the decision of the Authority and suggested that there was some form of discrimination, in so far as another Judge serving in the same circuit contemporaneously made an application for an extension of his service having reached the age of retirement and that extension was approved. (See Statements of the Bar Association of St. Vincent and the Grenadines and Dominica here displayed and marked **VL5** and **VL6** respectively).
12. Notwithstanding the decisions of the Judicial and Legal Services Commission and of the Authority Miss Joseph sought to have the provisions of the statute interpreted to mean that years could be added to her pensionable service so as to improve it. (See letter of 10th January, 1996 written to Chief Justice of the Eastern Caribbean Court of Appeal from Miss Joseph here displayed and marked **VL7**).
13. It is to my knowledge that Miss Joseph added to the public profile which this matter assumed by giving an interview to the B.B.C. Caribbean Service concerning the refusal of the Authority to extend her service beyond the age of retirement and expressed disappointment therewith.
14. One of the subjects of inquiry of the Commission relate to a financial transaction involving the Ministry of Finance and my wife, Mrs. Shirley Lewis. The sum of money involved is \$10,365.11.

This transaction took place during the period when I was Prime Minister and Minister of Finance.

15. The Commissioner is mandated to consider whether in all the circumstances the payment was due and whether it was properly made or lawfully authorized by the responsible authority or authorities. Implicitly this matter touches and concerns me as Head of the Administration and as Minister of Finance, in which capacity I approved the Special Warrant-necessary pre-condition of payment as is directed by law. This Special Warrant authorize payment to persons other than my wife, to wit: Russel & Company (Solicitors of London), Monplaisir & Company and Mr. Parry Husbands.
16. Some of the subjects of Inquiry by the Commission relate to decisions and/or events which took place during my time as Prime Minister and Chairman of the Cabinet.
17. The Commission of Inquiry has a general power in accordance with its terms of reference to "enquire into any and all allegations of fraud, corruption, breach of trust, conflict of interest or any wrong doing or impropriety".
18. I have been advised and accept that this wide-ranging power of the Commission does touch directly and indirectly some aspects of Government and on decisions taken when I was Prime Minister and Head of Government.
19. I am unhappy over the fact that the Respondent, Monica Joseph in pursuit of her pecuniary interest, namely, improved pension and gratuity was twice frustrated by the decision taken by the Authority to which I was Adviser and had the responsibility of communicating that decision to Miss Joseph via the Chairman of the Judicial and Legal Services Commission. The said Respondent now sits as sole Commissioner investigating matters which directly and indirectly concern me as Prime Minister and Minister of Finance. In the circumstance I fear that there is a real danger of bias.
20. I am equally unhappy over the fact that the Second Respondent has made a decision as Commissioner on 15th October, 1997 to the effect that I am not entitled as of right to legal representation before the Commissioner in accordance with the provisions of Section 18 of the Commissions of Inquiry Ordinance Chapter 5 of the Laws of St. Lucia, 1957.
21. I am unable out of my own resources to pay the cost of legal representation incurred by appearing before the Commission of Inquiry in defence of my reputation and in defence, too, of the integrity and the propriety of the actions taken by the Government over which I presided.
22. I have been advised by Counsel and I accept that the application of Section 18 of the said Commissions of Inquiry Ordinance will dictate that the State pay reasonable legal costs incurred in my appearance before the Commission.

23. I am deeply concerned with the decision of the Commissioner and Second Respondent made on 15th October, 1997 whereby she continued to sit as Commissioner and took and received evidence in the face of allegations of bias actual or perceived, and resulting from the circumstances of her retirement as a High Court Judge, and the decision of the Authority to which I was its Adviser and Executive Arm. The reasoning of the Commissioner which informed her decision to continue to receive evidence was that she was a fair person and that all those who knew her knew that to be so.
24. The allegations of bias constitute a challenge to the very foundations of the Commission and question her competence to sit as Commissioner. In the circumstances, I have been advised and accept that she ought either to have excused herself or adjourn the hearing until the matter was determined by the High Court.
25. I have been further advised by my Counsel and accept and verily believe that in all the circumstances indicated herein my *locus standi* arises from my obvious interest and involvement in some of the matters under Inquiry and has been fully established.
26. I have been still further advised by my Counsel and I accept and verily believe that the nature of the Inquiry; its wide powers particularly described in paragraph 17 above, the large public interest generated in the matters under Inquiry and the devastating impact any adverse findings will have on my reputation make this a case of "... sufficient gravity...", establishes sufficient interest on my part and calls for the intervention of the law.
27. I make this Affidavit of my own knowledge except wherein otherwise indicated and for the purpose of seeking the leave of this Court to apply for Certiorari to quash the decisions of the Governor General and of the Commissioner Monica Joseph herein complained of.

The Applicant exhibited to his affidavit certain correspondence in May 1995 to January 1996 relating, broadly speaking, to the request by the Second Respondent, then a High Court Judge of the Eastern Caribbean Supreme Court, for an extension of her term of office as a judge beyond the statutory retirement age of 62 years. It appears that at least five (5) letters were omitted by the Applicant from the chronology of relevant correspondence relating to the said matters. Three (3) of those letters were supplied by Counsel for the Respondents and were, by consent, made exhibits in this matter. The other two (2), being a letter of 5th January, 1996 from the Chairman Judicial and Legal Services Commission to the President of the St. Vincent and the Grenadines Bar Association and a letter dated 9th January, 1996 from the then Chief Justice and Chairman Judicial and Legal Services Commission to Justice Joseph, were exhibited in the companion action Suit 846 of 1997 as Exhibits No. 9 and No. 11 respectively.

The correspondence, relating to the request of the Second Respondent for extension of her tenure as a High Court Judge of the Eastern Caribbean Supreme Court, in evidence in the instant matter are as follows:-

- (a) Letter dated 3rd May 1995 by which Justice Joseph, then assigned to St. Vincent and the Grenadines, applied to the Judicial and Legal Services Commission pursuant to the proviso to Section 8 of the West Indies Associated States Supreme Court Order 1967 Statutory Instrument 1967 No. 223 for a two year extension beyond the designated retirement age for Court Judges, so as to enable her to secure a total of fifteen (15) years service, and to thereby qualify for full pension on retirement in accordance with Section 3(4) of the Eastern Caribbean Supreme Court (Rate of Pension of Judges) Act Chapter 198 of the Laws of St. Vincent and the Grenadines Exhibit "A".
- (b) Letter dated 11th May, 1995 from the Chairman of the Judicial and Legal Services Commission to the Director-General of the O.E.C.S. [the Applicant] requesting the concurrence of the Authority of the O.E.C.S., ("the Authority") in accordance with Section 8(1) of the West Indies Associated States Supreme Court Order 1967, to the said application of Justice Joseph, which had met with the unanimous approval of the said Commission. (Not exhibited).
- (c) Letter dated 16th December, 1996 (apparently a typographical error should be "1995") from Justice Joseph to the Chairman of the Judicial and Legal Services Commission, indicating that she had no objection to being transferred by the Chief Justice. Exhibit B.
- (d) Letter dated 18th December, 1995 from the Applicant, as Director-General of the O.E.C.S., to the Chairman of the Judicial and Legal Services Commission, informing that the recommendation of the said Commission had not received "the unanimous concurrence of Authority". Exhibit VL1.
- (e) Letter dated 19th December, 1995 from the then Chief Justice to Justice Joseph enclosing a copy of the letter of even date from the Director-General of the O.E.C.S. Exhibit C.

- (f) Letter dated 22nd December, 1995 from the President of the St. Vincent and the Grenadines Bar Association to the Chairman of the Judicial and Legal Services Commission, noting that the Bar was aware that Justice Joseph's application for extension had been unsuccessful; that the Bar had met in emergency session calling into question the criteria used for making such decisions; making reference to another judge of the circuit who had been recently granted a similar extension; expressing their strong support for the extension of Justice Joseph's tenure of office, taking issue with what they perceived to be the shabby treatment meted out to her; and requesting a review of the Authority's decision "in the interest of the administration of justice". Exhibit VL5.
- (g) Letter dated 1st January, 1996 from Justice Joseph to the Chairman of the Judicial and Legal Services Commission, applying for a transfer to Dominica from 10th January, 1996 where there is legislation providing for retirement of judges at age sixty-five (65), so as to enable her to obtain full retirement benefits in two (2) years time. Exhibit VL2.
- (h) Statement by the Dominica Bar Association dated 4th January, 1996 concerning the failure of the Heads of Government to concur with the Judicial and Legal Services Commission to extend the tenure of Justice Joseph; also making reference to a similar but successful application of another judge; expressing their deep concern about what they termed "an arbitrary exercise of discretion"; expressing concern that the decision to continue the service of a judge "can be frustrated by the arbitrary decision of a single Prime Minister"; requesting a reconsideration or review of the legislation governing the tenure of service of judges; and urging a review by the Heads of Government of their decision not to extend the tenure of Justice Joseph. Exhibit VL6.
- (i) Letter dated 4th January, 1996 from the Chairman of the Judicial and Legal Services Commission to Justice Joseph stating that the said commission did not consider it right and prudent to grant the requested transfer to Dominica, "in the face of the letter of 18th December, 1995 from the Director-General of the O.E.C.S." Exhibit VL3.

- (j) Letter dated 8th January, 1996 from Justice Joseph to the Chairman of the Judicial and Legal Services Commission, requesting extra time for packing of her personal effects and continuation of certain of the usual entitlement during that period, and pointing out that she would have to live with her sister until the expiration of the tenancy of her house in Grenada. The penultimate paragraph of his letter reads -

*"Finally I seek the permission of the Commission to communicate in writing, through the Registrar of the High Court, my thanks to the Bar Associations for their efforts on my behalf which they initiated without a request emanating from me. I think it is the polite thing to do but, in the peculiar circumstances of this case, I prefer to do it with the consent of the Commission".* Exhibit VL4.

- (k) Letter dated 10th January, 1996 from Justice Joseph to the Chief Justice making reference to an unspecified statute said to make provision for the adding of years to a judge's actual period of service for the purpose of computing pension, seeking clarification of that position, and referring to the legislation as a "fall back position to ensure that I obtain the best possible pension benefits". Exhibit VL7.

The correspondence seemingly ends there. No evidence of any response from the then Chief Justice has been produced to me and it must be presumed that none exists. Further, as there has been no evidence to the contrary, it is reasonable to infer, that the Second Respondent was unable to secure full pension entitlement by adding to her actual years of service for the purpose of computation, pursuant to some statutory provision.

Indeed, the allegation in the affidavit of the Applicant is that as a result of the decision of the Authority on the Second Respondent's application, she was adversely affected in both a pecuniary and personal way. There has been no denial of this and the matter proceeded on that basis. However, the extent of her loss of pension and/or gratuity has not been made known to the Court. Was it "significant" as the Applicant alleges in paragraph 10 of the his affidavit and if so, how significant was it, bearing in mind that the Second Respondent had already served some thirteen (13) years eleven (11) months of the fifteen (15) year period to qualify for full pension.

The Applicant, at paragraph 13 of his affidavit, refers to an interview given by the Second Respondent to the B.B.C. Caribbean Service, concerning the refusal of the Authority to extend her tenure of service, in which she expressed disappointment. No date, specific or approximate, has been given by the Applicant as to when the interview took place and what was said by the Second Respondent at that time.

Further, it is clear to me from the words used by the Applicant in paragraph 13, that he did not hear the B.B.C. interview himself but is relying on what others may have told him - hearsay evidence - which is not permissible in non-interlocutory proceedings (**Supreme Court Practice 1995 para. 41/5/1**). However, there is no counter affidavit filed by or on behalf of the Respondents or any of them, and no challenge has been made by their Counsel to the accuracy of this paragraph of the Applicant's affidavit. Indeed, the Second Respondent in her capacity as Commissioner, at the proceedings of the Commission on 15th October, 1997 confirmed the fact of this interview when she offered that the interviewer stated at the end of the interview "Her extension was turned down by one O.E.C.S. Prime Minister".

For my part, I would have been rather surprised if the Second Respondent was not disappointed by the denial of her request for an extension of her tenure as a judge. Who would not be disappointed. However, that is a rather different matter from imputing bias to the Second Respondent. I will address that main issue later on.

Two (2) affidavits were filed on behalf of the Respondents although none of them were affidavits of either Respondent. These were -

1. An affidavit of Jean Morille sworn and filed 4th November, 1997 exhibiting a true copy of the transcripts of the proceedings of the Commission of Inquiry held 30th September and 15th October, 1997 - Exhibits JM1 and JM2 respectively; and
2. An affidavit of Margaret Rose Gustave, Principal Assistant Secretary in the Ministry of Legal Affairs, Home Affairs and Labour of the Government of St. Lucia, sworn and filed 6th November, 1997 exhibiting -
  - (i) a copy of a memorandum from the then Attorney-General to the Director of Finance, Statistics and Negotiating dated

27th September, 1996 headed "Special Warrant - Request to Supplement 1601-32 Professional and Consultancy Services," Exhibit MRG1; and

- (ii) Special Warrant No. 97/96/97 dated 15th October, 1996 to the Accountant-General of St. Lucia Exhibit MRG2.

In her affidavit Ms. Gustave deposes, with respect to paragraphs 14 and 15 of the Applicant's affidavit, that she forwarded the memorandum with the Special Warrant to the Director of Finance for the approval of \$187,640.00 to Supplement Head 1601-32 in order to pay professional fees to four (4) persons, including a sum of \$10,400.00 to the Applicant's wife, Shirley Lewis. Further, that the signature of the then acting Deputy Director of Budget in the Ministry of Finance Ms. Mavis St. Croix appears above the words "Minister of Finance" at the top left hand corner of the Special Warrant, and she is unable to recognize certain other signatures appearing on the document, except her own at the bottom right, having appended it as the officer submitting the application for the said warrant.

It will be recalled that the Applicant deposed, in paragraphs 14 and 15 of his affidavit, that the payment to his wife by the Ministry of Finance, one of the subjects of the Commission of Inquiry, took place whilst he was Prime Minister and Minister of Finance. He continues -

*"Implicitly this matter touches and concerns me as Head of the Administration and as Minister of Finance in which capacity I approved the Special Warrant - necessary precondition of payment as is directed by law."*

The Applicant did not exhibit the Special Warrant with his affidavit which is not surprising, since there was a change of government after the 23rd May, 1997 general elections, he cannot now be expected to have access to such documents at the Ministry of Finance.

A careful examination of exhibits MRG 1 and MRG 2 reveals that the Applicant's signature is not on the Special Warrant, but appears on the covering memorandum, at the bottom left hand corner, after what appears to be the word "Approved" and followed by the date "15/10/96". This is compelling evidence that the Applicant did approve at least the making available or release of the funds for the purposes of effecting the payments to certain lawyers, including his wife. But is it proof that he authorized or approved the actual payment to his wife. Learned Counsel

for the Respondents contends to the contrary.

The other document exhibited in this matter is a copy of the letter dated 13th October, 1997 from the Applicant to Veronica Cenac, the Secretary to the Commission of Inquiry, (Exhibit D). In his letter the Applicant expressed his expectation to "be called as witness during the Commission's proceedings", as he was Prime Minister of St. Lucia during a portion of the period under inquiry by the Commission. He goes on to request an opportunity to make "a statement with the Commission in light of my overall responsibility for the political administration during the period alluded to above".

The letter ends with this statement -

*"I would therefore wish you to convey to the Commissioner my desire and request to appear before the Commission when it resumes on Wednesday, October 15th, 1997 and to make a statement on the matter relative to advise which I have received from Counsel concerning my own situation. On that and any subsequent occasion on which I may be required to appear, I will of necessity be represented by Counsel and would expect that in the circumstances, the costs of my representation would be borne by the State of St. Lucia".*

The Applicant and his Counsel did appear before the Commission on 15th October, 1997. Also appearing was Sir John Compton, former Prime Minister of St. Lucia, and his Counsel.

Certain decisions of the Commission made at that time are the subject of this application and that of Sir John Compton in Suit 846 of 1997.

It was agreed by Counsel, in advance of the hearing of these two matters, that the submissions in both, though of different counsel, will be accepted or adopted in relation to both suits.

#### **Establishment of Commission of Inquiry**

The May 23rd, 1997 General Election in St. Lucia resulted in a change of government whereby the United Workers Party, of which the Applicant and Sir John Compton are leaders, lost in a landslide victory to the St. Lucia Labour Party headed by Dr. Kenny Anthony, who is St. Lucia's current Prime Minister.

By instrument dated 17th September, 1997, Her Excellency the Governor-

General, on the advise of the Cabinet, issued a Commission pursuant to the Commissions of Inquiry Ordinance, Chapter 5 of the Laws of St. Lucia, appointing the Second Respondent as sole Commissioner authorized to inquire into various matters specified in the terms of reference as gazetted 18th September, 1997.

The second preamble to the Commission reads -

*AND WHEREAS the Governor-General on the advice of the Cabinet has deemed it advisable and for the public welfare that an inquiry be held into certain alleged corrupt practices within the administration of Government prior to the May, 1997 General Elections in Saint Lucia".*

Of particular importance to this application is paragraph 1(a) and the general or "umbrella" provision on page 3 of the Commission's terms of reference, which latter provision was incompletely quoted in paragraph 17 of the Applicant's affidavit, thereby misrepresenting its true meaning and effect. I set out hereunder those paragraphs of the terms of reference in full -

1. *To inquire into:*

- (a) *the payment by the Government of Saint Lucia to Mrs. Shirley M. Lewis of a sum of EC\$10,365.15 for professional services rendered in the criminal case Police v. Claudius Francis by Virement Warrant 144 of 1996/97: Savings: 1601-05, in order to -*
  - (i) *establish whether in all the circumstances, payment was due from the Government of Saint Lucia to Mrs. Lewis for the matters claimed in her letter of claim, dated January 8th, 1996;*
  - (ii) *identify the person or persons who authorized endorsed or in any way facilitated the payment of the said sum, to Mrs. Lewis and establish whether the person or persons acted with the approval and/or knowledge of the Cabinet of Ministers or any Minister or Senior Public official of the Government of Saint Lucia;*
  - (iii) *determine whether the person or persons who authorized, endorsed or facilitated the said payment was subject to any duress and if so, by whom;*
  - (iv) *determine whether the Government of Saint Lucia has the right to recover all or any part of the money paid to Mrs. Lewis and if so, identify the steps to be taken to so recover the same".*

*And further to enquire into any and all allegations of fraud, corruption, breach of trust, conflict of interest or any wrongdoing, impropriety or irregularity whatsoever made by anyone against any person arising out of and in connection with any or all of the above.*

It must be borne in mind that the Commission of Inquiry is charged to inquire with five (5) separate matters, one of which is the matter concerning the payment to the Applicant's wife.

### Proceedings of the Commission

The proceedings of the Commission have been open to the public and are nationally televised. The first hearing on 30th September, 1997 was, in large measure, of a procedural nature where the terms of reference of the Commission was read, statements as to the conduct of the inquiry made by the Commissioner and Senior Counsel to the Commission, appearances by Counsel for certain persons whose conduct are the subject of the inquiry were recorded, and a statement made by Counsel for one such person.

The second, and only other meeting so far of the Commission of Inquiry held 15th October, 1997, was attended by the Applicant and his Counsel Dr. Richard Cheltenham Q.C. and also by Sir John Compton and his Counsel Mr. Karl Hudon-Phillip Q.C. Neither the Applicant or Sir John had been summoned by the Commission to attend, and so they were there voluntarily at their own behest, having first despatched letters to the Secretary of the Commission requesting to make a statement at the said sitting.

At that sitting, Learned Counsel for the Applicant contended that the Applicant was a person implicated or concerned in the matters under inquiry, within the meaning of Section 18 of the Commissions of Inquiry Ordinance, "by virtue of the fact that many of the matters which are the subject of the inquiry fell under his watch as it were, took place during his administration". (See page 32 Exhibit JM2).

Dr. Cheltenham went on later to state (page 37 Exhibit JM2) -

*"These matters called to be determined happened during their [Sir John and Dr. Lewis] administration and it would clearly reflect on them, not to mention that in Dr. Lewis' case the payment, which is the subject of the Inquiry, to his wife, was made by the Ministry of Finance when he was a Minister for Finance; I mean you cannot go closer than that";*

The Second Respondent qua Commissioner issued her ruling on the Applicant's claim to be entitled to be represented by Counsel during the inquiry, in these terms (page 38 Exhibit JM2) -

*"Relative to Dr. Vaughn Lewis, he is also not a person implicated and he is not entitled to be represented. Under Section 18 of the Ordinance, if he considers it desirable to be represented he may, with the leave of the Commission, be so represented. The Commission grants him leave to make a statement, but the statement must be confined to the topics referred to in the Terms of Reference of the Commission".*

I pause here to observe that the Second Respondent had not been informed, either by the Applicant or his Counsel, prior to giving her ruling, that the Applicant had endorsed, signed, or approved the Special Warrant or that he had in any way facilitated the payment to his wife.

Both the Applicant and Sir John Compton made lengthy statements before the Commission in which they, inter alia, charged that there was a danger that the judgement of the Commissioner, [Second Respondent] may be affected adversely or with disfavour to them, by the circumstances in which she retired from office as a judge of the Supreme Court. They main contended in the main that they are entitled to be represented by Counsel during the proceedings of the Commission, with all their legal fees being paid by the State; and that the Second Respondent, against whom they had made allegations of bias in their statements, should not continue the proceedings of the Commission of Inquiry but ought to excuse herself from presiding over the Commission or adjourn the Commission to await a determination of the issue of bias by the Courts.

The Second Respondent in her response to these matters stated, *inter alia*, that she functions one way, straight and fair as is known by all those who know her (page 53 Exhibit JM2). She continued -

*"Reference was made to a B.B.C. Caribbean Report, at the end of that, the sentence by the interviewer was and I quote Her extension was turned down by one O.E.C.S. Prime Minister. Objection was made to extension of my service of O.E.C.S. Judge by an O.E.C.S. Prime Minister, but that O.E.C.S. Prime Minister who made the objection was not Sir John Compton, former Prime Minister of St. Lucia. So there can be no bias so far as Sir John is concerned.*

*Dr. Vaughn Lewis was an officer of the O.E.C.S., and was acting not on the decision body making authority, but was executing the authority, and so far as I can see no bias can arise. I therefore do not disqualify myself from this and I expect the next step as has been indicated will be taken".*

After a short adjournment the proceedings of the Commission of Inquiry resumed with the taking of testimony from certain witnesses. However, in light of the Court's order for stay of proceedings made in Suit 846 of 1997 (Sir John Compton) no further hearings have taken place pending

the outcome of that and this action.

I pause here to observe that the very first witness who gave testimony before the Commission, Mr. Anthony Severin, Secretary to the Cabinet of St. Lucia, testified, *inter alia*, that he did not find in his searches of the records, any authority or approval for payment out of the Consolidated Fund of any sum of money to Mrs. Shirely M. Lewis, for professional services rendered in the matter of Police v. Claudius Francis.

### **Legal Issues**

The following are the main legal issues for determination of this application:-

- (1) Is the First Respondent a proper party to the proceedings.
- (2) Whether the Applicant is entitled as of right to be represented by Counsel at the whole of the Inquiry.
- (3) If the Applicant is so entitled, is he also entitled to have his reasonable legal costs of such representation paid by the State.
- (4) Whether the Applicant has failed to make a full and frank disclosure in his application.
- (5) Is there a real danger or possibility of bias on the part of the Second Respondent qua Commissioner whereby she will in the conduct of the Commission unfairly regard with disfavour the issues relating to Applicant and his wife.
- (6) Can the appointment of the Commission, though valid under the Commissions of Inquiry Act, be quashed by the Court if apparent bias on the part of the Commissioner is found to exist.
- (7) Does the Court have the power to make declarations on an application for certiorari under RSC Order 44.
- (8) Was the decision of the Commissioner not to disqualify herself from sitting as Commissioner at the inquiry after the challenge was made by the Applicant and Sir John Compton on the basis of bias

conscious or unconscious, and to continue the inquiry, a proper or correct decision and if not can such decision be quashed by this Court on certiorari proceedings.

- (9) Does the Application have *locus standi* to bring this application.

### **Attorney-General as Proper Party**

On this issue, Learned Counsel for the Respondents submitted that certiorari proceedings are directed at removing and bringing into the High Court and quashing some decision, order or proceeding of an inferior tribunal. An order for certiorari goes to an error of law by an inferior tribunal in making a decision order or ruling. He further submitted, and it is beyond dispute, that the Applicant has not referred to any determination or decision made by the Attorney-General nor did he exercise any public law power and does not feature anywhere in the record of these proceedings. He, therefore, concluded that the First Respondent has been improperly joined as a party and ought to be dismissed from these proceedings with costs. In support of this proposition Counsel cited -

**R V Northumberland Compensation Appeal Tribunal Ex Parte Shaw** (1952) 1 AER 122.

**Augustin Lionel v. the Attorney-General** Civil Suit No. 357 of 1995 (St. Lucia) Per Matthew J (as he then was) at page 17 where the Learned Judge states -

*"I am of the view that the application in its present form is therefore defective for it does not evince a proper party as the Respondent."*

In that case the applicant applied for an order of prohibition to prevent Sir Fred Albert Phillips from sitting as one of three (3) Commissioners appointed by the respondent (Attorney-General) on the ground that there is a real danger of Sir Fred being bias in favour of the then Prime Minister of St. Lucia, Sir John Compton, because of a statement at page 196 of Sir Fred's book, "Caribbean Life and Culture," in which he referred to Sir John Compton and the then Prime Ministers of St. Vincent and the Grenadines and Grenada, Son Mitchell and Herbert Blaize respectively, as "close long-time colleagues with whom it was always a pleasure to work".

On the issue of whether the Attorney-General was a proper party the Learned Judge reasoned that the Governor-General having appointed the

commissioners under Section 2 of the Commissions of Inquiry, Ordinance which is an "existing law" as per paragraph 2(5) of Schedule 2 of the Saint Lucia Constitution Order and, therefore, must be construed in light of Section 64(1) of the Constitution which provides that the Governor-General, in executing his functions, must act in accordance with the advise of the Cabinet or a Minister acting under the general authority of the Cabinet. The Applicant had pleaded erroneously that the Attorney-General had appointed the commissioners. Accordingly, the Learned Judge opined at pages 15 to 16 -

*"So the application should either be directed at the Governor-General to prohibit him from continuing to allow the Commissioners to sit or perhaps at the Commissioners themselves to prevent them from sitting. In the former case it is conceivable that the proceedings against the Governor-General could be instituted against the Attorney-General by virtue of the Crown Proceedings Ordinance but the document would or ought to indicate that was the position".*

Matthew J then went on to give examples where proceedings were brought against either the Governor-General or the Commissioner, including the Trinidad and Tobago case of *Sir Solomon Hochoy v. N.U.G.E.* (1964) 7WIR 174.

In **Bethel v. Douglas** (1996) 3 AER 801 PC where there was a challenge made to the validity of the appointment of a commission of inquiry by the Governor-General of the Bahamas, the originating summons was brought against the Attorney-General and the president and other members of the commission. The Privy Council in upholding the validity of the appointment either as a prerogative act or under the statute, held, *inter alia*, that the Governor-General was required under the relevant provision of the constitution to act on the advise of the government in making the appointment.

Dr. Cheltenham for the Applicant in his reply relied on the Hochoy case and, in particular, this passage from the judgement of Wooding CJ at page 181 C-G:-

*" In both cases cited the defendant was the persona designata against whom it was alleged that he had exceeded the powers granted him by the statute which had empowered him to act. And it was held in each case that he was properly made a defendant although he had purported to act as an officer of state, because it was his act or conduct which was being challenged as ultra vires. Likewise, in the instant case, I hold that the appellant who, as the Governor-General, was the person designated by the Ordinance to exercise the statutory power to appoint a commission of inquiry is a proper defendant to answer the challenge that the appointment*

*made by him was ultra vires and accordingly, null and void and of no effect.*

*For the foregoing reasons I would dismiss the appeals. Nevertheless, having discharged my duties as a judge, I would suggest that in future the practice be followed of having the Attorney-General as defendant whenever the validity of an act of state done by the Governor-General is being called into question.*

*It is not in dispute that the appointment by the appellant of the commission of inquiry which is said to be in excess of the Statutory power is one which by s.63 of the Constitution can only have been made in accordance with the advise of the Cabinet or a Minister acting under the general authority of the Cabinet. Accordingly, although the appointment of the commission was his act by reason that the Ordinance names him as the person to perform it, it is really an act of the Government or, as it may be called, an act of state. In my personal view the ordinary civilities dictate that the same course should be followed in this country as was followed in New Zealand when Cook and others challenged the validity of an appointment made there by the Governor in Council under its Commission of Inquiry Act, 1908: they sued the Attorney-General - see 28 N.Z.L.R. 405. I think that the same procedure might commendably be adopted here. I recommend accordingly".*

Although the practice outlined in the above passage was said obiter and more by way of a recommended practice in matters of that kind, it is in my view nevertheless a statement of considerable weight, based on a common sense and realistic view taken by an eminent Caribbean judge and jurist which ought to be followed and applied. This approach also found some favour with Matthew J in the *Augustin Lionel v. Attorney-General* case.

Learned Counsel for the Applicant in his reply, whilst conceding that the First Respondent was not sued pursuant to the Crown Proceedings Act, Chapter 14 of St. Lucia, submitted that he was sued in accordance with "ordinary civilities" of life, and on the further basis that the appointment of the Second Respondent as Commissioner was an act of state or an act of the executive.

He relied on the first relief in the Applicant's Summons filed 20th October, 1997 seeking an order of certiorari quashing the appointment made by the Governor-General of the Second Respondent as Commissioner under the Commissions of Inquiry Ordinance, on the ground of bias conscious or unconscious and submitted that, therefore, the Attorney-General was a proper party.

Learned Counsel for the Respondents, with the leave of the Court, sought

to distinguish the Hochoy case as one in which declarations were sought under the provisions of the particular statute in Trinidad and Tobago, and submitted that the Crown Proceedings Act is not concerned with the prerogative Writs.

On this issue, Dr. Ramsahoye in the Sir John Compton matter, submitted that the Attorney-General would be a proper party where the applicant is alleging a contravention of the Commissions of Inquiry Ordinance, in challenging the validity of the appointment of a commission, but otherwise the Attorney-General is not a proper party since once the appointment was effected within Section 2 of the Ordinance, it is valid. In essence he submitted that where the appointment is validly made within the statute but the challenge to the Commission is one of bias and the court finds bias, that does not affect the validity of the appointment itself but merely disqualifies the person from sitting as Commissioner.

This latter proposition of Dr. Ramsahoye, with which I concur as a matter of law, is in my view a somewhat different issue to the question of whether the Attorney-General is a proper party, which has more to do with the nature of the relief sought by the Applicant and not whether that relief can be granted.

Wooding CJ in the Hochoy case in the passage quoted *in extensio* above, limited his recommendation to circumstances where the challenge is to the validity of the appointment of the Commission under the Commissions of Inquiry Act. However, Matthew J in the Augustin Lionel case, where the allegation was bias, seems to take the position that where the application is directed to the Governor-General the Attorney-General would be the proper party if sued pursuant to the Crown Proceedings Act, but the originating document ought to so indicate.

None of the documents filed in this matter by the Applicant indicates that the proceedings were brought against, or the Attorney-General is being sued pursuant to the Crown Proceedings Act and, indeed, Learned Counsel for the Applicant has so confirmed.

However, in my view, this would be a mere procedural irregularity which does not nullify the proceedings (RSC Order 2 r.1), and the normal civilities of life dictate that the Attorney-General should be named as a party instead of the Governor-General.

Furthermore, relief No. 1 in the Applicant's Summons is directed at quashing or invalidating the appointment of the Second Respondent made by the Governor-General and, *prima facie*, is a challenge to the effectiveness of the exercise of the statutory powers of the Governor-General in carrying out what is clearly an act or decision of state or of the executive. While it is not a challenge based on excess of statutory authority, its effect, if granted, would be to disqualify the Second Respondent from sitting as Commissioner, but not to invalidate or quash her appointment as Commissioner.

**Halsbury Laws of England 4th Ed. Vol. 1 paragraphs 67 and 77.**

**Bethel v. Douglas** (1996) 3 AER 810 P.C.

I am fortified in my view by the statement of Lord Goff of Chieveley in his leading judgement in **R.V. Gough (1993) 2 AER 724 at page 730 e -**

*"Of course if actual bias is proved, that is the end of the case: the person concerned must be disqualified: But it is not necessary that actual bias should be proved; and in practice the inquiry is directed to the question whether there is such a degree of possibility of bias on the part of the tribunal that the court will not allow the decision to stand".*

I therefore decline to strike out the First Respondent as a party to the proceedings.

### **Entitlement to Legal Representation**

This issue turns essentially on construing certain paragraphs of the terms of reference of the Commission said to pertain to the Applicant, and the proper interpretation and meaning of Section 18 of the Commissions of Inquiry Ordinance and, in particular, the words "in any way implicated or concerned in".

Section 18, which provides for legal representation by persons before a commission, creates two (2) separate categories of persons who would have a right or entitlement to be represented by Counsel before the commission, and a third category of persons whose Counsel can only represent them with the leave of the commission.

The first category relates to persons whose conduct is the subject of the inquiry. In other words, someone whose conduct is being investigated or inquired into by the commission as one of its assigned subjects. Persons in this category are entitled as of right to appear with Counsel at the

inquiry.

The second category relates to persons who are "in any way implicated or concerned in the matter under inquiry". This Commission of Inquiry is concerned with not one but at least five (5) separate subject matters for inquiry, and so it is that a person may be implicated or concerned with one or more but not all of the subject matters under inquiry.

Counsel for the Applicant submitted that although the Applicant is not a person whose conduct is the subject of inquiry by the Commission, he is a person who, on a literal or any other reasonable and proper interpretation of paragraph 1(a) and the "umbrella" paragraph on the third page of the terms of reference, is a person who is implicated or concerned in a matter under inquiry. That matter he says involves payment of a certain sum of money to his wife by the Ministry of Finance as legal professional fees, at a time when the Applicant was Prime Minister, Head of Cabinet and Minister of Finance in the Government of St. Lucia, and, further, that the Applicant signed the Special Warrant authorizing such payment to his wife, as well as to other lawyers. (See Exhibit MRG 1 and MRG 2 and paragraphs 14 and 15 of the Applicant's affidavit).

Counsel relied, in support of his submission, on the meanings given in the Concise Oxford Dictionary to: "implicated" - entwined, entangled, involved: "concerned" - relate to, affect, interest oneself in or about.

Based upon those meanings he submitted that the Applicant clearly falls within the second limb of Section 18 of the Ordinance. Counsel went on to submit, particularly in relation to paragraph 1(a)(ii) of the terms of reference, that the Applicant, as the then Minister of Finance and Head of the Cabinet, is at the centre of that subject matter of the inquiry and accordingly he is entitled as of right to be legally represented at the whole of the inquiry. Accordingly, he urged the Court to determine that the decision of the Second Respondent on 15th October, 1997 in ruling that the Applicant was not a person implicated or concerned in a matter under inquiry and therefore not entitled as of right to appear before the Commission with Counsel, was bad, wrong in law and ought to be quashed.

Counsel for the Respondents in his submissions also relied on the literal

meaning of the words "implicated" and "concerned". He cited from the Oxford Dictionary which gave the following meanings:-

"implicated" - involved in a charge or crime, brought into incriminating connection with, involved unfavourably.

"concerned" - to be in a relation of practical connection with, to have a part in, to be implicated or involved in, to have to do with something especially something culpable.

Mr. Alexander submitted that "implicated or concerned in" when used in Section 18 means "culpably involved". When a person is culpably involved in a matter the subject of the inquiry, such a person is entitled as of right to appear with Counsel before the Commission so that his rights can be protected, and no connection with the subject matter short of culpable involvement can give rise to an entitlement to be represented by Counsel before the Commission, he continued.

In support of this proposition, Counsel for the Respondents relied on the decision of the Supreme Court of Western Australia Full Court in **Ashbury v. Reid (1961) WAR 49**.

In that case the defendant was charged and convicted of a forest offence under the Forestry Act 1918 -1954. He applied for review of his conviction. It was contended that he was a person indirectly concerned in the commission of a forestry offence and was, therefore, deemed to have committed such offence pursuant to Section 54(1) of the Forestry Act 1918 - 1954. The Full Court, after referring to the meanings of "concerned" in the Oxford dictionary (referred to above), concluded that those meanings are the sense in which that word was used in Section 54(1). (see page 51 lines 21 - 27) and that the question was whether the acts or omissions of the defendant "does in truth implicate or involve him in the offence, whether it does have a practical connection between him and the offence". The court concluded that the mere fact that he had been responsible for bringing on to his property the instrument [bulldozers] with which the offence was subsequently committed is not sufficient (see page 51 lines 31 -36). They opined that a mere omission to act is insufficient unless "from a common sense point of view" it can be said that the defendant's failure to act, whether intentionally or otherwise, really contributed to the commission of the offence (page 51 lines 36 -39). In allowing the appeal the full court concluded that the defendant's failure to exercise a continuous supervision over the activities of the bulldozers

or to do more than he did, does not bring him within s.54 as being "concerned" in the offence.

It is to be borne in mind, as Counsel for the Applicant in my view rightly submitted, that *Ashbury V. Reid* dealt with construing a statute creating a criminal offence whereas, in the instant case, Section 18 is dealing with the right or entitlement to legal representation before a Commission of Inquiry appointed to inquire into matters which may or may not be concerned with criminal wrongdoing. He advocated strongly that the Court should apply the literal meaning of the words and give a more liberal or less restricted interpretation to Section 18 than was given to Section 54 of the statute under consideration in *Ashbury v. Reid*.

In my view Section 18 is not to be given too restricted an interpretation as a citizen ought not easily to be deprived of the right to be represented by Counsel before a commission of inquiry which, although it is not a Court and has no power to make any findings of criminal or civil liability, nevertheless can make findings of misconduct based on factual findings, with far reaching and long lasting adverse implications on a person's reputation and life.

**Canadian Red Cross Society v. Horace Krever and Commissioner of the Inquiry on the Blood System in Canada** (unreported) delivered 26th September, 1997 at page 2 (3rd para.).

**Bethel v. Douglas** (1995) 2 AER 801 at 802 f.

However, Section 18 on a literal interpretation clearly distinguishes between three levels or categories of involvement in or with a matter under inquiry, in addressing the entitlement to representation by Counsel before a commission of inquiry. In my opinion the distinctions are based on degree of culpable conduct, akin to the distinction in the criminal law between principal and accessory. I therefore construe the words "in any anyway implicated or concerned in" to mean in any way culpably involved in or connected with a matter under inquiry, though not necessarily in the sense of criminal wrongdoing. The question of some wrongdoing, or malfeasance or misconduct underpins the use and meaning of the said expressions in Section 18, as contrasted with the third category where a culpable act or omission or connection with the matter under inquiry is not alleged or likely to exist.

Counsel for the Respondents further submitted on this issue, that not

simply because the Applicant as Minister of Finance approved or signed the Special Warrant to enable the payment to be made which was approved in his Ministry (not that he made the payment) or the fact that the Applicant was carrying out his duty to see that money was provided for the payment, means that he made the payment and was culpably involved in the payment to his wife.

Regarding the Commission's ruling on the matter of legal representation of the Applicant, Counsel argued that her ruling was based on facts which were before her at the time including the contents of the Applicant's letter to the Commission dated 13th October, 1997 (Exhibit D) and the statements of his Counsel before the Commission on 15th October, 1997, neither of which, informed that the Applicant had approved or signed the Special Warrant. Her ruling was therefore a correct one, based on the facts before her, and the Court cannot substitute its decision for that of the Commission, but can only take account of the facts and matters which the Commissioner had before her in determining whether her decision was wrong or not.

And finally on this issue, Learned Counsel for the Respondents submitted that the matter of the Applicant's approval of the Special Warrant is irrelevant and immaterial and, even so, it is insufficient to show that the Applicant was culpably involved in the payment to his wife. The fact that the payment occurred during the Applicant's "watch" as Prime Minister and Minister of Finance is not enough, he must be shown to be culpably involved in a matter under inquiry to ground entitlement to be represented by Counsel before the Commission.

On this issue, Dr. Ramsahoye in the Sir John Compton matter, made the additional legal submissions which, if correct, would be equally applicable to my determination of this issue in this matter. In his view -

- (a) Under Section 18 of the Ordinance a person implicated or concerned in a matter under inquiry would be entitled to be represented by Counsel for the whole of the inquiry.

In my view, the expression "the whole of the inquiry" can only mean the whole inquiry into the subject matter under investigation by the Commission, in which that person is implicated or concerned. It is not a right to be represented at all sittings of the

Inquiry where the Commission is inquiring into other subject matters in which that person is not implicated or concerned. If it were otherwise it would make nonsense of Section 18 and put unnecessary burdens of time and expense on both the citizen and the Commission.

- (b) The Commissioner having ruled that she is not investigating the Applicant, and there has been nothing so far to show that his conduct is the subject matter of or he is in anyway implicated or concerned in a matter under inquiry, that ruling is decisive of the matter, and it is not open to the Applicant to say that the Commissioner ought to investigate him or his conduct.

This submission is an attractive one unless, in my view, the terms of reference of the Commission makes it clear that the Applicant is a person who is implicated or concerned in a matter under inquiry. Further, it is conceivable, having regard to the way in which inquiries of this nature progress, that a person who, on a proper reading and construction of the terms of reference as drafted is not implicated or concerned in a matter under inquiry, may at some later stage, based on new and revealing oral or documentary evidence before the commission, become clearly a person implicated or concerned in a subject matter of the inquiry. How then is such a person to be treated in light of Section 18, when the inquiry into that matter has already begun.

- (c) Dr. Ramsahoye's view is that in such a case, since fundamentally a commission cannot properly make adverse findings of fact or misconduct against a person without having given him an opportunity to be heard in person or by Counsel, when it becomes clear that the person is implicated or concerned, the commissioner ought either to decline from making any adverse findings against him, in which case his conduct may be the subject of a separate inquiry; or that person could be given notice or summoned to appear before the commission to be heard on the allegations, before the commission issues its report.
- (d) Affidavit evidence given post commencement of the inquiry, is not admissible or relevant in determining who is the subject of or implicated or concerned in the subject matter of the inquiry, as the

commissioner(s), in light of Section 18, must make that determination prior to commencement of the inquiry and, consequently, who would be entitled as of right to be represented by counsel at the whole of the inquiry.

I take a somewhat different view to Learned Counsel on these matters. I accept that for the proper execution of the commission, some prior determination has to be made by the commissioner as to the persons whose conduct are the subject of the inquiry or who are implicated or concerned in the matter or matters under inquiry, in order to summon such persons as witnesses and for them or their counsel to participate in the inquiry into the subject or subjects in which they are implicated. However, I do not agree that where, through error or otherwise, a person implicated or concerned in a matter under inquiry did not participate in the inquiry into that matter *ab initio*, the commissioner is precluded from summoning that person at that stage of the proceedings.

In my view, what is of fundamental importance is fairness and the observance of the principles of natural justice, in the conduct of the inquiry and in dealing with persons whose conduct is the subject of the inquiry or who are implicated or concerned in a matter under inquiry. **University of Celon v. Fernando** (1960) 1 AER 631 PC.

**In re Prgamom Press Ltd. (1971) 1 Ch 388** at 389 (Held). Per Lord Denning MR at page 400 B - E and G:

"This sort of thing should be left to the discretion of the inspectors. They must be masters of their own procedure. They should be subject to no rule save this: they must be fair. This being done, they should make their report with courage and frankness, keeping nothing back. The public interest demands it. They need have no fear because their report, so far as I can judge, is protected by an absolute privilege".

See also Sections 5 and 9 Commissions of Inquiry Act (St. Lucia).

Such a person should therefore be afforded by the commission the opportunity to appear before it, to give evidence and, either in person or by Counsel, question any and all witnesses who gave or are to give testimony, concerning the particular subject matter in which he is implicated, and also to call witnesses who can give favourable or exculpatory testimony before any adverse finding or determination is made by the commission in relation to him.

In short the entitlement to legal representation at the whole of the inquiry in Section 18 of the Commissions of Inquiry Ordinance, means that any person whose conduct is the subject of the inquiry or who is implicated or concerned in a matter under inquiry can, and must if he so request, as of right, be represented by Counsel for the whole of the inquiry into that particular subject matter in which he is implicated. If his involvement only becomes apparent after the inquiry into the subject matter has already begun, then the rules of fairness and natural justice dictate that he or his Counsel should be afforded every opportunity to participate fully in the inquiry, including recalling for cross-examination witnesses who had previously testified, and the making available to that person or his Counsel of all documents put into evidence at the inquiry, as well as any other documents in the possession of the commission, which may be exculpatory of or of assistance to that person, in relation to the allegations against him concerning the matter under inquiry. **Rees v. Crane (1994) 1 AER 832 at 835 a - d.**

There can be no question, that the ruling or decision of the Second Respondent, which she purported to make under Section 18 of the Commission of Inquiry Ordinance, that the Applicant is not entitled as of right to be represented by Counsel at the inquiry, can be the subject of certiorari proceedings on the ground of error of law or want of justification.

**Re Royal Commission on Thomas Case (1980) 1 N.Z.L.R. 602.**

**R. v. Northumberland Compensation Appeal Tribunal, Ex parte Shaw (1952) 1 AER 122.**

**Attorney-General v. Ryan (1980) A.C. 718 P.C. at 720 B-C.**

In the *Thomas* case the Full Court of New Zealand held that the Court had jurisdiction to entertain the proceedings for judicial review

because -

- (a) a commission of Inquiry, whether it was established by the executive under a statutory provision or created under the Royal prerogative, was subject to the Court's supervisory powers; (Cook v. Attorney General (1909) 28 N.Z.L.R. 405 applied); and
- (b) regardless of the provisions of the Judicature Amendment Act 1972 the applicants would have been entitled to certiorari or prohibition.

The Full Court also found that the applicants had established an error of law relating to the Commission's interpretation of a pardon which were not irreversible, and went on to make certain declarations pursuant to the Judicature Amendment Act 1972.

In the judgement of the Court at page 615 lines 18 to 25 it was stated -

*"In light of the authorities to which we have referred, we are satisfied that dicta in earlier cases to the effect that a Commission of Inquiry is immune from certiorari or prohibition because it is doing no more than inquiring and reporting are now out of date and are not in accord with the Court's responsibility to ensure that all tribunals carrying out functions (either investigative or decisive, or both) which are likely to affect individuals in relation to their personal civil rights or to expose them to prosecution under the criminal law, act fairly to those concerned".*

And in the British Virgin Islands Civil Appeal No. 7 of 1994 - **The Chief Immigration Officer v. Roger Burnett**, Sir Vincent Floissac CJ, at page 5 put it this way -

*"There is no doubt that the High Court has an inherent jurisdiction (either by way of judicial review or otherwise) to supervise and judicially control certain decisions and actions of public authorities constituted by law to make those decisions or to take those actions. Subject to the formalities prescribed by Rules of Court, the jurisdiction is exercisable whenever a public authority (purporting to exercise a constitutional, statutory or prerogative power) has made or taken or intends to make or take a justiciable judicial, quasi-judicial or administrative decision or action which affects or will affect a complainant who has locus standi by way of a relevant or sufficient interest in the decision or action and who alleges and proves that the decision or action is or will be illegal, irrational or procedurally improper. In such a case, the High Court may make such appropriate prerogative or other order as may be necessary to protect the complainant from the illegality, irrationality or procedural impropriety of the decision or action."*

The main question, therefore, is whether upon a proper reading of the terms of reference of the Commission, in particular paragraph 1(a) and the "umbrella" paragraph, and applying the literal or purposive meaning or construction to the pertinent words of Section 18 of the Commissions of Inquiry Ordinance, it can be said that the Applicant is a person who is implicated or concerned in a matter under inquiry. If so, then the ruling/decision of the Second Respondent would be wrong in law and certiorari would issue to quash it.

Before examining the wording of paragraph 1(a) and the umbrella paragraph, let me say that I do not accept as correct legal principle that an ex-head of government or ex-head of Cabinet is, simpliciter, entitled

to appear in person or by Counsel before a commission of inquiry to defend his administration or his stewardship before the Commission. The entitlement of such a leader, past or present, is no different in law to the entitlement of any citizen or person under Section 18 of the Ordinance, and the entitlement to be represented by Counsel before the Commission only arises where that individual's conduct is the subject of the inquiry or he is in anyway implicated or concerned in a matter which is under inquiry.

Likewise, I do not consider that such a right or entitlement would, as a matter of course, extend to a spouse of a person whose conduct is the subject matter of the inquiry, so that the spouse would likewise be entitled to appear before the Commission with Counsel, unless, from a common sense point of view, there is some act or omission or misconduct by the spouse which can reasonably be construed as contributing to the wrongdoing alleged against their partner.

The single issue is whether the Applicant, Dr. Vaughn Lewis, is implicated or concerned in a matter under inquiry, pursuant to any term of reference of the Commission of Inquiry being carried out by the Second Respondent.

Paragraph 1(a) and the umbrella paragraph of the terms of reference were set out verbatim earlier in this judgement.

In relation to the subject matter covered by paragraph 1(a) the Commission is to inquire into the payment by the Government of St. Lucia to the wife of the Applicant of the sum of EC\$10,365.15 for professional services rendered in a criminal case.

The documentary evidence before me, Exhibit MRG1 the memorandum dated September 27, 1996 which has what appears to be the signature of the Applicant after it the word "approved", *prima facie* shows that the Applicant was at least one person who authorized, endorsed or facilitated the payment. The approval of the request for payment and the Special Warrant attached, are essential steps to enable payment to be actually made to those who are said to be owed money.

Further, the indisputable fact is that the Applicant was Head of the Cabinet of Ministers and Minister of Finance at the relevant time, and

he, apparently, appended his signature approving the payment. The Commission has already been told by its first witness that no authority or approval can be found for this payment out of the Consolidated Fund. The Applicant as Minister of Finance at the time had direct responsibility under Sections 70, 80 and 81 of the Saint Lucia Constitution Order 1978 for payments made out of the Consolidated Fund.

It is also not difficult to surmise, that the suggestion in paragraph 1(a)(ii) of the terms of reference, is that persons other than the Applicant, such as officers of the Ministry of Finance who may have in some way facilitated the payment to Mrs. Lewis, may be said to have done so as a result of pressure exerted on them by someone in authority over them. The Applicant was certainly one such person.

Having regard to the dictionary meaning of the word "implicated", can it be said that the Applicant, by virtue of the terms of reference and his having approved the payment, has been brought into incriminating connection with or is involved unfavourably with the payment to Mrs. Lewis, a payment which he approved and for which some officer of his Ministry signed the Special Warrant on his behalf as Minister of Finance.

On the dictionary meaning of the word "concerned" can it be said that the Applicant may be in a relation of practical connection with the payment to his wife, or is implicated or involved in that payment or that he had something to do with it especially something culpable.

Having carefully pondered this aspect and having regard to the reason for the launching of this inquiry as stated in the second preamble to the instrument of appointment, and mindful of the documentary evidence before me, and taking the view that too narrow a construction ought not to be place on Section 18 of the Commissions of Inquiry Ordinance, and also bearing in mind the statement of the Commissioner that the Applicant is not a person implicated in the inquiry albeit a statement apparently made without knowing that the Applicant had under his signature approved the payment, and also mindful of what the Commission is required to investigate under paragraph 1(a) of its terms of reference and the Applicant's constitutional role or responsibility as Minister of Finance for payments made from the Consolidated Fund, I have determined that he is a person implicated or concerned in the matter under inquiry at

paragraph 1(a) of the Terms of Reference of the Commission within the meaning of Section 18 of the Commissions of Inquiry Ordinance.

I accordingly hold that the decision of the Second Respondent that the Applicant is not entitled to be represented by Counsel at the whole of the inquiry was wrong in law, to the extent that he is entitled to be represented at the whole of the inquiry into the matter the subject of inquiry under paragraph 1(a) of the terms of reference only.

The Applicant is not entitled to be represented by Counsel at the inquiry into any other of the specific matters being inquired into as he is in no way, on a proper construction of the terms of reference, implicated or concerned in any of those matters. Accordingly, I would order that certiorari be issued to remove that part of the Second Respondent's decision relative to paragraph 1(a) only into the High Court, and I hereby order the said decision quashed.

#### **Entitlement to Payment of Legal Costs**

Learned Counsel for the Applicant submitted on this issue, that once the Court finds the Applicant is entitled as of right to be represented by Counsel under Section 18 of the Commissions of Inquiry Ordinance, in order for that right not to become illusory, the State should pay for his legal representation.

In this regard he made reference to an excerpt from **Commissions of Inquiry by Pross Christie and Yogis 1990 at page 148** where it is stated -

*"In contemporary society inquiries are sufficiently expensive and it is frequently argued that the state should fund participation by particular individuals or groups ... In particular circumstances, the right to participate and to be represented by Counsel will be on illusion in the absence of funding. This is particularly so in the case of persons whose conduct is under review and complex and lengthy inquiries. Considerations of public policy and the protection of the rights of individuals insist upon the need for ongoing government recognition of this requirement".*

I do not regard the subject matter of this Commission of Inquiry in which it can be said the Applicant is implicated or concerned, to be either complex or to require lengthy inquiry.

The authors of the same work cited by Counsel go on to state -

*"I am not sure that the appropriate approach is to make some provision in the statutory regimes because it seems to me that no government would do that. That is really opening the door to a cost that would be absolutely horrendous. I am not sure whether there should not be some discretionary mechanism in the judge to order funding. How to do it. I do not know . . . I just cannot imagine any government saying "we'll provide in this statute that the Commission will be arbiter of whether or not there'll be funding . . ."*

This passage in my view sums up the legal position. There is no provision in the Commissions of Inquiry Act authorizing the payment or reimbursement of the legal cost of a person who is entitled to be represented by Counsel in a matter under inquiry; and no other statutory provision in St. Lucia to that effect, has been brought to my attention. Indeed, while the Constitution provides for the right to Counsel of your choice, it does not provide an entitlement to payment of your legal fees.

The Court has no power to make provision for the payment of the Applicant's cost of representation before the Commission and, in any event, the Applicant cannot be said to have made out a sufficient case of need by merely stating, without more, at paragraph 21 of his affidavit, -

*"I am unable to out of my own resources to pay the cost of legal representation incurred in appearing before the Commission of Inquiry in defence of my reputation and in defence, too, of the integrity and the propriety of the actions taken by the Government over which I preside".*

I therefore rule that there is no legal basis for or entitlement of the Applicant to payment by the Government of St. Lucia of any legal costs incurred by him in having Counsel represent him during the inquiry.

I also hold that ground No. 5 in the Applicant's Statement fails and this Court has no power to make the declaration sought at paragraph 4 of the Applicant's Summons filed 20th October, 1997; which is refused.

**Re Royal Commission on Thomas Case (1980) 1 N.Z.L.R. 603 at page 615 line 24 - 31**

### **Challenge of Bias**

The sole challenge by the Applicant to the appointment of the Second Respondent as sole Commissioner is on the ground of bias conscious or unconscious. The relief sought is an order quashing and invalidating the

said appointment made by the Governor-General, and also quashing the decision taken by the Second Respondent, as Commissioner, to continue sitting once the grounds of bias were drawn to her attention and the challenge to the very foundations of the Commission indicated to her on 15th October, 1997.

The Applicant contends that there is a real danger of bias or a real possibility of bias on the part of the Second Respondent as Commissioner, arising from the circumstances surrounding her retirement as High Court Judge of the Eastern Caribbean Supreme Court and the role played by the Applicant therein. Further, that the decision of the Authority not to accede to the Second Respondent's request to have her tenure as a judge extended beyond the prescribed retirement age, directly and adversely affected her in a pecuniary and personal way.

### The Law on Bias

The leading authority on the doctrine or test of bias is the decision of the House of Lord in **R V Gough (1993) 2 AER 724**.

The *ratio decidendi* of that case is stated at page 725 in these terms -

*"Except where a person acting in a judicial capacity had a direct pecuniary interest in the outcome of the proceedings when the court would assume bias and automatically disqualify him from adjudication, the test to be applied in all cases of apparent bias, whether concerned with justices, members of other inferior tribunals, jurors or arbitrators, was whether, having regard to the relevant circumstances, there is a real danger of bias on the part of the relevant member of the tribunal in question, in the sense that he might unfairly regard or have unfairly regarded with favour or disfavour the case of a party to the issue under consideration by him".*

*R V Gough* was a case in which the allegation of bias was made after the defendant was convicted of a criminal offence upon a trial where a juror was a neighbour of and knew his brother whose name was mentioned frequently during the trial. Applying the test of whether there was a real danger of bias his appeal to quash the conviction was dismissed.

The test as formulated by Lord Goff in *R V Gough* was explained and applied in **R V Inner West London Coroner; ex parte Dallaglio (1994) 4 AER 150**. In that case a challenge of bias was made concerning a coroner, by members of bereaved families, whose relatives had died following a collusion between a dredger and a passenger launch in

August 1989. He refused to remove himself from or to resume the inquest into the deaths. Upon application for judicial review of those decisions, the Court of Appeal found that, on the facts, the derogatory expressions used by the coroner about one of the relatives of disaster victims, indicated a real possibility that he had unconsciously allowed himself to be influenced against the applicants and other members of the action group by a feeling of hostility towards them, and that he had undervalued their case that the inquest should be resumed.

In the instant matter the challenge to the appointment of the Second Respondent is not based on actual or assumed bias (as in *Dimes v. The Proprietors of Grand Junction Canal* (1852) 3 HL Cas. 759 where the Lord Chancellor who had a pecuniary interest as shareholder in a plaintiff company decided an appeal in that matter from the decision to the Vice Chancellor) but apparent bias, and this matter has to be determined in accordance with the principles relating to apparent bias as set out in both cases.

At pages 150 to 152 of the *Dallaglio* case, Simon Brown LJ sets out certain pertinent parts of Lord Goff's speech in *R V Gough* and extracts nine (9) propositions therefrom -

"*R V Gough* has resolved this conflict in favour of the more stringent test, that of real danger of bias.

The actual passages in Lord Goff's speech are these:

*"... bias is such an insidious thing that, even though a person may in good faith believe that he was acting impartially, his mind may unconsciously be affected by bias... the approach of the law has been... to look at the relevant circumstances and to consider whether there is such a degree of possibility of bias that the decision in question should not be allowed to stand... it is not necessary that actual bias should be proved; and in practice the inquiry is directed to the question whether there was such a degree of possibility of bias on the part of the tribunal that the court will not allow the decision to stand... Since... the court investigates the actual circumstances, knowledge of such circumstances as are found by the court must be imputed to the reasonable man... If, in the circumstances of the case (as ascertained by the court), it appears that there was a real likelihood, in the sense of a real possibility, of bias... justice requires that the decision should not be allowed to stand".*

In conclusion Lord Goff said:

*"... I think it necessary, in formulating the appropriate test, to require that the court should look at the matter through the eyes of a reasonable man, because the court in cases such as these personifies the reasonable man; and in any event the court has first*

to ascertain the relevant circumstances from the available evidence, knowledge of which would not necessarily be available to an observer in court at the relevant time. Finally, for the avoidance of doubt, I prefer to state the test in terms of real danger rather than real likelihood, to ensure that the court is thinking in terms of possibility rather than probability of bias. Accordingly, having ascertained the relevant circumstances, the court should ask itself whether, having regard to those circumstances, there was a real danger of bias on the part of the relevant member of the tribunal in question, in the sense that he might unfairly regard (or have unfairly regard) with favour, or disfavour, the case of a party to the issue under consideration by him".

Lord Woolf said:

*" . . . I agree that the correct test to adopt in deciding whether a decision should be set aside on the grounds of alleged bias is that given by Lord Goff, namely whether there is a real danger of injustice having occurred as a result of the alleged bias . . . the courts have long recognised that bias operates in such an insidious manner that the person alleged to be biased may be quite unconscious of its effect . . . When considering whether there is a real danger of injustice, the court gives effect to the maxim [that justice must not only be done but be seen to be done], but does so by examining all the material available and giving its conclusion on the material. If the court having done so is satisfied there is no danger of the alleged bias having created injustice, then the application to quash the decision should be dismissed".*

From *R V Gough* I derive the following propositions -

- (1) *Any court seised of a challenge on the ground of apparent bias must ascertain the relevant circumstances and consider all the evidence for itself so as to reach its own conclusion on the facts.*
- (2) *It necessarily follows that the factual position may appear quite differently as between the time when the challenge is launched and the time when it comes to be decided by the court. What may appear at the leave stage to be a strong case of "justice [not] manifestly and undoubtedly be[ing] seen to be done", may, following the court's investigation, nevertheless fail. Or, of course, although perhaps less probably, the case may have become stronger.*
- (3) *In reaching its conclusion the court "personifies the reasonable man".*
- (4) *The question upon which the court must reach its own factual conclusion is this: is there a real danger of injustice having occurred as a result of bias? By "real" is meant not without substance. A real danger clearly involves more than a minimal risk, less than a probability. One could, I think, as well speak of a real risk or a real possibility.*
- (5) *Injustice will have occurred as a result of bias if "the decision-maker unfairly regard with disfavour the case of a party to the issue under consideration by him". I take "unfairly regarded with disfavour" to mean "was pre-*

*disposed or prejudiced against one party's case for reasons unconnected with the merits of the issue".*

- (6) *A decision-maker may have unfairly regarded with disfavour one party's case either consciously or unconsciously. Where, as here, the applicants expressly disavow any suggestion of actual bias, it seems to me that the court must necessarily be asking itself whether there is a real danger that the decision-maker was unconsciously biased.*
- (7) *It will be seen, therefore, that by the time the legal challenge comes to be resolved, the court is no longer concerned strictly with the appearance of bias but rather with establishing the possibility that there was actual although unconscious bias.*
- (8) *In the circumstances of the present case the court must therefore ask itself: is there a real danger that the coroner unfairly (though unconsciously) regarded with disfavour the case of those seeking a resumption of the inquest? Or: is there a real danger that the coroner was unconsciously prejudiced against this group? Or as Neil LJ put it in the Divisional Court:  
". . . is there a real danger that in deciding . . . not to resume the inquests Dr. Knapam was influenced, consciously or unconsciously, to a material degree by his views . . . about the Marchioness action group?"*
- (9) *It is not necessary for the applicants to demonstrate a real possibility that the coroner's decision would have been different but for bias; what must be established is the real danger of bias having affected the decision in the sense of having caused the decision-maker, albeit unconsciously, to weigh the competing contentions, and so decide the merits, unfairly.*

My first duty, therefore, is to ascertain the relevant circumstances of the instant matter in so far as they relate to the challenge based on apparent bias.

### **The Relevant Facts**

The Second Respondent, a citizen of Grenada, was appointed a puisne judge of the High Court of Justice of the O.E.C.S. on 1st February, 1982 and served continuously until her retirement at the normal retirement age of sixty-two (62) years on 10th January, 1996. After serving some thirteen (13) plus years she applied for a two (2) year extension of her term of service as is permissible under the relevant statutory provision. Her request having been unanimously approved by the Judicial and Legal Services Commission, did not meet with the unanimous concurrence of the Authority of the O.E.C.S., comprising all the Prime Ministers and Chief

Ministers of the O.E.C.S., which at the relevant time, December 1995, including Sir John Compton the then Prime Minister of St. Lucia.

The Applicant, as then Director-General of the O.E.C.S., wrote to the Chairman of the Judicial and Legal Services Commission conveying the Authority's decision and the Chairman forwarded a copy thereof to the Second Respondent.

The Bar Associations of St. Vincent and the Grenadines and Dominica, upon learning of the adverse decision, met in emergency session and wrote in strong terms to the Chairman of the Judicial and Legal Services Commission taking issue with the decision and categorizing it as discriminatory since another judge of the same circuit had been granted an extension beyond retirement age.

The Second Respondent's efforts to be transferred to Dominica, to take advantage of a statutory provision there permitting a judge to retire at age sixty-five (65) so as to enable her to realize full retirement benefits, was not acceded to by the Judicial and Legal Services Commission in light of the prior non-approval by the Authority.

The Second Respondent was also unsuccessful in trying to realize full retirement benefits utilizing an unspecified statutory provision to enable her to add years to the time actually served.

As a result the Second Respondent retired as a judge of the O.E.C.S. at age sixty-two years at less than full pension. The timing of the decision also caused her some personal dislocation.

It is not known from the evidence before me, what was the extent of the difference in retirement benefits which the Second Respondent actual received and what she could have received, if her request for an extension of tenure had been approved by the Authority.

The Second Respondent was, at a date unknown to the Court, interviewed on the B.B.C. Caribbean Service and expressed disappointment regarding the non-approval of an extension of her tenure as a judge of the O.E.C.S.

The Applicant was not himself a member of the Authority and had no

voting rights in relation thereto.

There is no evidence whatsoever that he participated in or gave any advise on the matter of the extension of the Second Respondent's tenure of office beyond the prescribed retirement age, or that he even attended the meeting of the Authority at which the recommended extension did not receive full concurrence of members.

Furthermore, there is no evidence of any animosity or hostility displayed by the Second Respondent to the Applicant before or since the adverse decision was made on her application.

There is also no statutory requirement for the decision on a judge's application for extension of tenure beyond the prescribed retirement age, to be made by the Authority after consultation with or upon the advise of the Director-General, and so the Court cannot, short of direct and cogent evidence, presume any such involvement or role played by the Applicant with regard to the decision on the Second Respondent's application.

Indeed, one would expect that the Prime Ministers and Chief Ministers of member countries who make up the Authority, would be advised on such matter by members of their own cabinet and would come to such a meeting with some clear view one way or the other.

Mr. Alexander submitted that the Applicant has not, in his affidavit, acted with the utmost good faith and condour, *uberrime fide*, as is required of him in making this kind of application, and that he misrepresented certain facts, including the full text of the "umbrella" paragraph in the terms of reference of the Commission. (**see R. v. Kensington Commissioners (1917) 1 KB 486**). He therefore surmised that the Court ought to refuse relief without more.

I have already addressed in this judgement the Applicant's misstatement of the text of the "umbrella" paragraph in the terms of reference. However, the omission of certain pertinent words was one of which I was fully cognisant at the time of hearing the application for leave. Furthermore, the full text of the terms of reference were gazetted and the Court is entitled to take judicial notice thereof.

In short, I do not regard the omissions in the Applicant's affidavit

highlighted by Mr. Alexander to be, either singly or collectively so grave as to warrant summary refusal of the application on that basis only.

Returning to the relevant facts, this is not a case in which the Second Respondent is said to have an interest, pecuniary or otherwise, in the outcome of the Inquiry or in any of the subject matters of the Inquiry. Indeed, the Second Respondent is not a native of nor was she serving as a judge in St. Lucia. She is not said to have any political or other connection with the present Government of St. Lucia or with anyone in a position of leadership therein, so as to indicate partisanship. In other words, there is nothing to suggest or even hint that the Second Respondent would unfairly treat with favour the present government or unfairly treat with disfavour their immediate predecessors in office.

Furthermore, the Second Respondent is not charged to inquire into any matters of or concerning pension rights or retirement benefits, for example, of past elected members of the House of Assembly or past Ministers of Government, nor has she been accused of expressing opinion on the merits of any of the subject matters under inquiry or of a similar nature, so as to suggest prejudgment. **R.V. Secretary of States for the Environment ex parte Kirkstall Valley Campaign Ltd. (1996) 3 AER 304.**

What then is the genesis of the allegation of apparent bias made by the Applicant against the Second Respondent?

#### **Applicant's Case for Bias**

Learned Counsel for the Applicant, in his useful skeleton argument puts it this way -

*"This is a case where resulting from the circumstances of the Second Respondent's retirement as a High Court Judge, and the role played by the Applicant, it is contended that, these events which constitute the backdrop to her appointment as Commissioner give rise to the appearance of bias and the possibility of bias conscious or unconscious arising in the facts".*

And he formulated the relevant questions for the court's determination in these terms -

- (a) Is there a real danger that the Second Respondent will as Commissioner unfairly regard with disfavour the issues relating to the Applicant and by extension, his wife in her deliberations? Or, put differently -

- (b) Is there an appearance of bias and or on examination of all the facts a real possibility that the Second Respondent qua Commissioner, may unconsciously be experiencing continuing disappointment resulting from her failure to realise increased gratuity and pension to the point that she may unconsciously feel resentment towards the Applicant, and by extension his wife, in such a way as to influence her approach to the deliberation of matters concerning them.

Learned Counsel further submitted that the Applicant was part of the decision making process of the Authority, and although he had no voting rights, he had a duty to participate in and contribute to all of the decisions of the Authority and is in the same position in law as a person with voting rights. I do not accept this as a correct statement either of law or of the facts as disclosed in this matter.

Counsel laid great emphasis and reliance on what he termed the adverse pecuniary effect on the Second Respondent which the non-approval of the extension of tenure as a judge must have, which he submitted is substantial and coterminous with her life.

As I have stated earlier, the extent of any financial "loss" has not been established to my satisfaction, and I regard the Applicant's classification of it as "significant" to be virtually meaningless from an evidential point of view. What is significant to one person may not be to another. It is a very subjective statement, and in the absence of actual figures, of which I would expect an ex-Director-General to have some knowledge, I do not attach much, if any, credence to that statement.

What is clear is that the Applicant has sought to attribute to himself a role in the said decision on the Second Respondent's request for an extension of her tenure as a judge, which is not made out by the facts.

I attach absolutely no weight or evidential value to the contention of Counsel for the Applicant that because the Second Respondent made no public statement disassociating herself from the allegation of discrimination against the Authority made by the two Bar Associations, it is to be assumed that she may unconsciously be harbouring bias. I agree with Mr. Alexander that the said proposition is, with all due respect to Learned Counsel, "scraping the bottom of the barrel".

I also do not accept as legally or factual correct, that the Second Respondent now sits in judgement of the Applicant who disappointed her on the matter of her extension of tenure. It is clear from the evidence that the Applicant was in no way involved in creating any such disappointment.

### **Respondents' Case Against Bias**

I have already touched on several of the submissions of Learned Counsel for the Respondents on this issue.

In brief, Mr. Alexander in encapsulated the legal principles, submitted that the Court has to consider the nature of the "interest" of the person accused of bias, the effect of that interest and its relevance to the subject matter of the proceedings. Having alleged bias an applicant has to go further and show that injustice will be created. It is the duty of the Court first to consider the relevant materials before it in so far as they relate to the challenge of bias and then go on to consider whether it is satisfied that the commission is predisposed or prejudiced unfairly against the Applicant, for reasons unconnected with the matters into which she must inquire and, in the final analysis, the Court is dealing with whether there is actual bias albeit unconscious bias.

Counsel also submitted that the Court is entitled to look at the professional or legal qualifications of the Second Respondent, as an experienced lawyer and High Court judge, and it cannot lightly be assumed that she would treat the Applicant with disfavour. In support of this proposition he relied on -

**R. v. Ruel Gordon** (1969) 14 WIR 21.

**R. v. Cullen** (1993) 1 LRC 610 at 611 d-e.

**R. v. Hereford Magistrates' Court, Ex parte Rowlands** (1997) 2 WLR 854 at 874 and 875.

**Rees v. Crane** (1994) 1 AER 832 P.C. at 849 b-f and 850 d.

Having analysed the evidence and commented on what he termed the Applicant's lack of candour in his affidavit, Learned Counsel submitted that the allegation of apparent bias had not been made out, and to find otherwise would be to find that the Second Respondent is a vindictive person.

*Lord Slynn* who delivered the opinion of the Board in **Rees v. Crane**

(*ibid*) attached some importance to the professional background of the persons who made up the Judicial and Legal Services Commission, in determining the issue of bias. He said at page 850 d -

*"their professional backgrounds are such that an assumption of bias should not lightly be made . . ."*

In the instant matter, having regard to the Second Respondent's professional qualifications as a lawyer and judge of considerable experience, it is not lightly to be assumed that she would be affected by bias conscious or unconscious.

### **Conclusions on Bias**

Having ascertained the relevant circumstances in the instant matter and applying the guiding principles set out in *R V Gough and R V Inner West London Governor ex parte Dallaglio* and, in particular, mindful that the court in reaching its conclusion on this issue personifies the reasonable man, is there a real danger, in the sense of one not without substance, something involving more than a minimal risk but less than a probability, in other words is there a real possibility that the Second Respondent, as sole Commissioner, will in the proceedings and deliberations of the Commission unfairly regard with disfavour the Applicant (or his wife) or that she is predisposed or prejudiced against them or either of them by virtue of the Applicant having written the letter conveying the decision of the Authority not to extend her tenure of office as a judge of the Eastern Caribbean Supreme Court beyond the prescribed retirement age, so as to lead to the conclusion that she harbours bias conscious or unconscious, notwithstanding any evidence whatsoever that the Applicant took any part or played any role, whether as adviser or otherwise in the deliberations and decision of the Authority or that he advised against or in any way influenced the outcome.

After a painstaking consideration of this matter, I conclude that there is no real danger or possibility of bias conscious or unconscious or put differently the Applicant has failed to make out a case of bias to my satisfaction so that I can exercise my discretion in his favour. Accordingly, Reliefs Nos. 1 and 3 in the Applicant's Summons filed 20th October, 1997, and as reiterated in his Statement of even date, and in the Originating Motion filed 30th October, 1997 fails and are dismissed.

I also hold that, in any event, even if a real danger of bias had been

established to my satisfaction, the Court could not quash the appointment of the Second Respondent as Commissioner for that reason, as the effect of such a finding of bias would have been merely to disqualify the Second Respondent from sitting as Commissioner, but not to invalidate her appointment as sole Commissioner, where no excess of authority or contravention of the provisions of the Commissions of Inquiry Ordinance, Chapter 5 were alleged in relation to the making of the appointment by the Governor-General. Accordingly, relief No. 1 sought by the Applicant in his Summons could not be granted and is also refused on that ground. See *R V Gough* at 735j.

### Locus Standi

This threshold test has to be established by an applicant both at the leave stage and at the substantive hearing. However, the modern approach is to give a liberal interpretation to *locus standi*, so as not to prevent or discourage citizens from challenging perceived wrongs or excess of power by public bodies, authorities, and quasi judicial tribunals.

The modern test is "relevant or sufficient interest". This test was expressed by Sir Vincent Floissac CJ in *Chief Immigration Officer v. Burnett* (*ibid*) at pages 5 - 6 in this way -

*"A complainant will be held to have locus standi by way of a relevant or sufficient interest in an actual or intended decision or action of a public authority (1) if the decision or action infringed or threatens to infringe any constitutional, statutory or common law right whatsoever vested in the complainant or (2) if the decision or action infringed or threatens to infringe the complainant's specific constitutional, statutory or common law right to the observance of the formalities required by the "audi alteram partem" rule of natural justice or (3) if the decision or action disappointed or threatens to disappoint the complainant's legitimate expectation that certain benefits or privileges will be granted to him or that certain rules of natural justice or fairness would be observed in relation to him before the decision or action is made or taken".*

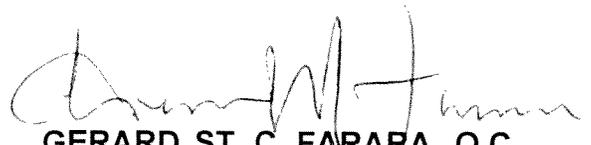
Applying that test to the instant matter, I entertain no doubt that the Applicant has a relevant or sufficient interest in the matter under inquiry, to satisfy the requirement of *locus standi*.

## Orders

It is therefore ordered as follows:-

- (1) the application for a writ of certiorari to quash and/or invalidate the appointment of the Second Respondent as Commissioner on the ground of bias conscious or unconscious is refused.
- (2) It is ordered that the decision of the Second Respondent made 15th October, 1997 that the Applicant is not entitled as of right to be represented by Counsel before the Commission of Inquiry in so far as it relates to the matter the subject of the inquiry under paragraph 1(a) of the terms of reference of the Commission published in the Extra-Ordinary Gazette Vol. 166 No. 65 dated 18th September, 1997 be removed into the High Court of Justice and is quashed.
- (3) The application for a writ of certiorari to remove into the High Court and quash the decision of the Second Respondent to continue to sit it as sole Commissioner of the Commission of Inquiry made 15th October, 1997 is refused.
- (4) The application for a declaration that the Applicant is entitled to have the reasonable costs of his legal representation before the Commission paid by the Government of Saint Lucia, is refused.

As the general approach of the Court is not to discourage citizens or public spirited persons, who have *locus standi*, from approaching the court on matters of national or constitutional importance in the public interest, and although the Applicant has failed in his main challenge, I would make no order as to costs.

  
GERARD ST. C. FARARA, Q.C.  
HIGH COURT JUDGE (ACTING)

All England Official Transcripts (1997-2008)\*

**Perch and others v The Attorney General of Trinidad and Tobago**

[2003] UKPC 17

57 of 2001,(Transcript)

**PRIVY COUNCIL**

**LORD BINGHAM, LORD STEYN, LORD HUTTON, LORD MILLETT, LORD WALKER**

**20 FEBRUARY 2003**

*Commonwealth and dependencies – Trinidad and Tobago – Constitution – Constitutionality of statute – Constitution of Trinidad and Tobago, ss 3(1), 121(1) – Trinidad and Tobago Postal Corporation Act 1999, s 36.*

**20 FEBRUARY 2003**

None stated at original source

**LORD BINGHAM:**

[1] In the course of hearings before Gregory Smith J at first instance and the Court of Appeal (de la Bastide CJ, Warner and Nelson JJA) and before the Board, the issues in this litigation have been progressively refined and simplified. The crucial question which now arises is whether persons employed in the **Trinidad and Tobago** Postal Corporation, a body established by the **Trinidad and Tobago** Postal Corporation Act 1999 and known as “**Trinidad and Tobago** Post”, are to be regarded as in “the service of the Government of **Trinidad and Tobago** in a civil capacity” within the meaning of those words in s 3(1) of the 1976 Constitution of the Republic of **Trinidad and Tobago**. On the answer to that question depends the constitutionality of the 1999 Act, or some sections of it, which the appellants challenge.

[2] In **Trinidad and Tobago**, as in many other countries, the Post Office was historically treated as a department of government and its employees as public servants. Thus in the Post Office Act 1938 (Chap. 47: 01) it was provided in s 41(1):

“There shall be in the public service a Postmaster **General** for **Trinidad and Tobago** and such number of Postmasters and subordinate officers as may be necessary for the purposes of this Act.”

It is unnecessary to elaborate this point, which is not controversial. Thus it is plain that recognised grades of

postal workers were entitled to the protection afforded to public officers by the 1962 Constitution: see **Trinidad and Tobago** (Constitution) Order in Council 1962 ([SI 1962/1875](#)), Second Schedule, ss 92, 93, 105(1).

**[3]** The Civil Service Act 1965 (Chap 23: 01) regulated the Civil Service, of which recognised grades of postal workers were part by virtue of s 3(1), the First Schedule to the Act as originally enacted **and** later Classification Orders. In Regulations made under the Act there was scheduled a list of civil service offices distributed between different classes, including the various grades of postal workers. Section 12 of the Act specified the various modes by which a civil servant might leave the Civil Service which included

- “(a) on dismissal or removal in consequence of disciplinary proceedings;
- (b) on compulsory retirement;
- (c) on voluntary retirement;
- (e) on resignation;
- (g) on the abolition of office;
- (h) in the case of a civil servant on probation, on the termination of appointment; . . .”

**[4]** Closer attention must be paid to the 1976 Constitution, for it is this which the 1999 Act is said to violate. This Constitution was scheduled to the Constitution of the Republic of **Trinidad and Tobago** Act 1976. Section 2 of the Constitution provides that it should be the supreme law **and** that any **other** law inconsistent with it should be void to the extent of such inconsistency. Section 3(1) lays down a number of definitions, of which the most important for present purposes are these:

“‘public office’ means an office of emolument in the public service;

‘public officer’ means the holder of any public office **and** includes any person appointed to act in any such office;

‘public service’ means . . . the service of the Government of **Trinidad and Tobago** in a civil capacity.”

Attention was drawn in argument to subsections (4) **and** (5) of s 3, to which the definition of “public service” is expressly subject, but these contribute little to the present problem. More germane is subsection (6):

“References in this Constitution to the power to remove a public officer from his office shall be construed as including references to any power conferred by any law to require or permit that officer to retire from the public service.”

**[5]** Ch 9 of the Constitution governs appointments to **and** the tenure of public offices. Provision is made for a

Police Service Commission **and** a Teaching Service Commission **and**, relevantly to these appellants, a Public Service Commission. All three commissions are so composed, structured **and** regulated as to ensure that they are independent **and** immune from political pressure, the object being to ensure that civil servants, police officers **and** teachers are similarly independent **and** immune. Lord Diplock explained the purpose of these provisions in *Thomas v Attorney-General of Trinidad and Tobago* [1982] AC 113, [1981] 3 WLR 601 at 124 in a way which, although directed to the 1962 Constitution, remains apposite. Section 121 of the Constitution includes the following subsections central to this appeal:

“(1) Subject to the provisions of this Constitution, power to appoint persons to hold or act in offices to which this section applies, including power to make appointments on promotion **and** transfer **and** to confirm appointments, **and** to remove **and** exercise disciplinary control over persons holding or acting in such offices shall vest in the Public Service Commission.

(7) This section applies to all public offices including in particular offices in the Civil Service, the Fire Service **and** the Prison Service, but this section does not apply to offices to which appointments are made by the Judicial **and** Legal Service Commission, the Police Service Commission or the Teaching Service Commission or offices to which appointments are to be made by the President.”

[6] In **Trinidad and Tobago**, as in **other** countries, there came a time when the policy of the Government was to limit its participation in commercial activities, as Mr George, Permanent Secretary of the Ministry of Public Utilities, deposed in an affidavit sworn on 14 July 1999. Technological advances such as facsimile transmissions **and** electronic mail were rendering postal services vulnerable to competition. The Universal Postal Union, of which **Trinidad and Tobago** is a member, contemplated a change of practice as early as September 1994 **and** at its Congress held at that time appealed to the governments of member countries (among **other** things) to “Give the Post a legal status **and** a modern management system which guarantee it appropriate financial independence, **and** of course accountability, in particular, as regards a commercial approach **and** greater satisfaction of customers' needs.”

[7] The 1999 Act was **Trinidad and Tobago's** response to this appeal **and** to the changed environment in the postal world. The Act did not apply to telephones, which had always been run by a commercial company. The Act repealed most of the Post Office Act (section 64(1)) **and** established the corporation referred to at the outset of this judgment, **Trinidad and Tobago Post**, which was charged to provide inland **and** foreign postal services (section 6(a)) **and** empowered to carry out related businesses (section 6(b) **and** (c)). It was given wide powers (section 7), including borrowing powers (sections 31 **and** 32), **and** was required to operate on sound business principles (section 8(a)) **and** to implement Government policy as conveyed to it (section 8(b)). It was given certain exclusive rights for a 5-year period (section 9(1)). Management of the corporation was entrusted to a small board, appointed by the President (section 11(1)) acting on the advice of the responsible Minister, on terms specified in the First Schedule. The President could revoke the appointment of a board member (First Schedule, para 1(7)), **and** the Minister could give directions in writing to the board on matters of broad public policy, to which the board was obliged to give effect (section 17). The board was required to prepare a corporate plan, a financial plan for the forthcoming year **and** an annual report, which were to be submitted to the Minister (sections 19, 21 **and** 24). The board was required to have regard to specified operating **and** accounting rules (sections 21(3) **and** 22) **and** the corporation was subject to annual audit by the Auditor-**General** or his nominee (section 23). There were detailed financial provisions in Part V of the Act: the corporation was to be financed partly by parliamentary appropriations, partly by sums standing to the credit of the Government under the Post Office Act, partly by its earnings **and** partly from **other** sources (section 25).

[8] Part VI of the Act is headed “Staff”, **and** it is necessary to recite the terms of ss 35 **and** 36:

“35. The Board may employ such staff as is required by **Trinidad and Tobago** Post.

36. (1) This section applies to an officer who on the date of assent of this Act –

(a) holds a permanent appointment to; or

(b) holds a temporary appointment to, **and** has served at least two continuous years in,

a public office specified in the Third Schedule.

(2) A person to whom this section applies may, within three months of the date of assent of this Act, exercise one of the following options:

(a) voluntarily retire from the public service on terms **and** conditions agreed between him or his appropriate recognized association **and** the Chief Personnel Officer;

(b) transfer to **Trinidad and Tobago** Post with the approval of the Public Service Commission on terms **and** conditions no less favourable than those enjoyed by him in the Public Service; or

(c) remain in the Public Service provided that an office commensurate with the office held by him in the Public Service prior to the date of the assent of this Act, is available.”

The Third Schedule listed all the grades of postal worker to which the appellants, **and** those whom they represent, belonged.

**[9]** The Act was passed on 12 January 1999. It received the assent of the President on 10 February 1999, upon which date certain sections of the Act, including ss 35 **and** 36, came into effect. Thus the 3-month period from the date of assent, specified in s 36(2) for the exercise of the statutory options, began to run on 10 February. The remainder of the Act took effect on a date fixed by presidential proclamation, which was made on 1 July 1999.

**[10]** On the date of assent the first-named appellant was the Post Mistress of Gasparillo Post Office, having served in the Post Office for just under 10 years. The **other** two named appellants served under her in more junior ranks. The 3 named appellants, **and** those whom they represent in these proceedings (some 66 **others**, all of them postal workers called upon to opt under s 36(2) of the Act), opted to remain in the public service as provided in subsection (2)(c). In the cases of some who chose that option alternative offices in the public service were available. But in each of the appellants' cases an office commensurate with the office held by them in the public service before the date of assent proved to be unavailable. So they were faced with a choice between the options in subsections (2)(a) **and** (2)(b). They chose (2)(a) **and** retired. But they claim that the imposition of this choice violated their constitutional right enshrined in s 121(1) of the Constitution.

**[11]** In advancing this argument on the appellants' behalf, Mr Fitzgerald QC was able to set out from the proposition, accepted as correct, that, at any rate until the 1999 Act took effect, the appellants were holders of public offices in the Civil Service **and** were persons engaged in the service of the Government in a civil

capacity. Thus their appointment, whether initially or on promotion **and** transfer, **and** their removal **and** discipline, were within the exclusive power of the Public Service Commission as provided by s 121(1) of the Constitution. This was common ground. Controversy entered with Mr Fitzgerald's next **and** all-important contention: that the postal service operated directly by the Government before 1999 remained a postal service operated by the Government, despite the changes made by the 1999 Act in the means by which the service was delivered, since the new corporation was subject to close governmental control. This was not a pure privatisation, therefore, but a postal service run by the Government in a different way **and** those who worked for the new corporation worked in the service of the Government in a civil capacity, just as when they had worked for the old Post Office. They remained entitled to the protection of s 121(1). It followed that power to appoint to the new corporation or remove them from the Post Office was exclusively vested in the Public Service Commission. Mr Strachan QC for the **Attorney-General** took issue with this argument. He submitted that those employed by the new corporation were not holders of any public office **and** were not employed in the service of the Government in a civil capacity.

[12] The draftsman of s 36(2) plainly intended to draw a contrast between transferring to the new corporation **and** remaining in the public service. Those transferring were not regarded as remaining in the public service: hence the provision that the terms **and** conditions on transfer should be no less favourable than those enjoyed in the public service. The draftsman's intention is by no means irrelevant; but it cannot supersede the view properly to be taken on the substance of the matter.

[13] The 1999 Act exemplifies a widespread international trend towards the divestment by governments of functions previously carried on by them directly or indirectly but forming no part of the core functions of government (such as defence, the maintenance of law **and** order **and** the administration of justice) **and** lending themselves to commercial non-governmental operation in the interests of efficiency **and** economy. If it were sought to devolve the police service or the prison service to a corporation analogous to **Trinidad and Tobago** Post there would be strong arguments (on which it is unnecessary to pronounce) for holding that such a change contradicted express terms of the Constitution **and** assumptions on which it was based. But no such problem arises here. There is nothing intrinsically governmental in collecting **and** delivering letters **and** parcels, any more than there is in operating telephones, or trains, or lotteries, or meteorological offices, or scientific laboratories, or libraries, or hospitals. It is certainly true, as Mr Fitzgerald emphasised **and** as is apparent from the summary in para 7 above, that the Government reserved a significant measure of control over the new corporation. This is understandable. Since it had no shareholders, the corporation could only be accountable to the Government; **and** since the corporation could not fail without grave damage to the credit of the state, a degree of oversight was to be expected. But the Minister's power of direction under s 17 did not extend to operational matters **and**, significantly, the board was to be composed of persons (section 11(1)) with "proven experience or qualifications in postal services, business, law, financial management, economics **and** human resource management". This was intended to be a high grade commercial business. The observations of Denning LJ in *Tamlin v Hannaford* [1950] 1 KB 18, [1949] 2 All ER 327 at 24, although directed to the British Transport Commission **and** calling for modification in a republican context, remain pertinent:

"It is not the Crown **and** has none of the immunities or privileges of the Crown. Its servants are not civil servants, **and** its property is not Crown property. It is as much bound by Acts of Parliament as any **other** subject of the King. It is, of course, a public authority **and** its purposes, no doubt, are public purposes, but it is not a government department nor do its powers fall within the province of government."

At page 25, Denning LJ contrasted "commercial matters" with those which were "essentially the province of government", although he recognised that historically the carriage of mail had enjoyed a special position. As Shaw LJ said in *Trendtex Trading Corporation v Central Bank of Nigeria* [1977] QB 529, [1977] 1 All ER 881 at 576,

“Governments everywhere engage in activities which although incidental in one way or another to the business of government are in themselves essentially commercial in their nature.”

Sovereign states are no longer immune from suit in respect of such commercial transactions (see [State Immunity Act 1978, s 3](#), a provision reflecting the current rule of public international law on this point) **and** it is not surprising that those engaged in such transactions should cease to be regarded as servants of the state.

[14] Reliance was placed on *Thomas v Attorney-General of Trinidad and Tobago* [1982] AC 113 at 123, where Lord Diplock deprecated the spoils system which has operated elsewhere, notoriously in the Post Office, **and** Mr Fitzgerald warned of the danger if employees of the new corporation were to lose the protection of s 121(1). But Lord Diplock was addressing the risk if civil servants, police officers **and** the like were dismissible summarily without cause, a risk against which the Constitution provides express protection. Employees of the new corporation enjoy all the rights of employees in the private sector. If the members of the board were to exercise the corporation's employment powers to advance the interests of any party or faction they would act outside the powers conferred upon them **and** would be susceptible to challenge. So would the Minister if he purported to direct board members to act in such a way. He would also be susceptible to challenge on the ground discussed in *Porter v Magill* [2001] UKHL 67; [2002] 2 AC 357.

[15] The Board is of the clear opinion that employees of the new corporation are not holders of any public office **and** are not employed in the service of the Government in a civil capacity within the meaning of s 3(1) of the Constitution. It remains to enquire whether, that being so, s 36(2) of the 1999 Act violated the rights of these appellants. In the case of those who, like the appellants, chose option (c) **and** for whom, unlike the appellants, another office was available in the public service, there would plainly be no violation, although the appointment to another department on transfer from the Post Office would require to be made by the Public Service Commission by virtue of s 121(1), a requirement with which s 36(2) does not purport to dispense. For those, like the appellants, who chose option (c), but for whom no **other** office in the public service was available, there was again no constitutional violation. Retirement, whether voluntary or compulsory, is a mode of leaving the public service recognised by s 12 of the Civil Service Act. So is the abolition of an office held, which in the appellants' case was imminent. It is established that a legislature or (subject to any relevant legislation) a government may abolish a public office in the interests of good administration: *Young v Waller* [1898] AC 661; *Reilly v The King* [1934] AC 176; *Pillai v The State of Kerala* [1974] 1 SCR 515. It would seem, by virtue of the extended meaning given to “remove” by s 3(6) of the Constitution **and** by virtue of s 12 of the Civil Service Act, that the retirement of the appellants would require the sanction of the Public Service Commission. But there is again nothing in s 36(2) which dispenses with that requirement if it did apply; the sanction of the Commission would inevitably have been given, with the abolition of the appellants' offices imminent; there is no evidence that the sanction of the Commission was not given; **and** even if the correct procedure was not followed it caused the appellants no harm **and** in any event affords no ground for impugning the constitutionality of the 1999 Act. The option offered in s 36(2)(a) raises no issue beyond these already discussed even if, as Mr Fitzgerald suggested, the appellants' retirement from the public service was not truly voluntary. Option (b) involved a transfer to an employer (namely the new corporation) outside the public service. For reasons already given, it would seem that such a transfer involved retirement from the public service, **and** so required the sanction of the Commission, but there is nothing in the 1999 Act which purports to dispense with that requirement **and** the sanction of the Commission would inevitably have been given. There is, in short, nothing in s 36 which is in any way incompatible with the Constitution.

[16] Gregory Smith J held that s 36 of the 1999 Act was incompatible with s 121(1) of the Constitution insofar as it abolished the offices of postal officers **and** terminated their employment in the public service. Since the provision was not passed by the special majority needed for a constitutional amendment, it was unconstitutional. Mr Fitzgerald did not seek to support this reasoning, since it is not a breach of s 121(1) for Parliament to abolish a post in the public service, as the Court of Appeal rightly held. Whilst the Board would

not support all the reasoning of the Court of Appeal in allowing the **Attorney-General's** appeal against the judge's ruling in favour of the appellants, it is in complete agreement that the establishment of the new corporation, undertaken for sound governmental, administrative **and** commercial reasons, involved no breach or threatened breach of the appellants' constitutional rights. It follows that the appeal must be dismissed with costs.

*Appeal dismissed.*

A

Court of Appeal

**Regina v Chapman and others****Regina v Sabey**

B

[2015] EWCA Crim 539

2015 March 10; 26

Lord Thomas of Cwmgiedd CJ,  
Cranston, William Davis JJ

*Crime — Aiding and abetting — Misconduct in public office — Whether necessary for prosecution to prove that defendant knew misconduct sufficiently serious to amount to crime*

C

*Crime — Common law offence — Misconduct in public office — Appropriate directions to jury in relation to necessary level of seriousness of misconduct*

*Crime — Conspiracy — Misconduct in public office — Whether necessary for prosecution to prove that defendant knew misconduct sufficiently serious to amount to crime — Criminal Law Act 1977 (c 45), s 1 (as substituted by Criminal Attempts Act 1981 (c 47), s 5(1))*

D

In the first case the first defendant, a prison officer, supplied information about a prisoner to newspapers in return for money which was paid into a bank account of the second defendant, with whom he had a relationship. The third defendant was a journalist who received some of the information so supplied. The first and second defendants were charged with misconduct in public office, the second defendant on a joint enterprise basis in that she had aided and abetted the first defendant's conduct. The third defendant was charged with conspiracy to commit misconduct in public office, contrary to section 1 of the Criminal Law Act 1977, as substituted<sup>1</sup>.

E

In the second case the defendant was a journalist who received information from a soldier about an officer in the soldier's regiment, knowing that the soldier was being paid for the information. The soldier was charged with misconduct in public office and the defendant was charged with aiding, abetting, counselling and procuring misconduct in public office by the soldier. The defendants in both cases were convicted and applied for permission to appeal against conviction on the grounds, inter alia, that the judges had misdirected the juries in respect of (i) the third element of the common law offence of misconduct in public office, namely that the misconduct was of such a degree as to amount to an abuse of the public's trust in the office holder (relied on by the defendants in the first case only), (ii) the mens rea required for the offence of aiding and abetting misconduct in public office (relied on by the second and third defendants in the first case and the defendant in the second case) and (iii) the mens rea required for the offence of conspiracy to commit misconduct in public office (relied on by the second and third defendants in the first case).

F

On the applications—

G

*Held*, (1), granting the application and allowing the appeal in the first case, that in order to direct a jury adequately as to the third element of the offence of misconduct in public office, a judge had to make clear that more than a simple breach of duty or breach of trust was required and refer the jury to the need to find that the misconduct had the effect of injuring the public interest so as to call for condemnation and punishment, the threshold of misconduct being a high one; that context was important in determining how the jury should be directed; that in the context of a case involving the media and the ability to report information provided in breach of trust by a public officer, the harm to the public interest was the major determinant in establishing whether the misconduct was sufficiently serious to

H

<sup>1</sup> Criminal Law Act 1977, s 1, as substituted: see post, para 61.

amount to a criminal offence; that the judge in the first case had not directly asked the jury to determine whether the conduct had the effect of injuring the public interest as a step in deciding whether the conduct was so serious as to amount to an abuse of the public's trust in the office holder; and that, accordingly, there had been a material misdirection and the convictions should be quashed on that ground (post, paras 30–40, 77).

*R v Dytham* [1979] QB 722, CA, *Shum Kwok Sher v Hong Kong Special Administrative Region* (2002) 5 HKCFAR 381 and *Attorney General's Reference (No 3 of 2003)* [2005] QB 73, CA considered.

(2) Granting the application in the second case, that in order to establish the offences of aiding and abetting misconduct in public office or conspiracy to commit misconduct in public office it was not necessary to prove that the defendant had known or intended that the office holder's misconduct would be so serious as to amount to the offence of misconduct in public office; that, rather, it was sufficient for the defendant to have known the circumstances which resulted in the conduct being so serious as to amount to that offence; that, in the circumstances, there had been no misdirection in either case as to mens rea; and that the appeal in the second case, in which the first ground had not been advanced, would be adjourned with liberty to apply to amend the grounds of appeal (post, paras 55–56, 68–69, 76, 78).

The following cases are referred to in the judgment of the court:

*Attorney General's Reference (No 3 of 2003)* [2004] EWCA Crim 868; [2005] QB 73; [2004] 3 WLR 451; [2005] 4 All ER 303; [2004] 2 Cr App R 366, CA

*Johnson v Youden* [1950] 1 KB 544; [1950] 1 All ER 300, DC

*R v Adomako* [1995] 1 AC 171; [1994] 3 WLR 288; [1994] 3 All ER 79; 99 Cr App R 362, HL(E)

*R v Bembridge* (1783) 3 Doug KB 327

*R v Borron* (1820) 3 B & Ald 432

*R v Dytham* [1979] QB 722; [1979] 3 WLR 467; [1979] 3 All ER 641; 69 Cr App R 387, CA

*R v Misra* [2004] EWCA Crim 2375; [2005] 1 Cr App R 328, CA

*R v Rimmington* [2005] UKHL 63; [2006] 1 AC 459; [2005] 3 WLR 982; [2006] 2 All ER 257; [2006] 1 Cr App R 257, HL(E)

*R v Saik* [2006] UKHL 18; [2007] 1 AC 18; [2006] 2 WLR 993; [2006] 4 All ER 866; [2006] 2 Cr App R 368, HL(E)

*Shum Kwok Sher v Hong Kong Special Administrative Region* (2002) 5 HKCFAR 381

The following additional cases were cited in argument:

*Callow v Tillstone* (1900) 83 LT 411, DC

*R v Churchill (No 2)* [1967] 2 AC 224; [1967] 2 WLR 682; [1967] 1 All ER 497; 51 Cr App R 212, HL(E)

*R v Webster* [2006] EWCA Crim 415; [2006] 2 Cr App R 103; [2006] RTR 237, CA

The following additional cases, although not cited, were referred to in the skeleton arguments:

*R v Arthur* [2013] EWCA Crim 1852; [2014] Crim LR 229, CA

*R v Connors* [2013] EWCA Crim 368; [2013] Crim LR 854, CA

*R v L (D)* [2011] EWCA Crim 1259; [2011] 2 Cr App R 159, CA

*R v Maxwell* [1978] 1 WLR 1350; [1978] 3 All ER 1140; 63 Cr App R 128, HL(NI)

*R v Powell (Anthony)* [1999] 1 AC 1; [1997] 3 WLR 959; [1997] 4 All ER 545; [1998] 1 Cr App R 261, HL(E)

*R v Rahman* [2008] UKHL 45; [2009] AC 129; [2008] 3 WLR 264; [2008] 4 All ER 351; [2009] 1 Cr App R 1, HL(E)

*R v West (Nicholas)* [2014] EWCA Crim 1392, CA

## A APPLICATIONS for permission to appeal against conviction

*R v Chapman and others*

On 5 November 2014 in the Central Criminal Court (Judge Wide QC and a jury) the first defendant, Scott Derek Chapman, was convicted of misconduct in public office, the second defendant, Lynn Gaffney, was convicted of aiding and abetting misconduct in public office and the third defendant, Lucy Rebecca Panton, was convicted of conspiracy to commit misconduct in public office.

The defendants applied for permission to appeal against their convictions on the grounds that the judge had misdirected the jury in respect of the threshold requirement for misconduct in public office, and that, as to the second and third defendant respectively, the judge had misdirected the jury in respect of the required mens rea in relation to the offences of aiding and abetting misconduct in public office and of conspiracy to commit misconduct in public office.

The facts are stated in the judgment of the court.

*R v Sabey*

On 19 February 2015 in the Central Criminal Court (Judge Wide QC and a jury) the defendant, Ryan Sabey, was convicted of aiding and abetting misconduct in public office.

He applied for permission to appeal against conviction against his conviction on the grounds that the judge had misdirected the jury in respect of the required mens rea for the offence of aiding and abetting misconduct in public office.

The facts are stated in the judgment of the court.

*Paul Mendelle QC* (instructed by *The Johnson Partnership, Nottingham*) for the first defendant in the first case.

The threshold for establishing criminal misconduct is a high one, as established in *Attorney General's Reference (No 3 of 2003)* [2005] QB 73. There has to be a serious departure from proper standards, not merely negligent but amounting to an affront to the standing of the public office held, before the criminal offence is committed: see *Shum Kwok Sher v Hong Kong Special Administrative Region* (2002) 5 HKCFAR 381. The element of culpability must be of such a degree that the misconduct impugned is calculated to injure the public interest so as to call for condemnation and punishment: see *R v Dytham* [1979] QB 722. The judge's only direction on this matter was that there has to be a serious, blameworthy departure from standards amounting to an affront to the standing of the public office held. That did not go far enough.

*John Butterfield QC* (instructed by *Paul Martin & Co, Romford*) for the third defendant in the first case.

An agreement to commit a criminal conspiracy cannot be made out when the agreement does not cover all the elements of the crime. A true agreement cannot encompass something which is simply unknown at the time. The judge should have directed the jury that the third defendant had to intend or know that the first defendant's conduct would meet the requisite threshold of seriousness. That threshold in relation to the third defendant was not

simply an objective test for the jury: see *R v Saik* [2007] 1 AC 18. In appropriate circumstances the mens rea required for conspirators should be in excess of that required for the substantive offence. A

*Emily Culverhouse* (instructed by *Noble Solicitors, Luton*) for the second defendant in the first case.

The judge failed to direct the jury that the mens rea of aiding and abetting the principal needs to attach to all elements of the offence. An aider and abettor of an offender charged with misconduct in public office has to intend the misconduct to injure the public interest. B

*Jonathan Rees QC* (instructed by *Crown Prosecution Service, Organised Crime Division*) for the prosecution in the first case.

The threshold test is not part of the mens rea of the offence of misconduct in public office. The requisite mens rea is identified in the term “wilfully” which means deliberately doing something that is wrong, knowing it to be wrong or with reckless indifference as to whether it is or not. The prosecution does not have to prove that the defendant was aware that his conduct would cross the criminal threshold. If the prosecution proves that a public officer, acting as such, has wilfully misconducted himself, he is guilty of the offence of misconduct in public office if it is determined that he did so without reasonable excuse or justification and the misconduct crosses the criminal threshold. The key aspects of the threshold test are that the misconduct must be serious and culpable and fall so far below acceptable standards as to amount to an abuse of the public’s trust in the office holder, and whether the misconduct reaches that level of seriousness is to be determined by looking at all of the surrounding circumstances. The judge’s directions were adequate and reflected the law as stated in *Attorney General’s Reference (No 3 of 2003)* [2005] QB 73. C D E

As to the adequacy of the judge’s direction regarding the mental element which the prosecution is required to prove against a person charged with aiding and abetting another to commit the offence of misconduct in public office, while the prosecution is required to prove that the secondary party was aware of facts which, on assessment by the tribunal of fact, would render the misconduct sufficiently serious to cross the criminal threshold, the prosecution are not required to prove that the secondary party had conducted the assessment himself and arrived at the conclusion that the misconduct passed the threshold test. The prosecution has to prove that the secondary party foresaw that the principal, a public officer, might wilfully misconduct himself but does not have to prove that the secondary party foresaw that the principal might wilfully misconduct himself in a culpable manner to such a degree as to amount to an abuse of the public’s trust in the office holder. Accordingly, the mental elements which the prosecution need to prove to establish the guilt of the second defendant comprise an intention to assist the course of conduct impugned, knowledge that the first defendant was a public official at the relevant time and knowledge that the course of conduct which she intended to assist might involve the first defendant wilfully misconducting himself and knowledge of facts relating to the misconduct which, on assessment by the jury, rendered the misconduct culpable and sufficiently serious to cross the criminal threshold. The elements of aiding and abetting may be different for different offences: compare *R v Webster* [2006] 2 Cr App R 103. F G H

The merits of the ground of appeal relating to the adequacy of the judge’s direction on the mental element which the prosecution is required to prove

A against a person charged with conspiracy to commit misconduct in public office depend on the application of section 1(2) of the Criminal Law Act 1977 to the offence of conspiracy to commit misconduct in public office: see *R v Saik* [2007] 1 AC 18. In order to establish the third defendant's guilt the prosecution has to prove that she intentionally entered into an agreement with the first defendant, whom she knew to be a public official, to pursue a course of conduct which, if carried out in accordance with their intentions, would involve the public official, acting as such, wilfully misconducting himself in circumstances which would render the misconduct culpable and an abuse of the public's trust in the office holder. The judge adequately directed the jury as to the requisite mental element.

*Mendelle QC* and *Butterfield QC* replied.

C *Orlando Pownall QC* and *William Hays* (instructed by *Guney Clark & Ryan*) for the defendant in the second case.

The judge misdirected the jury as to the necessary mental state which a secondary party must have in order to be guilty of encouraging the offence of misconduct in a public office in that he failed to direct the jury that before they could convict they would have to be satisfied that the defendant appreciated that right-thinking members of the public would regard the misconduct as being so serious as to amount to a breach of the public's trust in the office holder: see *Attorney General's Reference (No 3 of 2003)* [2005] QB 73, *R v Churchill (No 2)* [1967] 2 AC 224 and *Callow v Tillstone* (1900) 83 LT 411. There is a clear distinction between the position of the principal and the aider and abettor because in relation to the principal the offence is one of strict liability. If, on the defendant's part, actual knowledge of the fact of the breach of public trust is not required, there would be a lack of legal certainty as to his liability.

*Julian Christopher QC* and *Stuart Biggs* (instructed by *Crown Prosecution Service, Organised Crime Division*) for the prosecution in the second case.

F Although *Johnson v Youden* [1950] 1 KB 544 sets out the state of mind required of an aider and abettor, "the essential matters which constitute [the] offence" do not include knowledge of how right-thinking members of the public would regard the conduct. That is not a matter which has to be proved in relation to the principal. The principal must know that he has a duty not to conduct himself in the way in which he did and he must deliberately breach that duty but he does not need to know that his deliberate breach of duty would be so serious as to amount to the conduct required in the third element of *Attorney General's Reference (No 3 of 2003)* [2005] QB 73. The offence of misconduct in a public office is not an offence of strict liability. The misconduct has to be wilful in that the office holder must act deliberately and he must be aware of his duty not to conduct himself in that way. He must also act without justification. Although he did not have to intend or foresee that the level of misconduct must be so serious as to amount to the criminal offence, there remains a significant mental element in the offence for the principal.

*Pownall QC* replied

The court took time for consideration.

26 March 2015. LORD THOMAS OF CWMGIEDD CJ handed down the following judgment of the court. A

This is the judgment of the court to which each of us has contributed.

1 Over the past year and at present, there have been, are continuing and will be a number of trials where public officials (policemen, prison officers, soldiers and others) are being tried for the ancient common law offence of misconduct in public office on the basis that they passed information obtained in the course of their duties to the media in return for payment. Those in the media who dealt with them have been, are being or will be tried for aiding and abetting such misconduct and in some cases conspiracy. B

2 There are before the court applications for leave to appeal in two such trials which have been tried at the Central Criminal Court before Judge Wide QC and a jury. C

*The evidence in R v Chapman, Gaffney and Panton*

3 As is well known, in 1993 Jon Venables and another young person were convicted of the murder of James Bulger. In due course he was released on licence for that offence under a new identity. That identity was protected by various orders of the court. In early 2010 he was recalled to prison in relation to further offences. In March 2010 Venables was held at HMP Woodhill. D

4 One of the officers at HMP Woodhill was the first defendant in the first appeal, Scott Chapman, who had been employed there from 2003. Between then and 20 June 2011 Scott Chapman provided information about Venables to the newspapers. It was his case and his evidence that at first he did so because he believed Venables was receiving what he saw as special treatment which he believed to be wrong, unfair and contrary to the ethos of the prison. However, he accepted that in the course of the period in which he supplied information to newspapers, his motivation changed to that of obtaining money, particularly after he had lost his job at HMP Woodhill on 6 April 2011. He had obtained more than £40,000. None the less he contended that, although what he had done was wrong, it was not so wrong as to amount to a crime. The prosecution case was that he had deliberately exploited his public office for gain. E

5 The money that was paid by the newspapers was paid to the bank account of the second defendant, Lynn Gaffney. Scott Chapman had had a relationship with her for many years; their son had been born in 1997. He remained close friends with her. That was not in dispute. It was Scott Chapman's account that at first he did not tell her the truth as to where the money was coming from but later he had said he told her that he was selling stories to newspapers which he had made up. Although the money was in her bank account he considered that the money was his. Her evidence was that when she saw the cheques were coming from News International, she asked him why he was being paid. He told her that he had been making up stories and selling them. The prosecution case was that she knew that her bank account was being used because of the seriousness of the misconduct he was committing in breach of his duties as a prison officer. F

6 Both were charged with misconduct in public office, the case against Lynn Gaffney being that she had aided and abetted him. G

[2015] QB

A 7 One of the journalists to whom the information had been provided was the third defendant, Lucy Panton, a crime reporter who had joined the *News of the World* in 2002; there was powerful evidence before the jury about her professionalism as a journalist. It was the prosecution case against her that she had obtained information from Scott Chapman which resulted in two articles about Venables and for which a payment of £1,250 had been made. It was her evidence and case that Scott Chapman had been referred to her in 2010 by the newsdesk when he telephoned the newspaper. He had been referred to as “Adam” and was an anonymous tipster. He was not the only anonymous source with information about Venables; she had published several stories but “Adam” was the source of only two. He told her that he had sold information to the *Sun*. She found him on the system with the payment details for Lynn Gaffney; she could see from the system that he was a tried and trusted source. Her evidence was that it was not her practice to cause public officials to be paid for stories; any decision to make a payment was for the legal managers and the editors. It was not her practice to ask for identification where the source was anonymous. She did not know he was a prison officer. She had sent an e-mail where she referred to having seen the source’s Woodhill pass and wage slip; her case was that she probably made that up in order to ensure that her story was not “pulled”. There was also a reference by her in an e-mail to a “prison tipster” but that did not necessarily mean a prison officer. She believed that the story was in the public interest.

8 She was charged with conspiracy to commit misconduct in public office on the basis she had entered into an agreement which would involve Scott Chapman who she knew to be a prison officer acting in breach of his duty by disclosing information about Venables.

E 9 The three were tried with another journalist at the Central Criminal Court before Judge Wide QC and a jury. All three were convicted on 5 November 2014 but the other journalist acquitted.

F 10 On 11 December 2014 Scott Chapman was sentenced to 42 months’ imprisonment, Lynn Gaffney to 30 weeks’ imprisonment and Lucy Panton to six months’ imprisonment, suspended for 12 months with a 150-hour unpaid work requirement and a three-month electronically monitored curfew requirement. Their application for leave to appeal against conviction has been referred to the Full Court by the Registrar. We grant leave.

#### *The evidence in R v Sabey and Brunt*

G 11 As is also well known, HRH Prince Harry was an officer in the Blues and Royals of the Household Cavalry Mounted Regiment in 2006–2007. There was intense press interest in any stories about him.

H 12 Paul Brunt was a Lance Corporal in the same Regiment. He provided information about Prince Harry to the *News of the World* between April 2006 and November 2007 in return for payments. There was evidence that all members of the armed forces were instructed not to talk to the media without permission; this instruction was reinforced when the Royal Princes joined the regiment. Paul Brunt did not give evidence, but his account in his interview (when he chose not to be represented by a lawyer) was that he had provided the information for money. The prosecution case was that he had abused his position as a soldier and received from the *News of the World* and the *Sun* (to whom he had also provided information) a total of £16,000.

13 Ryan Sabey was a journalist on the *News of the World*, joining in 2001, becoming a staff reporter in 2003 and a Royal reporter in 2005. The newsdesk had put him in touch with Paul Brunt, telling him that there was someone with a potential story. He rang back. He was told his name was Steve and he might have a story. He kept in touch and some weeks went by before he provided information about the Prince horse riding. In the course of his dealings, Paul Brunt passed him a story with pictures of a soldier in his regiment with KKK dress and swastika symbols. He accepted that he learnt that Paul Brunt was a serving soldier and that Paul Brunt had been paid. The jury were provided with an e-mail in which Ryan Sabey asked if he could pay £1,500 in cash instead of paying it into his bank account as Paul Brunt had said his position could be jeopardised if the army ever asked to see his bank accounts. That payment was made in cash. His evidence was that many much more senior people in the paper had known he was receiving stories from a serving soldier and he had made the payments. It was the prosecution case that he encouraged Paul Brunt to provide the information, knowing that Paul Brunt was not allowed to provide it. Ryan Sabey contended that looked at overall the stories were in the public interest.

14 Paul Brunt and Ryan Sabey were charged with misconduct in public office, Ryan Sabey being charged with aiding and abetting Brunt.

15 They were tried at the Central Criminal Court also before Judge Wide QC and a jury on 19 February 2015; both were convicted. Sabey seeks leave to appeal on a single ground—the direction of the judge in respect of aiding and abetting. We grant leave. At the time of the hearing, the time for Paul Brunt to seek leave to appeal had not expired.

#### *The issues*

16 Four issues arose on the first appeal. The second appeal involved the first and second issues only. (i) Was the judge’s direction in respect of the threshold required for misconduct in public office correct? (ii) Was the judge’s direction in respect of the mens rea of Lynn Gaffney/Ryan Sabey as aiders and abettors correct? (iii) What was the mens rea required to convict Lucy Panton in relation to the count of conspiracy? (iv) Did the judge’s response to a jury note in *R v Chapman* amount to a material irregularity affecting the safety of the conviction?

(1) *Was the judge’s direction in respect of the threshold required for misconduct in public office correct?*

(a) *The elements of the offence*

17 Misconduct in public office is, as we have said, an ancient common law offence; it can be traced back to the thirteenth century, though the development of the present offence only began in 1783 in the judgment of Lord Mansfield CJ in *R v Bembridge* (1783) 3 Doug 327. The most recent formulation of the elements of the offence was set out in the judgment of this court (Pill LJ, Hughes and Aikens JJ) in *Attorney General’s Reference (No 3 of 2003)* [2005] QB 73. After the acquittal of four police officers in a trial involving a death in custody, the Attorney General sought the opinion of the court on the question: “What are the ingredients of the common law offence of misconduct in public office?” The court after an extensive review of the authorities answered the question at para 61 by stating it comprised four

A elements: (i) A public officer acting as such (ii) wilfully neglects to perform his duty and/or wilfully misconducts himself (iii) to such a degree as to amount to an abuse of the public's trust in the office holder (iv) without reasonable excuse or justification.

B 18 The element in issue on the applications before us was the third element—the threshold test for the misconduct to be sufficiently serious to amount to an abuse of the public's trust in the office holder. In the court's examination of the authorities on this element it relied in particular on the decisions in *R v Dytham* [1979] QB 722 (Lord Widgery CJ, Shaw LJ and McNeill J) and *Shum Kwok Sher v Hong Kong Special Administrative Region* (2002) 5 HKCFAR 381 (Court of Final Appeal, Hong Kong, where the leading judgment was given by Sir Anthony Mason NPJ). Its conclusion in respect of the third element was expressed [2005] QB 73, paras 56–58:

C “56. . . . there must be a serious departure from proper standards before the criminal offence is committed; and a departure not merely negligent but amounting to an affront to the standing of the public officer held. The threshold is a high one requiring conduct so far below acceptable standards as to amount to *an abuse of the public's trust in the office holder*. A mistake, even a serious one, will not suffice. The motive with which a public officer acts may be relevant to the decision whether the public's trust is abused by the conduct . . .

D “57. . . . the element of culpability ‘must be of such a degree that *the misconduct impugned is calculated to injure the public interest so as to call for condemnation and punishment*’ . . .

E “58. . . . The conduct cannot be considered in a vacuum: the consequences likely to follow from it, viewed subjectively as in *R v G* [2004] 1 AC 1034, will often influence the decision as to whether the conduct amounted to an abuse of the public's trust in the officer . . . There will be some conduct which possess the criminal quality even if serious consequences are unlikely, but it is always necessary to assess the conduct in the circumstances in which it occurs.” (Emphasis added.)

F 19 In the light of the modern restatement of the law it is not necessary to refer to earlier cases as it was not suggested before us that the formulation in *Attorney General's Reference (No 3 of 2003)* was in any way inaccurate. What was in issue was whether the way in which the judge set out this element of the offence accorded with the law as so formulated. It is, as was submitted to us, therefore helpful briefly to refer to that issue as raised in *R v Dytham* and *Shum Kwok Sher v Hong Kong Special Administrative Region*.

G 20 In *R v Dytham* [1979] QB 722 a police officer was charged with the offence in circumstances in which he had witnessed a very serious attack on an individual who died, but had failed to intervene; this was not an allegation of nonfeasance, but of deliberate failure and wilful neglect. The judge ruled that the offence was one known to the law and the officer was convicted. On appeal, the court said, at pp 727–728:

H “This involves an element of culpability which is not restricted to corruption or dishonesty but which must be of such a degree that the misconduct impugned *is calculated to injure the public interest so as to call for condemnation and punishment*. Whether such a situation is revealed by the evidence is a matter that a jury has to decide. It puts no

heavier burden upon them than when in more familiar contexts they are called upon to decide whether driving is dangerous or a publication is obscene or a place of public resort is a disorderly house . . .” (Emphasis added.) A

21 In *Shum Kwok Sher v Hong Kong Special Administrative Region* 5 HKCFAR 381 a senior government officer had used his position to provide preferential treatment to a company and its directors to whom he was related. Sir Anthony Mason NPJ observed that the passage in the judgment of Lord Widgery CJ to which we have referred was not the language of definition. He went on to say, at paras 76–77: B

“76. . . . Read in context, the words suggest that his Lordship was endeavouring to convey the idea that the conduct complained of must be injurious to the public interest and of a sufficiently serious nature to warrant conviction and punishment. The linkage his Lordship makes with the idea of culpability reinforces this view of his Lordship’s purpose. In this respect, it is to be noted that Lord Widgery employs the concept of culpability to embrace two different matters, namely, first, the absence of reasonable excuse or justification and, secondly, that the conduct complained of may not involve corruption or dishonesty but must be of a sufficiently serious nature. C

“77. The second point is that there was no clear previous authority for the proposition that, in any category of case of misconduct in public office, the prosecution must prove to the satisfaction of a jury, as elements of the offence, *that the conduct of the defendant was calculated to injure the public interest so as to call for condemnation and punishment.*” (Emphasis added.) D

*(b) The judge’s direction on the threshold test for the misconduct*

22 We turn therefore to consider whether the direction given by the judge accurately reflected the third element of abuse in the public’s trust in the office holder as outlined in these cases.

23 The judge directed the jury, orally and in his route to verdict, as follows: E

“Are you sure that Mr Chapman’s misconduct was so serious as to amount to an abuse of the public’s trust in him as the holder of public office and that Mr Chapman has no reasonable excuse or justification for selling the stories?” F

This direction set out together and in a single sentence the third and fourth elements identified in *Attorney General’s Reference (No 3 of 2003)*. He then went on to amplify that by a further direction which he recorded in his route to verdict in a footnote (footnote 3) which read: G

“There must have been a serious, blameworthy departure from proper standards amounting to an affront to the standing of the public office held. Have regard to all the circumstances as you find them to have been including (what follows is not exhaustive) the responsibilities entrusted to Mr Chapman as an office holder, the importance to the public of his responsibilities, the nature and extent of his departure from those responsibilities and his motivation for doing so (for example, to try to H

A right a perceived wrong/making money), the nature of the information sold by him, his perception of the potential and actual consequences of his misconduct and how that misconduct was viewed by him and others. Consider whether the information he provided was information which the public really ought to have known but was being kept from them and what, if any alternative means of addressing any wrong reasonably perceived by him was available to him. Bear in mind that for the members of the public to be interested in certain facts is not necessarily the same as it being in the public interest for those facts to be published.”

24 The direction given in respect of Paul Brunt was the same. In that case the jury asked a question: According to law, can the seriousness of the misconduct be determined by the nature of the misconduct alone or can it/must it depend on the seriousness of the information imparted?

25 The judge answered it by saying that they had to take into account both but they also had to take into account all the circumstances set out in his direction at footnote 3.

*(c) The contentions of the defendants*

26 At the trial each of the defendants invited the judge to give a direction that the test for establishing criminal misconduct was a high one. They contend that the omission of a reference to the threshold being a high one, requiring conduct so far below acceptable standards as to amount to an abuse of public trust in the office holder should have been used. It was submitted that the judge should have made it clear that the conduct was so serious that it required punishment through the criminal courts.

27 It was also submitted on behalf of Lynn Gaffney, as part of the argument in relation to her position as an accessory, that the standard of misconduct was not to be judged objectively, but that the prosecution had to prove that the office holder intended his conduct to be so serious as to cross the threshold. We consider this argument at para 47 and following below as it arose solely in that context. For the reasons we give it is for the jury to decide whether, on the information known to the office holder, the conduct crossed the threshold. It is not necessary to establish that the office holder intended to cross the threshold.

*(d) Our approach*

28 We were referred to the direction given by Fulford J in a similar case involving a police officer’s provision of information to a newspaper which was heard in January 2013. In it that judge said in relation to the third element that the prosecution must establish that:

“What the defendant did was ‘wrong’, in the sense that her actions were an abuse of the public’s trust in her position as a police officer and what she said during the telephone call to the *News of the World* . . . substantially fell below the standards that the public are entitled to expect of police officers, particularly at a senior level. It must involve wrongdoing, therefore, that harms the public interest and is sufficiently serious to merit a criminal conviction in the context of this trial.

“You represent the public in this trial and it is for you to say whether the defendant’s actions were wrong and constituted an abuse of the

public's trust in the sense I have just described. However, the defendant's actions clearly must have been graver than a simple and straight forward mistake or an understandable error of judgment even a serious one. Instead it must constitute an abuse of the public's trust in this senior police officer."

29 We were given no explanation why the judge was not helped by the provision to him of this direction. Prosecuting counsel had not been made aware of it. This is without doubt a difficult area of the criminal law. An ancient common law offence is being used in circumstances where it has rarely before been applied. The judge was entitled to far more help by the prosecution than he was given.

30 It is clear, in our judgment, that no exact form of words is necessary to direct the jury as to what is required by the third element—misconduct of such a degree that it amounts to a breach of the public's trust in the office holder. However any direction must take into account the context in which the misconduct has occurred. In this appeal two points arise in the context of information being supplied by office holders to the media.

31 First, the judge had to make clear that the necessary misconduct was not simply a breach of duty or breach of trust. The judge directed the jury in respect of the first two elements identified in *Attorney General's Reference (No 3 of 2003)* that they had to be sure there was wilful misconduct, that is to say a deliberate breach of duty. In the context of both trials, as there was overwhelming evidence that the prison officer and soldier had acted in breach and neglect of their duties and had done so deliberately, it was therefore necessary when turning to the third element to make clear in the direction to the jury that the misconduct must be more than a breach or neglect of duty or breach of trust; as was observed in *R v Borron* (1820) 3 B & Ald 432, to condemn anyone who had fallen into error or made a mistake, belonged only to the law of a despotic state. Although the judge did not make this expressly clear (and it might have been better if he had), we are in no doubt that it was clear from the direction read as a whole that misconduct at the level of breach of duty, neglect of duty or breach of trust was insufficient to satisfy the third element.

32 Second, it was necessary in our view to explain to the jury how they should approach determining whether the necessary threshold of conduct was so serious that it amounted to an abuse of the public's trust in the office holder. Each of the cases refers (as we have indicated in the emphasis we have given to the citations) to that level as being one where it is calculated to injure, that is to say has the effect of injuring, the public interest so as to call for condemnation and punishment.

33 Again context is important in determining how the jury should be directed—the wilful misconduct of the office holder involved in the provision of information to the media. In a democratic society the media carry out an important role in making information available to the public when it is in the public interest to do so, not simply (as the judge pointed out) because the public may be interested in it. Those employed by the state in public office will generally be in breach of the duty owed by them to their employers or commanding officers by providing unauthorised information to the press. However, information is sometimes provided by such persons in breach of that duty where the provider of that information may benefit the

A public interest rather than harm it. The provision of the information may well in such a case be an abuse of trust by the office holder to his employer or commanding officer, even if the disclosure of the information may be in the public interest. It may therefore result in disciplinary action and dismissal of the officer holder. That is because the abuse of the trust reposed in the office holder by the employer/commanding officer in such a case is viewed through the prism of the relationship between the office holder and his employer or commanding officer. That is not the prism through which a jury should approach the issue of the abuse of the public's trust in an office holder.

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D 34 The offence requires, as the third element, that the misconduct must be so serious as to amount to an abuse of the public's trust in the office holder. It is not in our view sufficient simply to tell the jury that the conduct must be so serious as to amount to an abuse of the public's trust in the office holder, as such a direction gives them no assistance on how to determine that level of seriousness. There are, we consider, two ways that the jury might be assisted in determining whether the misconduct is so serious. The first is to refer the jury to the need for them to reach a judgment that the misconduct is worthy of condemnation and punishment. The second is to refer them to the requirement that the misconduct must be judged by them as having the effect of harming the public interest. The direction adopted by Fulford J encompassed both of these.

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F 35 In the argument before us, the emphasis was on the failure of the judge to refer to the conduct being of such seriousness as to require condemnation as criminal and punishment. We were referred to the type of direction given in gross negligence manslaughter where the court makes clear that simple negligence is not enough; the level of conduct must be criminal. It is not necessary for us to consider the decisions in *R v Adomako* [1995] 1 AC 171 or *R v Misra* [2005] 1 Cr App R 328 and the difficulties that arise if a jury is told that the conduct must be so bad as to amount to a criminal act. We do not think that it was necessary in relation to the offence of misconduct in public office to tell the jury that they must decide if conduct must amount to criminal conduct. It is not, as we read the decisions, required and it has the dangers of circularity. It is, in our view, sufficient if the judge tells the jury that the threshold is a high one.

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H 36 We therefore turn to examine the second way in which the standard of seriousness can be judged—by reference to the harm to the public interest. In our view, in the context of provision of information to the media and thus the public, that is the way in which the jury should judge the seriousness of the misconduct in determining whether it amounts to an abuse of the public's trust in the office holder. The jury must, in our view, judge the misconduct by considering objectively whether the provision of the information by the office holder in deliberate breach of his duty had the effect of harming the public interest. If it did not, then although there may have been a breach or indeed an abuse of trust by the office holder vis-à-vis his employers or commanding officer, there was no abuse of the public's trust in the office holder as the misconduct had not had the effect of harming the public interest. No criminal offence would have been committed. In the context of a case involving the media and the ability to report information provided in breach of duty and in breach of trust by a public officer, the harm to the public interest is in our view the major determinant in establishing whether the conduct can amount to an abuse of the public's

trust and thus a criminal offence. For example, the public interest can be sufficiently harmed if either the information disclosed itself damages the public interest (as may be the case in a leak of budget information) or the manner in which the information is provided or obtained damages the public interest (as may be the case if the public office holder is paid to provide the information in breach of duty). A

37 The judge did not direct expressly the jury in these terms. He referred to the conduct being so serious as to amount to an abuse of the public's trust in the prison officer and the soldier. Did that sufficiently make clear, in the context with which these cases were concerned, the issue as to the public interest? B

38 The provision of information which had the effect of harming the public interest would have been very properly viewed as an abuse of the public's trust in the prison officer/soldier as an office holder so as to amount to the necessary serious degree of misconduct. But the simple use of the term "an abuse of the public's trust in him as the holder of a public office" is simply conclusory. It does not explain to the jury how to determine whether the conduct was of a sufficient level of seriousness. Their task was to determine the level of seriousness by reference to whether the misconduct had the effect of harming the public interest. Does the footnote achieve this? C

39 The footnote refers to the circumstances which the jury must take into account as extending to include whether the information was information the public really ought to have known, if there were alternative means of addressing the wrong and the nature of the public interest. It did not directly ask the jury to determine whether the conduct had the effect of harming the public interest as a step in deciding whether the conduct was so serious as to amount to an abuse of the public's trust in the office holder. In the context of the subject matter of both appeals this was essential. D

40 As the third ingredient of the offence was a central element of the case against Scott Chapman, Lynn Gaffney and Lucy Panton and as it was not properly explained to the jury, there was a material misdirection. We have no doubt that it was open to the jury, in a case where the information itself might not be said to harm the public interest, to conclude that the manner in which the information was provided for payment would be of a sufficient level of seriousness to harm the public interest. E

*(2) Was the judge's direction in respect of the mens rea of Lynn Gaffney/Ryan Sabey as aiders and abettors correct?*

*(a) The directions to the jury*

41 We turn to the position of Lynn Gaffney and Ryan Sabey, each of whom was charged as aiding and abetting misconduct in public office. As we have set out, the allegation in Gaffney's case was that she had allowed her account to be used in the manner we have set in the knowledge (a) that Scott Chapman was being paid for information and (b) that Scott Chapman's activity amounted to wilful misconduct. The allegation in Ryan Sabey's trial was that he had assisted and encouraged Paul Brunt as the holder of a public office wilfully to misconduct himself. F

42 Although the nature of the participation of these two defendants was different, the directions given to the jury in the route to verdicts in the different trials in relation to what had to be proved against them were very G

A similar. The judge first made it clear to the jury in each case that Lynn Gaffney and Ryan Sabey only could be convicted if the principal offender—whether Scott Chapman or Paul Brunt—were to be convicted. The routes to verdict then set out the questions to be answered in relation to the principal offender. Only after answering those questions against the interests of the principal was the jury required to consider the case of Lynn Gaffney or Ryan Sabey. The routes to verdict document in the case of Ryan Sabey was as set out below. That relating to Lynn Gaffney differed in relation to the nature of the assistance said to have been given by her. This is of no consequence to the issues in these appeals and it has not been raised as an issue for our consideration.

C “4. Are we sure that Ryan Sabey encouraged and assisted, and intended to encourage and assist, Paul Brunt in providing information/photographs to him?

“If yes, go to question 5.

“If no, verdict: Not guilty.

D “5. Are we sure that, when Ryan Sabey received information/photographs from Paul Brunt, he knew that Paul Brunt’s actions amounted to wilful misconduct by him?

“If yes, go to question 6.

“If no, verdict in relation to Ryan Sabey: Not Guilty.

E “6. Are we sure that, in the circumstances of which Ryan Sabey was aware, Paul Brunt’s misconduct was, in our judgment so serious as to amount to an abuse of the public’s trust in Paul Brunt as the holder of a public office and for which he, Paul Brunt, had no reasonable excuse or justification?

“If yes, verdict in relation to Ryan Sabey: Guilty.

“If no, verdict in relation to Ryan Sabey: Not Guilty.”

F 43 Paragraph 5 was subject to two footnotes. (i) The first concerned the word “wilful”. The explanatory footnote read: “deliberate, being aware of his duty not to conduct himself in the way that he did.” (ii) The second related to the word “misconduct”. The explanatory footnote was as follows:

“ie that he breached a duty, of which he was aware, not to sell information/photographs to newspapers. The existence of that duty and his awareness of it need not derive from a specific Regulation.”

G As we have observed, these two questions related essentially to their respective knowledge that Scott Chapman/Paul Brunt were in deliberate breach of their duties. They did not relate to the seriousness of the misconduct.

H 44 The element relating to the seriousness of the misconduct was dealt with in question 6 and the footnote at the conclusion of paragraph 6 which added to and explained the contents of that paragraph. It referred back to the lengthy footnote direction given in relation to the principal in respect of what has been termed the threshold as set out by us at para 23 and then added: “but note you may take into account only those circumstances of which you are sure Ryan Sabey (Lynn Gaffney) was aware.”

45 During the course of their retirement the jury in the trial of Scott Chapman and others asked if they should interpret the question as meaning:

“Did Lynn Gaffney believe that Scott Chapman’s conduct crossed a criminal threshold?” The jury was given the answer “No”. A

*(b) The contentions made on behalf of Lynn Gaffney and Ryan Sabey*

46 Both Lynn Gaffney and Ryan Sabey argued that the directions given were deficient in that they did not require the jury to find that each knew or intended that the misconduct of the holder of the public office should be so serious as to amount to an abuse of the public’s trust in the office holder. They submit that this omission is contrary to the test of mens rea for an aider and abettor as expressed in Lord Goddard CJ in *Johnson v Youden* [1950] 1 KB 544, 546: “Before a person can be convicted of aiding and abetting the commission of an offence he must at least know the essential matters which constitute that offence.” B

47 The first submission made on behalf of Lynn Gaffney was that anyone charged with the offence of misconduct in public office whether as a principal or as an accessory must intend the misconduct to be so serious as to cross the threshold and amount to a breach of the public’s trust in the holder of the public office. It is to be noted that this was not a submission made by Scott Chapman, the principal in her case. It was not supported by Ryan Sabey, the other defendant in the position of aider and abettor. Indeed the written submissions made at trial on behalf of Ryan Sabey were to precisely the opposite effect in relation to the principal. The submission finds no direct support in any reported authority on the elements of the offence of misconduct in a public office. In the perfected grounds of appeal lodged on behalf of Lynn Gaffney, it is said that “the starting point is clearly the words of the statute”. Section 1(1) of the Criminal Law Act 1977 then is cited. Since that is the statutory provision relating to the offence of conspiracy, this is of no assistance. C D E

48 The prosecution submission was that, for the holder of a public office to be convicted of misconduct in a public office, he must know of the facts and circumstances which would lead the right-thinking member of the public to conclude that the misconduct was such as is required by the third element set out in *Attorney General’s Reference (No 3 of 2003)*. However, it was not necessary for the prosecution to prove that the holder of the public office himself reached that conclusion. It was sufficient to prove that he had the means of knowledge available to him to make the necessary assessment of the seriousness of his misconduct; the assessment was for the jury. F

49 We agree with that submission. In *R v Rimmington* [2006] 1 AC 459 the House of Lords considered the mental element in relation to the offence of public nuisance. At para 39, Lord Bingham of Cornhill said: G

“The argument in this appeal was very largely directed to the issue of mens rea: what state of mind must be proved against a defendant to convict him of causing a public nuisance? The Crown contended that the correct test was that laid down by the Court of Appeal in *R v Shorrock* [1994] QB 279, 289, that the defendant is responsible for a nuisance which he knew, or ought to have known (because the means of knowledge were available to him), would be the consequence of what he did or omitted to do. That was a test clearly satisfied on the facts of that case, where the defendant deliberately permitted use of his field and should have known what the result would be. It is a test satisfied, I think, H

A in all the public nuisance authorities considered above, save those based on vicarious liability (which are hard to reconcile with the modern approach to that subject in cases potentially involving the severest penalties, and may well be explained, as Mellor J did in *R v Stephens* (1866) LR 1 QB 702, 708–709, by the civil colour of the proceedings). I would accept this as the correct test, but it is a test to be applied to the correct facts.”

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50 Public nuisance involves (inter alia) endangering the life, health, property or comfort of the public or obstructing the public in the exercise of common rights. A defendant will be guilty of public nuisance if he ought to have known (because the means of knowledge were available to him) of the consequences of his actions. Similar considerations apply to the holder of a public office who engages in misconduct.

C

(c) *The mens rea required of an aider and abettor*

51 The second submission made by Lynn Gaffney was that, whatever the relevant mental element for the principal, an aider and abettor must have actual knowledge that the misconduct was or would be so serious that it amounted to criminal misconduct as we have discussed under the first issue.

D This submission was supported by Ryan Sabey. It was argued on his behalf that “the essential matters which constitute [the] offence” as per *Johnson v Youden* included the fact that the misconduct as assisted and encouraged by the aider and abettor would cross that threshold. To reflect that proposition Mr Pownall QC in oral argument offered this formulation of the proper direction on the mental element:

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“Are we sure that, by the ordinary standards of reasonable people, what was done amounted to misconduct in a public office so serious as to amount to a breach of public trust in the office holder?”

“If yes, are we sure that Ryan Sabey must have realised that what he assisted and encouraged was by the ordinary standards of reasonable people misconduct in a public office so serious as to amount to a breach of public trust in the office holder?”

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52 As well as arguing that this formulation was necessary because of the requirement of knowledge of “the essential matters which constitute [the] offence”, Mr Pownall submitted that there was a clear distinction to be drawn between the position of the principal and the aider and abettor because the offence in relation to the principal was one of strict liability. Finally it was said on behalf of Ryan Sabey that, if actual knowledge on his part of the fact of the breach of public trust were not required, there would be a lack of legal certainty as to his liability.

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53 The prosecution accept that *Johnson v Youden* accurately sets out the state of mind required of an aider and abettor. However, they argued that “the essential matters” did not include knowledge of how right thinking members of the public would regard the conduct. That was not a matter which had to be proved in relation to the principal. The principal must know that he had a duty not to conduct himself in the way that he did and he must deliberately breach that duty. He did not need to know that his deliberate breach of duty would be so serious as to amount to the conduct required in the third element of *Attorney General’s Reference (No 3 of 2003)*

H

[2005] QB 73. Reliance was placed on the passage in *Johnson v Youden* [1950] 1 KB 544, 546 immediately following that relied on by Lynn Gaffney and Ryan Sabey:

“He need not actually know that an offence has been committed, because he may not know that the facts constitute an offence and ignorance of the law is not a defence. If a person knows all the facts and is assisting another person to do certain things, and it turns out that the doing of those things constitutes an offence, the person who is assisting is guilty of aiding and abetting that offence, because to allow him to say, ‘I knew all of those facts but I did not know that an offence was committed’, would be allowing him to set up ignorance of the law as a defence.”

54 The prosecution contended that the offence of misconduct in a public office was not an offence of strict liability. The misconduct had to be wilful in the sense explained in the routes to verdict, i.e. the office holder must act deliberately and he must be aware of his duty not to conduct himself in the way that he did. Moreover, he must act without justification. Whilst he did not have to intend or foresee that the level of misconduct must be so serious as to amount to the criminal offence, there remained a significant mental element in the offence for the principal.

55 We agree that misconduct in a public office is plainly not an offence of strict liability for the reasons identified above. Thus, this does not provide a basis for an enhanced mental element on the part of the aider and abettor. We also consider that there is no more lack of legal certainty for an aider and abettor if he is not required to know that the misconduct will be so serious as to amount to the criminal offence of misconduct in public office than there is for the principal in respect of whom, as Mr Pownall accepts, no such knowledge is required. We conclude that, just as the principal does not need to know or intend that the consequence of all of the facts of which he is aware will be so serious as to amount to the third element of the offence of misconduct in public office, the aider and abettor does not have to have such knowledge or intent. “The essential matters” which he must know are those set out in the routes to verdict: encouraging and/or assisting the principal in particular conduct; that conduct amounting to wilful misconduct, i.e. deliberate breach of a duty as a public office holder; the circumstances which resulted in the conduct being so serious as to amount to the third element of the offence. Due to the requirement of knowledge on the part of the aider and abettor of the essential matters, the routes to verdict in relation to Lynn Gaffney and Ryan Sabey required the jury to be sure as to the circumstances of which they were aware. In assessing whether the misconduct aided and abetted by them was so serious as to amount to the third element, the jury were prohibited from taking into account matters not known to Lynn Gaffney and/or Ryan Sabey. That was sufficient to ensure that they were not convicted other than on the basis of “the essential matters” known to them. As Mr Christopher QC put it in relation to Ryan Sabey, it had to be shown he knew all of the facts and he encouraged Paul Brunt to do what he did in the light of that knowledge.

56 It is instructive to stand back and consider the position of Lynn Gaffney and Ryan Sabey respectively. (i) Lynn Gaffney had been the partner of Scott Chapman. She plainly knew what he did for employment i.e. a

A prison officer at HMP Woodhill. Over the course of under two years a little over £40,000 was paid into two bank accounts in her name, the payments clearly coming from various newspapers. There was documentary and other evidence to show that much of the money coming into her accounts was paid over to Scott Chapman. (ii) Ryan Sabey was a Royal reporter at the *News of the World*. He knew that Paul Brunt was a serving soldier. He knew that Paul Brunt's position would be compromised if it became known that he was providing information to the *News of the World* yet he continued to encourage him (and to pay him) to provide the stories to which we have referred. It is against that background that the jury in each case were considering the circumstances as known to Lynn Gaffney and Ryan Sabey respectively.

C (d) *Was any additional burden placed on Ryan Sabey to prove matters of which he was aware?*

57 It is also against that background that we must consider a subsidiary complaint raised by Mr Pownall about the footnote to paragraph 6 of the route to verdict. This required the jury to take into account only those circumstances of which they were sure Ryan Sabey was aware. Mr Pownall argued that this meant that Ryan Sabey had to prove to the criminal standard circumstances on which he wished to rely to suggest that there would not have been. It is not clear whether this issue was raised at trial.

58 Mr Christopher on behalf of the prosecution could not recall it being raised but he took no point on it only being raised before us if that were the position. It is also not clear which were the circumstances on which Ryan Sabey wished to rely to suggest that assessment thereof would have militated against a conclusion that there was an abuse of the public's trust in the office holder. Whatever the position we accept the answer to this complaint is as given by Mr Christopher. By the time that the jury came to consider the footnote to paragraph 6, they had convicted Paul Brunt. The footnote in reality was concerned only with issues pointing to guilt. The direction would not have led to the jury applying the criminal standard of proof to exculpatory matters.

(3) *What was the mens rea required to convict Lucy Panton in relation to the count of conspiracy?*

59 The particulars of the charge of conspiracy against Lucy Panton to commit misconduct in public office, contrary to section 1(1) of the Criminal Law Act 1977 were that "between 5 April and 11 September 2010 she conspired together with Mr Chapman, Ms Gaffney and a third person to commit misconduct in public office".

60 As we have said, Scott Chapman and Lynn Gaffney were not charged with conspiring but with the substantive offence. We asked Mr Rees QC why a conspiracy charge was preferred against Lucy Panton. He explained that conspiracy was used initially for Lynn Gaffney as well and, to avoid further changes to the indictment, conspiracy as regards Lucy Panton was continued with to trial. It was for the same reason that she was not charged with aiding and abetting in the same way Ryan Sabey had been charged. It would have been much simpler if she had, for the additional complexities of a conspiracy count should if possible be avoided.

61 Section 1(1)(2) of the 1977 Act, as substituted by section 5(1) of the Criminal Attempts Act 1981, provide: A

*“The offence of conspiracy*

“(1) Subject to the following provisions of this Part of this Act, if a person agrees with any other person or persons that a course of conduct shall be pursued which, if the agreement is carried out in accordance with their intentions, either— (a) will necessarily amount to or involve the commission of any offence or offences by one or more of the parties to the agreement, or (b) would do so but for the existence of facts which render the commission of the offence or any of the offences impossible, he is guilty of conspiracy to commit the offence or offences in question. B

“(2) Where liability for any offence may be incurred without knowledge on the part of the person committing it of any particular fact or circumstance necessary for the commission of the offence, a person shall nevertheless not be guilty of conspiracy to commit that offence by virtue of subsection (1) above unless he and at least one other party to the agreement intend or know that that fact or circumstance shall or will exist at the time when the conduct constituting the offence is to take place.” C

62 In his route to verdict, the judge directed the jury that if the prosecution against Scott Chapman failed, it could not succeed against the other defendants. As to Lucy Panton, the jury had to be sure about four matters: D

(1) Are we sure that Ms Panton agreed with Mr Chapman and that Mr Chapman provided information for payment for inclusion in a newspaper, intending that he would do so?

(2) Are we sure that Ms Panton knew, when she did so, that Mr Chapman was a public official? E

(3) Are we sure that, when she did so, Ms Panton knew that Mr Chapman’s selling the information to newspapers amounted to wilful misconduct by him?

(4) Are we sure that, in the circumstances of which Ms Panton was aware, Mr Chapman’s misconduct was so serious as to amount to an abuse of the public’s trust in him as the holder of public office and for which he had no reasonable excuse or justification? F

63 As regards (4), the judge referred the jury back to his explanation of the circumstances to which the jury could have regard in relation to Chapman as set out earlier at para 23 above and added:

“but note you may take into account only those circumstances of which you are sure Ms Panton was aware. When considering Ms Panton’s awareness of Mr Chapman’s motivation and whether he, Mr Chapman, had reasonable excuse or justification for selling the information, bear in mind that this question is not concerned with Ms Panton’s opinion as a journalist of whether publication of the information would be in the public interest.” G

64 Before the judge and before us, Mr Butterfield QC contended that in relation to issue (4), the seriousness threshold, the jury should have been directed that Lucy Panton had to intend or know that Scott Chapman’s conduct would meet the requisite threshold. In other words, Lucy Panton’s mens rea had to extend to the four elements of the offence identified by this H

A court in *Attorney General's Reference (No 3 of 2003)* [2005] QB 73 as we have set out at para 17 above, including the seriousness threshold. The judge was wrong in his direction that the seriousness threshold as regards Lucy Panton was simply an objective test for the jury, albeit that they had to approach the matter through the prism of the circumstances of which Ms Panton was aware.

B 65 In Mr Butterfield's submissions both section 1(1) and section 1(2) of the 1977 Act lead to this result. Section 1(1) required an agreement and a true agreement could not cover something which was unknown at the time, i.e. that the jury would decide whether the threshold test of seriousness is met. To avoid that, what was required was that the conspirator intended or knew that the misconduct was so serious as to meet the threshold. Mr Butterfield invoked *R v Saik* [2007] 1 AC 18 in support.

C 66 In his submission section 1(2) also drove that result. The threshold test of seriousness was in the statutory language a "particular fact or circumstances necessary for the commission of the offence" and the subsection demanded that there be no liability unless at least one of the conspirators intended or knew that it would exist at the time the conduct took place. Even if the threshold test was not part of the mens rea for the public official, it had to be for the journalist. Mr Butterfield called in support *Smith & Hogan's Criminal Law*, by Professor David Ormerod, 13th ed (2011), pp 442-443, that in appropriate circumstances the mens rea required for conspirators should rightly be in excess of that required for the substantive offence.

E 67 Mr Butterfield contended that we should approach the matter with legal policy firmly in mind. That legal policy was to adopt an interpretation which favoured the defendant in criminal matters, especially when the prosecutor's approach would criminalise the activities of journalists acting as part of a free press. Although we accept this proposition, we note that legal policy could also be said to be to put roadblocks in the way of corrupting public officials by paying them to provide information. Moreover, Mr Butterfield's interpretation might also enable journalists to do this without consequence on their evidence that, given the public interest in the information being available, they did not believe that its disclosure was a sufficiently serious breach of the public official's duties so as to satisfy the third element in *Attorney General's Reference (No 3 of 2003)* [2005] QB 73.

F 68 In our judgment the judge was correct: to convict Lucy Panton the jury had to be sure first, that Scott Chapman was guilty of the substantive offence and secondly, that there was an agreement between Scott Chapman and Lucy Panton which, if it were carried out in accordance with their intentions, would necessarily involve Scott Chapman, acting as a public official, wilfully breaching his duties. The mental element on Lucy Panton's part was in the making of the agreement and intending Scott Chapman's wilful breach. Moreover, that misconduct on his part had to be in circumstances known to Lucy Panton which, on an assessment by the jury, met the threshold of seriousness. In our view nothing in section 1(1) of the 1977 Act requires that the prosecution make the jury sure that, at the time of the agreement, Ms Panton knew or intended that Mr Chapman's misconduct would meet the requisite threshold of seriousness. Nor does anything in *R v Saik* [2007] 1 AC 18.

69 As to section 1(2), “fact or circumstance” is not directed to the mens rea of an offence but to the elements of the actus reus: *R v Saik*, para 9, per Lord Nicholls of Birkenhead. We accept Mr Rees QC’s submission that the elements of the actus reus for the commission of the offence in this context are that the individual in question is a public officer, acting as such; that the behaviour in question constitutes a wilful breach of his or her duties as such; and that circumstances surrounding the misconduct are such that, on assessment by the jury, it reaches the requisite degree of seriousness required as the third element of the offence. Whether the misconduct meets the threshold of seriousness is not a fact or circumstance but an evaluative exercise by the jury. As the judge noted, it involved the jury taking into account matters Lucy Panton envisaged such as the importance to the public of Scott Chapman’s responsibilities, his motivation and the nature of the information he was selling. In our view, balancing such matters is far removed from a “fact or circumstance” and section 1(2) has no role.

*(4) Did the judge’s response to a jury note in R v Chapman amount to a material irregularity affecting the safety of the conviction?*

70 The jury retired on 3 November 2014. They continued their deliberations on 4 November. That evening they were again sent home. At about 5 p m that evening the judge received the following note from a juror:

“The discussions within the jury room have become aggressive and the atmosphere is horrible.

“I went to speak and two other jurors rolled their eyes and stated ‘again’. Another juror told them to stop being rude and voices were raised.

“Additionally a particular juror keeps insisting we go with a majority vote, despite being told otherwise repeatedly by several jurors and our foreman.

“One juror even got out a magazine and proceeded to read this whilst others were stating their points.

“Please be aware all of above is only the activity of two jurors however I strongly feel it is affecting the ability of us all to voice our opinions without fear of reprisal from them.”

71 The following morning the judge told counsel that he had received a note from a juror which he did not propose showing to them. He said he would give a further direction about it. When the jury came into court, he directed them as follows:

“Thank you ladies and gentlemen I am going to ask you in a moment when the jury bailiff has been sworn to retire and continue to deliberate. There is something I should add. When I asked you to retire to consider your verdicts I directed that you should elect a foreman to chair your discussions and act as your spokesman or spokeswoman when you come back to court. Perhaps I should have added this in relation to the word discussions. Discussion is not of course the same as argument. It is important to keep in mind that you are a jury of 12 and the collective collaborative nature of your decision-making is important. This involves paying collective attention to the consideration of the views of each individual member. It is also important for your discussion to be focused

A and for them to keep them moving forward in relation to the issues you have to decide. Finally this I also said to you just before you retired that your verdicts must each be unanimous and that remains the case unless I give you further direction.”

72 Immediately after he gave that direction, he received a note from another juror. “I am being that. I am wasting oxygen!”

B 73 That note was not shown to counsel. When the application for leave to appeal was made, an application was made for both notes to be disclosed.

74 After considering the notes, we directed they should be disclosed. After hearing argument, we were satisfied, as the prosecution accepted, that they should have been disclosed as they showed that one juror was very concerned as to the way in which the deliberations were being conducted. The non-disclosure therefore amounted to an irregularity.

C 75 However we are quite satisfied that the non-disclosure has no bearing on the safety of the conviction. If the judge had provided the note to counsel, it is possible that the judge might have refined his direction, but we are quite satisfied that the direction was more than sufficient a response to the note.

D *Conclusion*

76 The arguments of the defendants fail on the second and third issues in the appeals.

E 77 However, in the case of *R v Chapman*, each defendant contended on the first issue in the appeal that the judge had misdirected the jury on the third element of the offence, namely the requisite level of seriousness. We have set out our conclusion that there was a misdirection and considered very carefully whether it affected the safety of the conviction; the considerations were finely balanced given the great care the judge took and overall approach taken by the judge and the parties in the case to the public interest. We have none the less concluded that in all the circumstances we cannot say that the jury would necessarily have convicted these defendants had they been directed in accordance with what we have set out. We must therefore quash the convictions.

F 78 In the *R v Sabey*, no point was taken in the context of that case as to the direction on the third element. We therefore do not take a similar course; we give Ryan Sabey liberty to apply to the court, if so advised.

*Applications granted.*

G *Appeals in first case allowed and convictions quashed.*

*Appeal in second case adjourned with liberty to apply.*

PHILIP RIDD, Solicitor

H



## **JUDGMENT**

### **The Queen ex parte Mario Hoffmann (Appellant) v The Commissioner of Inquiry and the Governor of Turks & Caicos (Respondent)**

**From the Court of Appeal of the Turks and Caicos  
Islands**

before

**Lord Phillips  
Lord Brown  
Lord Mance  
Lord Kerr  
Lord Dyson**

**JUDGMENT DELIVERED BY  
LORD PHILLIPS  
ON**

**23 May 2012**

**Heard on 13-14 March 2012**

*Appellant*  
Lord Pannick QC  
Javan Herberg QC  
Naina Patel

(Instructed by Arnold &  
Porter)

*Respondent*  
Phillip Havers QC  
Howard Stevens QC

(Instructed by Charles  
Russell LLP)

## **LORD PHILLIPS:**

### *Introduction*

1. On 31 May 2009 the first respondent, Sir Robin Auld (“the Commissioner”) presented to the second respondent, Mr Gordon Wetherell, who had succeeded Mr Tauwhare as Governor of the Turks & Caicos Islands (“TCI”), his final report (“the Report”) on corruption in relation to members of the House of Assembly, previously known as the Legislative Council, of TCI. Mr Tauwhare had appointed Sir Robin as the Commissioner and the Board will refer in this advice to “the Governor” whether speaking of Mr Tauwhare or Mr Wetherell. The entirety of the Report was made public. The Report opened with the following statement:

“There is a high probability of systemic corruption in government and the legislature and among public officers in the Turks & Caicos Islands in recent years. It appears, in the main, to have consisted of bribery by overseas developers and other investors of Ministers and/or public officers, so as to secure Crown Land on favourable terms, coupled with government approval for its commercial development.”

The Report identified some of the “overseas developers” referred to and included findings of fact in relation to their involvement that formed the basis of the Commissioner’s conclusion that there was “a high probability of systemic corruption”. Prominent among these developers was the appellant, Mr Hoffmann.

2. Mr Hoffmann was given notice by the Commissioner of the possibility that the Report would make adverse findings in relation to him and responded to that notice in writing. Before the Report was published he began proceedings for judicial review, seeking an order that it should not include any adverse reference to himself, or alternatively that any such reference should not be published by the Governor. There were two grounds for seeking this order. The first was that any such reference would fall outside the terms of reference of the Commissioner. The second was that the procedure adopted by the Commissioner in relation to Mr Hoffman was unfair. On 16 June 2009 Gordon Ward CJ entertained but rejected his application for judicial review.

3. Mr Hoffmann appealed to the Court of Appeal. On 17 March 2010 the court, Zacca P, Mottley and Ground JA, dismissed his appeal. He appeals to the Board with the permission of the Court of Appeal. He seeks declaratory relief to the effect that the findings in relation to himself were outside the Commissioner’s terms of reference and that the procedure adopted in relation to him was unfair.

4. Mr Hoffmann's case was heard together with that of another developer, Dr Kinay, who was also the subject of adverse findings in the Report. The Chief Justice found that the procedure adopted in Dr Kinay's case had not been fair, but that finding was reversed on appeal.

5. Mr Hoffmann is a wealthy Slovakian businessman. He is, indirectly, the owner of over 90% of Postova Banka, a regulated Slovakian retail bank, and is the Chairman of its supervisory board of directors. Since 1997 he has been a frequent visitor to TCI, having built a house there and spending 2 to 3 months there every year. Since 2000 he has been pursuing a project to develop, through a company called DEVCO, an island of particular beauty called Salt Cay. To that end he has steadily acquired land on this island from the Government of TCI. Another Slovakian bank, J & T Banka, is a partner in this project. An important part of the project is the creation of a golf course. The following facts have not been in dispute in relation to the project. The TCI Government, under the leadership of its premier, the Hon Michael Misick, granted to DEVCO the land on which the golf course was to be built, on a 99 year lease at a "peppercorn" rent. In August 2006 Salt Cay Golf Club was incorporated as the company that would own and run the golf club. 50% of the shares in this company were held by Mr Hoffmann's Cyprus based holding company. The other 50% were given to a holding company of which Mr Chal Misick, a brother of the Premier, was the owner. In the following year, 2007, the Hon Michael Misick successfully applied to J & T Banka for a loan, made to himself and his wife, of US\$ 6 million. Mr Chal Misick provided, and J & T Banka accepted, his 50% shareholding in Salt Cay Golf Club as security for this loan.

6. Findings made by the Commissioner in relation to the implications of these transactions form the principal subject matter of Mr Hoffmann's complaint. In particular objection is taken to the Commissioner's rejection of Mr Hoffmann's assertion that the land that was to be transformed into a golf course had no intrinsic value and the reasons given by Mr Hoffmann for taking Mr Chal Misick as a partner. More generally, Mr Hoffmann objects to the following expression of the Commissioner's conclusions in relation to these transactions:

"I find that there is information of possibly corrupt and/or otherwise seriously dishonest involvement, including misfeasance in public office, of the Hon Michael Misick in relation to the Government's transactions with Mario Hoffmann of DEVCO for the development of Salt Cay: 1) In respect of his participation in that development with Chal Misick's knowing assistance and complicity in it, as described above; 2) in the potential abuse of his public office by accepting lavish and disproportionate hospitality from Mario Hoffmann, including the use of private aircraft, the provision of international flights and other hospitality in the course of developing business relations between DEVCO and the Government; and 3) in potential abuse of his public

office by seeking and accepting a loan of \$6 million from J&T Banka when that Bank, on its own account, was in negotiation with the Government over funding and participation in the development of Salt Cay.

I therefore, recommend criminal investigation by the police or others of the possibility of corruption and/or other serious dishonesty, including misfeasance in public office, in relation to the Hon Michael Misick in respect of those matters.”

The Board will turn straightaway to Mr Hoffmann’s assertion that these findings, and the findings of fact that related to them, fell outside the Commissioner’s terms of reference.

*The scope of the terms of reference.*

7. On 4 July 2008 the Foreign & Commonwealth Office (“FCO”) wrote to the Governor referring to allegations, of which the Governor was aware, and other indications of possible corruption and serious dishonesty in relation to past and present elected members of the House of Assembly and instructing him to consider, in accordance with the TCI Commissions of Inquiry Ordinance 1986 (“the Ordinance”), whether to appoint a Commission to inquire into these matters. Two days later the Foreign Affairs Committee of the House of Commons published a report that contained a section headed “Allegations of corruption in the Turks and Caicos Islands”. Areas of concern identified by this report included the sale of Crown land, contracts and development agreements and grants of “Belongership”, that is residential status that carried with it the possibility of acquiring Crown land on advantageous terms.

8. The Ordinance provided, by section 2(1):

“The Governor may appoint one or more Commissioners (hereinafter referred to as a Commission) to inquire into the conduct and management of any public body, the conduct of any public officer or into any matter whatsoever which is, in his opinion, of public importance.”

9. On 10 July 2008 the Governor appointed the Commissioner with the following terms of reference:

“...to inquire into whether there is information that corruption or other serious dishonesty in relation to past and present elected members of the House of Assembly (previously known as the Legislative Council) may have taken place in recent years. It is to report to the Governor within sixteen weeks its preliminary findings and recommendations concerning:

- a) instigating criminal investigations by the police or otherwise
- b) any indications of systemic weaknesses in legislation, regulation and administration
- c) any recommendation that the inquiry’s terms of reference be extended
- d) any other matters relating thereto.

In relation to (a), the Commission is directed to refer such information and/or evidence it may obtain to the TCI prosecuting authorities.”

10. These terms of reference were challenged by two members of the House of Assembly on a number of grounds in *Robinson and Been v Auld and Attorney General* (CL 83/08) unreported dated 28 July 2008. They had limited success in as much as they succeeded in persuading the Chief Justice to order (c) above to be deleted on the ground that it fell outside the scope of the Ordinance.

11. Before the Chief Justice and the Court of Appeal counsel for Mr Hoffmann based their attack on the inclusion by the Commissioner of findings adverse to Mr Hoffmann on two grounds. The first was the more fundamental. In their skeleton argument for the hearing before the Chief Justice, Mr Sturman QC and Mr Herberg contended at para 23(3):

“In any event, the inquiry into whether there is information as to corruption or other serious dishonesty is only expressed to be ‘*in relation to past and present elected members of the House of Assembly (previously known as the Legislative Council)*’. The Commission is not empowered to investigate, or make findings relating to, whether there is evidence of corruption against other persons. At most, it might be

relevant for the Commission to consider the role and actions of such other persons in relation to an investigation into past and present elected members (and as to whether to recommend further investigation), but the Commission is not authorised to report into such other persons.”

12. This submission was repeated in the skeleton argument of Miss Carss-Frisk QC and Mr Herberg for the Court of Appeal. They submitted at para 45:

“...it is accepted that it might be relevant for the Commission to consider the role and actions of such other persons in relation to an investigation into House of Assembly members (in the context of assessing whether to recommend further investigation). But it could only do so to the extent that it was necessary in relation to such an assessment. It could not independently assess, still less make (even provisional) findings of fact in respect of a third party.”

13. These submissions were rejected by both courts. The Chief Justice held at para 66:

“That cannot be correct. Corruption is an offence which almost invariably requires more than one person. Any meaningful investigation into corruption must involve an examination of the wider offence. The expression ‘in relation to’ used in the instrument allows, in fact demands, if it is to have any real meaning and effect, investigation of those who may have been bribed, those who may have bribed them and/or those who may have been parties to any such corrupt and/or otherwise serious dishonest behaviour, as the Commissioner stated in his Interim Report.”

To like effect the Court of Appeal held at para 16:

“We find that argument hard to follow. It does indeed take two to tango, and an assessment of whether there was information against a member of the House of Assembly will of necessity involve an assessment of the information against any person with whom he might have entered into a corrupt transaction. We would accept that it would be impermissible to launch into a wholly unrelated matter involving a third party, but do not think that the Commissioner has done that. It has also to be borne in mind that some of the transactions concerned were by their very nature complex, and involved numerous parties. In order to understand and evaluate them the Commissioner was obliged to look at the whole

picture, and it would be both artificial and uncondusive to the proper performance of his functions to tease out some strands only.”

14. This argument was not pursued by Lord Pannick QC before the Board. On the contrary, in a complete *volte face* he repeatedly argued that Mr Hoffmann should have received precisely the same treatment as the members of the House of Assembly to whom the terms of reference expressly referred. This matter will have some relevance when the Board comes to consider the issue of fairness. So far as the scope of the terms of reference is concerned the effect of the *volte face* is that Mr Hoffmann’s attack cannot be restricted to the passages of the Report that are adverse to Mr Hoffmann.

15. Findings adverse to Mr Hoffmann pale into insignificance compared to those made by the Commissioner in relation to those members of the House of Assembly whom he summoned to give evidence. In the first chapter of his report at 1.81 the Commissioner summarised his “provisional conclusions” by stating that on all the material and evidence before him there was “information in abundance pointing to a high probability of systemic corruption and/or other serious dishonesty”. He went on to identify this. The second chapter of the Report was headed “Corruption”. At 2.8 the Commissioner spoke of the “seemingly embedded disregard” by Ministers and other members of the legislature of the imperative to avoid conflicts of interest. At 2.14 he stated unequivocally that the disregard by the Cabinet of the Code on Principles in Public Life in promoting their private interests and those of their intimates “deserves more serious censure”. At 2.20 he commented that the attitude of the Hon Michael Misick to his statutory obligations “would have *caused raised eyebrows in the foc’sle of a pirate sloop*”. At 2.36 the Commission referred to a number of clearly evidenced payments, direct or indirect, to, in particular, the Hon Michael Misick, the Hon Floyd Hall, the Hon McAllister Hanchell and the Hon Jeffrey Hall, detailed in chapter 4. The findings adverse to Mr Hoffmann, while among the most significant of those in chapter 4, related to only one of a considerable number of transactions described in that chapter. If Lord Pannick is correct in submitting that the findings in relation to Mr Hoffmann were outside the terms of reference of the Commission, then it must follow that the Report was ultra vires almost from beginning to end.

16. The case advanced by Lord Pannick in support of his argument that the findings adverse to Mr Hoffmann were ultra vires was founded on the terms of reference laid down by the Governor. The Commission was to do no more than ascertain whether “corruption or other serious dishonesty *may* have taken place in recent years”. Findings and recommendations were to be “*preliminary*” leading to a recommendation concerning “instigating criminal investigations”. As Lord Pannick put it the inquiry “was intended to be an investigation preliminary to potential investigation by other authorities”. He submitted that it was unusual to set up a public inquiry as a precursor to possible criminal prosecutions rather than as a substitute for

these and that the tentative nature of the terms of reference was designed to avoid findings that might prejudice a subsequent prosecution.

17. Lord Pannick supported his submission by reference to statements about his role made by the Commissioner himself. Thus on a preliminary visit to the TCI on 15 July 2008 the Commissioner said:

“Although it is an ‘Inquiry’ within the meaning of that Ordinance, it should be plain from the wording of the Terms of Reference, that it is, for the moment, an inquiry into whether there is a need for a further and more searching investigation of what may have been going on in the government of this Territory. That could be by the Commission itself, the Police or some other public or regulatory body – such as the new Integrity Commission.”

A Commission press statement on 23 December 2008 said:

“The Commissioner is not a Court or Tribunal with power to *determine* any issue of fact in the Inquiry or to *direct* any particular outcome. In particular, it is not his job to make findings of guilt or in exoneration of those against whom allegations may have been widely and publicly made. The most he can do, should he conclude that there is information of *possible* venality, is to consider whether to recommend a further and more searching investigation, or investigations, by some other body. His second task, which but for the first, would certainly not call for a partly forensic exercise of this sort, is to report on any indications of systemic weakness in the law or its administration in the Territory.”

18. In opening the oral hearings on 13 January 2009, the Commissioner returned to this theme:

“I am concerned with the possibility, not with proof, of corruption. I have no power to determine issues of fact or to direct any particular outcome. It is not my job to make findings of guilt or to exonerate those against whom allegations have been made. The most I can do – if I have information of possible corruption or other dishonesty – is to recommend further and more searching investigations, say, by the police and/or some other public enforcement body with a view to criminal prosecution, recovery of the proceeds of crime if proved and/or consideration of other sanctions.”

19. The effect of the terms of reference and of the legitimate expectation that would have been created by the Commissioner's statement was, according to Lord Pannick, as follows. It was not within the Commissioner's remit to make findings of any fact that was in issue, even if the findings were provisional. Nor was it within his remit to express any view on the likelihood of dishonesty or corruption. His role was no more than to identify any areas that merited further, and more detailed, investigation by the appropriate authority to see whether there was justification for criminal proceedings.

20. Lord Pannick identified the following instances as going beyond the Commissioner's remit to do no more than identify information that raised the possibility of corruption that ought to be investigated by others:

- i) The opening statement in the Report that there was a "high probability of systemic corruption in government and the legislature", coupled with a cross reference to chapter 4 of the Report, which gave instances of relationships between members of the House of Assembly and developers, including Mr Hoffmann.
- ii) The statement that the Commissioner was "unable to accept" Mr Hoffmann's explanation of why he appointed Mr Chal Misick as a partner in the Salt Cay project;
- iii) The unqualified finding, contrary to Mr Hoffmann's written evidence, that Mr Chal Misick was not made a partner because Mr Hoffmann needed a Belonger as a partner.
- iv) The finding that Mr Chal Misick had received an "unearned stake in a development company".
- v) The rejection of Mr Hoffmann's written statement that the golf course had no significant value as "meaningless".
- vi) The unqualified statement that the Hon Michael Misick had received "lavish and disproportionate hospitality" from the appellant.
- vii) The description of the J & T Banka loan as "a convenient fiction".

21. Lord Pannick submitted that these were findings of fact that went far beyond the "tentative" standard in respect of giving "preliminary indications" that further

investigations should be carried out, which the Commissioner had himself accepted as a true description of his role under his terms of reference.

22. The case advanced by Lord Pannick was one that had been swept aside in fairly peremptory fashion by both the Chief Justice and the Court of Appeal. The Chief Justice was unaware of the contents of the Report, which was not yet in the public domain, but he said this of the suggestion that the Commissioner could not make findings of fact where these were in issue:

“The Commission is required to inquire whether there is information that corruption may have taken place. It would be a failure by the Commission to carry out its duties properly if it was simply to accept all information as having the same weight. It must evaluate the information and submit its preliminary findings and recommendations as to whether there should be further investigations by some other body. Simply to name the people subject to further investigation without any further explanation would be of little value and would certainly not supply the Governor or the prosecuting authority with sufficient information on which to base the decisions they will have to make. Clearly it is necessary to evaluate the strength or weakness of the information and its likely relevance to the criminal offences for which further investigation is recommended. That is the preliminary finding that is to be supplied with any recommendation to instigate or not any further investigation. Similarly, one might ask how the Commission is to instigate further investigation if it cannot report the basis upon which it has made its preliminary finding that the information is sufficient to justify such a course of action.”

23. The Court of Appeal accepted that the Commissioner had made some findings of fact in “the decisive language of concluded findings”, but went on to say this:

“However, it is hard to see how the Commissioner could have fulfilled his task without making some evaluation of the material before him. He had to find his way through a sea of gossip, rumour and misinformation and in order to do that effectively it was both necessary and permissible for him to weigh the evidence, rejecting some and accepting some. Nor was he bound to accept the explanations given by the witnesses, including Mr Hoffmann and Dr Kinay, and if he did not accept them, then he was obliged to explain why. We do not think that he went beyond that, but even if he did in some instances, the overall context as noted above would correct it. Nor was it necessary for him to render the report unreadable by obsessively inserting qualifications, or by peppering the text with reservations.”

24. It seems to the Board that this area of contention arises out of confusion in relation to the requirement in the terms of reference that the Commission should make “preliminary findings” coupled with “recommendations concerning ...instigating criminal investigations by the police or otherwise”. That language has to be considered having regard to the fact that the original terms of reference also required the Commission to make “any recommendation that the inquiry’s terms of reference be extended”. When announcing the appointment of the Commission on 10 July 2008 Governor Tauwhare said that the Commission would submit a preliminary report, after which Governor Wetherell

“will then consider how best to proceed in the light of the Commission’s preliminary findings, including whether to extend or amend the Inquiry’s terms of reference. It would not be sensible for me now to prejudge whether or how the Inquiry might be extended. These matters will need to be assessed in the light of the Commissioner’s preliminary report. At the same time any information which might be relevant for a criminal investigation would be passed directly by the Commission to the Hon Attorney General who in turn could request the police to undertake investigations which could lead to criminal prosecutions. It is important to understand that it is not the role of the Commission itself to conduct a criminal investigation or prosecution. Any matters of a potentially criminal nature which come to light as a result of its work will need to be the subject of investigation by the police and, if appropriate, prosecutions brought by the Attorney General.”

25. As the Board has explained at para 10 above, the possibility of the Commissioner recommending an extension to his terms of reference was challenged and excluded from his terms of reference. Nonetheless, the reference to “preliminary report” reflects the possibility that the Commission itself might be asked to make a further report. In the light of this it would have been particularly bizarre if the Commission’s terms of reference had precluded it from making in its preliminary report findings of fact or expressing opinions as to the inferences to be drawn from the facts. Lord Pannick accepted that terms of reference that did no more than require a commission to report on whether there should be a further investigation were without precedent in his experience. Mr Havers QC, for the respondents, agreed with him.

26. The Board does not consider that the terms of reference restricted the function of the Commissioner in a manner that was without precedent. It reads the reference to a “preliminary” report as indicating that the report would not be final, but that any findings would be subject to further review, either by the Commission itself or by the prosecuting authorities or by some other body. The attack on the terms of reference to which the Board has referred at para 10 included a root and branch attack on the terms

of reference on the ground that they were “too wide and ill-defined to satisfy the requirement of clarity”. This attack did not succeed. The Chief Justice held at para 28:

“ The public has a right to know that it will look at all matters which may have taken place and will not be restricted by terms which may effectively prevent full investigation of the allegations that have been made and of any relevant information which comes to light. The purpose of appointing the Commission of Inquiry is to try and ascertain whether there is substance in these allegations or whether they are unfounded. It is an inquiry not a trial. It is not to establish guilt but to uncover information. Any past or present elected member who is not involved should regard the Commission as an effective way of having the propriety of his or her conduct confirmed. If, however, there is information that there has been corruption or serious dishonesty in relation to any such members of the public is entitled to know that the Commission has the necessary power to uncover it , but the decision to bring any possible criminal charges is, and will remain, the responsibility of the prosecution authorities not of the Commission.”

The Court of Appeal upheld his decision.

27. The Board agrees with the conclusions of the courts below. It has concluded that the terms of reference entitled the Commissioner to express conclusions of fact and to express opinions as to the implications of those facts, albeit that these would only be “preliminary” or “provisional”. That is, they would have no effect in law and would be open to review in the event of any further proceedings. Many public inquiries take place in circumstances where subsequent criminal proceedings are possible and the Board is aware of none in which the terms of reference precluded findings of fact. To have restricted the powers of the Commissioner in the manner suggested by Lord Pannick would have robbed his Report of almost all utility. Certainly it would have rendered inappropriate the action that he took before he produced his final Report.

28. On 28 February 2009 the Commissioner presented an Interim Report to the Governor. This included the following paragraphs:

“Over the six months of extensive written inquiries by the Commission before it began its oral proceedings in Providenciales in January and February 2009, I had found much information pointing to possible systemic corruption or of other serious dishonesty involving past and

present elected Members of the Legislature in recent years. I had also found indications of systemic weaknesses in legislation, regulation and administration and in related matters calling for attention by way of recommendation.

The oral proceedings – required in the main to secure full disclosure of interests from Ministers and other Members of the House of Assembly - have provided further information in abundance pointing, not just to a possibility, but to a high probability of such systemic venality. Coupled also with clear signs of political amorality and immaturity and of general administrative incompetence, they have, in my view, demonstrated a need for urgent suspension in whole or in part of the Constitution and for other legislative and administrative reforms. There are also strong indications, in the information before me, of the need for change in other related matters.”

The Commissioner went on to recommend actions which included the suspension of the entire Constitution for an indefinite period. The Commissioner could not properly have justified such a recommendation without making an evaluation of the extent to which the information that he had received was indicative of systemic corruption. He stated, when he did so, that he was not ready at that point to formulate “provisional findings or recommendations for institution of criminal investigation in relation to any individual”. No criticism has been made of the Interim Report.

29. Had the Commissioner’s subsequent Report been as anodyne as Lord Pannick suggested that his terms of reference required, it could not have justified the drastic action recommended in the Interim Report. In the event the Commissioner set out in his subsequent Report, as explained in para 1.9,

“findings of information of possible corruption and/or other serious dishonesty involving individual Members of the House of Assembly – all Ministers at the material time and some third parties, with recommendations for criminal investigations.”

30. At the beginning of chapter 4 the Commissioner explained the provisional nature of his findings in the following terms:

“In reporting upon what I have found, I have simply related what emerged from the evidence, and identified areas of conflict, contradiction and information pointing to possible corruption. Further investigation will be required in every case, but to do less than this, at

this stage, would have been a dereliction of my duty under the Terms of Reference, and would have risked presenting a less than full picture.

Any final assessment made, may or may not bear out my initial assessment on the material available. That assessment will be a task for those who come after me, and may or may not involve criminal proceedings. What should also be clear is that the process of inquiry, which this Commission has begun, is far from complete. The fact that an individual is not named or criticised should not be taken as any form of endorsement of their behaviour; the fact that particular misdeeds are not explored in detail here, does not mean they will not be given attention at a later stage.”

The Board has concluded that the Commissioner correctly identified the task entrusted to him by the terms of reference and concludes that Mr Hoffmann’s appeal against the Court of Appeal’s findings to that effect should be dismissed.

### *Procedural fairness*

31. Lord Pannick’s case on procedural fairness is summarised by the following proposition in para 17 of his written case:

“...persons liable to be criticised by a commission of inquiry should generally be given a fair opportunity to participate in the process: *Mahon v Air New Zealand* [1984] AC 803. Although the extent of that opportunity and how it may be given effect to will depend upon the particular circumstances, the basic principle is clear.”

32. The Board endorses that principle. It observes, however, that reliance on it is at odds with Lord Pannick’s case on the first issue, for his submission is that it was not within the Commissioner’s terms of reference to make findings that were critical of Mr Hoffmann. In truth the second issue raised by this appeal arises only because Mr Hoffmann has failed on the first issue.

33. Lord Pannick’s complaint about Mr Hoffmann’s treatment by the Commissioner is, in a nutshell, that he was not treated in the same way as the members of the House of Assembly who were summoned to give evidence to the inquiry. They were given notice that they were potentially subject to criticism. They were given access to the relevant documents. They were called to give oral evidence and they were represented by lawyers throughout the oral hearings. These were procedures that the Commissioner had promised would be afforded to all whose

conduct was the subject of the inquiry. None of these safeguards against injustice were afforded to Mr Hoffmann.

34. In order to address these submissions it is necessary to consider the procedures announced and adopted by the Commissioner prior to his delivery of his Report to the Governor. These were carefully summarised by the Chief Justice in his judgment and the Board has annexed that summary to this advice.

*The obligation of fairness*

35. The submissions made by Lord Pannick in relation to the procedural requirements of fairness in a public inquiry were founded on common law. He relied on the “Salmon Principles” as set out in para 32 of the Report of the Royal Commission on Tribunals of Inquiry (1966), (Cmnd 3121):

“1. Before any person becomes involved in an inquiry, the Tribunal must be satisfied that there are circumstances which affect him and which the Tribunal proposes to investigate.

2. Before any person who is involved in an inquiry is called as a witness he should be informed of any allegations which are made against him and the substance of the evidence in support of them.

3. (a) He should be given an adequate opportunity of preparing his case and of being assisted by legal advisers.

(b) His legal expenses should normally be met out of public funds.

4. He should have the opportunity of being examined by his own solicitor or counsel and of stating his case in public at the inquiry.

5. Any material witnesses he wishes called at the inquiry should, if reasonably practicable, be heard.

6. He should have the opportunity of testing by cross-examination conducted by his own solicitor or counsel any evidence which may affect him.”

36. At para 70 of his judgment the Chief Justice accepted that these principles were applicable in TCI. The Court of Appeal did not agree. It, referred, with approval, to a passage in *Wade & Forsyth Administrative Law* 10<sup>th</sup> ed (2009)pp 826-827 which challenged the inflexible application of the Salmon principles. The Court of Appeal preferred the following principles laid down by Lord Mustill in an oft-quoted speech in *R v Secretary of State for the Home Department, Ex p Doody* [1994] 1 AC 531 560:

“My Lords, I think it unnecessary to refer by name or to quote from, any of the often-cited authorities in which the courts have explained what is essentially an intuitive judgment. They are far too well known. From them, I derive that (1) where an Act of Parliament confers an administrative power there is a presumption that it will be exercised in a manner which is fair in all the circumstances. (2) The standards of fairness are not immutable. They may change with the passage of time, both in the general and in their application to decisions of a particular type. (3) The principles of fairness are not to be applied by rote identically in every situation. What fairness demands is dependent on the context of the decision, and this is to be taken into account in all its aspects. (4) An essential feature of the context is the statute which creates the discretion, as regards both its language and the shape of the legal and administrative system within which the decision is taken. (5) Fairness will very often require that a person who may be adversely affected by the decision will have an opportunity to make representations on his own behalf either before the decision is taken with a view to producing a favourable result; or after it is taken, with a view to procuring its modification; or both. (6) Since the person affected usually cannot make worthwhile representations without knowing what factors may weigh against his interests fairness will very often require that he is informed of the gist of the case which he has to answer.”

37. The Court of Appeal added this at para 31:

“...the procedure of a Commission of Inquiry such as this one is primarily a question for the Commission itself. Various considerations will affect that in addition to fairness, including the requirement of effectiveness, speed, economy and practicality. There is no general rule that all persons likely to be adversely affected by the findings of a Commission of Inquiry are entitled to give oral evidence. It is sufficient if they are notified of matters of concern which affect them and given a chance to respond.”

38. The Board is broadly in agreement with the approach of the Court of Appeal. The Salmon principles cannot be inflexibly applied and the requirements of fairness must be tailored in a manner that has regard to all the circumstances of the particular Inquiry. The Court of Appeal was, however, itself overly specific if it intended to suggest that it will always be sufficient to notify a person likely to be affected by the findings of a Commission of Inquiry of matters of concern to the Inquiry and to give that person the chance to respond in writing. Fairness will sometimes require that such a person be given the opportunity to give oral evidence, and it is necessary to decide whether Mr Hoffmann was such a person.

39. The position of Mr Hoffmann was governed not merely by the common law, but by the terms of the Ordinance. Section 7 of the Ordinance provides:

“(1) Any person whose conduct is the subject of an inquiry, or who is implicated or concerned in the subject matter of the inquiry shall, subject to the provisions of section 4, be entitled to be represented by an Attorney at the inquiry.

(2) For the purpose of subsection (1), a Commission shall determine whether the conduct of any person is the subject of the inquiry or whether a person is in any way implicated or concerned in the subject matter of the inquiry.”

Perhaps because in the courts below it was Mr Hoffmann’s case that he was not one of those whose conduct was to be investigated under the Commissioner’s terms of reference, neither counsel before the Board focussed initially on this provision. When it was drawn to their attention, both agreed that it applied to Mr Hoffmann. The Board has considered whether they were right to do so.

40. In his interim report, and again at para 1.3 of his Report, the Commissioner said this:

“Under the first Term of Reference, I am to consider whether there is information – in whatever form and giving it the weight I consider it deserves – of possible corruption *in relation to* , that is, involving, elected Members, past and present of the Legislature. If so, I am to consider whether to recommend criminal investigation by the police or other bodies. The potential targets of the Commission’s Inquiry and any such criminal investigation are those who may have been bribed, those who may have bribed them and /or those who may have been parties to any such corrupt and/or otherwise seriously dishonest behaviour.”

The Board considers that this statement is capable of giving a misleading impression both of the object of the Inquiry and of the manner in which the Commissioner addressed that object. The terms of reference required the Commissioner to inquire into possible “corruption or other serious dishonesty *in relation to past and present elected members of the House of Assembly*” (the Board’s emphasis). When dealing with the attack made by Robinson and Beer on the terms of reference the Chief Justice remarked at para 21 that the Governor had identified “the limited group of people who were to be the subject of the inquiry”. At para 24 he added:

“...the inquiry is limited to the past and present members who have been elected to a total of fifteen seats at any one time. It does not extend to the appointed members or to any member of staff in the House. It is limited to information whether corruption or serious dishonesty has taken place in relation only to that specified group.”

41. These observations were well founded. The suspected corruption that was the object of the inquiry was corruption in government. The principal targets of the inquiry were the members of the government who were suspected of corruption. The suspected corruption consisted, in part, in the soliciting and the acceptance of money and benefits from developers in exchange for benefits that were conferred on the developers. At para 6 of his Report the Commissioner summarised his findings as follows:

“Pursuant to the Commission’s first Term of Reference, I find that there is information of possible corruption and/or other serious dishonesty, including misfeasance in public office, in relation to five present elected Members of the House of Assembly, all of whom until recently were members of the Cabinet, namely, the Hons Michael Misick, Floyd Hall, McAllister Hanchell, Jeffrey Hall and Lillian Boyce. I have recommended criminal investigation by the police or others with a view to prosecutions, if so advised, in relation to such possible offences in respect of matters identified and described in Chapter 4, and summarised in Chapter 6, of this Report.”

The five named members of the House of Assembly were primary targets of the inquiry.

42. At the beginning of chapter 4 of his Report, at 4.2, the Commissioner said:

“This Chapter necessarily considers other persons beyond simply the elected officials involved. It would be wholly artificial to produce a Report that did otherwise. In so far as there is information indicating

corruption, that corruption does not exist in a vacuum (eg if an official receives a possibly corrupt payment, it must have come from someone else and they must be identified in order to show why and how it may be is corrupt)(sic).”

The statement that persons other than officials had to be named in order to show why and how the conduct was corrupt is significant. It demonstrated that the Commissioner appreciated that persons other than officials were not the primary targets of his inquiry.

43. The Commissioner went on to state at para 4.3

“Several parties have sought to argue before the Commission that to consider or even to name parties, apart from elected officials, takes the Commission outside its Terms of Reference. Related arguments were also raised that no comment should be made upon those who provided no evidence or who only gave written evidence before the Commission. I do not accept those arguments. I have endeavoured to ensure that, in every case, where I was minded to make an adverse finding leading to a recommendation of criminal investigation in respect of any person whose conduct is the subject of, or who is implicated or concerned in the subject matter of the Inquiry, that person should have an opportunity to comment ahead of the Report, by means of responses to *Salmon* letters. All have responded.”

44. The Board was told that 19 Salmon letters were sent, some of them to developers other than Mr Hoffmann. The Board does not consider that every developer who was suspected of providing money or other benefits to Ministers fell to be considered as a “person whose conduct [was] the subject of, or... implicated or concerned in the subject matter of the inquiry” within section 7(1) of the Ordinance, or as “involved in” the inquiry, in the wording of the Salmon principles. To have involved all of them in the inquiry would have multiplied the length of time that the inquiry would have taken and defeated the its object, as deduced from the terms of reference. That object was to address a situation of emergency in the governance of TCI, as indicated by the very short timescale of the inquiry.

45. Mr Hoffmann cannot, however, fairly be treated on the same footing as the developers who played a less prominent part in the matters investigated by the Commissioner. Mr Hoffmann was no mere outsider. He had had a house in TCI since at least 2000, spent two or three months a year there and had been granted Belonger status. His relationship with the Hon Michael Misick, and with his brother Chal, received detailed consideration by the Commissioner. The dealings in relation to Salt

Cay formed the most significant and detailed portion of the Report. In the Board's view, these matters were enough to make Mr Hoffmann's conduct a subject of the inquiry within the meaning of section 7(1) of the Ordinance, or at the very least to make Mr Hoffman a person who was "implicated or concerned in the subject matters of the inquiry".

46. Mr Hoffmann had a powerful personal interest in the inquiry. Not only was his reputation at stake, but so was the substantial business venture in which he had invested heavily. In these circumstances, the Board has reached the conclusion that fairness required that Mr Hoffmann should be given a reasonable opportunity to deal with his involvement in the Salt Cay project and that this involved giving him a reasonable opportunity to give oral evidence to the Commissioner. The critical question is whether he was given those opportunities.

#### *The relevant facts*

47. On September 24 2008 the Commissioner wrote to the attorneys acting for the Hon Michael Misick seeking information and documentation in relation to the Salt Cay project. The letter sought confirmation from the Hon Michael Misick that DEVCO would not be permitted to commence work unless all the necessary permissions had been granted.

48. On January 6 2009 the Governor was instructed by the Secretary of State for Foreign and Commonwealth Affairs not to act in accordance with the advice of the TCI Cabinet in relation to any further steps in the development of Salt Cay. An official of the FCO subsequently made it plain that this instruction was issued when it became clear that the Commissioner was looking into the Salt Cay development and it was considered imprudent, pending the outcome of the inquiry, to allow any further steps to be taken in respect of the development which might prove to be irreversible.

49. On 8 January 2009 the lawyers acting for the Hon Michael Misick sent, electronically, a letter to Mr Hoffmann stating that the Salt Cay development was one of the matters being investigated by the Commission and asking five questions in relation to Mr Hoffmann's involvement in the loan of \$6 million made by J & T Banca to the Hon Michael Misick. The letter ended:

"If you feel able to do so we would like you to give a general statement as to the allegation that your development project is tainted by connection to the Premier and this is not the case (sic)."

50. Mr Hoffmann replied electronically on 12 January 2009, denying any involvement in the loan. The letter went on to express concern about

“absolutely irresponsible rumours and some media reports that me personally or my project on Salt Cay is connected with any potential corruption or inconvenient acting. I’d like to present to you and whoever it may concern indisputable facts about my activities on TCI and Salt Cay Project.”

51. Mr Hoffmann went on to set out a concise but detailed account of his dealings in relation to Salt Cay. This was to the effect that he had given fair value for any land or benefit acquired in relation to the project and had received no preferential treatment when compared to other developers on TCI. The letter ended by remarking that Mr Hoffmann had not been contacted by the Commission but would cooperate with any enquiry made of him by it.

52. This letter was read to the Commissioner in the course of the oral evidence of the Hon Michael Misick on 15 January 2009. On 19 January the Commissioner referred to this and remarked that in the light of the evidence given by the witness he considered that it would “be only just” that Mr Hoffmann should come to give evidence to the Commission. The Commissioner was informed that Mr Hoffmann was in Slovakia. On the following day, having obtained Mr Hoffmann’s email address, the Commission sent a letter to him requesting Mr Hoffmann to attend to give evidence on oath in relation to the evidence of the Hon Michael Misick and the letter sent by Mr Hoffmann. Relevant extracts from the transcript of the oral hearings were included and Mr Hoffmann was asked to state the days on which he could attend prior to February in order to attempt to schedule a hearing to suit his convenience.

53. No reply had been received by 26 January, on which day the Commission sent a chaser to the lawyers acting for Mr Hoffmann in TCI. One of these, Mr Katan replied at once stating that they had just received instructions from their client to the effect that owing to pre-existing commitments it would be extremely difficult for him to attend within the timetable provided. Mr Katan complained that the tight timetable was unreasonable, asked for sight of the core documentation and said that Mr Hoffmann would be happy to provide evidence in response to written questions.

54. Two days later Mr Katan wrote suggesting that Mr Hoffmann should give evidence by written statement “in the first instance”. Although there was some discussion of the possibility that Mr Hoffmann might give oral evidence when the Commissioner returned to London on termination of the hearings in TCI, Mr Hoffmann was told that this would not be possible and asked to submit evidence in writing by 20 February 2009. In a letter to his lawyers dated 10 February, Mr Milne,

counsel to the inquiry, explained the nature of the evidence that the inquiry hoped to receive. He stated:

“We suspect that he, along with many other developers, found that the approach that had to be taken was that nothing happened if the wheels were not greased in government. That greasing in many cases appears to be that one is required to appoint a ‘partner’ who takes a large share of some aspect of the project; who contributes nothing of any appreciable value; who is entitled to a significant proportion of the eventual profits/capital, and who just happens to be a relative or close friend of the Premier. He may wish to comment upon this.”

This comment supports the Board’s conclusion that the Commission was not treating developers as primary targets.

55. Mr Hoffmann submitted to the Commission a very lengthy written statement, accompanied by submissions from leading counsel. He offered to submit to oral questions, an offer that was not taken up by the Commissioner. On 9 April 2009 the Commissioner sent Mr Hoffmann a Salmon letter, inviting his comments on the following provisional conclusions:

“1. Mr Mario Hoffmann in granting a 50% stake in Salt Cay Golf Club Ltd to Mr T Chalmers Misick in December 2006 entered into a potentially corrupt deal, in that he knew that the purpose of granting the shares to Mr Misick was to provide a benefit directly or indirectly to the Premier who was negotiating on behalf of the government in relation to the Salt Cay development as a whole.

2. Mr Mario Hoffmann, in representing to the Commission that he had recruited Mr T Chalmers Misick as a ‘Belonger partner’ solely on the basis that Mr Misick provided particular skills and abilities, and not because he was the brother of the Premier, was seeking to mislead the Commission.

3. Mr Mario Hoffmann engaged in potentially corrupt practice in that he may have procured and/or facilitated the loan to the Premier from J&T Banka of \$6 million secured upon the shares provided to Mr T Chalmers Misick by Hoffmann.

4. Mr Mario Hoffmann engaged in potentially corrupt practice by providing lavish hospitality to the Premier and other TCI ministers,

including the provision of international travel and the use of his private jet, whilst engaged in business negotiations with the Government of the TCI.”

56. Mr Hoffmann submitted a further statement, again supported by submissions from leading counsel, again to no avail. The Commissioner’s Report included the adverse conclusions set out in the Salmon letter. The issue before the Board is not whether those conclusions could properly be based on the material before the Commission but whether the procedure adopted by the Commissioner in reaching those conclusions was fair.

*The findings of the courts below*

57. The relevant findings of the Chief Justice are at paras 93 to 99 of his judgment. He held that Mr Hoffmann was entitled to expect to be treated in the same way as “other witnesses and persons implicated”. He found that there were significant departures both from the procedure announced by the Commissioner and from the requirements of natural justice and the Salmon principles in the early stages of the inquiry. He commented that it was difficult to see how the Commissioner could have failed to see the link with Mr Hoffmann as soon as the Salt Cay matter came to his attention. He should have advised him of his interest before the oral hearings began and enabled him to test the witnesses in cross-examination. The Chief Justice held, however, that the Commissioner could not be criticised, having regard to the urgency of the inquiry, for failing to continue to try to make arrangements for Mr Hoffmann to give oral evidence after the hearings in TCI came to an end. Looking at matters overall, the Chief Justice was satisfied that Mr Hoffmann had been given a fair hearing. Subsequent events repaired the earlier shortcomings.

58. The relevant findings of the Court of Appeal are at paras 54 to 64 of its judgment. The Court held that the Chief Justice had erred in finding that there had been breaches of natural justice and the Commissioner’s own procedure in the initial stages. The published procedure envisaged that if the Commissioner pursued someone who might be implicated for information or documents he would tell that person the gist of the information against him. Nor did he promise an oral hearing to all such persons. It was in his discretion whether to take the evidence orally or in writing. Mr Hoffmann was not himself within the first or second stages of the proceedings contemplated in the press release of 23 December. They were members of the House of Assembly, civil servants or other government insiders. The latter included Mr Chal Misick, who was closely involved in many of the transactions and was a “key participant” in whatever was going on at Salt Cay. Nor was Mr Hoffmann a stage two person. These were in effect witnesses for the prosecution. Mr Hoffmann fell into the category of those adversely implicated by the evidence given at stage 1 or 2, who were promised an opportunity to give evidence at stage 3, either orally or in writing at the

Commissioner's discretion. Fairness did not require persons in Mr Hoffmann's position to be given the opportunity to give oral evidence.

59. The Court of Appeal further held that it was not apparent that the Commissioner or his staff were aware of the matters that were to cause him concern about the role of Mr Hoffmann until Mr Hoffmann himself drew attention to them by his letter of 12 January 2009. As Mr Hoffmann had not identified himself or requested an oral hearing prior to that point he could not complain about being overlooked. The Commissioner had, by his letters of 19 and 20 January, given him an opportunity to give oral evidence. He had never given a satisfactory explanation of why he did not take advantage of that offer:

“In those circumstances it seems to us that the proper conclusion on the evidence was that Mr Hoffmann effectively declined what was, on 20 January, a reasonable opportunity to give oral evidence at some point in the following two weeks.”

### *Conclusions*

60. The Board considers that the Chief Justice rather than the Court of Appeal reached the correct conclusion as to the point at which the Commissioner and his staff must first have become aware of the significance of the part that Mr Hoffmann played in the story. The matters to which the Board has referred at paras 45 and 47 above show that the Commissioner focussed on Salt Cay as early as September 2008. Furthermore the terms in which the Hon Michael Misick was examined by counsel to the inquiry on 15 January 2009 show that the latter was very well briefed about Mr Hoffmann and the role that he had played in respect of the Salt Cay development. With hindsight, it would have been better and fairer if the Commissioner had notified Mr Hoffmann, before the start of the oral hearing in TCI, that his conduct was a subject of the inquiry and that he was entitled to be represented at its hearings. The Board can, however, understand how it came about that he was not.

61. It seems clear, from the summary set out in the Annexe, that the Commissioner and his staff focussed initially on attempting to obtain information from the members of the House of Assembly and the Cabinet Secretary, the Permanent Secretaries and under Secretaries. The stated intention was that the Commissioner would then decide upon those whose conduct was the subject of the inquiry or who were implicated or concerned in its subject matter and afford them the opportunity to testify. This plan was derailed by the obduracy of members of the Assembly in attempting to bring the inquiry to a halt by judicial review and in failing to respond to the Commissioner's invitation to provide relevant evidence. This forced him to group the proposed oral hearings into stages. The first stage, unusually, involved calling those whose conduct

formed the express subject matter of the inquiry, the members of the House of Assembly suspected of corruption. The reason for this, as the Commissioner explained in para 1.6 of his Report was that these oral hearings were necessary “in the main to secure full disclosure of interests from Ministers and other Members of the House of Assembly”.

62. It seems to the Board that, perhaps understandably having regard to the pressure that he was under and the difficulties that he was experiencing, the Commissioner had not at this stage turned his attention to the question of whether any developers fell within the scope of section 7(1) of the Ordinance. It was only when Mr Hoffmann’s letter was read to the inquiry that the Commissioner, belatedly, appreciated that justice required that he should be afforded the opportunity to give oral evidence to the inquiry.

63. Is the fact that Mr Hoffmann was denied the opportunity to take part in the first stage of the oral hearings a procedural shortcoming that should have led the Chief Justice to order that any adverse findings in relation to him should be removed from the Report, and that should lead the Board to make a declaration that he has been unfairly treated? The Board thinks not. The findings that it has just made will stand as part of the record, but the Board agrees with the Chief Justice that overall Mr Hoffmann was fairly treated.

64. The Board does not consider that, if Mr Hoffmann had been represented at the hearing of the evidence given in the first stage of the oral hearings, intervention by the lawyer representing him would have been likely to alter the overall import of the evidence given at that stage. Before the Court of Appeal his counsel gave examples of the questions that might have been posed to witnesses. They would have been largely designed to obtain confirmation of the evidence that he was subsequently to give in his statements. As the Court of Appeal observed at para 61 it is hard to see how this would have added much to the examination of the main protagonists already conducted by their own counsel.

65. The critical question is whether the Commissioner afforded, by his letter of 20 January, a fair opportunity for Mr Hoffmann to give oral evidence to the inquiry. The Board agrees with both the courts below that he did.

66. Mr Hoffmann had, on his own evidence, spent about three months in TCI after the Commission of Inquiry had been set up. His letter of 12 January made it clear that he was aware of the allegations that his participation in the Salt Cay project involved corruption. Had he wished to give oral evidence the Board would have expected him to do his utmost to take advantage of the request to do so made in the letter of 20 January. He himself has given no explanation of why he did not do so. He has given

no explanation for the delay between 20 January, when the letter was sent to him and 26 January, when Mr Katan responded on his behalf. Mr Katan's explanation of the delay was that Mr Hoffmann's schedule was planned well in advance and that it was not always possible to gain instructions from him immediately. That does not explain why Mr Hoffmann could not have corresponded more expeditiously with his lawyer, had he wished to do so, nor indeed does it state that he did not do so. The reason given to explain Mr Hoffmann's failure to comply with the request to give oral evidence was that "owing to pre-existing commitments it would be extremely difficult for him to attend before the Commission within the timetable provided". Without any evidence from Mr Hoffmann of the overriding nature of those commitments the Board agrees with the Court of Appeal that the proper conclusion on the evidence is that Mr Hoffmann effectively declined what was, on 20 January, a reasonable opportunity to give oral evidence at some point in the following two weeks. Thereafter the Commissioner did all that fairness required by admitting lengthy written evidence from Mr Hoffmann, coupled with submissions from his lawyer both before and after the issue of a Salmon letter.

67. For these reasons the Board rejects the arguments advanced on behalf of Mr Hoffmann in respect of the procedural fairness of the inquiry. It accordingly humbly advises Her Majesty that this appeal should be dismissed.

68. The appellant to pay the respondent's costs unless written submissions are received within 28 days.

**ANNEXE**  
**Procedure Adopted by**  
**the Commissioner, as summarised by the Chief Justice**

[76] In his opening statement, the Commissioner explained that he had not, at that stage, been able to detail the procedure that he would follow but he gave his initial view of the manner in which it would deal with persons possibly implicated:

" ... the Secretary will write to persons who may have particular means of knowledge or who may be implicated by information already before the Commission. [The secretary] will seek specific information and, where appropriate, written material and documents or records. In each such case, common justice requires that I should inform those who may be so implicated of the gist of any information before me suggesting such knowledge or implication... The next stage ... will be to invite them to give information orally, which may be in the form of evidence on oath or by way of affirmation ... "

[77] In a press statement dated 17 September 2008, the Secretary stated:

"Sir Robin hopes that the Commission will move to the Turks and Caicos Islands ... to obtain further information and to convene formal public hearings. At those hearings, he expects to invite or, if necessary summon, persons to give evidence and/or produce documents ... "

[78] On 3 October 2008 it was pointed out that letters had been sent to each member of the Government and elected member of the Assembly and the Commission had more recently extended the same invitation to assist the Inquiry to the Cabinet Secretary and Permanent Secretaries and Under Secretaries. It continued:

"There will be, in any event, public hearings ... at which evidence may be called, and at which anyone who, on due notice from the Commission, appears to it to be a subject of the Inquiry or implicated or concerned in its subject matter, will be given an opportunity to testify."

[79] That was repeated on 10 October 2008 but, in the press statement of 6 November 2008, it was stated that the Commissioner intended to summon the Premier and other Ministers to attend and continued:

For that purpose, and to give an opportunity to anyone to give evidence who appears to the Commission to be" implicated or concerned in the subject matter of the Inquiry, it will conduct

oral hearings in the Territory ... Such hearings may be held in public and/or private, and evidence maybe taken orally on oath or in writing, as the Commission considers appropriate."

[80] On 17 November 2008, this was repeated including the fact that "evidence may be taken orally on oath or in writing, as Sir Robin considers appropriate" and that he would "shortly notify those whom the Commission intends to examine on oath and/or those whose evidence he wishes to take, giving advance notice of the matters on which he wishes to hear evidence."

81] On 25 November 2008, it was announced that the oral hearings had to be deferred to the New Year and, on 10 December 2008, it announced the hearings were to commence on 13 January 2009. It is explained that evidence would first be taken from Ministers and members of the Assembly and the Commission would then take, "oral evidence from others over a range of issues within its terms of reference. Finally, it will give an opportunity to give evidence to those whom it considers and notifies may be implicated or concerned in any subject matter of the Inquiry" and it would publish by 23 December 2008 a provisional programme indicating the names of those to give evidence and when they will be required to give it.

[82] The press statement of 23 December 2008 set out in some detail the procedures to be followed at the hearings. It explained the rights of persons, whose conduct the Commissioner considered to be a subject of the Inquiry or to be implicated or concerned, to have an attorney present and gave the basis upon which the Commissioner had determined the procedure to be followed at the hearings:

"In doing so, he has kept in mind the essentially inquisitorial nature of the inquiry set by; 1) the great breadth of its subject matter and length of the period to be investigated; 2) the short time within which his Report is to be submitted, originally four - now seven - months; and 3) the tentative and preliminary nature of his first and main task, namely to inquire where there is information of *possible* corruption or other serious dishonesty in recent years on the part of or in relation to past and present elected members of the Territory's legislature.

The Commissioner is not a Court or Tribunal with power to *determine* any issue of fact in the Inquiry or to *direct* any particular outcome. In particular it is not his job to make findings of guilt or in exoneration of those against whom allegations may have been widely and publicly made. The most he can do, should he conclude that there is information of *possible* venality, is to consider whether to recommend a further and more searching investigation, or investigations, by some other body ....

The Commissioner intends to exercise his power to take all evidence in public and on oath or by affirmation, save where persuaded the interests of the public and/or justice require otherwise .... In all of this, the Commissioner will endeavour to conduct the Inquiry in such away that it does not risk prejudicing the fairness of any subsequent proceedings."

[83] He concluded with the procedures, of which the first is to examine the elected members;

"The second stage of the hearings, which should begin during the third week of the hearings, will be devoted to the oral evidence of others. The Commissioner will notify in advance the gist of such evidence to those whom he considers may be adversely affected by it Counsel to the Commissioner (sic) will examine each witness in chief. With the permission of the Commissioner, each witness may be cross-examined by or on behalf of any person the subject of the evidence or implicated or concerned in the subject matter of the evidence. The witness may then be further examined by Counsel to the Commissioner.

At the third stage of the bearings, the Commissioner will give an opportunity to any person to give evidence in response to any oral evidence which he, the Commissioner, considers may adversely affect or cause concern to that person. The Commissioner may, in his discretion receive any such evidence orally or in writing .... Any person, who, at the direction of or with the acquiescence of the Commissioner, gives evidence in writing, will have a reasonable time within which to do so."

[84] The fourth stage~ refers to the right of counsel to make submissions either orally or in writing. The statement then reminds the public that some evidence provided to the Commission was given in confidence and continues:

"Thus, the information to be given by witnesses in stage two of the hearings can be but a fragment of all the information before the Commissioner, to each part of which he will have to give the weight he: considers it deserves. The final stage of the Inquiry will be for .the Commissioner to prepare a Report and Recommendations to the Governor, as required by his Terms of Reference. In the course of doing so, he may form a provisional view from his consideration of *all the material before him* that there is information of possible corruption or other serious dishonesty on the part of a person or persons worthy of further and more searching investigation. In that event, he will inform any such persons in writing of that provisional view and invite his or her comments before finalising the report and recommendations."

[85] On 12 February 2009, the Commission reiterated that the findings and recommendations in the final report would be made after taking into account the responses of individuals given to what are described as "minded to find and/or recommend" letters.

[86] Finally, on 16 April it was announced that the Commission:

"has notified all those, in respect of whom it may make adverse findings, of the nature of those provisional findings. It has now received most responses, but awaits a few more.

The purpose of the exercise, often referred to as a *Salmon Exercise* ... is to give the recipients an opportunity to make representations to the Commission before it considers and makes its final findings and recommendations. Receipt of any such letter is not to be taken by its recipient or anyone learning of it as, in itself, a finding of impropriety against the recipient. ... The Commission hopes to have received all the remaining responses to its *Salmon* letters by 21st April. It has been considering and taking into account those already received, and will do the same for those~ to come, before reaching its final conclusions in accordance with its terms of reference."



Neutral Citation Number: [2019] EWHC 148 (Admin)

Case No: CO/2251/2018

**IN THE HIGH COURT OF JUSTICE**  
**QUEEN'S BENCH DIVISION**  
**ADMINISTRATIVE COURT**

Bristol Civil Justice and Family Centre  
Bristol, BS1 6NP

Date: 31/01/2019

**Before:**

**MR JUSTICE GARNHAM**

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**Between:**

**The Queen (on the application of (1) O and (2) H)**

**Claimants**

**- and -**

**The Secretary of State for the Home Department**

**Defendant**

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**Natalie Lieven QC, Shu Shin Luh and Gemma Loughran (instructed by Deighton Pierce  
Glynn Solicitors) for the Claimants**

**Lisa Giovannetti QC, Gwion Lewis (instructed by Government Legal Department) for the  
Defendant**

Hearing dates: 22 & 23 November 2018  
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**Approved Judgment**

## **Mr Justice Garnham:**

### Introduction

1. The principal issue raised by this case is as follows: have delays by the Home Office in the process of making “Conclusive Grounds” decisions in respect of potential victims of human trafficking become so significant and so widespread as to be unlawful?
2. “Conclusive Grounds” decisions are made by “Competent Authorities” under an arrangement established by the Secretary of State for the Home Department (“the Secretary of State”), for the purpose of identifying victims of trafficking and modern slavery, an arrangement called “The National Referral Mechanism” (“NRM”). There are two competent authorities, the UK Human Trafficking Centre, operated by the National Crime Agency, and the Home Office. This claim relates only to the systems operated by the Home Office
3. There was a delay of 34 months between the date when Ms O, the First Claimant, received what is called a positive “Reasonable Grounds” decision, in August 2015, and the date in June 2018 when she received a negative Conclusive Grounds decision. There was a delay of more than 19 months between the positive Reasonable Grounds decision and the negative Conclusive Grounds decision in the case of Ms H, the Second Claimant. A third claimant, P waited 19 months between the two decisions. She thereafter discontinued her claim.
4. The two Claimants allege unlawful delay in their own cases. But they also allege that their cases are illustrative of a much wider and more profound deficiency in the NRM arrangements operated by the Home Office. They point to what they describe as sustained criticism of the arrangements contained in reports by Mr Jeremy Oppenheim for the Home Office in 2014 and by the National Audit Office in 2017, and in witness statements from a number of solicitors with experience of representing potential victims of trafficking.
5. The Secretary of State resists this claim. He argues that there is no duty to make a Conclusive Grounds decision within a particular period. He says that whilst particular individuals have been waiting regrettably long periods for a Conclusive Grounds decision to be made in their case, the evidence does not support the claim that “delays are systematically egregious”. He disputes the suggestion that the delays in the two Claimants’ cases were unreasonably long and points out that ultimately conclusive grounds were not established in their cases.
6. Before considering the criticisms advanced by the Claimants, it is necessary to identify first the relevant international instruments, second the domestic policies and guidance, third the relevant parts of the Claimants’ own history and fourth the history and reviews of the NRM.

### The International Instruments

7. There are three relevant international instruments.

8. First, the Council of Europe Convention on Action against Trafficking in Human Beings (or “ECAT”), which came into force in February 2008. The relevant articles are as follows:

**“Article 1 - The purposes of this Convention**

1. The purposes of this Convention (include) “(b) to protect the human rights of the victims of trafficking...”

**Article 10 – Identification of the victims**

- 1 Each Party shall provide its competent authorities with persons who are trained and qualified in preventing and combating trafficking in human beings, in identifying and helping victims, including children, and shall ensure that the different authorities collaborate with each other as well as with relevant support organisations, so that victims can be identified in a procedure duly taking into account the special situation of women and child victims and, in appropriate cases, issued with residence permits under the conditions provided for in Article 14 of the present Convention.
- 2 Each Party shall adopt such legislative or other measures as may be necessary to identify victims as appropriate in collaboration with other Parties and relevant support organisations. Each Party shall ensure that, if the competent authorities have reasonable grounds to believe that a person has been victim of trafficking in human beings, that person shall not be removed from its territory until the identification process as victim of an offence provided for in Article 18 of this Convention has been completed by the competent authorities and shall likewise ensure that that person receives the assistance provided for in Article 12, paragraphs 1 and 2.

**Article 12 – Assistance to victims**

- 1 Each Party shall adopt such legislative or other measures as may be necessary to assist victims in their physical, psychological and social recovery. Such assistance shall include at least:
- (a) standards of living capable of ensuring their subsistence, through such measures as: appropriate and secure accommodation, psychological and material assistance;
  - (b) access to emergency medical treatment;
  - (c) translation and interpretation services, when appropriate;

- (d) counselling and information, in particular as regards their legal rights and the services available to them, in a language that they can understand;
  - (e) assistance to enable their rights and interests to be presented and considered at appropriate stages of criminal proceedings against offenders;
  - (f) access to education for children...
- 7 For the implementation of the provisions set out in this article, each Party shall ensure that services are provided on a consensual and informed basis, taking due account of the special needs of persons in a vulnerable position and the rights of children in terms of accommodation, education and appropriate health care.

### **Article 13 – Recovery and reflection period**

- 1 Each Party shall provide in its internal law a recovery and reflection period of at least 30 days, when there are reasonable grounds to believe that the person concerned is a victim. Such a period shall be sufficient for the person concerned to recover and escape the influence of traffickers and/or to take an informed decision on cooperating with the competent authorities. During this period it shall not be possible to enforce any expulsion order against him or her...
- 2 During this period, the persons referred to in paragraph 1 of this Article shall be entitled to the measures contained in Article 12, paragraphs 1 and 2...

### **Article 14 – Residence permit**

- 1 Each Party shall issue a renewable residence permit to victims, in one or other of the two following situations or in both:
  - (a) the competent authority considers that their stay is necessary owing to their personal situation;
  - (b) the competent authority considers that their stay is necessary for the purpose of their cooperation with the competent authorities in investigation or criminal proceedings...

### **Article 15 – Compensation and legal redress**

- 1 Each Party shall ensure that victims have access, as from their first contact with the competent authorities, to information on relevant judicial and administrative proceedings in a language which they can understand.

- 2 Each Party shall provide, in its internal law, for the right to legal assistance and to free legal aid for victims under the conditions provided by its internal law.
- 3 Each Party shall provide, in its internal law, for the right of victims to compensation from the perpetrators.
- 4 Each Party shall adopt such legislative or other measures as may be necessary to guarantee compensation for victims in accordance with the conditions under its internal law, for instance through the establishment of a fund for victim compensation or measures or programmes aimed at social assistance and social integration of victims, which could be funded by the assets resulting from the application of measures provided in Article 23.

#### **Article 16 – Repatriation and return of victims**

- 1 The Party of which a victim is a national or in which that person had the right of permanent residence at the time of entry into the territory of the receiving Party shall, with due regard for his or her rights, safety and dignity, facilitate and accept, his or her return without undue or unreasonable delay.
- 2 When a Party returns a victim to another State, such return shall be with due regard for the rights, safety and dignity of that person and for the status of any legal proceedings related to the fact that the person is a victim, and shall preferably be voluntary...

#### **Article 18 – Criminalisation of trafficking in human beings**

Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences the conduct contained in article 4 of this Convention, when committed intentionally...

#### **Article 26 – Non-punishment provision**

Each Party shall, in accordance with the basic principles of its legal system, provide for the possibility of not imposing penalties on victims for their involvement in unlawful activities, to the extent that they have been compelled to do so.”

9. Second, the 2011 EU Anti-Trafficking Directive (2011/36/EU), the recitals to which include the following:

“(7) This Directive adopts an integrated, holistic, and human rights approach to the fight against trafficking in human

beings and when implementing it, Council Directive 2004/81/EC of 29 April 2004 on the residence permit issued to third-country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration, who cooperate with the competent authorities and Directive 2009/52/EC of the European Parliament and of the Council of 18 June 2009 providing for minimum standards on sanctions and measures against employers of illegally staying third-country nationals should be taken into consideration. More rigorous prevention, prosecution and protection of victims' rights, are major objectives of this Directive. This Directive also adopts contextual understandings of the different forms of trafficking and aims at ensuring that each form is tackled by means of the most efficient measures...

- 18) It is necessary for victims of trafficking in human beings to be able to exercise their rights effectively. Therefore assistance and support should be available to them before, during and for an appropriate time after criminal proceedings. Member States should provide for resources to support victim assistance, support and protection. The assistance and support provided should include at least a minimum set of measures that are necessary to enable the victim to recover and escape from their traffickers. The practical implementation of such measures should, on the basis of an individual assessment carried out in accordance with national procedures, take into account the circumstances, cultural context and needs of the person concerned. A person should be provided with assistance and support as soon as there is a reasonable-grounds indication for believing that he or she might have been trafficked and irrespective of his or her willingness to act as a witness. In cases where the victim does not reside lawfully in the Member State concerned, assistance and support should be provided unconditionally at least during the reflection period. If, after completion of the identification process or expiry of the reflection period, the victim is not considered eligible for a residence permit or does not otherwise have lawful residence in that Member State, or if the victim has left the territory of that Member State, the Member State concerned is not obliged to continue providing assistance and support to that person on the basis of this Directive. Where necessary, assistance and support should continue for an appropriate period after the criminal proceedings have ended, for example if medical treatment is ongoing due to the severe physical or psychological consequences of the crime, or if the victim's safety is at risk due to the victim's statements in those criminal proceedings...

(23) Particular attention should be paid to unaccompanied child victims of trafficking in human beings, as they need specific assistance and support due to their situation of particular vulnerability. From the moment an unaccompanied child victim of trafficking in human beings is identified and until a durable solution is found, Member States should apply reception measures appropriate to the needs of the child and should ensure that relevant procedural safeguards apply. The necessary measures should be taken to ensure that, where appropriate, a guardian and/or a representative are appointed in order to safeguard the minor's best interests. A decision on the future of each unaccompanied child victim should be taken within the shortest possible period of time with a view to finding durable solutions based on an individual assessment of the best interests of the child, which should be a primary consideration. A durable solution could be return and reintegration into the country of origin or the country of return, integration into the host society, granting of international protection status or granting of other status in accordance with national law of the Member States."

10. The following articles of the Directive are said to be material:

"Article 8

**Non-prosecution or non-application of penalties to the victim**

Member States shall, in accordance with the basic principles of their legal systems, take the necessary measures to ensure that competent national authorities are entitled not to prosecute or impose penalties on victims of trafficking in human beings for their involvement in criminal activities which they have been compelled to commit as a direct consequence...

Article 11

**Assistance and support for victims of trafficking in human beings**

1. Member States shall take the necessary measures to ensure that assistance and support are provided to victims before, during and for an appropriate period of time after the conclusion of criminal proceedings in order to enable them to exercise the rights set out in Framework Decision 2001/220/JHA, and in this Directive.

2. Member States shall take the necessary measures to ensure that a person is provided with assistance and support as soon as the competent authorities have a reasonable-grounds indication

for believing that the person might have been subjected to any of the offences referred to in Articles 2 and 3...

4. Member States shall take the necessary measures to establish appropriate mechanisms aimed at the early identification of, assistance to and support for victims, in cooperation with relevant support organisations...

Article 16

**Assistance, support and protection for unaccompanied child victims of trafficking in human beings.**

2. Member States shall take the necessary measures with a view to finding a durable solution based on an individual assessment of the best interests of the child.”

11. Third, the 2000 Charter of Fundamental Rights of the European Union (as amended from the date of entry into force of the Treaty of Lisbon). The relevant provisions provide as follows:

**“Article 5 Prohibition of slavery and forced labour**

1. No one shall be held in slavery or servitude.
2. No one shall be required to perform forced or compulsory labour.
3. Trafficking in human beings is prohibited...

**Article 52 Scope of guaranteed rights**

1. Any limitation on the exercise of the rights and freedoms recognised by this Charter must be provided for by law and respect the essence of those rights and freedoms. Subject to the principle of proportionality, limitations may be made only if they are necessary and genuinely meet objectives of general interest recognised by the Union or the need to protect the rights and freedoms of others.
2. Rights recognised by this Charter which are based on the Community Treaties or the Treaty on European Union shall be exercised under the conditions and within the limits defined by those Treaties.
3. In so far as this Charter contains rights which correspond to rights guaranteed by the Convention for the Protection of Human Rights and Fundamental Freedoms, the meaning and scope of those rights shall be the same as those laid down by the said Convention. This provision shall not prevent Union law providing more extensive protection.”

12. Article 5 of the Charter is the equivalent of Article 4 of the European Convention on Human Rights, the difference being that Article 5(3) makes explicit the protection against human trafficking. (That prohibition was found to be implicit in Article 4 ECHR in *Rantsev v Cyprus v Russia* [2010] 51 EHRR 1).

### Domestic law and Policy

13. The UK signed the Convention against Trafficking on 23 March 2007 and ratified it on 17 December 2008. It came into force on 1 April 2009. The obligation to identify and protect potential victims of trafficking (“PVoT”) and (“VoTs”) was implemented in the UK by the establishment of the National Referral Mechanism and the Home Office guidance “Victims of Modern Slavery – Competent Authority Guidance”.
14. ECAT has not been incorporated into English domestic law and as a result cannot be relied upon in proceedings against the Defendant directly. However, insofar as the Secretary of State has adopted parts of ECAT as his own policy in guidance, the decision of *R (G) v SSHD* [2016] 1 WLR 4031 means that the Secretary of State must follow that guidance unless there is good reason not to do so.
15. The guidance includes the following: At page 8 it is made clear that the guidance is based on the European Convention against Trafficking and as part of implementing the Convention, the Government created the NRM in 2009. Page 19 explains that the UK’s two designated Competent Authority decision makers under the NRM are the Human Trafficking Centre (UKHTC) within the National Crime Agency, and the Home Office. The Home Office has a number of Competent Authorities including UK Visa and Immigration NRM Hub.
16. Page 21 identifies as “First Responders” several designated organisations which can refer potential victims of modern slavery in the UK into the NRM. Those responders include the Home Office, the Police, the Salvation Army and “Unseen UK”. Page 50 of the guidance identifies the ‘2 Stage National Referral Mechanism’ consideration process.

“**Part 1** The first part is the Reasonable Grounds test, which acts as an initial filter to identify potential victims.

#### **Part 2**

The second is a substantive Conclusive Grounds decision as to whether the person is in fact a victim...”

17. Page 50 also identifies “Timescales” for making a reasonable grounds decision as follows:

“The expectation is that the Competent Authority will make a reasonable grounds decision within 5 working days of the NRM referral being received at the UK Human Trafficking Centre (UKHTC) where possible.

Reasonable grounds decisions for cases in immigration detention will be considered as soon as possible”.

18. The guidance continues “the reasonable grounds decision has consequences for the potential victim in terms of protection and support (and potential further stay in the UK if they are subject to immigration control)”.

19. Page 64 deals with making Conclusive Grounds decisions as follows:

“When a Competent Authority makes a positive reasonable grounds decision, at the end of the recovery and reflection period they then have to conclusively decide whether the individual is a victim of human trafficking (Scotland and Northern Ireland) or modern slavery (England and Wales).

The Competent Authority is responsible for making a conclusive decision on whether, ‘on the balance of probabilities’ there are sufficient grounds to decide that the individual being considered is a victim of human trafficking or modern slavery. We refer to this as the Conclusive Grounds decision.”

20. The timescale for Conclusive Grounds decisions is described as follows:

“The expectation is that a conclusive grounds decision will be made as soon as possible following day 45 of the recovery and reflection period. There is no target to make a conclusive grounds decision within 45 days. The timescale for making a conclusive grounds decision will be based on all the circumstances of the case” (emphasis added).

21. The guidance addresses the need for evidence gathering:

“Competent Authority staff may need to gather more information to make a conclusive grounds decision.

The Competent Authority must make every effort to secure all available information that could prove useful in establishing if there are conclusive grounds.

If they cannot make a conclusive grounds decision based on the evidence available, they must gather evidence or make further enquiries during the 45 day recovery and reflection period.”

22. Page 80 deals with monitoring case progress during the 45 day recovery and reflection period. It provides:

“To make sure the potential victim has sufficient time for recovery and reflection and that a conclusive grounds decision can be made as near as possible to day 45 (although that may not be possible in every case), you must set a review date for day 30 to:

- Monitor progress on the case
- Check it is on target for a conclusive decision...

A potential victim's specific circumstances could mean they need more than 45 days to recover and reflect. If representations are made for more time, you must consider whether an extension is appropriate..."

23. Although not directly relevant to the present case, it is also to be noted that the Modern Slavery Act became law from 26 March 2015 and the majority of provisions in that Act have now been brought into force.

### The Claimants' History

#### *Ms O*

24. Ms O who was born in February 1983, arrived in the UK on 3 April 2010 with a Mr O, a man who Ms O's parents were pressurising her to marry in exchange for financial support for their family. Ms O says she was abandoned by Mr O on arrival. She was approached by a woman calling herself Mrs Lawrence who offered accommodation and help, but instead forced her to carry out domestic work for the Lawrence family without pay. She alleges she was beaten, threatened, locked in the house, had her passport withheld and was subject the sexual advances by Mr Lawrence.
25. Later in 2010, she says she escaped the Lawrence family and slept rough for a period during which she was raped and made the victim of theft. She then met a Mr A who offered to help. He brought her to Bristol and in August 2012 they married. In June 2013, Ms O gave birth to a son.
26. In January 2014, Mr A claimed asylum. He was detained for 10 months during which period Ms O and her son were supported by social services. In August 2014, Ms O claimed asylum. That was refused in September 2014 and her claim was certified as clearly unfounded. In March 2015, the Home Office provided asylum support for the family.
27. An NRM referral was made to the Home Office by the Salvation Army. In July 2015, Ms O started receiving support from an anti-trafficking charity known as "Unseen" who had been contacted through the Salvation Army to provide support. On 4 April 2015, Ms O received a positive Reasonable Grounds decision from the NRM.
28. In August 2015, Ms O gave birth to a son. Thereafter, a number of representations were made by a number of different organisations, including Unseen, and an organisation called Migrant Legal Project (MLP), on Ms O's behalf to the Competent Authority. On 10 November 2015, an interview was conducted for the purposes of a trafficking identification process. Further clarification and representations were provided by MLP to the Competent Authority and the First Claimant underwent counselling both with an organisation called "Womankind" and an organisation called "Kinergy". Further representations were made on Ms O's behalf during 2016.
29. In August 2016, Ms O was diagnosed by her GP with anxiety and depression. Subsequently she was assessed by her GP. She was also referred to Somerset and Avon Rape and Sexual Abuse Support. Her GP reported that she had been referred for psychological treatment and for counselling and cognitive behavioural therapy. Further

representations were made by MLP to the Competent Authority on the First Claimant's behalf during 2017.

30. In September 2017, Ms O gave birth to a daughter. In October 2017, she was seen by perinatal health services in respect of various mental health difficulties. In November 2017 her GP reported on her continuing mental health condition. Yet further representations were made to the Competent Authority by MLP and Unseen. At the end of 2017, the Competent Authority acknowledged MLP's representations and requested a passport photograph of Ms O and her children. That was provided some two months later.
31. On 9 March 2018, a letter before claim was served on the NRM. Correspondence between the parties followed. On 6 June 2018, the NRM issued the negative Conclusive Grounds decision and on 8 June 2018 the claim was issued.

### Ms H

32. Ms H first came to the UK on 28 April 2016, then aged 15. She reported she had been beaten and disowned by her family after they discovered that she had lost her virginity. She explains she had been forced to work as a prostitute prior to obtaining a visa for the UK.
33. She was referred to the NRM some six months after arriving in the UK and an initial contact interview shortly thereafter. One week later, Ms H received a positive Reasonable Grounds decision. Later that month her initial health assessment was conducted which identified a wide range of physical and mental problems. On 9 November 2016, a substantive trafficking and asylum interview was conducted. A request of support for Ms H was refused. On 24 November 2016, Ms H attempted suicide by taking an overdose of medication. She was taken to A&E and subsequently a report on her condition was prepared by the Cardiff Health Practice. A wide range of symptoms relating to her physical, mental and emotional health were reported.
34. On 14 December 2016, the substantive trafficking and asylum interview was conducted. Two days later, Home Office case records note that a "level 3 safeguarding flag" was registered on the Claimant's papers.
35. In June 2016, the charity Barnardo's began work with Ms H. In August 2017, Gloucester City Health Centre provided details of the Second Claimant's condition. On 29 September 2017, Ms H gave birth to a child. In December 2017, the case record sheets note concern about proposals to relocate Ms H. Also in December 2017, there was a letter from an organisation called Let's Talk", indicating the second Claimant suffered moderately severe symptoms of depression and severe symptoms of anxiety.
36. In January 2018, Barnardo's wrote to the Defendant indicating concern that Ms H's housing situation was having a detrimental impact on her and she would need cognitive behaviour therapy. A request was made for relocation to more suitable accommodation. Also, that month, there are records of email correspondence raising concerns, again, about Ms H's proposed relocation, a step that took place on 22 January 2018 when Ms H was moved to Bristol.

37. That same month, Unseen began supporting Ms H and in February 2018 Ms H instructed solicitors. There were further representations by Unseen in March 2018 and later that month a letter before claim was issued by the Claimant's then solicitor. Correspondence then followed with continued representations being made on Ms H's behalf. On 8 June 2018, this claim was issued. On 28 June, the Acknowledgment of Service and Summary Grounds of Defence was filed. The negative Conclusive Grounds decision followed on 2 July 2018.

### The Evidence as to the Operation of the NRM

#### *The evidence of delay*

38. It is common ground that there have been significant delays in recent years in the processing of cases through the NRM. In her witness statement, Ms Rachel Devlin, the leading policy officer in the Home Office unit responsible for the NRM said this:

“The Home Office accepts that exponential increases in the number of referrals to the NRM in recent years have led to the regrettable delays in some cases.”

39. In a submission to the Secretary of State from the Modern Slavery Unit at the Home Office dated 8 September 2017, it is said that the “NRM is intended to be a dynamic process, providing a bridge to support to enable people to recover the exploitation they have suffered, begin to move forward and to be robust enough to avoid future exploitation...” One of the key factors that frustrates in practice is the “substantial delays in decisions, in particular for non-EEA nationals” which mean they spend “extended periods of time in limbo” in NRM support “with no indication of when a decision will be received...”
40. In the hearing before me, there was some debate about the relevant statistics as to that delay. On the second day of the hearing, at my suggestion, an agreed note summarising the effect of the statistical material available was produced. Of particular interest for present purposes are the following five points:
41. First, it is plain that the total number of referrals has risen every year from 2013 to 2017. In 2013, the total number of referrals was 1745, in 2015, 3266 and in 2017, 5145. It appears that the number of referrals has dropped in 2018; by 1 November the referrals totalled 3539 and the pro-rata projection for the end of the year is 4245.
42. Second, the number of pending decisions has increased steadily. At the end of 2015, the total number pending was 2151, made up of 19 cases from 2013, 470 from 2014 and 1662 from 2015. At the end of 2017, there were a total of 5091 cases pending, made up of 11 from 2013, 124 from 2014, 515 from 2015, 1168 from 2016 and 3273 from 2017. As at 1 November 2018, there were 5315 cases pending of which 109 were from 2015, 581 from 2016, 1882 from 2017 and 2743 from 2018.
43. Third, the average time for making a Conclusive Grounds decision has fallen somewhat. In 2015, UK Visas and Immigration took an average of 378 days from the positive Reasonable Grounds decision to make a Conclusive Grounds decision. In

2016, the figure was 370 days and in 2017 it was 327 days; (it is to be noted that the averages do not include cases from previous years).

44. Fourth, those averages need to be examined in a little more depth to identify the length of time individuals were waiting for a Conclusive Grounds decision. As at 1 November 2018, 1009 individuals had been waiting more than 18 months, 1218 had been waiting 12-18 months, 550 between 9 and 12, 692 from 6-9 months, 93 from 3-6 months and also 93 for less than 3 months.
45. Finally, the available figures for 2018 show a steady rise in number of Conclusive Grounds decisions made; 78 in January, 100 in March, 126 in May, 108 in July, 329 in September, 421 in November.

#### *Concern about delay*

46. Concern about the performance of the NRM has been expressed for some years. In November 2014, Jeremy Oppenheim, a senior civil servant in the Home Office, conducted a detailed review of the operation of the NRM. His conclusions included the following;

“7.2.1 Stakeholders agree current timescales for the conclusive grounds decisions are a problem.

7.2.2 UK Visas and Immigration is working to bring conclusive grounds decisions within a service standard of 98% and straight forward decisions within 6 months. In 2013, the UK Human Trafficking Centre...made a conclusive grounds decision in an average of 56 days....

8.2.1 The governance of the current system is fragmented and lacking in overall performance framework. It has evolved in to the system of implementation of 2009 and, whilst improved, cannot be described as efficient or effective.

8.2.2. There is insufficient accountability for the outcomes of the process or the appropriate management for the process itself...

8.2.9 It is vital that any system is properly managed so that cases are not delayed unduly. The timeliness of decision making has been discussed at 7.2.2. Clearly any effective process needs tight performance management with agreed outcomes. We believe that the management of the National Referral Mechanism should include an escalation process which sees all cases being referred at agreed decision points if the case has not reached the expected stage.”

47. In December 2017, the National Audit Office published a report on the NRM. That report includes the following:

“2.12 Very few cases reach a conclusive grounds decision within 45 days. Of those referred in 2016-17, the Government provided a conclusive grounds decision within 45 days to only 6% of the victims who received a decision. This rises to 33% for a decision within 90 days. Of potential victims referred to the NRM in 2016, 46% did not receive a conclusive grounds decision by March 2017...

2.13 The NRM process is inefficient and potential victims are caught up in the system waiting for a decision for a long time. For two thirds of those referred in 2016-17, the Government took longer than 90 days to make a conclusive grounds decision..”

48. The Claimants adduced witness statements from a number of solicitors experienced in handling victim of trafficking cases. Their own solicitor, Ugo Hayter of Deighton Pierce Glynn Solicitors produced a table showing the time taken from the expiry of the 45 day recovery and reflection period to the receipt of the Conclusive Grounds decision. The figures ranged from two days to 33 months. Evidence from Kirsten Powrie, of Wilson Solicitors LLP, demonstrated delays of up to 40 months and showed that of the 43 cases she dealt with that had been referred, 28 individuals experienced delays of 12 months or more and 11 experienced delays in excess of 24 months.
49. I was also taken to evidence from Alice de Looy-Hyde of the Migrant Legal Project to similar effect. She also speaks of her clients receiving no information from the NRM about the progress of their claims and of her attempts to provide evidence of the sort she says the Home Office ought to be collecting herself. Ms Powrie of Wilson Solicitors LLP describes similar experiences.
50. The solicitors to whom I have referred also speak of the effect of these delays on their clients. Ms Hayter, for example, says:

“One of the most significant and detrimental effects of substantial delays experienced by individuals awaiting conclusive grounds decisions is on victims ability to recover and ”move on” from their experience of exploitation...as well as impairing recovery, the delay in the decision making process can also exacerbate clients’ mental health conditions. This is the case particularly for individuals suffering from anxiety disorders and depression. The continual uncertainty about their future can in itself become debilitating. For asylum claimants, the Defendant’s policy of staying negative asylum claims behind CG decisions means, in practice, that all asylum decision making is deferred pending the CG decision resulting in extreme delays to the outcome of the individual’s asylum claim as well as to the determination of their trafficking victim status.”
51. The Claimants also rely on expert evidence from Professor Cornelius Katona, the medical director of the Helen Bamber Foundation, a highly experienced psychiatrist. He says:

“18. Victims of trafficking, like others who have experienced abuse and trauma, experience a profound loss of their sense of safety and security. People who do not feel safe and secure are often unable to undertake trauma-focussed work until they reach a degree of symptomatic and situational stabilisation that enables them to regain that sense of safety and security. Such stabilisation is determined by external factors; for example being away from a combat situation, having a long-term roof over one’s head, having enough money to meet essential living needs, having a support network to rely on, and (in the immigration context) recognition as a victim of trafficking and consequent grant of leave to remain.

19. Without that stability it is much more difficult for patients to engage fully in and thereby benefit from trauma-focussed work. Continuing uncertainty regarding their NRM status impedes their sustained recovery. By this I mean that they may be able to achieve symptomatic improvement (i.e. the ability to function superficially on a day-to-day basis) but not sustained improvement in the form of the ability to cope with further setbacks without mental deterioration. If however they regain a sufficient sense of stability, safety and security to engage fully in trauma-focused therapy, such therapy can in turn enable to develop the ability to cope with future setbacks.”

52. He goes on:

“22. Thus the suggestion that as long as victims have access to support, they should be able to recover is an oversimplification of the complex therapeutic journey experienced by the clients with whom we work.

23. It is also significant that until people are granted leave to remain they often cannot work or resume study. It is important to see these activities not just as means to improving the survivor’s economic position but as important ways to help survivors of trauma to rebuild their self-worth and self-esteem, which are important for their ability to integrate properly into society.”

53. I also received evidence as to the effect of delays such as those described by the solicitors. Mirjam Thullesen is a registered psychotherapist specialising in the assessment and support of survivors of trauma, especially human trafficking. In her witness statement, she says:

“In my experience the impact on mental health is one of the most significant problems caused by delay in CG decision making. The simple reason for this is the state of uncertainty in which potential victims remain while waiting for an outcome from the NRM identification process. The CG decision, as the outcome of the NRM identification process is a critical juncture for

potential victims; it is life changing. A positive CG decision may entitle a person to a grant of leave to remain in the UK, for example when continued treatment for physical or mental health conditions require it or if they are assisting police with an investigation into their traffickers.”

*Response on the issue of delay*

54. Ms Devlin, the Home Office policy officer to whom I have referred, provides a detailed response to this claim in her witness statement. She explains that Article 10 of ECAT makes clear that the gateway to the provision of assistance and support for potential victims of trafficking is the Reasonable Grounds decision. She says that the NRM complies with the victim identification process required by Article 10 and that the expectation is that such a Reasonable Grounds decision would be taken within 5 working days of the referral to the NRM. She says that once a positive Reasonable Grounds decision has been made, the individual is entitled to assistance and support as required by Article 12 of ECAT.
55. That decision also triggers the requirement under Article 13 for a recovery and reflection period during which the UK is required to authorise the individual to stay in their territory. She says that the UK allows a longer recovery and reflection period than the minimum 30 days; the UK allows 45 days. She says that the assistance and the support provided to an individual does not come to an end on the 45<sup>th</sup> day if a Conclusive Grounds decision is still awaited. Instead, it will continue until that Conclusive Grounds decision is taken “irrespective of how long it takes”.
56. Ms Devlin points out that the ECAT does not prescribe a timescale for making the Conclusive Grounds decision. She acknowledges that the guidance refers to the expectation that a Conclusive Grounds decision will be made “as soon as possible” following Day 45 of the recovery and reflection period. But she says that:

“a positive reasonable grounds decision does not in itself give rise to any further legal right to remain in immigration terms, or to any further right to assistance and support...Even those who receive a conclusive grounds decision are required to leave any accommodation provided to them by the Salvation Army within two weeks of the decision...”
57. Ms Devlin notes that Article 14 of ECAT makes provision for a renewable residence permit where the Competent Authority considers it necessary owing to their personal situation or necessary for the purpose of co-operation with the Competent Authority’s investigation or criminal proceedings. But she observed that a positive Conclusive Grounds decision does not mean automatically that either of those conditions are met. The guidance explains that the subject of a Conclusive Grounds decision “may be eligible for a grant of discretionary leave outside of immigration rules”. A grant of discretionary leave gives individuals the right to work in the UK but discretionary leave is not required before potential victims of trafficking can access primary and secondary health care.
58. Ms Devlin also speaks of proposed changes to the NRM following a decision announced by Home Office ministers in 2017. She says that in December 2017 a new,

additional team of decision makers, recruited in the UKVI division of the Home Office, started work on reducing the number of outstanding Conclusive Grounds decisions. The aim was to reduce the “cohort of cases that had been outstanding since before April 2017 to as close as possible to zero by December 2018.” She describes other changes to the system including the commission of a new digital system to manage cases in the NRM.

### The Competing Arguments

59. The Claimants advanced six grounds of challenge in their Grounds, but those arguments were substantially refined and narrowed in Ms Lieven QC’s skeleton argument and oral submissions. As the case was advanced before me there were, in substance, three grounds:
60. First, Ms Lieven acknowledges that the European instruments to which I have referred do not mandate a specific time period within which the victim identification process must be completed. However, she says that those instruments cannot be construed as providing an open-ended discretion. Implicit in them is an obligation to complete the process “within a reasonable period of time”. There is, she says, a “restrained timescale” for the identification of victims of trafficking.
61. Second, she says that the delays in the NRM process are systemically unlawful. She argues that the “chronic delays in completing the process and making a conclusive grounds decision” amounts to “a frustration of the rights of potential victims of trafficking to obtain practical and effective protection”. She says that the delays in the NRM system breach the “base requirements set out in EU Directive, ECAT, Article 4 ECHR and Article 5 CFR for the early identification of victims”. She says the delays have a significant destabilising effect on the mental health and recovery process of potential victims of torture. She contended that the “systemic delays” in the operation of the NRM demonstrated both irrationality and systemic unfairness in the operation of the arrangements.
62. Third, Ms Lieven contends that there was “individual unlawfulness and unfairness” in the two Claimants’ case.
63. In response, Ms Giovannetti QC for the Secretary of State, says there was no duty to make a Conclusive Grounds decision within a particular time; that the evidence does not support the Claimants’ case that delays are systematically egregious; that any delays are the result of a substantial number of referrals, not because the Secretary of State is operating an irrational system; that how the Secretary of State manages his administrative resources is a matter for him and, ultimately, parliament, and not for the courts; that even where individuals have been waiting excessive periods they still receive assistance and support as potential victims of trafficking, and the Conclusive Grounds decision is not the “gateway” to support as a victim of trafficking; that whether, and if so how, the Secretary of State should prioritise certain cases over others is a policy judgement for him, subject to a rationality test, and there is nothing irrational about the Secretary of State’s approach.
64. I record here my gratitude for the clear and economically expressed submissions, both written and oral, by counsel for both parties

## **Discussion**

### Ground 1 - A restrained timescale?

65. As noted above, it is common ground that there is no express time limit for the making of a Conclusive Grounds decision in any of the European or domestic instruments to which I have referred. However, it is perfectly plain that there is no intention to give the relevant authorities unlimited time to make a final decision. Article 11(4) of the Directive requires the establishment of “mechanisms aimed at the early identification of... victims”. The UK’s domestic guidance refers to “an expectation” that a Conclusive Grounds decision will be made as soon as possible following day 45 of the recovery and reflection period, although it is said that there is no target to make a conclusive grounds decision within 45 days.
66. In my judgment it is impossible to argue that there was no constraint at all on the period of time the competent authority could spend deciding any individual case. Such a contention, if well-founded, would have the capacity to negate entirely the obligation assumed by the Secretary of State when adopting the guidance. It does not need reference to European instruments to make good that conclusion; the ancient writ of mandamus or its modern equivalent, a mandatory order, can be deployed to compel performance of such an obligation. Prolonged and inexcusable delay can justify the issue of a mandatory order requiring performance of a duty.
67. And it is equally straight-forward, in my view, to identify the appropriate descriptor for the time limit; decisions must be taken in a reasonable time. What is reasonable, however, will turn on the nature of the power being exercised, the effect of exercising, and failing to exercise, the power, and all the circumstances of the case. It was on the application of those considerations, both in individual cases and in the generality of cases handled by the competent authority, that the greater part of the argument in this case was focused.
68. In fact, I do not understand Ms Giovannetti to dissent from either of the propositions just set out. Certainly, in the not dissimilar circumstances of asylum applications, in *S v Home Secretary* [2007] EWCA Civ 546 at [51] Carnwath LJ (as he then was) said
- “The Act does not lay down specific time-limits for the handling of asylum applications. Delay may work in different ways for different groups: advantageous for some, disadvantageous for others. No doubt it is implicit in the statute that applications should be dealt with within “a reasonable time”.
69. Similarly, in *H v SSHD* [2007] EWHC, highly experienced counsel acting for the Secretary of State was content to concede that there was an implicit obligation on the defendant to decide applications for leave to remain in the UK within a reasonable time. In *R(MK) (Iran) v SSHD* [2010] EWCA Civ at [34] the Court of Appeal recorded that it was not in dispute that, at least under domestic law, the Secretary of State was under a public law duty to decide asylum applications within a reasonable time.
70. The position is similar under the law of the ECtHR and in EU law. In *Rantsev v Cyprus and Russia* (2010) EHRR 1, the ECtHR found that a “requirement of promptness and

reasonable expedition is implicit” in the obligation under art 4 ECHR to investigate situations of potential trafficking. In *Italy v the Commission* [Case 14/88] the CJEU held, in the very different circumstances of a claim for the payment of aid, that:

“16 ... although it is undeniable that Article 14(1) does not expressly stipulate any period for the payment of the aid in question and that the expression "... grant ... aid ..." is not unequivocal, it is clear from the very terms of that provision that the aid in question is intended to facilitate the commencement of operations of producers' organizations whose formation is encouraged by Regulation No 1035/72, as is stated in the 10th and 11th recitals in the preamble to the regulation, in order to facilitate the attainment of the objectives of the common organization of the market in fruit and vegetables . The provision in question refers in fact to aid which may be granted by Member States to producers' organizations during the three years following the date of their formation, in order to encourage their formation and to facilitate their operation, provided that the organizations furnish adequate guarantees as regards the duration and effectiveness of their activities.

17 That objective may, however, only be attained if the aid is not only granted within a brief period but is also paid swiftly to the organizations concerned in such a way that they may in fact avail themselves of it, thus increasing the likelihood of effective action on their part. The stipulation of a short period for payment of this aid thus appears to be necessary in order to achieve the aim assigned thereto by Regulation No 1035/72.”

71. In my judgment, none of this is remotely surprising or capable of serious dispute. It follows that I accept Ms Lieven’s first submission that there is a restrained timescale for victim identification under the NRM and that restraint is the obligation to determine cases in a reasonable period.

72. The difficulty lies in identifying how the requirement to take decisions within reasonable periods is to be applied to a challenge such as this one. As Carnwath LJ said in *S v SSHD* in the passage immediately following that cited at paragraph 68 above, an obligation to deal with an application in a reasonable time says little in itself. Such an obligation:

“...is a flexible concept, allowing scope for variation depending not only on the volume of applications and available resources to deal with them, but also on differences in the circumstances and needs of different groups of asylum seekers. But...in resolving such competing demands fairness and consistency are also vital considerations.”

73. Ms Lieven sought at one stage to argue that the delays in the case of the two individual Claimants and the general delay described elsewhere in the evidence was “self-evidently” such as would demonstrate unlawfulness, in that the Defendant had not acted “fairly and reasonably in the operation of the NRM decision-making process”. I do not

accept that there is anything self-evident about that issue. In my view, the answer to the question whether the Defendant's conduct has been unlawful turns on consideration of the next two grounds.

Ground 2 – Systemically unlawful delay and unfairness

74. Ms Lieven contends that the operation of the NRM is unlawful both because of the chronic, systemic delays to which she refers and because of what she describes as the “systemic unfairness” of the arrangement.
75. I was taken to a number of authorities which the parties argued demonstrated the correct approach to systemic delay as a ground of challenge.
76. In *R v SSHD ex parte Phansopkar [1976] QB 606*, the first claimant was from India and the second from Bangladesh. Both were resident in England, had been registered as United Kingdom citizens and thereby became patrials under the 1971 Act. Each had a wife in his country of origin and each wished his wife to join him in England. Under s2(2) Immigration Act 1971 wives of patrials had the right of abode in the United Kingdom, proof of such right being established by a certificate of patriality. As a rule of practice, the Home Office required that wives applied for and obtained such certificates in their countries of origin. Since a delay existed of some eighteen months in the determination of such applications in both India and Bangladesh, both husbands brought their wives to England without the requisite certificates, and the wives were both refused entry by immigration officers, such refusal being confirmed by the Secretary of State for the Home Department upon the grounds that it would be wrong to sanction “queue-jumping” and that the applications for certificates of patriality could most satisfactorily be dealt with in their countries of origin.
77. The Court of Appeal granted mandamus, holding that wives of patrials were entitled to enter the United Kingdom “without let or hindrance”; that good cause must be shown for delaying the exercise of that right; and that, in the circumstances of these cases, the Secretary of State for the Home Department should determine the applications.
78. At 626 B Lord Scarman said:

“However, when the claim (as in these two cases) is that the right arises from the status of wife to a man living in this country, the delay may impose great hardship and stress upon private and family life. Delay of this order appears to me to infringe at least two human rights recognised, and therefore protected, by English law. Justice delayed is justice denied: “We will not deny or defer to any man either justice or right”: Magna Carta, chapter 29. This hallowed principle of our law is now reinforced by the European Convention on Human Rights to which it is now the duty of our public authorities in administering the law, including the Immigration Act 1971, and of our courts in interpreting and applying the law, including the Act, to have regard: ...”
79. That, however, was a case of an established right. The Court was not considering, as is the position in the present case, whether the claimant could establish a right to a particular status or the defendant ought to grant the relevant status; all that was

outstanding was a formal recognition of a right arising as a matter of status. The Court intervened not because of an unconscionable delay in making a decision but because the government was failing to act on an established right.

80. That decision was relied upon by Elias J in a case upon which the claimants placed considerable reliance; *R v SSHD ex parte Mersin* [2000] INLR 511. There a Turkish national who had been successful in his appeal against the Secretary of State's refusal to grant him asylum, sought a declaration that the eight-month delay between the adjudicator's decision and the actual grant of leave to enter was unlawful, and an enforcement order to remedy the defects in the administrative process, requiring the Secretary of State to report to the court at regular intervals. The court held that there had been no deliberate delay on the part of the relevant authorities but that no procedures had been adopted which enabled priority to be given to asylum applicants who had made successful appeals. The special adjudicator's decision had given the claimant a right to refugee status which the Secretary of State had been under a duty to provide within a reasonable time and the failure to fulfil that duty had been unreasonable in the *Wednesbury* sense.

81. At page 519 Elias J held:

“In my opinion there is a clear duty on the Secretary of State to give effect to the Special Adjudicator's decision...

The crucial question, therefore, is whether the delays in this case constituted a breach of that duty. I accept Mr. Catchpole's submission that there is plainly no fixed period within which the Special Adjudicator's determination has to be implemented...

Mr. Drabble contends that it is nonetheless necessary for the Secretary of State to act within such period as is reasonable in all the circumstances, and that in any event the delays in this case- seven and a half months for what were in essence ministerial acts- were outside the bands of *Wednesbury* reasonableness.

In my opinion it is necessary to bear in mind three features of this case. First the Secretary of State has not deliberately delayed in granting refugee status, for example in order to conduct further inquiries or anything of that kind; he accepts that the delays are solely the result of the administrative procedures taking their course. Second, whilst no doubt shortage of staff has in part explained the delay, a very important reason for the delay was that no distinction was made at the relevant time between those who had successfully appealed an initial refusal and those - a very much larger number - whose applications for asylum were still being considered. That was, of course, because the respondent chose to organise matters in that way, operating through a multi-functional directorate which gave no priority to the position of those in the applicant's position. Third, the respondent has accepted that the delays in this case, and other similar cases, were unacceptable. His contention is that it was not unlawful.”

82. Having cited *Phansopkar*, he went on at p522:

“In my judgment if someone has established the right to some benefit of significance, as the right to refugee status and indefinite leave surely is, and all that is required is the formal grant of that benefit (in the absence at least of a change in circumstance since the right was acquired or other exceptional circumstance), then it is incumbent upon the authority concerned to confer the benefit without unreasonable delay. The resources available to the authority will be part of the circumstances which can be taken into account when determining whether the delay is reasonable or not. However, if the authority fails to have regard to the fact that a right is in issue, it will have failed to take into account a relevant factor and will be acting unlawfully. In this case the respondent ought to have treated the applicant and those in a similar position differently to other categories of cases. The failure to do that both rendered the decision unlawful in traditional *Wednesbury* terms and meant that the refugee status was not granted within a reasonable period. The resources available to the authority will be part of the circumstances which can be taken into account when determining whether the delay is reasonable or not. However, if the authority fails to have regard to the fact that a right is in issue, it will have failed to take into account a relevant factor and will be acting unlawfully. In this case the respondent ought to have treated the applicant and those in a similar position differently to other categories of cases. The failure to do that both rendered the decision unlawful in traditional *Wednesbury* terms and meant that the refugee status was not granted within a reasonable period.”

83. But that too was not this case. There is here no “established right to some benefit”.

84. Ms Lieven submits that that is a false dichotomy; that all that matters is that the Claimants have a right to a *decision*, whether or not their claim is ultimately established. I reject that submission. What is sought by the Claimants before me, and in the numerous other cases to which they refer, was more than the formal grant of a benefit already established in principle. It was the recognition of a status as established victims of trafficking, as to which hitherto there had been only reasonable grounds for belief. In failing to make a decision on conclusive grounds the NRM was not failing to have regard to the fact that an established right was in issue.

85. The case of *R (FH) v SSHD* [2007] EWHC 1571 (Admin) bears closer comparison with the present case. There a number of applicants applied for an order that their applications to be allowed to remain in the United Kingdom should be considered forthwith by the respondent Secretary of State. They also sought a declaration that the delay in determining their applications was unlawful. Theirs were all "incomplete asylum cases", in that their initial applications for asylum had been rejected, and their appeals against those decisions did not succeed, but they had not been removed from the UK. Some years previously they had submitted fresh claims based on further evidence, or new circumstances, which were said to justify fresh consideration. The claims had not been considered by the Secretary of State. They submitted that the

Secretary of State had failed in his duty to decide the applications within a reasonable time and operated a system to deal with the backlog of applications which was unfair and unlawful.

86. Thus, *FH* was not a case of an established right. At paragraph 11 Collins J held:

“Here the question is whether the delay was unlawful. It can only be regarded as unlawful if it fails the *Wednesbury* test and is shown to result from actions or inactions which can be regarded as irrational ... What may be regarded as undesirable or a failure to reach the best standards is not unlawful. Resources can be taken into account in considering whether a decision has been made within a reasonable time, but (assuming the threshold has been crossed) the defendant must produce some material to show that the manner in which he has decided to deal with the relevant claims and the resources put into the exercise are reasonable. That does not mean that the court should determine for itself whether a different and perhaps better approach might have existed. That is not the court's function. But the court can and must consider whether what has produced the delay has resulted from a rational system. If unacceptable delays have resulted, they cannot be excused by a claim that sufficient resources were not available. But in deciding whether the delays are unacceptable, the court must recognise that resources are not infinite and that it is for the defendant and not for the court to determine how those resources should be applied to fund the various matters for which he is responsible.”

87. In *R (Arbab) v SSHD* [2002] EWHC 1249 (Admin) the applicant was a Sudanese citizen whose appeal against a refusal of asylum had been successful. His entitlement to assistance from the National Asylum Support Service ended but he was not entitled to claim welfare benefits from the Benefits Agency because he had not yet received a status letter from the Secretary of State confirming that he had refugee status. He applied for judicial review of the Secretary of State's failure to issue him with the "status letter". He sought declarations that the Secretary of State's conduct was unlawful and requiring the Secretary of State to administer the process of issuing status letters more efficiently.

88. At [45] Jackson J said:

“One aspect of the separation of powers is that the court will not generally involve itself in questions concerning the management of a government department or similar body: see *Inland Revenue Commissioners v National Federation of Self-Employed and Small Businesses Ltd* [1982] AC 617, at 635 (per Lord Wilberforce), and at 636 and 644 (per Lord Diplock). There are at least three good reasons for this abstinence on the part of the courts:

(1) How resources should be allocated between competing priorities and how government ministers should organise their

administrative systems are political questions. Judges are not elected and it is not their function to decide such questions.

(2) The courts do not have the expertise to review the performance of government departments at this level of generality.

(3) Under our constitutional arrangements there are other more effective mechanisms for calling to account ministers and senior civil servants who mismanage their departments or mis-allocate resources. These mechanisms include Parliamentary questions and, more importantly, the scrutiny of select committees: see de Smith, Woolf & Jowell “Judicial Review of Administrative Action” (Fifth Edition) 1995 at pages 37–40.”

89. From those cases I draw the following principles which seem to me relevant to the present case:
- i) Delay may be unlawful when the right in question arises as a matter of established status and the delay causes hardship (*Phansopkar*).
  - ii) An authority acts unlawfully if it fails to have regard to the fact that what is in issue is an established right rather than the claim to a right (*Mersin*).
  - iii) Delay is also unlawful if it is shown to result from actions or inactions which can be regarded as irrational. However, a failure merely to reach the best standards is not unlawful (*FH*).
  - iv) The court will not generally involve itself in questions concerning the internal management of a government department (*Inland Revenue Commissioners v National Federation of Self-Employed and Small Businesses Ltd* and *Arbab*).
  - v) The provision of inadequate resources by Government may be relevant to a charge of systematically unlawful delay, but the Courts will be wary of deciding questions that turn on the allocation of scarce resources (*Arbab*).
90. Here, there is no established status or established right in issue. The question then is whether, giving such weight as is appropriate to the question of resources, can the delays that have undoubtedly occurred, properly be described as the result of an irrational system.
91. Ms Lieven also argues that the management of NRM led to “systemic unfairness”. She refers me to the decision in *R (Q) v SSHD* [2003] EWCA Civ 364, where the Court of Appeal had to consider whether the Secretary of State had established and operated a fair system for determining whether an asylum seeker had satisfied him that he had claimed asylum as soon as reasonably practicable after his arrival. The Court held that the decision-making process was unfair, but the reasons for that conclusion related primarily to the interview process rather than the time taken to reach decisions. For example, the court pointed to the fact that the information given to the claimants before

interview was inadequate; caseworkers were not properly directed as to how human rights issues were to be addressed, caseworkers were not instructed to consider, and the Secretary of State failed to have regard to, the claimants' states of mind on arrival, and a more flexible approach to interviewing was required (see [69], [81-102], [116], [119]).

92. She also referred to the decision of the Court of Appeal in *Lord Chancellor v Detention Action* [2015] 1 WLR 5431. In that case the court dismissed an appeal against a finding that fast track rules governing asylum appeals were ultra vires. At [27] Lord Dyson accepted the formulation by counsel for the Secretary of State of the general principles that can be derived from the authorities as to determining the fairness of a system for considering appeals:

“(i) in considering whether a system is fair, one must look at the full run of cases that go through the system; (ii) a successful challenge to a system on grounds of unfairness must show more than the possibility of aberrant decisions and unfairness in individual cases; (iii) a system will only be unlawful on grounds of unfairness if the unfairness is inherent in the system itself; (iv) the threshold of showing unfairness is a high one; (v) the core question is whether the system has the capacity to react appropriately to ensure fairness (in particular where the challenge is directed to the tightness of time limits, whether there is sufficient flexibility in the system to avoid unfairness); and (vi) whether the irreducible minimum of fairness is respected by the system and therefore lawful is ultimately a matter for the courts. ”

93. The present case does not involve a judicial system for determining appeals as did *Detention Action*; the NRM is an administrative arrangement for determining a status. The *Detention Action* principles inform, but cannot entirely determine, the fairness of a system such as the NRM. Point (v), in particular, is more obviously relevant to a judicial process. In my judgment, however, points (i) to (iv) are relevant in circumstances such as the present. Accordingly, it needs to be acknowledged that the threshold of showing unfairness is a high one and that it is necessary to consider the full range of cases being determined before reaching a judgment on the system. The acid test is whether there is unfairness *inherent* in the arrangements; aberrant decisions or unfairness in individual cases will not suffice. Point (vi) serves to underline the fact that a challenge such as this is justiciable in the courts.

94. Five particular criticisms are advanced by Ms Lieven, of the NRM system:

- i) As a matter of fact, there are chronic delays;
- ii) The Defendant routinely takes no, or little action to progress the decision making;
- iii) The Defendant has no regard to the impact of delay and has no system for prioritisation of especially deserving cases;
- iv) The lack of a needs-based mechanism for expedition is discriminatory; and

- v) Delays in progressing Conclusive Grounds decisions delays the examination of asylum claims.

95. I deal with each point in turn.

*Chronic Delays*

96. It is apparent from the evidence of Ms Devlin and the agreed statistics that there has been a very significant growth in the number of persons being referred to the NRM. It is apparent from all I have heard that the NRM has struggled to cope. The Home Office can, in my view, fairly be criticised for being slow to respond to the growing number of referrals and the consequent delays in reaching Conclusive Grounds decisions. Appreciating the extent and persistence of the growth in referrals is, of course, hugely easier in retrospect than when the problem is emerging. Nonetheless the direction of travel in numbers must have been pretty obvious from early on. If there was any doubt about that, that doubt is, in my view, entirely resolved by the Oppenheim report which made the position, and the problem, very clear.
97. In my view, there was delay in taking steps necessary to address the problem. Sensible steps are currently being taken as described by Ms Devlin, but there is no obvious reason why those changes could not have been taken earlier. Resources have now been found; I have no evidence as to why they could not have been found in earlier years if the political will was there. However, there is nothing to suggest there was either any deliberate decision to delay the decision-making process or any cynical attempts to avoid the costs associated with it. In fact, delay only added to the expense the Home Office had to bear; the facilities required for persons in respect of whom there are reasonable grounds to believe they are victims of trafficking is significantly reduced after a decision is made, whichever way that decision goes.
98. There is, however, nothing to suggest that the delay in reacting to the long-emerging problem or the delay in applying appropriate resources to the problem is the result of some irrational decision or some irrational failure to act. Delays are a function of the very substantial growth in the NRM's caseload and the Home Office's tardiness in responding. But in my judgment, it cannot be said that substantial delay is *inherent* in the arrangements. There is nothing to which my attention has been drawn, for example, which suggests there is some design fault in the system or some flaw in the arrangements which make delay inevitable. Certainly, I do not have the materials on which I can draw safe conclusions about the internal management of the relevant departments of the Home Office. It may well be that the Home Office failed in its management of the NRM to reach the highest standards of administration; it may well be that it would now be possible to devise a better system but neither of those facts means their conduct of the NRM to date has been unlawful.
99. Furthermore, it appears from the evidence and the agreed statistics that the position is now improving. The problems appear to have been identified and resources are being devoted to improving the speed at which cases are determined.
100. In my judgment the simple fact of significant delays in the processing of Conclusive Grounds decisions does not, on these facts, establish unlawfulness.

*Progressing decision making*

101. There is evidence in the statements from solicitors relied on by the claimants of delay and inefficiency in progressing cases through the conclusive grounds process. But there is no evidence, statistical or from witness, to substantiate the assertion that the NRM “routinely takes no action” to progress decision-making. In fact, the statistics of improving rates of decision-making points firmly towards the contrary conclusion. I accept the submissions on behalf of the Secretary of State that determining Conclusive Grounds decisions is not straightforward; the evidence has to be gathered, analysed and tested. As the Oppenheim report explains, many persons and agencies are consulted as part of a process which is evaluative rather than simply administrative. Furthermore, what matters is not just the speed but also the quality of the decision-making.
102. The Guidance advises that cases are reviewed at the 30<sup>th</sup> day of the recovery and reflection period to “monitor progress of the case” and “check it is on target for a conclusive decision”, but it expressly recognises that “it may not be possible in every case” to make a decision “as near as possible to day 45”.
103. The willingness to recognise, investigate and respond to the cause and effect of delays is demonstrated first by the commissioning of the Oppenheim report, second by the internal submission to the Secretary of State from the Modern Slavery Unit dated 8 September 2017, and third, the steps taken in consequence. It is apparent that these concerns have been taken into account in the management process of the NRM. The NRM cannot fairly be described as an agency (or a process) that refused to address its own deficiencies. Those responsible for it have, in recent months, devoted real effort and monies to addressing the problem of delays in making Conclusive Grounds decisions
104. I am not in a position to conduct an audit on the hundreds or thousands of cases that have passed through the NRM’s hands to determine the level of competence displayed by their staff. But I cannot conclude, on the material put before me, that the criticism that the Defendant routinely takes no, or little, action to progress the decision making is made out.

*Impact of delays/Prioritisation/Lack of needs-based mechanism for expedition*

105. These complaints can be taken together.
106. It is clear that the delays about which I have heard have the potential to cause significant distress to those affected. It is not difficult to imagine the upset caused by waiting months, or even years, to discover whether or not it has been accepted in the NRM that the reasonable grounds for believing a person is a victim of trafficking have matured into conclusive grounds for accepting the same. And I accept the evidence of Professor Katona as to the potential consequences for the psychiatric recovery of victims of trafficking of significant delays in the process. Furthermore, Ms Lieven is right to observe that a positive Conclusive Grounds decision is a gateway for other benefits. In particular, it is a pre-requisite for the grant of discretionary leave to remain, a time-limited grant of permission to remain in the UK.

107. The Home Office does not dispute the potential effects of delay. It accepts that the delays are regrettable, and that stability is important for victims of trafficking. It has to be observed, however, that all those affected by these delays have been accepted as potential victims of trafficking and that that decision is the trigger, under the guidance and the Directive, for protection, support and accommodation. There is no criticism in these proceedings of either the process for, or timing of, the making of those decisions. The 45-day period for which the guidance provides is a minimum period for recovery and reflection, after which a Conclusive Grounds decision can be made; it is not the maximum period within which a decision must be made. Whilst I accept Ms Lieven's submissions that the process envisaged by the Directive for the recognition of victims of trafficking encompasses both the Reasonable Grounds and Conclusive Grounds stages, the former is undeniably the more important in ensuring the safety and welfare of the victim.
108. In my judgment the fact that there are some additional advantages that may flow from a positive Conclusive Grounds decision does not make the delay in the system unlawful. There is no evidence that potential victims of trafficking are, in fact, liable to prosecution after the grant of a Reasonable Grounds decision. There are advantages in the grant of discretionary leave to remain, but those advantages are less obvious when the comparator status is being a person in respect of whom a Reasonable Grounds decision has been made.
109. As to prioritisation, the Secretary of State's Safeguarding Guidance indicates that his policy is to prioritise attention and support to individuals within the NRM according to their vulnerability, rather than a policy that expedites a Conclusive Grounds decision on that basis. It is impossible to see that as irrational or demonstrably unfair.

*Consequential delay to asylum process*

110. The Secretary of State is right to observe in his skeleton argument that the time taken to make asylum decisions is not the subject matter of this claim. There is little evidence in support of the contention that delays in reaching a conclusive grounds decision has a consequential effect on the time taken to make an asylum decision, or on the lawfulness or unfairness of that consequence. If this was to be an issue of real substance, it would need to be addressed in detail by the parties and it has not been.
111. The same point made above about discretionary leave to remain would need to be addressed. The comparator status for determining the nature and extent of any unfairness would not be an asylum seeker *simpliciter* but an asylum seeker who had the benefit of being the subject of a Reasonable Grounds decision. That exercise was not carried out before me.

*Conclusions on systemic unfairness and unlawful systemic delay*

112. In those circumstances, whilst there may be significant grounds for criticising the operation of the NRM, they are not criticisms that can ground a successful judicial review. There is no unfairness *inherent* in the arrangements and there is nothing inherently irrational in the system being operated.

Ground 3 – The two claimants’ individual claims

113. Ms Lieven argues that each of the criticisms made of the NRM process applies to the Claimants individually. She says that each Claimant waited an excessive period for her Conclusive Grounds decision. No good reason has been provided for the delay. No “Day 30” review or any other review appears to have been carried out in their cases. Neither of their cases was prioritised despite the mental frailty of both women. The delay has caused consequential delay in resolving their asylum claims.
114. I have rejected each of the grounds advanced in support of the general complaints about the system; they can fare no better in respect of the two individuals.
115. As Ms Giovannetti submits there is no legal time limit for resolving the Claimants’ cases and the delay has not been so egregious as to be unlawful when looked at in isolation. The explanation for the delays in these two cases is the same as applies more generally; there has been a rapid increase in the NRM’s caseload and the Secretary of State has been somewhat slow to address the resulting problem. But his response has not been irrational, and the problem has now been, or is being, addressed. The Secretary of State does not operate a policy of expediting Conclusive Grounds decisions but has a policy instead to prioritise attention and support to individuals according to their vulnerability. That is not irrational. The observations above about the impact on asylum claims applies equally to the Claimants’ individual cases.

Conclusion

116. In those circumstances, this claim must fail.

**OPINIONS**  
**OF THE LORDS OF APPEAL**  
**FOR JUDGMENT IN THE CAUSE**

**In re B (Children) (FC)**

**Appellate Committee**

**Lord Hoffmann**  
**Lord Scott of Foscote**  
**Lord Rodger of Earlsferry**  
**Lord Walker of Gestingthorpe**  
**Baroness Hale of Richmond**

**Counsel**

*Appellants:*  
Stephen Cobb QC  
Stuart Fuller  
(Instructed by Stantons)

*Respondents:*  
Marianna Hildyard QC  
Helen Mountfield  
Isabelle Watson  
(Instructed by Church Bruce)

*Interveners*  
Jo Delahunty QC  
Alison Grief  
(Instructed by CAFCASS)

*Hearing date:*  
19 AND 20 MAY 2008

ON  
WEDNESDAY 11 JUNE 2008



**HOUSE OF LORDS**

**OPINIONS OF THE LORDS OF APPEAL FOR JUDGMENT  
IN THE CAUSE**

**In re B (Children) (FC)**

**[2008] UKHL 35**

**LORD HOFFMANN**

My Lords,

1. I have had the advantage of reading in draft the speech to be delivered by my noble and learned friend Baroness Hale of Richmond and I am in complete agreement with her reasoning, analysis of the authorities and conclusions. I add some observations on the standard of proof only to underline, without in any way qualifying, what she has said.

2. If a legal rule requires a fact to be proved (a “fact in issue”), a judge or jury must decide whether or not it happened. There is no room for a finding that it might have happened. The law operates a binary system in which the only values are 0 and 1. The fact either happened or it did not. If the tribunal is left in doubt, the doubt is resolved by a rule that one party or the other carries the burden of proof. If the party who bears the burden of proof fails to discharge it, a value of 0 is returned and the fact is treated as not having happened. If he does discharge it, a value of 1 is returned and the fact is treated as having happened.

3. The effect of the decision of the House in *Re H (Minors)(Sexual Abuse: Standard of Proof)* [1996] AC 563 is that section 31(2)(a) of the Children Act 1989 requires any facts used as the basis of a prediction that a child is “likely to suffer significant harm” to be proved to have happened. Every such fact is to be treated as a fact in issue. The majority of the House rejected the analogy with facts which merely form part of the material from which a fact in issue may be inferred, which need not each be proved to have happened. There is of course no conceptual

reason for rejecting this analogy, which in the context of some predictions (such as Lord Browne-Wilkinson's example of air raid warnings) might be prudent and appropriate. But the House decided that it was inappropriate for the purposes of section 31(2)(a). It is this rule which the House reaffirms today.

4. The question which appears to have given rise to some practical difficulty is the standard of proof in such cases, that is to say, the degree of persuasion which the tribunal must feel before it decides that the fact in issue did happen. *Re H (minors)* makes it clear that it must apply the ordinary civil standard of proof. It must be satisfied that the occurrence of the fact in question was more likely than not.

5. Some confusion has however been caused by dicta which suggest that the standard of proof may vary with the gravity of the misconduct alleged or even the seriousness of the consequences for the person concerned. The cases in which such statements have been made fall into three categories. First, there are cases in which the court has for one purpose classified the proceedings as civil (for example, for the purposes of article 6 of the European Convention) but nevertheless thought that, because of the serious consequences of the proceedings, the criminal standard of proof or something like it should be applied. Secondly, there are cases in which it has been observed that when some event is inherently improbable, strong evidence may be needed to persuade a tribunal that it more probably happened than not. Thirdly, there are cases in which judges are simply confused about whether they are talking about the standard of proof or about the role of inherent probabilities in deciding whether the burden of proving a fact to a given standard has been discharged.

6. A case in the first category was *R v Secretary of State for the Home Department, Ex p Khawaja* [1984] AC 74 which concerned the summary removal of an immigrant on the ground that he had obtained leave to enter by fraud or deception. These were civil proceedings and Lord Scarman, who dealt with this point most fully, was reluctant to say that the criminal standard of proof should apply: see p. 112. Instead, he said:

“I have come to the conclusion that the choice between the two standards is not one of any great moment. It is largely a matter of words. There is no need to import into this branch of the civil law the formula used for the guidance

of juries in criminal cases. The civil standard as interpreted and applied by the civil courts will meet the ends of justice.”

7. He then cited *Bater v Bater* [1951] P 35, in which the Court of Appeal managed to rule that although it was a misdirection for a judge in matrimonial proceedings to say that the criminal standard of proof applied to allegations of cruelty (*Davis v Davis* [1950] P 125) it was correct to say that they had to be proved beyond reasonable doubt. Lord Scarman then referred to *Hornal v Neuberger Products Ltd* [1957] 1 QB 247, which was a case in the second category, and went on at p113:

“My Lords, I would adopt as appropriate to cases of restraint put by the executive upon the liberty of the individual the civil standard flexibly applied in the way set forth in the cases cited... It is not necessary to import into the civil proceedings of judicial review the formula devised by judges for the guidance of juries in criminal cases. Liberty is at stake: that is, as the court recognised in *Bater v. Bater* [1951] P. 35 and in *Hornal v. Neuberger Products Ltd.* [1957] 1 Q.B. 247, a grave matter. The reviewing court will therefore require to be satisfied that the facts which are required for the justification of the restraint put upon liberty do exist. The flexibility of the civil standard of proof suffices to ensure that the court will require the high degree of probability which is appropriate to what is at stake.”

8. Another case in the first category is *B v Chief Constable of Avon and Somerset Constabulary* [2001] 1 WLR 340, which concerned a “sex offender order” under section 2 of the Crime and Disorder Act 1998. Magistrates may make such an order if it is proved that a person is a sex offender and has acted in such a way as to give reasonable cause to believe that an order is necessary to protect the public from serious harm. The order may impose restrictions upon the person’s freedom of movement and activity. Lord Bingham CJ said (at pp. 353-354) that the proceedings were civil in domestic law and for the purposes of the Convention but —

“...the civil standard of proof does not invariably mean a bare balance of probability, and does not mean so in the

present case. The civil standard is a flexible standard to be applied with greater or lesser strictness according to the seriousness of what has to be proved and the implications of proving those matters: *Bater v Bater* [1951] P 35, *Hornal v Neuberger Products Ltd* [1957] 1 QB 247 and *R v Secretary of State for the Home Department, ex parte Khawaja* [1984] AC 74....In a serious case such as the present, the difference between the two standards is, in truth, largely illusory. I have no doubt that, in deciding whether the condition in section 2(1)(a) is fulfilled, a magistrates' court should apply a civil standard of proof which will for all practical purposes be indistinguishable from the criminal standard.”

9. A similar point arose in *R (McCann) v Crown Court at Manchester* [2003] 1 AC 787, which concerned an anti-social behaviour order under section 1 of the 1998 Act. The House held that the proceedings were civil for the purposes of article 6 of the Convention. On the standard of proof, however, Lord Steyn said at para 37:

“I agree that, given the seriousness of matters involved, at least some reference to the heightened civil standard would usually be necessary: *In re H (Minors)(Sexual Abuse: Standard of Proof)* [1996] AC 563, 586D-H, per Lord Nicholls of Birkenhead. For essentially practical reasons, the Recorder of Manchester decided to apply the criminal standard. The Court of Appeal said that would usually be the right course to adopt. Lord Bingham of Cornhill has observed that the heightened civil standard and the criminal standard are virtually indistinguishable. I do not disagree with any of these views. But in my view pragmatism dictates that the task of magistrates should be made more straightforward by ruling that they must in all cases under section 1 apply the criminal standard.”

10. The leading case in the second category was, until *Re H (Minors)* [1996] AC 563, the decision of the Court of Appeal in *Hornal v Neuberger Products Ltd* [1957] 1 QB 247. The question there was the appropriate standard of proof of an allegation of fraud in civil proceedings. In a frequently cited passage, Morris LJ said (at p. 266) that it was the normal standard for civil proceedings; proof on a balance of probability. But the gravity of an allegation of fraud was something

which should be taken into account in deciding whether the burden had been discharged:

“Though no court and no jury would give less careful attention to issues lacking gravity than to those marked by it, the very elements of gravity become a part of the whole range of circumstances which have to be weighed in the scale when deciding as to the balance of probabilities.”

11. It was this notion of having regard to inherent probabilities which Lord Nicholls of Birkenhead attempted to capture in *In re H (Minors)(Sexual Abuse: Standard of Proof)* [1996] AC 563, 586D-H:

“The balance of probability standard means that a court is satisfied an event occurred if the court considers that, on the evidence, the occurrence of the event was more likely than not. When assessing the probabilities the court will have in mind as a factor, to whatever extent is appropriate in the particular case, that the more serious the allegation the less likely it is that the event occurred and, hence, the stronger should be the evidence before the court concludes that the allegation is established on the balance of probability. Fraud is usually less likely than negligence. Deliberate physical injury is usually less likely than accidental physical injury. A step-father is usually less likely to have repeatedly raped and had non-consensual oral sex with his under age stepdaughter than on some occasion to have lost his temper and slapped her. Built into the preponderance of probability standard is a generous degree of flexibility in respect of the seriousness of the allegation.

Although the result is much the same, this does not mean that where a serious allegation is in issue the standard of proof required is higher. It means only that the inherent probability or improbability of an event is itself a matter to be taken into account when weighing the probabilities and deciding whether, on balance, the event occurred. The more improbable the event, the stronger must be the evidence that it did occur before, on the balance of probability, its occurrence will be established.”

12. The degree of confusion which is possible on this issue is exemplified by the fact that despite the painstaking clarity with which Lord Nicholls explained that having regard to inherent probabilities did not mean that “where a serious allegation is in issue the standard of proof required is higher”, Lord Steyn in *R (McCann) v Crown Court at Manchester* [2003] 1 AC 787, 812 cited this very passage as authority for the existence of a “heightened civil standard”. This appears to have resulted in submissions that the Family Division should also apply a “heightened civil standard”, equivalent to the criminal standard (“in serious cases such as the present, the difference between the two standards is, in truth, largely illusory”, per Lord Bingham CJ in *B v Chief Constable of Avon and Somerset Constabulary* [2001] 1 WLR 340, 354), in local authority applications for care orders. Dame Elizabeth Butler-Sloss P restored clarity and certainty in *re U (A Child) (Department for Education and Skills intervening)* [2005] Fam 134,143-144:

“We understand that in many applications for care orders counsel are now submitting that the correct approach to the standard of proof is to treat the distinction between criminal and civil standards as ‘largely illusory’. In our judgment this approach is mistaken. The standard of proof to be applied in Children Act 1989 cases is the balance of probabilities and the approach to these difficult cases was laid down by Lord Nicholls in *In re H (Minors) (Sexual Abuse: Standard of Proof)* [1996] AC 563. That test has not been varied nor adjusted by the dicta of Lord Bingham of Cornhill CJ or Lord Steyn who were considering applications made under a different statute. There would appear to be no good reason to leap across a division, on the one hand, between crime and preventative measures taken to restrain defendants for the benefit of the community and, on the other hand, wholly different considerations of child protection and child welfare nor to apply the reasoning in *McCann's* case [2003] 1 AC 787 to public, or indeed to private, law cases concerning children. The strict rules of evidence applicable in a criminal trial which is adversarial in nature is to be contrasted with the partly inquisitorial approach of the court dealing with children cases in which the rules of evidence are considerably relaxed. In our judgment therefore...the principles set out by Lord Nicholls should continue to be followed by the judiciary trying family cases and by magistrates sitting in the family proceedings courts.”

13. My Lords, I would invite your Lordships fully to approve these observations. I think that the time has come to say, once and for all, that there is only one civil standard of proof and that is proof that the fact in issue more probably occurred than not. I do not intend to disapprove any of the cases in what I have called the first category, but I agree with the observation of Lord Steyn in *McCann's* case (at 812) that clarity would be greatly enhanced if the courts said simply that although the proceedings were civil, the nature of the particular issue involved made it appropriate to apply the criminal standard.

14. Finally, I should say something about the notion of inherent probabilities. Lord Nicholls said, in the passage I have already quoted, that —

“the court will have in mind as a factor, *to whatever extent is appropriate in the particular case*, that the more serious the allegation the less likely it is that the event occurred and, hence, the stronger should be the evidence before the court concludes that the allegation is established on the balance of probability.”

15. I wish to lay some stress upon the words I have italicised. Lord Nicholls was not laying down any rule of law. There is only one rule of law, namely that the occurrence of the fact in issue must be proved to have been more probable than not. Common sense, not law, requires that in deciding this question, regard should be had, to whatever extent appropriate, to inherent probabilities. If a child alleges sexual abuse by a parent, it is common sense to start with the assumption that most parents do not abuse their children. But this assumption may be swiftly dispelled by other compelling evidence of the relationship between parent and child or parent and other children. It would be absurd to suggest that the tribunal must in all cases assume that serious conduct is unlikely to have occurred. In many cases, the other evidence will show that it was all too likely. If, for example, it is clear that a child was assaulted by one or other of two people, it would make no sense to start one's reasoning by saying that assaulting children is a serious matter and therefore neither of them is likely to have done so. The fact is that one of them did and the question for the tribunal is simply whether it is more probable that one rather than the other was the perpetrator.

16. For the reasons given by Baroness Hale of Richmond, I would make the order she proposes.

## **LORD SCOTT OF FOSCOTE**

My Lords,

17. I have had the advantage of reading in draft the opinion prepared by my noble and learned friend Baroness Hale of Richmond. Having done so I find myself wholly convinced by her analysis of the legal issues and the conclusions she has reached, and convinced also that any attempt by me to add anything of my own would no more than muddy the waters that she has left so admirably limpid. For the reasons she has given I too would dismiss this appeal.

## **LORD RODGER OF EARLSFERRY**

My Lords,

18. I have had the privilege of considering the speeches of my noble and learned friends, Lord Hoffmann and Baroness Hale of Richmond, in draft. For the reasons which they give, I too would dismiss the appeal and make the order which Baroness Hale proposes.

## **LORD WALKER OF GESTINGTHORPE**

My Lords,

19. I have had the privilege of reading in draft the opinions of my noble and learned friends Lord Hoffmann and Baroness Hale of Richmond. I am in complete agreement with them, and I would make the order that Baroness Hale proposes.

## **BARONESS HALE OF RICHMOND**

My Lords,

20. Taking a child away from her family is a momentous step, not only for her, but for her whole family, and for the local authority which does so. In a totalitarian society, uniformity and conformity are valued. Hence the totalitarian state tries to separate the child from her family and mould her to its own design. Families in all their subversive variety are the breeding ground of diversity and individuality. In a free and democratic society we value diversity and individuality. Hence the family is given special protection in all the modern human rights instruments including the European Convention on Human Rights (art 8), the International Covenant on Civil and Political Rights (art 23) and throughout the United Nations Convention on the Rights of the Child. As Justice McReynolds famously said in *Pierce v Society of Sisters* 268 US 510 (1925), at 535, “The child is not the mere creature of the State”.

21. That is why the *Review of Child Care Law* (Department of Health and Social Security, 1985)) and the white paper, *The Law on Child Care and Family Services* (Cm 62, 1987), which led up to the Children Act 1989, rejected the suggestion that a child could be taken from her family whenever it would be better for her than not doing so. As the *Review* put it, “Only where their children are put at unacceptable risk should it be possible compulsorily to intervene. Once such a risk of harm has been shown, however, [the child’s] interests must clearly predominate” (para 2.13).

22. The principle of “unacceptable risk of harm” is easy enough to state but difficult to put into statutory language. The draft Children Bill annexed to the Law Commission’s Report on its *Review of Child Law, Guardianship and Custody* (1998, Law Com No 172) required that “the child concerned has suffered significant harm, or that there is a real risk of his suffering such harm” (clause 12(2)(a)). This was refined in the Bill presented to Parliament and eventually emerged in the so-called “threshold criteria” in section 31(2) of the Children Act 1989:

“A court may only make a care order or a supervision order if it is satisfied –

(a) that the child concerned is suffering, or is likely to suffer, significant harm; and

(b) that the harm, or likelihood of harm, is attributable to –

(i) the care given to the child, or likely to be given to him if the order were not made, not being what it would be reasonable to expect a parent to give to him; or

(ii) the child’s being beyond parental control.”

This case is about the meaning of the words “is likely to suffer significant harm”. How is the court to be satisfied of such a likelihood? This is a prediction from existing facts, often from a multitude of such facts, about what has happened in the past, about the characters and personalities of the people involved, about the things which they have said and done, and so on. But do those facts have to be proved in the usual way, on the balance of probabilities? Or is it sufficient that there is a “real possibility” that they took place, even if the judge is unable to say that it is more likely than not that they did?

23. That issue was authoritatively determined in favour of the former solution by a majority of this House in *In re H (Minors) (Sexual Abuse: Standard of Proof)* [1996] AC 563. It was reaffirmed in two later decisions: see *Lancashire County Council v B* [2000] 2 AC 147 and *In re O (minors) (Care Proceedings: Preliminary Hearing)* [2004] 1 AC 523. The latter also supported, albeit *obiter*, the Court of Appeal decision in *In re M and R (Child Abuse: Evidence)* [1996] 2 FLR 195. There, the Court of Appeal had applied the same approach to the words “and harm which he has suffered or is at risk of suffering”, a factor which, under section 1(3)(e) of the 1989 Act the court has to take into account when deciding what order, if any, will be best for the child.

24. In this case, the children’s guardian, with the support of the local authority and the children’s mother, seeks to over-turn the decision in *In re H* and over-rule *In re M and R*, in favour of a “real possibility” test. The children’s father, with the support of the interveners, the Children and Family Court Advisory and Support Service (Cafcass), seeks to uphold the present law.

#### *The factual background*

25. As the case is still continuing, the least said about the factual background the better. It concerns the future of two children, a nine year old girl, NB, and a six year old boy, AB. Their parents are Mr and Mrs B, who began their relationship in 1996 and married in 1999. Mrs B has two children by her previous marriage, a 16 year old girl, R, and a 17 year old boy, S. They all lived together until April 2006, when Mr B left the family home, although he later visited from time to time.

26. Social services and the police became involved with the family shortly afterwards. N's school became concerned about her possibly sexualised behaviour. In July 2006, Mrs B undoubtedly assaulted S in the street. Following that S left the family home and has not returned. Mrs B threatened to allege that S had sexually assaulted N if he persisted in an assault charge against her. Mrs B and R then both made false allegations of sexual abuse and assault against S. The police and social services began their inquiries.

27. Those inquiries were still continuing on 30 October 2006, when Mr B applied, with the support of the local authority, for residence orders in respect of N and A. Instead, the district judge made interim care orders in respect of R as well as N and A, on the basis of a plan to remove them all from Mrs B and place them with Mr B at his parents' home. However, while they were being removed from home that evening, R alleged that Mr B had sexually abused her and had also assaulted her and S with a belt. R was placed with foster carers and has since returned to her mother's care. N and A were placed with Mr B's parents and Mr B moved out. In September 2007 they were moved to foster carers, where they remain.

28. The care proceedings were transferred to the High Court. A fact finding hearing took place before Charles J over 29 days in June and July 2007. As is now the practice, the local authority set out a statement of the basis upon which it was alleged that the section 31(2) criteria were met. The parents made a number of concessions but there remained a number of matters in dispute, amongst them R's allegations of sexual abuse against Mr B. No-one is now persisting in the suggestion that S had sexually abused N or anyone else.

29. On 19 October 2007, Charles J handed down a judgment comprising 347 substantive paragraphs and 8 schedules, totalling 159 pages in all. He made detailed findings of physical and emotional abuse supporting his overall conclusion that:

“The combination of the physical and verbal violence, abuse and relationships within the household and the antagonism both between members of the household, and them and persons outside it, had the result that the children were being brought up in a fraught household in which they had no realistic prospect of being able to develop as young children, and then as teenagers, into adults against a background of emotional and physical

stability or in which balanced and reasonable approaches were taken to the events of every day life.” (para 48)

Important components in that conclusion were his findings about Mrs B’s aggressive and bullying behaviour in her dealings with the children’s schools and others and the existence of an “allegation culture” within the family for which Mrs B was primarily responsible:

“ . . . the family have an allegation culture in which all four of Mrs B, Mr B, S and R have made and supported allegations that are simply untrue, or allegations that are so exaggerated and misrepresented that they become untrue, to promote a campaign against others or to get back at them.” (para 133)

30. However, despite an elaborate and meticulous analysis of all the evidence, the learned judge was unable to make a finding about the alleged sexual abuse of R by Mr B. Instead he concluded that:

“(i) I cannot make a properly founded and reasoned conclusion that it is more likely than not that R was sexually abused by Mr B as she alleges or substantially as she alleges, and thus that she is telling the truth,

(ii) I cannot make a properly founded and reasoned conclusion that it is more likely than not that R was not sexually abused by Mr B, and thus that Mr B is telling the truth,

(iii) my answer to the question which of the above two possibilities (and thus which of Mr B and R is telling the truth) is more likely, would be a guess because I cannot even answer that question by attributing and giving weight to the competing arguments on a properly founded and reasoned basis, and

(iv) on an approach founded on evidence and reasoning, and not on suspicion and/or concern, I am unable to conclude that there is no real possibility that Mr B sexually abused R as she asserts or substantially as she asserts and I have therefore concluded that there is a real possibility that he did.” (para 339)

31. My Lords, if the judiciary in this country regularly found themselves in this state of mind, our civil and family justice systems

would rapidly grind to a halt. In this country we do not require documentary proof. We rely heavily on oral evidence, especially from those who were present when the alleged events took place. Day after day, up and down the country, on issues large and small, judges are making up their minds whom to believe. They are guided by many things, including the inherent probabilities, any contemporaneous documentation or records, any circumstantial evidence tending to support one account rather than the other, and their overall impression of the characters and motivations of the witnesses. The task is a difficult one. It must be performed without prejudice and preconceived ideas. But it is the task which we are paid to perform to the best of our ability.

32. In our legal system, if a judge finds it more likely than not that something did take place, then it is treated as having taken place. If he finds it more likely than not that it did not take place, then it is treated as not having taken place. He is not allowed to sit on the fence. He has to find for one side or the other. Sometimes the burden of proof will come to his rescue: the party with the burden of showing that something took place will not have satisfied him that it did. But generally speaking a judge is able to make up his mind where the truth lies without needing to rely upon the burden of proof.

33. The judge's findings in this case were expressed in such a way as squarely to raise the issue of principle. Is it possible to be satisfied that a child is likely to suffer a particular kind of harm in the future when the basis for suggesting this is that there is a "real possibility" that another child has suffered the same kind of harm in the past? There are, of course, many degrees of possibility – from a fifty/fifty chance that it happened down to an infinitesimal chance that it did. In this case, the judge seems to have concluded that there was a "real possibility" because he could not conclude that there was none.

34. Having set the case up in such a way as to raise the issue of principle, the judge further elaborated upon the problem as he saw it in Schedule A to his principal judgment, which was handed down with a further judgment containing a draft letter of instruction to the experts who were to conduct assessments of the parents and the family for the next stage in the proceedings on 11 December 2007. He had indicated that he considered the case suitable for a "leapfrog" appeal to this House but Mr B did not agree to this. Accordingly Charles J gave leave to appeal to the Court of Appeal. The Court of Appeal, being bound on the authorities to dismiss the guardian's appeal, gave leave to appeal to this House.

*The authorities*

35. In *In re H and others (Minors) (Sexual Abuse: Standard of Proof)* [1996] AC 563, the facts were unusually simple. The mother had four daughters, two by her husband and two by R, the man with whom she was now living. The eldest daughter alleged that R had been sexually abusing her for some years. The local authority brought care proceedings in respect of the three younger children, relying solely on these allegations as proof of the likelihood of similar harm to them. The judge was not satisfied that the allegations were true, although there was a real possibility that they were. He dismissed the local authority's applications.

36. The local authority's appeal to this House established three quite separate propositions. The first, on which all five of their lordships were agreed, was that the words "is likely to suffer significant harm" did not mean that such harm had to be more likely than not to happen in the future: it was enough if its happening was a real possibility, a "possibility that cannot sensibly be ignored having regard to the nature and gravity of the feared harm in the particular case" (Lord Nicholls of Birkenhead at p 585).

37. The second, on which all were also agreed, was that the standard of proof of facts in issue was the balance of probabilities; but there was a difference between the ways in which that standard was expressed, on the one hand by Lord Nicholls with the majority, and on the other hand by Lord Lloyd of Berwick. That issue has not only led to considerable confusion in the past but is also the source of some of the perceived difficulties with the present law. Miss Jo Delahunty QC, on behalf of Cafcass, has made an eloquent plea to us to clarify it for the future.

38. The third issue, on which Lord Nicholls, with whom Lord Goff and Lord Mustill agreed, took one view and Lord Browne Wilkinson and Lord Lloyd took another, was the issue which is raised in this case. Lord Nicholls' conclusion was that a conclusion as to future risk had to be based on facts:

"In my view these unresolved judicial doubts and suspicions can no more form the basis of a conclusion that the second threshold

condition in section 31(2)(a) has been established than they can form the basis that the first has been established.” (p 589E)

He gave several reasons for arriving at that conclusion. He pointed to the distinction between interlocutory relief, which can be granted on the basis of a good arguable case without resolving disputed questions of fact, and a trial, in which “the court normally has to resolve disputed issues of relevant fact before it can reach its conclusion on the issue it has to decide”. (p 589G) “A decision by a court on the likelihood of a future happening must be founded on a basis of present facts and the inferences fairly to be drawn therefrom.” (p 590A) For the first limb of section 31(2)(a), “There must be facts, proved to the court’s satisfaction if disputed, on which the court can properly conclude that the child is suffering harm”. (p 590C) “Similarly, with the second limb: there must be facts from which the court can properly conclude there is a real possibility that the child will suffer harm in the future.” (p 590C)

39. He found several indications in the Act that this, the ordinary approach, was to be applied. First, when dealing with investigations and child assessment orders, the Act uses the term “reasonable cause to suspect” (ss 47(1)(b) and 43(1)(a)), and when dealing with emergency protection orders, police protection and interim care orders, it uses the term “reasonable cause to believe” (ss 44(1)(a), 46(1) and 38(2)), that the child is suffering or likely to suffer significant harm. This is the sensible approach to child protection before the stage of a final order is reached. But the language of section 31(2) is different: the court must be “satisfied . . . that the child . . . is suffering, or is likely to suffer, significant harm; . . .” “This is the language of proof, not suspicion, however reasonably based.” (p 590H)

40. Second, the second threshold condition, likelihood of harm, is “cheek by jowl” with the first, that the child is suffering harm. If the evidence of maltreatment is not sufficient to establish that the child is suffering harm, “It would be odd if, in respect of the selfsame non-proven allegations, the self-same insufficient evidence could nonetheless be regarded as a sufficient factual basis for satisfying the court there is a real possibility of harm to the child in the future”. (p 591B)

41. Third, if this were the case, it “would effectively reverse the burden of proof in an important respect”. Once apparently credible evidence of misconduct had been given, those against whom the allegations were made would have to disprove them. “Otherwise it would be open to a court to hold that, although the misconduct has not

been proved, it has not been disproved and there is a real possibility that the misconduct did occur. . . . I do not believe Parliament intended that section 31(2) should work in this way.” (p591D)

42. This is, of course, exactly what the judge found in our case and exactly what the children’s guardian says should be enough to cross the threshold. One reason for this is the alleged inconsistency between the approach taken in *Re H* and the approach taken by the House in the two later cases. In each of them, it was clear that the children involved had suffered significant harm but it was not clear who had been the perpetrator. The point arose in particularly striking circumstances in *Lancashire County Council v B* [2000] 2 AC 147. A seven month old baby, A, lived with her parents but was cared for by a child minder during working hours. She suffered very significant harm as a result of violent shaking on at least two occasions. The local authority brought care proceedings, not only in respect of child A, but also in respect of the childminder’s son, B, who was a month older than the injured child. The possible perpetrators, as found by the judge, were A’s mother and father or the childminder, B’s mother (he was able to exonerate B’s father). But the injuries could have happened in either household; he could not say in which or who was the likely perpetrator.

43. The judge dismissed the applications relating to each child. He could not be satisfied that harm suffered by child A was attributable to a lack of reasonable care on the part of the parent against whom the order was sought, nor could he be satisfied of the likelihood of future harm to child B attributable to a lack of reasonable care by his mother. The Court of Appeal held that the judge was plainly right in relation to child B. There was no evidence that he had been harmed in any way. It had not been proved that his mother was responsible for A’s injuries and that was the only basis for suggesting that there was any risk of harm to B in the future. *In re H* applied. Child A, on the other hand, had undoubtedly been harmed. This was not an accident. It was attributable to a lack of proper care. It was not necessary, in order to establish the criterion in section 31(2)(b)(i) (see para 22 above), to show who was responsible for that lack. The local authority’s appeal was allowed in relation to her. The parents’ appeal to the House of Lords was dismissed.

44. The question was whether the “care given to the child”, which had been found to be deficient, meant the care given to the child by her parents or other primary carers, as argued on behalf of the parents, or whether it meant the care given by anyone who plays a part in the care arrangements for the child, as argued by the local authority and the

child's guardian. Lord Nicholls found both extremes produced unacceptable results. He favoured a middle course:

“The phrase ‘care given to the child’ refers primarily to the care given to the child by a parent or parents or other primary carers. That is the norm. . . Different considerations from the norm apply in a case of shared caring where the care given by one or other of the carers is proved to have been deficient, with the child suffering harm in consequence, but the court is unable to identify which of the carers provided the deficient care. In such a case the phrase ‘care given to the child’ is apt to embrace not merely the care given by the parents or other primary carers; it is apt to embrace the care given by any of the carers.” (p 166 C-D)

45. He recognised that this construction meant that the conditions might be satisfied when there was no more than a possibility that the parents were responsible and that parents who might be wholly innocent would face the possibility of losing their child. But to hold otherwise

“would mean that the child's future health, or even her life, would have to be hazarded on the chance that, after all, the non-parental carer rather than one of the parents inflicted the injuries. Self-evidently, to proceed in such a way when a child is proved to have suffered serious injury on more than one occasion could be dangerously irresponsible.” (p 165G)

46. The more common version of this dilemma, however, is not where a child's care is shared between two households, but where it is shared between two parents. If the child suffers harm, and the judge cannot decide which parent was responsible, the threshold criteria are met. But how is the court to approach the next stage in the proceedings, the stage of deciding what order, if any, will be in the best interests of the child? In *In re O (Minors)(Care: Preliminary Hearing)*; *In re B (A Minor)* [2003] UKHL 18, [2004] 1 AC 523, the Court of Appeal in one case had held that the judge had to proceed on the basis that the child had not been harmed by the mother and that she did not present a risk of harm to that or another child; in the other, a differently constituted Court of Appeal had held that as the mother had not been exonerated, the judge could not disregard the risk that she might present.

47. Lord Nicholls (with whom Lord Hoffmann, Lord Millett, Lord Scott and Lord Walker simply agreed) preferred the latter view:

“Quite simply, it would be grotesque if such a case had to proceed at the welfare stage on the footing that, because neither parent, considered individually, has been proved to be the perpetrator, therefore the child is not at risk from either of them. This would be grotesque because it would mean the court would proceed on the footing that neither parent represents a risk even though one or other of them was the perpetrator of the harm in question. . . .

. . . The preferable interpretation of the legislation is that in such cases the court is able to proceed at the welfare stage on the footing that each of the possible perpetrators is, indeed, just that: a possible perpetrator.” (paras 27, 28)

48. However, no doubt was cast on the conclusions reached in *In re H*. Lord Nicholls went on to consider how unproven allegations of harm should be treated at the “welfare stage” in care proceedings. Once the threshold in section 31(2) has been crossed, the court is required to apply the welfare principle in section 1(1) of the 1989 Act:

“When a court determines any question with respect to –

- (a) the upbringing of a child; or
- (b) the administration of a child’s property or the application of any income arising from it,

the child’s welfare shall be the court’s paramount consideration.”

The court is also required to have regard, in particular, to the “checklist” of factors set out in section 1(3) of the Act. These include, along with such obvious matters as the wishes and feelings of the child, and the capacities of the adults around her to meet her needs, in section 1(3)(e), “any harm which he has suffered or is at risk of suffering”.

49. Is section 1(3)(e) to be interpreted and applied differently from section 31(2)(a)? Can a court conclude that there is a risk of the child suffering a particular kind of harm even though the allegations said to

give rise to such a risk cannot be proved? The question did not arise directly in *In re O*, but Lord Nicholls said this:

“On balance, I consider that to have regard at the welfare stage to allegations of harm rejected at the threshold stage would have the effect of depriving the child and the family of the protection intended to be afforded by the threshold criteria. Accordingly, at the welfare stage in this type of case the court should proceed on the footing that the unproven allegations are no more than that.” (para 38).

50. This accorded with the approach of the Court of Appeal in *In re M and R (Minors) (Abuse: Expert Evidence)* [1996] 4 All ER 239. There, the judge was satisfied that the threshold was crossed on the basis that the children had suffered emotional abuse and were likely to do so in future. He was not, however, satisfied that sexual abuse had also occurred, although there was a real possibility that it had. The local authority contended that he should have taken this into account under section 1(3)(e) when assessing the welfare of the children. Butler-Sloss LJ, giving the judgment of the court, rejected their submissions at p246H to 247D:

“They amount to the assertion that under section 1 the welfare of the child dictates that the court should act on suspicion or doubts, rather than facts. To our mind the welfare of the child dictates the exact opposite. . .

If there is a dispute as to whether the child has suffered or is at risk of suffering harm, the task of the judge, when considering whether to make any order, whether it be a care or supervision order under section 31 or a section 8 order (residence, contact and other orders with respect to children), must be to resolve that dispute. . . The question is how such a dispute is to be resolved.

To our minds there can be only one answer to this question, namely the same answer as given by the majority in *In re H*. The court must reach a conclusion based on facts, not on suspicion or mere doubts. ...

[Counsel’s] point was that if there is a real possibility of harm in the past, then it must follow (if nothing is done) that there is a risk of harm in the future. To our minds, however, this proposition contains a non sequitur. The fact that there might

have been harm in the past does not establish the risk of harm in the future. The very highest it can be put is that what might possibly have happened in the past means that there may possibly be a risk of the same thing happening in the future. Section 1(3)(e), however, does not deal with what *might* possibly have happened or what future risk there *may* possibly be. It speaks in terms of what *has* happened or what *is* at risk of happening. Thus, what the court must do (when the matter is in issue) is to decide whether the evidence establishes the harm or the risk of harm”

51. *In re M and R* was a care case but, in a private law dispute between mother and father over contact, the Court of Appeal had a month earlier (and in the knowledge the judgment in *In re M and R* was pending) pointed to the judge’s “fundamental error” in exercising his discretion as to the future on the basis of a finding that there was “a substantial risk” that abuse had occurred in the past. In *Re P (Sexual Abuse: Standard of Proof)* [1996] 2 FLR 333, 343 Wall J commented that:

“It has also had the effect, in the instant case, of producing the worst of all worlds. The father remains under a cloud. Abuse is not proved on the balance of probabilities, but he remains effectively branded an abuser: as the judge himself said, ‘at the very lowest he will remain under suspicion until his daughters are old enough to be able to cope with any risk of abuse themselves’. Furthermore, the mother’s beliefs are reinforced. It thus becomes impossible for the parties and the children to put the issue of sexual abuse behind them. The end result is highly unsatisfactory.”

52. The children’s guardian also invites us to overrule the Court of Appeal’s decision in *In re M and R*, so that, the threshold having been crossed on other grounds, the judge will be able to take into account at the welfare stage the unproven allegations of sexual abuse against Mr B.

*This appeal*

53. Mr Stephen Cobb QC, on behalf of the children’s guardian who represents N and A, invites us to depart from *In re H* and to overrule *In re M and R* principally on the ground that, in combination with

*Lancashire County Council v B* and *In re O*, they produce illogical results. If a parent can be deprived of her child, or a child deprived of her mother, on the basis of a real possibility that she may have been the perpetrator of the harm suffered by the child, why should not such a real possibility that harm has been suffered in the past be the basis of a finding that it is likely that such harm will be suffered in the future? The artificiality of proceeding on the basis that such harm did not happen at all, when there is a real possibility that it did, is just as irresponsible and dangerous as proceeding on the basis that neither parent was the perpetrator, rejected by this House in *In re O*.

54. My Lords, I would unhesitatingly decline that invitation. The reasons given by Lord Nicholls for adopting the approach which he did in *Re H* remain thoroughly convincing. The threshold is there to protect both the children and their parents from unjustified intervention in their lives. It would provide no protection at all if it could be established on the basis of unsubstantiated suspicions: that is, where a judge cannot say that there is no real possibility that abuse took place, so concludes that there is a real possibility that it did. In other words, the alleged perpetrator would have to prove that it did not. Mr Cobb accepts that it must be proved on the balance of probabilities that a child “is suffering” significant harm. But nevertheless he argues that those same allegations, which could not be proved for that purpose, could be the basis of a finding of likelihood of future harm. If that were so, there would have been no need for the first limb of section 31(2)(a) at all. Parliament must be presumed to have inserted it for a purpose. Furthermore, the Act draws a clear distinction between the threshold to be crossed before the court may make a final care or supervision order and the threshold for making preliminary and interim orders. If Parliament had intended that a mere suspicion that a child had suffered harm could form the basis for making a final order, it would have used the same terminology of “reasonable grounds to suspect” or “reasonable grounds to believe” as it uses elsewhere in the Act. Instead, as Butler-Sloss LJ pointed out in *In re M and R*, it speaks of what the child *is* suffering or *is likely* to suffer.

55. My Lords, it is rare for the facts to be as stark as they were in *In re H*. There are usually many facts from which an inference that a child is likely to suffer harm in the future can be drawn. In *In re H* it appears that there was nothing, other than the allegations of sexual abuse made by the oldest child, from which it would have been possible to draw the inference that the other children were likely to suffer such harm. In the air-raid example used by Lord Browne Wilkinson in *In re H*, it would have been difficult to conclude that an air raid was likely from nothing more than that five unidentified planes had been seen in the skies

overhead. But the country was at war. Air raids were frequent. The fact that there had been raids in the past would make it possible to draw the inference that there would be raids in the future. The only question was when.

56. But in a case such as this, as indicated by Butler-Sloss LJ in *In re M and R*, the “risk” is not an actual risk to the child but a risk that the judge has got it wrong. We are all fallible human beings, very capable of getting things wrong. But until it has been shown that we have, it has not been shown that the child is in fact at any risk at all.

57. It is also important to keep separate the roles of the courts and the local authorities in the protection of children from harm. Where a local authority have reasonable cause to suspect that a child in their area is suffering or likely to suffer significant harm, they must make the inquiries necessary to enable them to decide whether they should take any action to protect the child and if so what (1989 Act, s 47(1)). This is done by way of a core assessment, conducted in accordance with the *Framework for the Assessment of Children in Need and Their Families* (Department of Health and others, 2000). This is “an in-depth assessment which addresses the central or most important aspects of the needs of a child and the capacity of his or her parents or caregivers to respond appropriately to those needs within the wider family and community context” (para 3.11). As such, it will clearly range far wider than the threshold criteria. It will form “a central part of the evidence supporting any application that the local authority may make for a care or supervision order” (Department for Children, Schools and Families, *Children Act 1989, Guidance and Regulations, Volume 1, Court Orders*, 2008, para 3.17). It will also form the basis for the plan for the future care of the child which the local authority must put before the court under section 31A of the 1989 Act (*ibid*, para 3.18).

58. The local authority make the application for a care or supervision order under section 31(1) and the local authority will be responsible for carrying out any order which the court may make. The task of the court is to hear the evidence put forward on behalf of all the parties to the case and to decide, first, whether the threshold criteria are met and, second, what order if any will be best for the child. While the local authority may well take preliminary or preventive action based upon reasonable suspicions or beliefs, it is the court’s task when authorising permanent intervention in the legal relationship between parent and child to decide whether those suspicions are well-founded. As the *Review of Child Care Law* (1985, para 2.20) put it,

“One of our guiding principles has been that the court should be able to determine major issues such as the transfer of parental rights and duties where there is or may be a dispute between parents and local authorities, while the management of the case should be the responsibility of the local authority”.

59. To allow the courts to make decisions about the allocation of parental responsibility for children on the basis of unproven allegations and unsubstantiated suspicions would be to deny them their essential role in protecting both children and their families from the intervention of the state, however well intentioned that intervention may be. It is to confuse the role of the local authority, in assessing and managing risk, in planning for the child, and deciding what action to initiate, with the role of the court in deciding where the truth lies and what the legal consequences should be. I do not under-estimate the difficulty of deciding where the truth lies but that is what the courts are for.

60. I am fortified in that conclusion by two things. The first is that Cafcass does not support the guardian’s stance in this appeal. Cafcass is the body responsible for safeguarding the interests of children in the family courts. It appoints the individual guardians. If Cafcass thought that the decision in *In re H* was causing serious difficulties and jeopardising the welfare of our most vulnerable children, no doubt it would have said so. The second is that Parliament has recently had the opportunity of reviewing the 1989 Act in the light of the inquiry into the tragic death of Victoria Climbié (*The Victoria Climbié Inquiry, Report of an Inquiry by Lord Laming*, 2003, Cm 5730). Children’s services have been thoroughly reorganised by the Children Act 2004, but no change has been made to the Act’s substantive provisions.

61. The decisions in *In re H*, *Lancashire County Council v B*, and *In re O* fit together as a coherent whole. The court must first be satisfied that the harm or likelihood of harm exists. Once that is established, as it was in both the *Lancashire* and *Re O* cases, the court has to decide what outcome will be best for the child. It is very much easier to decide upon a solution if the relative responsibility of the child’s carers for the harm which she or another child has suffered can also be established. But the court cannot shut its eyes to the undoubted harm which has been suffered simply because it does not know who was responsible. The real answers to the dilemma posed by those cases lie elsewhere – first, in a proper approach to the standard of proof, and second, in ensuring that

the same judge hears the whole case. Split hearings are one thing; split judging is quite another.

*The standard of proof*

62. All of their Lordships in *In re H* were clear that there was one standard of proof, the balance of probabilities. But Lord Nicholls went on to say this at p586:

“The balance of probability standard means that a court is satisfied an event occurred if the court considers that, on the evidence, the occurrence of the event was more likely than not. When assessing the probabilities the court will have in mind as a factor, *to whatever extent is appropriate in the particular case*, that the more serious the allegation the less likely it is that the event occurred and, hence, the stronger should be the evidence before the court concludes that the allegation is established on the balance of probability. Fraud is less likely than negligence. Deliberate physical injury is *usually* less likely than accidental physical injury. A step-father is *usually* less likely to have repeatedly raped and had non-consensual oral sex with his under age stepdaughter than on some occasion to have lost his temper and slapped her. Built into the preponderance of probability standard is a generous degree of flexibility in respect of the seriousness of the allegation.

Although the result is much the same, this does not mean that where a serious allegation is in issue the standard of proof required is higher. It means only that the inherent probability or improbability of an event is itself a matter to be taken into account when weighing the probabilities and deciding whether, on balance, the event occurred. The more improbable the event, the stronger must be the evidence that it did occur.... Ungood-Thomas J expressed this neatly in *In re Dellow's Will Trusts* [1964] 1 WLR 451, 455: “The more serious the allegation the more cogent is the evidence required to overcome the unlikelihood of what is alleged and thus to prove it.” (emphasis supplied)

If he had stopped there, perhaps there would have been no difficulty, provided that lawyers and courts paid attention to the whole passage, including the words which I have italicised, rather than extracting a single phrase. But he went on:

“This substantially accords with the approach adopted in authorities such as the well known judgment of Morris LJ in *Hornal v Neuberger Products Ltd* [1957] 1 QB 247, 266. This approach also provides a means by which the balance of probability standard can accommodate one’s instinctive feeling that even in civil proceedings a court should be more sure before finding serious allegations proved than when deciding less serious or trivial matters.”

“More sure” may be read as suggesting a higher standard than the simple preponderance of probabilities.

63. Lord Lloyd, at pp 577-578 on the other hand, took a more straightforward line:

“In my view the standard of proof under [section 31(2)] ought to be the simple balance of probability however serious the allegations involved. . . . mainly because section 31(2) provides only the threshold criteria for making a care order. . . if the threshold criteria are not met, the local authority can do nothing, however grave the anticipated injury to the child, or however serious the apprehended consequences. This seems to me to be a strong argument in favour of making the threshold lower rather than higher. It would be a bizarre result if the more serious the anticipated injury, whether physical or sexual, the more difficult it became for the local authority to satisfy the initial burden of proof, and thereby ultimately, if the welfare test is satisfied, secure protection for the child. . .

There remains the question whether anything should be said about the cogency of the evidence needed to ‘tip the balance’. For my part I do not find those words helpful, since they are little more than a statement of the obvious; and there is a danger that the repeated use of the words will harden into a formula which, like other formulas (especially those based on a metaphor) may lead to misunderstanding.”

64. My Lords, Lord Lloyd’s prediction proved only too correct. Lord Nicholls’ nuanced explanation left room for the nostrum, “the more serious the allegation, the more cogent the evidence needed to prove it”,

to take hold and be repeated time and time again in fact-finding hearings in care proceedings (see, for example, the argument of counsel for the local authority in *Re U (A Child) (Department for Education and Skills intervening)* [2004] EWCA Civ 567, [2005] Fam 134, at p 137. It is time for us to loosen its grip and give it its quietus.

65. Indeed, later events made matters worse. In *B v Chief Constable of the Avon and Somerset Constabulary* [2001] 1 WLR 340, the issue was the standard of proof to be applied when finding the facts needed to make a sex offender order under section 2 of the Crime and Disorder Act 1998. The Court of Appeal held that these were civil proceedings, but Lord Bingham of Cornhill CJ said this about the standard of proof:

“30. It should, however, be clearly recognised, as the justices did expressly recognise, that the civil standard of proof does not invariably mean a bare balance of probability, and does not so mean in the present case. The civil standard is a flexible standard to be applied with greater or lesser strictness according to the seriousness of what has to be proved and the implications of proving those matters (see *Bater v Bater* [1951] P 35, *Hornal v Neuberger Products Ltd* [1957] 1 QB 247, and *R v Secretary of State for the Home Department, ex parte Khawaja* [1984] AC 74).

31. In a serious case such as the present the difference between the two standards is, in truth, largely illusory. . . .”

66. *In re H* was neither referred to nor cited in that case, but of course the link could be made through the references to *Hornal v Neuberger Products*. However, *In re H* was cited in *R (McCann and others) v Crown Court at Manchester* [2002] UKHL 39, [2003] 1 AC 787. One issue was the standard of proof in finding the facts needed to make an anti-social behaviour order under section 1 of the Crime and Disorder Act 1998. Lord Steyn said this:

“37. Having concluded that the relevant proceedings are civil, in principle it follows that the standard of proof ordinarily applicable in civil proceedings, namely the balance of probabilities, should apply. However, I agree that, given the seriousness of matters involved, at least some reference to the heightened civil standard would usually be necessary (see *Re H(minors)(sexual abuse: standard of proof)* [1996] AC 563, 586D-H per Lord Nicholls of Birkenhead). . . . Lord Bingham of

Cornhill has observed that the heightened civil standard and the criminal standard are virtually indistinguishable. I do not disagree with any of those views.”

The House went on to hold that in anti-social behaviour order proceedings the court should apply the criminal standard of proof.

67. The link with *In re H* having been made, it is not surprising that judges should think that the same “heightened” standard should also apply in care proceedings. In *In re ET (Serious Injuries: Standard of Proof)* [2003] 2 FLR 1205, Bodey J directed himself that, in applying the civil standard and “the *Re H* cogency test”, he would have well in mind the dicta in *B v Chief Constable of Avon* and *R (McCann) v Chief Constable of Manchester*. So, if he found any facts it would be “on the basis that, in this very serious case, the difference between the civil and criminal standards of proof is ‘largely illusory’” (para 6) And who, in the light of the passages quoted above, can blame him?

68. Fortunately for care proceedings, the *status quo* was restored by the Court of Appeal in *In re U (A Child) (Department for Education and Skills intervening); In re B (A Child) (Department for Education and Skills Intervening)* [2004] EWCA Civ 567, [2005] Fam 134. The issue was the approach to be taken to medical evidence in care proceedings following the decision of the Court of Appeal (Criminal Division) in *R v Cannings* [2004] 1 WLR 2607. Dame Elizabeth Butler-Sloss P, giving the judgment of the court, said this:

“13. We understand that in many applications for care orders counsel are now submitting that the correct approach to the standard of proof is to treat the distinction between criminal and civil standards as ‘largely illusory’. In our judgment this approach is mistaken. The standard of proof to be applied in Children Act 1989 cases is the balance of probabilities and the approach to these difficult cases was laid down by Lord Nicholls in *In re H (Minors)(Sexual Abuse: Standard of Proof)* [1996] AC 563. That test has not been varied or adjusted by the dicta of Lord Bingham of Cornhill CJ or Lord Steyn who were considering applications made under a different statute. There would appear to be no good reason to leap across a division, on the one hand, between crime and preventive measures taken to restrain defendants for the benefit of the community and, on the other

hand, wholly different considerations of child protection and child welfare . . . ”

69. My Lords, I entirely agree. There are some proceedings, though civil in form, whose nature is such that it is appropriate to apply the criminal standard of proof. Divorce proceedings in the olden days of the matrimonial “offence” may have been another example (see *Bater v Bater* [1951] P 35). But care proceedings are not of that nature. They are not there to punish or to deter anyone. The consequences of breaking a care order are not penal. Care proceedings are there to protect a child from harm. The consequences for the child of getting it wrong are equally serious either way.

70. My Lords, for that reason I would go further and announce loud and clear that the standard of proof in finding the facts necessary to establish the threshold under section 31(2) or the welfare considerations in section 1 of the 1989 Act is the simple balance of probabilities, neither more nor less. Neither the seriousness of the allegation nor the seriousness of the consequences should make any difference to the standard of proof to be applied in determining the facts. The inherent probabilities are simply something to be taken into account, where relevant, in deciding where the truth lies.

71. As to the seriousness of the consequences, they are serious either way. A child may find her relationship with her family seriously disrupted; or she may find herself still at risk of suffering serious harm. A parent may find his relationship with his child seriously disrupted; or he may find himself still at liberty to maltreat this or other children in the future.

72. As to the seriousness of the allegation, there is no logical or necessary connection between seriousness and probability. Some seriously harmful behaviour, such as murder, is sufficiently rare to be inherently improbable in most circumstances. Even then there are circumstances, such as a body with its throat cut and no weapon to hand, where it is not at all improbable. Other seriously harmful behaviour, such as alcohol or drug abuse, is regrettably all too common and not at all improbable. Nor are serious allegations made in a vacuum. Consider the famous example of the animal seen in Regent’s Park. If it is seen outside the zoo on a stretch of greensward regularly used for walking dogs, then of course it is more likely to be a dog than a lion. If it is seen

in the zoo next to the lions' enclosure when the door is open, then it may well be more likely to be a lion than a dog.

73. In the context of care proceedings, this point applies with particular force to the identification of the perpetrator. It may be unlikely that any person looking after a baby would take him by the wrist and swing him against the wall, causing multiple fractures and other injuries. But once the evidence is clear that that is indeed what has happened to the child, it ceases to be improbable. Some-one looking after the child at the relevant time must have done it. The inherent improbability of the event has no relevance to deciding who that was. The simple balance of probabilities test should be applied.

### *Split hearings*

74. Care proceedings are not a two stage process. The court does have two questions to ask. Has the threshold been crossed? If so, what will be best for the child? But there are many cases in which a court has two or more questions to ask in the course of a single hearing. The same factual issues are often relevant to each question. Or some factual disputes may be relevant to the threshold while others are relevant to the welfare checklist: it may be clear, for example, that a child has suffered an injury while in the care of the mother, but whether the father or step-father has a drink problem and has been beating the mother up is extremely relevant to the long term welfare of the child.

75. The purpose of splitting the hearing is not to split the two questions which the court must answer. It is to separate out those factual issues which are capable of swift resolution so that the welfare professionals have a firm foundation of fact upon which to base their assessments of family relationships and parenting ability: see *In Re S (Care Proceedings: Split Hearing)* [1996] 2 FLR 773. A fact finding hearing is merely one of the case management possibilities contemplated by the new Public Law Outline. It is not a necessary precondition for the core professional assessment, which the Public Law Outline now expects should normally be done before the proceedings even begin (Judiciary of England and Wales and Ministry of Justice, *The Public Law Outline, Guide to Case Management in Public Law Proceedings*, April 2008, President's Practice Direction, para 9.2, pre-proceedings checklist and Flowchart). There is no point in splitting the issues if the facts cannot be determined relatively quickly, still less if it

is unlikely to result in clear cut findings to help the professionals in their work.

76. But the finding of those facts is merely part of the whole process of trying the case. It is not a separate exercise. And once it is done the case is part heard. The trial should not resume before a different judge, any more than any other part heard case should do so. In the particular context of care proceedings, where the character and personalities of the parties are important components in any decision, it makes no sense at all for one judge to spend days listening to them give evidence on one issue and for another judge to spend more days listening to them give evidence on another. This is not only a wasteful duplication of effort. Much useful information is likely to fall between the gaps. How can a judge who has not heard the parents give their evidence about how the child's injuries occurred begin to assess the risk of letting them care for the child again? The experts may make their assessments, but in the end it is for the judge to make the decision on all the evidence before him. How can he properly do that when he has heard only half of it?

### *Human rights*

77. Children have both the right to life under article 2, and the right not to be subjected to torture or inhuman or degrading treatment or punishment under article 3, of the European Convention on Human Rights. States are required to take measures to protect them, principally in form of effective deterrence through the criminal law (*A v United Kingdom* (1999) 27 EHRR 611) but also through taking steps to remove them from an abusive situation about which the authorities knew or ought to have known (*Z v United Kingdom* (2002) 34 EHRR 3). But there is nothing in those cases to suggest that the authorities are failing in their duty to protect children from inhuman or degrading treatment because they are unable permanently to remove children from their families on the basis of unproven allegations. Deterrence through the criminal law depends upon proof to the criminal standard. The duty to take positive protective steps depends upon the authorities having reasonable notice of the risk (see *Osman v United Kingdom* (1998) 29 EHRR 245). In *Osman* the police knew of the threats to kill; in *Z* the local authority were well aware of the long history of neglect and abuse. For a risk to be "real" it has to be founded on real facts not unproven speculations.

78. Children also have the right to respect for their family lives under article 8 of the Convention. This is, of course, a qualified right. Interference by the authorities is justified if it is “necessary in a democratic society” in order to protect the child’s own rights, which in this context include the right to be protected from harm. But there has to be a “pressing social need” for the interference, the reasons for it have to be “relevant and sufficient”, and the interference itself has to be proportionate to the need: see, for example, *K & T v Finland* (2001) 31 EHRR 18, *Scozzari & Giunta v Italy* (2002) 35 EHRR 12, *Kutzner v Germany* (2002) 35 EHRR 25. It is difficult to see how the reasons for taking a child away from her family for the indefinite future can be “relevant and sufficient” if they rely upon unproven allegations as the only basis for inferring that the child is at risk of harm.

79. For my part, therefore, I see no reason to revise the existing law in the light of the Human Rights Act 1998.

### *Conclusion*

80. I would therefore dismiss this appeal. However, two consequential points arise. Part of the judge’s order in preparation for the next part of the hearing was a draft letter of instruction to the experts. This was designed to point up the problems with the present law as the judge saw them. The parties are all content with the much simpler draft proposed by Cafcass for cases such as this:

“The court has considered the allegations of [type of harm] made against [name(s) of alleged abuser(s)] and has concluded that the court is not satisfied that they are more likely than not to be true. In those circumstances the fact that those allegations were made remains part of the factual matrix of the family history and the ramifications of their having been made may well be relevant to your assessment. However, given that the court was not satisfied that the allegations were true, they cannot form the basis for asserting that there is a current risk of the same type of harm occurring in the future.”

This would certainly seem a more appropriate form of words than that chosen by the judge for use in the present case and may well be suitable for use generally.

81. The second point is that, although not invited to do so by any of the parties, the judge recused himself from the case. His concern was that he had deliberately instigated this test to the existing law and others might perceive that he would find it difficult put out of his mind his view that the “real possibility” ought to be taken into account at the welfare stage. However, all judges are from time to time required to apply legal principles with which they have intellectual difficulty. The problem which the judge saw in this case will arise in any other care case in which allegations are made but not found on the balance of probabilities to be true. If the judge is not fitted to try this case, it might be said that he is not fit to try any case in which the same problem could arise, and that would be absurd. For all the reasons given earlier, the same judge should hear the whole case. Indeed, this case is a good illustration, for any subsequent judge might well have difficulty in extracting the really important findings from such a long and complicated judgment on the factual issues.

82. I would therefore send the case back for the experts to be instructed and the judge to complete his hearing of the case in the light of the judgments in this House. As with so many family cases, it is likely that things have moved on since these proceedings were begun. The problems which loomed so large in the past may have receded while others have reared their heads. In family life, as in family proceedings, nothing stands completely still.

**EASTERN CARIBBEAN SUPREME COURT  
TERRITORY OF THE VIRGIN ISLANDS**

**IN THE HIGH COURT OF JUSTICE**

**Claim No. BVIHCV 2016/0063**

**BETWEEN:**

**CLAUDE SKELTON-CLINE**

**Claimant**

**-AND-**

**THE CABINET OF THE VIRGIN ISLANDS**

**Defendant**

**Appearances:** Tana'ania Small-Davis, Pauline Mullings and Christine Hart, Counsel for the Claimant  
Giselle Jackman Lumy, Principal Crown Counsel, Counsel for the Defendant

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2019: May 23<sup>rd</sup>  
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**JUDGMENT**

[1] **Ellis J:** The Claimant herein is aggrieved by the decision of the Cabinet of the Virgin Islands ("Defendant") not to approve the renewal of his appointment as Managing Director of the British Virgin Islands Ports Authority ("BVIPA") and makes a claim for judicial review of that decision and for the following relief:

- (1) An order of certiorari quashing the decision of the Cabinet in failing to approve the renewal the Claimant's contract of employment as Managing Director of the BVI Ports Authority.
- (2) Damages for failure to renew the Claimant's contract of employment as Managing Director of the BVI Ports Authority including loss of earnings and diminution of job prospects;
- (3) General Damages;
- (4) Further or other relief as the Court deems just;
- (5) Costs.

[2] The Claimant was appointed as Managing Director in accordance with section 20 of the British Virgin Islands Ports Authority Act<sup>1</sup> (“the Act”) which provides that:

20. (1) The Authority shall, with the approval in writing of the Governor in Council appoint a Managing Director and a Deputy Managing Director.

(2) The Managing Director shall, subject to the general direction of the Authority, be the Chief Executive Officer and be charged with the direction of the business of the Authority, the organisation and the exercise, performance and discharge of its powers, duties and functions and the administrative *control of the employees of the Authority*.

(3) -

(4) -

(5) -

[3] By an agreement dated 4<sup>th</sup> December 2012, between the BVIPA and the Claimant, the Claimant agreed to serve for a period of three (3) years commencing on 1<sup>st</sup> December 2012 and terminating on 30<sup>th</sup> November 2015. In or about January, 2015 and in accordance with clause 9 of the Agreement, the Claimant communicated to the BVIPA his desire to continue in employment for a further term.

[4] On 22<sup>nd</sup> January 2015, the BVIPA Board passed a resolution approving the extension of the Claimant’s contract of employment as Managing Director for a further period of three years (1<sup>st</sup> December 2015 to 30<sup>th</sup> November 2018) with a one (1) year option to extend. This resolution was communicated to the Ministry of Communications and Works (“the Ministry”) in or about 28<sup>th</sup> January, 2015.

[5] The Claimant asserts that during the period March 2015 – November 2015, the Minister of Communications and Works and several other ministers of Government, both publicly and privately expressed confidence in the Claimant’s performance of his duties during his period of employment and assured him that his employment contract would be renewed.

[6] Notwithstanding this, the Claimant’s contract of employment was allowed to expire on 30<sup>th</sup> November 2015 without confirmation of approval. Nevertheless, the Claimant asserts that he continued to perform his duties as Managing Director until 7<sup>th</sup> December 2015. On 8<sup>th</sup> December 2015, the Acting Chairman of the BVIPA Board informed the Claimant that it had received no

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<sup>1</sup> No. 12 of 1990 as amended

approval of the resolution for the continuation of his employment and informing him that the Permanent Secretary in the Ministry had advised that the Deputy Managing Director had been appointed to act as Managing Director.

- [7] By letter dated 16<sup>th</sup> December 2015, the Board acknowledged that the Claimant's contract of employment had ended. Paragraph 1 of the letter is relevant and provided as follows:

*“As you are aware, the Board of the British Virgin Islands Port Authority (“the Ports Authority”) made recommendation to the Ministry of Communications and Works in March 2015 to retain your services as Managing Director for a further contract term of three years. To date, Cabinet which is required to approve the recommendation has not communicated a decision regarding renewal of the contract and your appointment. The Board therefore considers that your relationship with the BVI Ports Authority as Managing Director has ended pending a decision by Cabinet. In light of the developments, we are constrained to ask for your full cooperation in ensuring a smooth transition of matters to the Deputy Managing Director.”*

- [8] The Claimant asserts that when he sought to determine what had occurred, he was informed by several ministers of Government that his contract had not been deliberated upon and that the relevant Cabinet Paper had in fact been withdrawn from consideration on 2<sup>nd</sup> December 2015. This evidence was neither admitted nor denied by the Defendant or indeed by the individual ministers, however, the Cabinet Secretary, Ms. Sandra Ward averred that no Cabinet decision which touches and concerns these proceedings was taken on 2<sup>nd</sup> December 2015.

- [9] The Claimant filed an Application for leave to make a judicial review claim on 23<sup>rd</sup> February 2016. Prior to doing so, he recounts a meeting with the Honourable Premier on 31<sup>st</sup> December 2015 in which he indicated that in the public interest, he did not see how his contract could be renewed.

- [10] On 6<sup>th</sup> April 2016, the Minister of Communications and Works submitted a Paper to Cabinet seeking a determination of the BVIPA's Resolution. On that date, Cabinet met and decided not to renew the Claimant's contract of employment. The Cabinet Secretary asserts that the rationale for Cabinet's decision is set out at paragraph 4 of the Cabinet Paper which states:

*“...it is in the best interest of the Territory to utilize other arrangements for the human resource needs of the Managing Director's position. The additional qualities required of the person holding the portfolio of Managing Director should include specialized management and strategic skills sets that can assist in harmonizing the function of the Ports Authority with the operations and functions of the new multi-million dollar cruise pier and landside development and harmonizing the two (2) operations. This will no doubt require legislative changes as the present Act does not provide for large scale commercial and retail landside services operated on ports property.”*

- [11] The Claimant states that he only became aware of Cabinet's decision through the Affidavit filed for the Permanent Secretary in the Ministry, Mr. Anthony McMaster filed on 3<sup>rd</sup> May 2016. The Claimant asserts that it was only later, on 28<sup>th</sup> June, 2016, that the Claimant became aware of Cabinet's reasons for its decision when he was served with the Second Affidavit of Mr. McMaster.
- [12] On 27<sup>th</sup> September 2016, after a contested hearing, the Court granted leave to the Claimant to pursue judicial review of the Defendant's decision to refuse to approve his appointment as Managing Director of the BVIPA on the grounds of:
- (a) Irrationality/unreasonableness;
  - (b) Failure to give reasons; and
  - (c) Natural justice/want of procedural fairness.
- [13] The Claimant maintains that:
- (a) The Defendant, pursuant to the statutory power given to it by section 20 of the Act, had a duty to:
    - (i) Act fairly and reasonably;
    - (ii) Take into account all proper matters/not taking into account improper matters;
    - (iii) Act rationally;
    - (iv) Adopt a fair and reasonable procedure in the carriage of its duty to properly consider the continuation of appointment and employment of the Claimant which it has failed to do.
  - (b) The Defendant's decision is unreasonable and irrational;
  - (c) The Defendant's treatment of the Claimant has caused him damage and loss, in particular damage to his reputation and career prospects.
- [14] The Parties agree that the following issues arise for determination:
- a. Whether the decision of Cabinet to refuse to approve the reappointment of the Claimant is amenable to judicial review?
  - b. Whether Cabinet has failed to provide adequate reasons for its decision to refuse to approve the BVIPA's recommendation?
  - c. Whether Cabinet's refusal to approve the BVIPA's recommendations was irrational/unreasonable?

- d. Whether Cabinet failed to have regard to the principles of natural justice or procedural fairness when refusing to approve the BVIPA's recommendation?
- e. If the response to questions (b), (c), or (d) is yes, what is the appropriate measure of damages?

**A. Whether the decision of Cabinet, to refuse to approve the reappointment of the Claimant is amenable to judicial review?**

**THE PARTIES' ARGUMENTS**

[15] Counsel for the Defendant commenced her arguments by referencing the nature and classification of public authorities. She conceded that generally, all public authorities serve a public function which would inure to the benefit of a public interest and so therefore the decisions of public authorities are *prima facie* susceptible of review. However, Counsel submitted that not all public bodies constitute central government. Public authorities could be divided into two discrete classifications; those which fall under the chapeau of the public/civil service and those which are classified as statutory bodies/bodies corporate. Counsel for the Defendant submitted that only those persons employed in central government are designated as public servants and she submitted that this distinction is fundamental to the determination of this issue.

[16] To illustrate this point, Counsel pointed to section 2 of the Virgin Islands Constitution, where the term "public service" is defined as "*the service of the Crown in a civil capacity in respect of the Government of the Virgin Islands*". This acknowledges a distinction between members of the civil service and those appointed to statutory corporation/bodies corporate which has long been recognized at common law. In **Tamlin v Hannaford**<sup>2</sup>, Lord Denning made the following pronouncement in relation to the British Transport Commission – a statutory corporation established by the Transport Act 1947:

*"In the eye of the law, the corporation is its own master and is answerable as fully as any other person or corporation. It is not the Crown and has none of the immunities or privileges of the Crown. Its servants are not civil servants, and its property is not crown property. It is as much bound by Acts of Parliament as any other subject of the King. It is of course, a public authority and its purposes no doubt are public purposes, but it is not a government department nor do its powers fall within the province of government."*

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<sup>2</sup> (1950) 1 KB 18

- [17] **Tamlin v Hannaford** was cited with approval by the Privy Council in **Perch and Others v Attorney General of Trinidad and Tobago**.<sup>3</sup> In that case, the Board opined that employees of the Trinidad and Tobago Postal Corporation – a body established by Trinidad and Tobago Postal Corporation Act 1999 – were not to be regarded as in the service of the Government of Trinidad and Tobago in a “civil capacity” within the meaning of those words in section 3 (1) of the 1976 Constitution.<sup>4</sup> In the 2009 decision of **Attorney General v Smith**<sup>5</sup>, the Board re-affirmed the dichotomy between central government and statutory corporations. At paragraph 16, Lord Walker, referred to the decision in **Tamlin v Hannaford**, and made clear that; “*Those employed in the local government of statutory corporations are working in the public sector (a much wider expression) but are not in the Crown Service.*”
- [18] Counsel for the Defendant submitted that the dichotomy between the public service and bodies corporate is an important feature of the current factual matrix because the starting premise has always been that employment decisions are not generally amenable to judicial review. Indeed, such matters normally fall under the rubric of ordinary master-servant relationships which can only be resolved through recourse to private law remedies.<sup>6</sup>
- [19] By contrast, the employment of public servants is subject to a special immunity and insulation, recognized by the Privy Council in **Endell Thomas v The Attorney General of Trinidad and Tobago**<sup>7</sup>. In that case, Lord Diplock underscored the need to provide every member of the public service with security of tenure and insulation from political patronage.<sup>8</sup> Such insulation is manifest in the manner in which members of the public service are appointed. One becomes a public servant, by virtue of appointment by the Governor, after consideration of the recommendation advanced by the relevant Service Commissions. Concomitant with the necessity of insulating public servants in this manner, however, is the need to subject employment decisions concerning

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<sup>3</sup> [2003] UKPC 17

<sup>4</sup> Section 3 (1) of the 1976 The Constitution of the Republic of Trinidad and Tobago reads:

“public service” means, subject to the provisions of subsection (4) and (5), the service of the Government of Trinidad and Tobago or of the Tobago House of Assembly established by section 3 of the Tobago House of Assembly Act, in a civil capacity.

<sup>5</sup> [2009] UKPC 50

<sup>6</sup> Dr. Astley McLaughlin v His Excellency The Governor of the Cayman Islands [2007] UKPC 50

<sup>7</sup> Privy Council Appeal No. 47 of 1980

<sup>8</sup> The principle was re-affirmed in the more recent Privy Council decision in Manning v Ramjohn [2011] UKPC 20, paragraphs 26 and 27

only members of the public service to the supervisory jurisdiction of the courts. In contrast, members of bodies corporate do not enjoy any such insulation.

[20] Counsel for the Defendant asserted that decisions concerning employment within a body corporate are not amenable to judicial review. She relied on the case of **Vidyodaya University of Ceylon and Ors. v Silva**<sup>9</sup>, in which the Board held that the employment of a teacher amounted to no more than an ordinary contract of master and servant, despite the fact that the university was established by statute. At page 875, the Board re-affirmed the dicta in **Barber v Manchester Regional Hospital Board**<sup>10</sup> that: “Here, despite the strong statutory flavor attaching to the plaintiff’s contract I have reached the conclusion that in essence it was an ordinary contract between master and servant and nothing more.”

[21] Counsel garnered further support for her arguments from **Agricultural Development Bank v Seebalack Singh** Civil Appeal No. 61 of 2006 and **Seth Quashie v The Tobago House of Assembly** CV 2013 – 4226. In the latter case, the court was charged with determining whether a body corporate was performing a public function when refusing to renew the claimant’s contract. At paragraph 30 of the judgment, the Court held that “the Defendant was free to negotiate contracts of employment and this includes freedom to choose to renew or not to renew contract... there appears to be no structure or policy in relation to the selection criteria to be applied in the case of a further contract... there exists no obligation on the Defendant to renew a contract of employment upon expiration of time, it is a decision entirely based on discretion in the context of a contract for services.” Counsel submitted that this dictum applies *mutatis mutandis* to the case at bar.

[22] Counsel conceded that the position may be different if the Claimant was a public servant at the time of the application for appointment to the BVIPA post; however, he was not. In this context Counsel applied the judgment in the Trinidadian case of **The North West Regional Health Authority v Ameena Ali** which was heavily relied on by the Claimant.<sup>11</sup> In that case Mrs. Ali was

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<sup>9</sup> [1964] 3 ALL ER 865, 867 and see R v East Berks Health Authority, ex p Walsh [1984] 3 ALL ER 425, 4299 and the Caribbean Court of Justice case of Brent Griffith v Guyana Revenue Authority and Attorney General of Guyana CCJ Application No. 1 of 2006, which was applied with authority at paragraph 13 of the Eastern Caribbean Court of Appeal decision of Hazeline Maynard and Anor. v The Saint Christopher and Nevis Solid Waste Management Corporation and Anor. SKBHVCAP 2015/00069.

<sup>10</sup> [1958] 1 ALL ER 322, 331

<sup>11</sup> Civ. App. No. 11 of 2005

employed by the Regional Health Authority, a statutory corporation and yet was allowed to pursue judicial review proceedings by the Trinidadian Court of Appeal. However, in distinguishing that case, Counsel submitted that Mrs. Ali was actually a public servant, who had been seconded to the employ of the statutory corporation. Her substantive employment remained firmly rooted in her employment in the public service of central government. This was evidenced by the terms of her contract with the statutory corporation, which provided that her benefits, termination and discipline were all referable to the relevant Civil Service Act and Civil Service Regulations. Additionally, the relevant statute provided that an officer who opts for secondment should “*be treated no less favourably than if he were not so seconded*”. As such, Mrs. Ali remained a civil servant in central government despite the fact that, when her complaint arose, she was seconded to the statutory authority.

[23] Counsel submitted that this claim concerns aspirations to a post in a statutory corporation established under the Act. The Claimant does not allege that he was a civil servant and he was clearly seeking employment outside of the civil service. In such circumstances, Counsel submitted that the Claimant cannot avail himself of the insulation enjoyed by civil servants which permit their extraordinary recourse to judicial review of adverse employment decisions. She concluded that the entire claim is therefore misconceived and bound to fail.

[24] Counsel further submitted that the force of the Defendant’s arguments is in no way diminished by the fact that the impugned Cabinet decision was made pursuant to statute. While this factor may imbue decisions concerning appointment as Managing Director of the BVIPA with a “*strong statutory flavour*”, it would not without more, render employment decisions to this body corporate susceptible to review. Counsel relied on **R v East Berkshire Health Authority ex parte Walsh**<sup>12</sup> in which the relevant central government authority, the Secretary of State for Social Services, had a similar statutory power to approve the decision under consideration. Despite this, it was maintained that the decision itself was not amenable to judicial review since it concerned employment with a statutory corporation. Counsel submitted that in the same way, the requirement for Cabinet’s approval would not disturb the fact that the post to which the Claimant was seeking to be appointed did not fall within the ambit of the civil service.

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<sup>12</sup> [1985] QB 152

[25] To demonstrate the point even further, the Defendant contended that if Cabinet made the impugned decision qua employer, judicial review would remain equally unavailable. The fact would remain that anyone appointed in this respect would not be a public servant or part of central government as defined by the Constitution. Not being a civil servant, there would be no entitlement to the insulation which permits such persons access to judicial review in respect of employment decisions.

[26] Counsel for the Defendant concluded that regardless of any other intervening factors, it cannot be debated that the Claimant was not a civil servant, not employed in central Government and by extension, not entitled to seek judicial review of employment decisions.

[27] In responding, Counsel for the Claimant commenced her submissions by relying on the decision in **R v Derbyshire County Council ex parte Noble**.<sup>13</sup> In that case, the Respondent had been employed by the county council to provide services to detained persons. Upon termination of his employment, the respondent initiated judicial review proceedings, challenging the dismissal. Lord Woolf (as he then was) acknowledged that though these elements may give rise to judicial review, there is no single universal test in determining whether there is a sufficient public law element or whether the issue is confined strictly to private law.

[28] Lord Woolf went on to crystallize the correct approach that a court should take:

*“As I understand the approach which the courts now adopt, and which has been made clear in a series of cases, it is to look at the subject matter of the decision which it is suggested should be subject to judicial review and by looking at that subject matter then come to a decision as to whether judicial review is appropriate.*

*That approach is an approach that can be found, for example, in Reg. v Secretary of State for Foreign and Commonwealth Affairs ex parte Everett in which this court had to decide whether or not the issue or refusal to issue a new passport to the applicant was a matter which was appropriate for judicial review. Having referred to the speeches in Council for the Civil Service Unions v Minister for the Civil Service O'Connor LJ, in giving the judgment of the court, said:*

*‘Three of their Lordships, Lord Diplock, Lord Scarman and Lord Roskill unequivocally held that judicial review did lie of decisions taken under the prerogative. Lord Scarman in his speech stated that it was not the origin of the administrative power, but it was the actual factual application which had to be considered.’*

*I would echo those remarks of O'Connor LJ and suggest that what one does is to look at the actual, factual approach.”<sup>14</sup>*

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<sup>13</sup> [1990] ICR 808

<sup>14</sup> At page 819A

- [29] In considering the actual factual application, the court in **ex parte Noble** concluded that the issue arose directly out of the employment relationship.
- [30] A further example of a case in which the actual factual application demonstrated that the employment relationship was amenable to judicial review is **R v Civil Service Appeal Board, ex parte Bruce**<sup>15</sup>. In that case, the Civil Service Appeal Board was an independent body, set up under the prerogative, whose decision was not that of the employer, and with whom the applicant had no direct relationship. The Claimant asserts that as in **Ex Parte Bruce**, his complaint is not against any action of his employer, the BVIPA. The Claim does not seek remedies in respect of a breach of his contract of employment. In fact, there is no employment relationship between the Claimant and the Defendant in this suit. He asserts that the said contract is merely peripheral to the issues raised in this action. The grievance is entirely against a party who had a statutory role to perform and which is therefore entirely governed by the duty imposed upon it by the statute. Counsel submitted that it is the Cabinet, which operates as a prerogative decision-maker, in this case independent of the BVIPA. Its decision not to approve the continuation of the Claimant's employment as Managing Director was not the decision of the employer. The Claimant has no direct relationship with the Cabinet. The Claimant has no possible cause of action against his actual employer.
- [31] Counsel argued that the legal principles to be gleaned from both **Ex Parte Walsh** and **Ex Parte Noble** must be regarded in the context that the complaints made were breaches of express contractual terms. She submitted that neither **Ex Parte Walsh** nor **Ex Parte Noble** identified an alleged abuse of power by the public authority. Instead, Counsel for the Respondent submitted that the more relevant authority is **Regina v Civil Service Appeal Board ex parte Bruce**.
- [32] Counsel for the Claimant referred to several cases relied on by the Defendant including **Agricultural Development Bank of Trinidad and Tobago v Seebalack Singh**<sup>16</sup>, which she submitted are distinguishable from the case at bar. The key issue in **Seebalack Singh** was whether the employee could challenge his dismissal by the Appellant bank, which had been established as a statutory body corporate, by way of judicial review proceedings. In other words,

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<sup>15</sup> [1988] ICR 649; [1989] 2 ALL ER 907

<sup>16</sup> Seth Quashie v The Tobago House of Assembly and The Public Services Association v The Minister of Health and The Regional Health Authorities

whether the bank was exercising a public law function in terminating his employment. On appeal, and applying the test set out in **ex parte Noble** of examining what “*actual factual application*” the decision maker was engaged in the Trinidadian Court of Appeal held that the bank was exercising an employment function pursuant to the contract of employment, which was therefore a private law issue.

[33] Counsel for the Claimant also relied on the dictum of Waller J in **R v Lord Chancellor ex parte Hibbit and Sanders**<sup>17</sup>:

*“In considering whether a decision can be judicially reviewed, it is critical to identify the decision and the nature of the attack on it. Unless there is a public law element in the decision, and unless the allegation involves suggested breaches of duties or obligations owed as a matter of public law, the decision will not be reviewable.”*

[34] Counsel submitted that the public law element is present in the case at bar because the Legislature directly required the Cabinet to consider and approve the appointment of the Managing Director of the BVIPA and the Cabinet at first refused and or neglected to do so in abuse of its power. Eventually, when the Cabinet did exercise that power, (refusing to approve the continuation/appointment of the Claimant), it did so on an irrational basis and followed an unfair process.

[35] Counsel submitted that it is indisputable that the decisions of the Cabinet are that of a public body acting in the public interest. The power given to the Cabinet is to be exercised in the public interest and the public has an interest in ensuring that this power is not abused. The Claimant finds support for this in the redacted Cabinet Paper disclosed by the Defendant. He submits that it is obvious that the appointment of the Managing Director was considered in the context of legislative changes that would affect the economic viability of the Territory’s ports specifically and the economic welfare of the country generally.

[36] Counsel submitted that the court has an obligation to exercise its supervisory power over decision-makers in connection with interests protected by public law, in order to promote better quality decision making in the public interest. Where a decision involves the exercise of a power granted by statute to a public body, Counsel submitted that there is enough of a public law element to make review by the court available. Then, when there is merit to the challenge, i.e. an arguable public

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<sup>17</sup> The Times, March 12, 1993 [1993] COD 326, referred to in *Quashie v The Tobago House of Assembly*

law ground, looking at the factual application of the decision, the court has a duty to intervene to prevent or correct irrational or unfair decisions or abuse of power.<sup>18</sup> Counsel further submitted that where there is an overlap of public law and private law issues, the court should decide in favour of granting relief in these proceedings particularly where there is no alternative private law remedy available.

[37] The Claimant relied on the **Ameena Ali** case in which the Court of Appeal determined the issue of whether the claim was based in private or public law by asking what was the 'actual factual application' in which the decision maker was engaged. The court concluded that it was not merely question of breach of contract, but rather, whether the rights and obligations created by the statutory provision of section 29(4) of the Regional Health Authorities Act were observed and whether in terminating the respondent's employment, the appellant had acted lawfully.

[38] In the case at bar, the Claimant asserts that the issue is whether the Defendant has (a) carried out its function as decision maker pursuant to the Act or has abused its power by refusing/failing to do so and/or (b) properly carried out its function in the decision that it purportedly arrived at by acting fairly, reasonably and rationally.

## **COURT'S ANALYSIS AND CONCLUSION**

[39] Having reviewed the Parties written legal submissions and having heard the oral arguments, the Court can find no fault with the case law cited or the reasoning contained therein. It is now trite law that for a decision to be the subject of a claim in judicial review, it must fall within the realm of public and not private law.

[40] The Court is satisfied that the correct approach to be adopted by a court considering the reviewability of a decision is that prescribed by Lord Woolf in **ex parte Noble**. In that case, the court found that although the applicant's engagement involved the carrying out by him of certain functions of a public nature, his complaint was directed to the circumstances surrounding his dismissal. The court in that case was concerned not with any breach by the council, but with such private rights as the applicant might be entitled to by virtue of his private contract of employment with the council.

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<sup>18</sup> De Smith's Judicial Review, 6<sup>th</sup> ed., 3-060 set out in paragraph 14 of *Quashie v Tobago House of Assembly*

The court therefore, concluded that there was no element of public law which was necessary to enable the applicant to proceed by judicial review.

- [41] After noting that there is no universal test which will be applicable to all circumstances which definitively prescribe when judicial review is or is not available, at page 819 of the judgment, Lord Woolf stated:

*“As I understand the approach which the courts now adopt, and which has been made clear in a series of cases, it is to look at the subject matter of the decision which it is suggested should be subject to judicial review and by looking at that subject matter then come to a decision as to whether judicial review is appropriate.”*

- [42] In applying this approach, this Court has also considered the following excerpt of Lord Diplock’s speech in **Council of Civil Service Unions v Minister for the Civil Service**:

*“To qualify as a subject for judicial review the decision must have consequences which affect some person (or body of persons) other than the decision-maker, although it may affect him too. It must affect such other person either: (a) by altering rights or obligations of that person which are enforceable by or against him in private law; or (b) in depriving him of some benefit or advantage which either (i) he had in the past been permitted by the decision-maker to enjoy and which he can legitimately expect to be permitted to continue to do until there has been communicated to him some rational grounds for withdrawing it on which he has had an opportunity to comment; or (ii) he has received assurance from the decision-maker will not be withdrawn without first giving him an opportunity of advancing reasons for contending that they should not be withdrawn.”*

*“For a decision to be susceptible to judicial review the decision-maker must be empowered by public law (and not merely, as in arbitration, by agreement between private parties) to make decisions that, if validly made, will lead to administrative action or abstention from action by an authority endowed by law with executive powers, which have one or other of the consequences mentioned in the preceding paragraph. The ultimate source of the decision-making power is nearly always nowadays a statute or subordinate legislation made under the statute; but in the absence of any statute regulating the subject matter of the decision the source of the decision-making power may still be the common law itself, i.e., that part of the common law that is given by lawyers the label of “the prerogative.” Where this is the source of decision-making power, the power is confined to executive officers of central as distinct from local government and in constitutional practice is generally exercised by those holding ministerial rank.”*

- [43] No doubt it is the application of this approach which has resulted in the generally held view that judicial review should not be extended to a pure employment situation.<sup>19</sup> There can now be no doubt that employees of statutory corporations do not generally enjoy the protections of public employment and cannot *without more* seek to invoke the court’s supervisory jurisdiction to seek to obtain remedies stemming from a breach of any right arising out of their employment contract.

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<sup>19</sup> R v BBC ex parte Lavelle [1983] 1 WLR 23 at 30C

[44] **Ex parte Walsh** is illustrative. In that case, a district nursing officer who had been dismissed for misconduct sought judicial review to quash the decision on the ground that there had been a breach of natural justice and that the district nursing officer had no power to dismiss him. In that case, two factors played a prominent part in the decision to refuse judicial review:

- i. the absence of any special statutory element underpinning the employment relationship:

*“As Lord Wilberforce said, it is the existence of these statutory provisions which injects the element of public law necessary in this context to attract the remedies of administrative law. Employment by a public authority does not per se inject any element of public law. Nor does the fact that the employee is in a “higher grade” or is an “officer”. This only makes it more likely that there will be special statutory restrictions upon dismissal or other underpinning of his employment (see per Lord Reid in Malloch (supra)). It will be this underpinning and not the seniority which injects the element of public law. Still less can I find any warrant for equating public law with the interest of the public. If the public through Parliament gives effect to that interest by means of statutory provisions, that is quite different, but the interest of the public per se is not sufficient.” per Sir J. Donaldson*

- ii. the presence of a contract between applicant and respondent.

*“At the end of the day I find myself returning to the basic question, did the remedies sought by Mr. Walsh arise solely out of a private right in contract between him and the authority or on some breach of the public duty placed on that authority which related to the exercise of the powers granted by statute to them to engage and dismiss him in the course of providing a national service to the public? In my judgment there is no arguable case which can be mounted upon the facts disclosed even if they are all assumed in favour of Mr. Walsh to the effect that the remedies sought by him stem from a breach which can be related to any right arising out of the public rights and duties enjoyed by or imposed upon the health authority. The only remedies sought by Mr. Walsh arise solely out of his contract of employment with it, as opposed to any public duty imposed upon the health authority.”*

*“However, in my judgment, the relationship between the applicant and the Health Authority was one which fell within the category of “pure master and servant” although the powers of the authority to negotiate terms with their employees were limited indirectly by statute and subordinate legislation. Any breach of those terms of which Mr. Walsh complains related solely to the private contractual relationship between the Health Authority and him and did not involve any wrongful discharge by the Health Authority of the rights or duties imposed upon it qua Health Authority. The rules of natural justice may well be imported into a private contractual relationship, vide the category of employee/master relationship envisaged in the first of the three categories described by Lord Reid in Ridge v. Baldwin (1964) AC 40 to which the Master of the Rolls has already referred but in such circumstances they would go solely to the question of rights and duties involved in the performance of the contract of employment itself. The manner in which the authority terminated, or purported to terminate, Mr. Walsh's contract of employment related to their conduct as employers in a pure master and servant context and not to the performance of their duties, or exercise of their powers as an authority providing a health service for the public at large. per Purchas LJ.”*

- [45] In the Court's judgment, rather than the status enjoyed, by the applicant – whether by contract or appointment, a court must ultimately consider the facts and circumstances of the case that is to say the nature of the allegations and the nature of the acts complained of as well as the actual rights alleged to be infringed.<sup>20</sup>
- [46] It is clear that this case does not fall to be determined on a purely master- servant employment basis. The decision under challenge was not made by the Claimant's employer but rather by the Cabinet of Ministers. The Court has not lost sight of the fact that this Claimant does not seek relief as against his employer but rather against the Cabinet whose decision to withhold approval ensured that his employer could not act to continue to employ him.
- [47] Section 20 (1) of the Act provides that the BVIPA shall, with the approval in writing of the Governor in Council (Cabinet) appoint a Managing Director. This provision makes it clear that the appointment of the managing director requires the approval of Cabinet in writing. It follows that BVIPA is statutorily obliged to consult with and secure the approval of Cabinet before any appointment can be made. Inversely, the Act provides that Cabinet must consider the BVIPA's recommendation and signify its consent or refusal and it is that decision-making process which is the subject of this Application.
- [48] Section 20 (2) defines employment relationship and makes it clear that it is the BVIPA who is the Claimant's employer. It provides that the Managing Director shall, subject to the general direction of the Authority, be the Chief Executive Officer and be charged with the direction of the business of the Authority. The Claimant's complaints therefore do not relate solely to the private contractual relationship between the BVIPA and himself and do not involve any wrongful discharge by the BVIPA of the rights or duties imposed upon it under the Act. In the same way, the remedies sought by the Claimant do not arise solely out of a private right in contract between himself and the BVIPA.

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<sup>20</sup> Boxhill et al v Port Authority of Trinidad and Tobago CA No.11 of 2018, judgment delivered 28/2/2013

[49] Counsel for the Defendant has submitted that these factors are of no moment. She submitted that the fact that the impugned Cabinet decision was made pursuant to statute may imbue the matter with a “*strong statutory flavour*”, it would not *without more*, render employment decisions concerning this statutory corporation susceptible to review. Counsel contends that the case of **Ex Parte Walsh** supports this contention because in that case the relevant central government authority, (the Secretary of State for Social Services) had a similar statutory power to approve the decision under consideration. She submitted that despite this obvious fact, the Court held that the decision itself was not amenable to judicial review. She submitted that in the same way, the requirement for Cabinet’s approval should not disturb the fact that the post to which the Claimant was seeking to be appointed did not fall within the ambit of the civil service.

[50] In the Court’s judgment this argument fails to acknowledge the very obvious fact that the decision maker in **Ex Parte Walsh** was the claimant’s employer and not the Secretary of State and that the matter under review was his dismissal and not the Secretary of State’s refusal to approve his conditions of service. It is therefore not surprising that May LJ concluded:

*“Thirdly, although the relevant statutory instrument provided that where conditions of service of, for instance, senior nursing officers had been the subject of negotiations by a negotiating body (a normal civil service Whitley Council) and had been approved by the Secretary of State, then Mr. Walsh’s contract should include those conditions, I doubt whether it can be said that Mr. Walsh’s conditions of service were “fortified by statute” in the sense meant by Lord Wilberforce. It could have been different had Mr. Walsh’s claim been that in some respects his contract with the appellants had not incorporated the agreed conditions: but that is not his claim in the present proceedings which is merely that his employers failed to comply with some of such conditions, express or implied.”*

[51] In the Court’s judgment, this case is not on all fours with the case at bar. In the event that the Claimant was seeking remedies against his employer relative to his terms of employment or his renewal or dismissal, the Court is satisfied that on the authorities relied on by the Claimant, he would be obliged to pursue a private law claim. However, the case at bar is not as straightforward. While the Claimant’s non-renewal may have given rise to private law rights, the Claim herein alleges that the decision to refuse to approve the BVIPA’s recommendation for his reappointment was invalid and should be set aside because Cabinet has violated substantive principles governing the exercise of public law power.

- [52] When the Court considers the “actual factual application” in which this decision maker was engaged, it is clear that the issue is not whether there has been a breach of contract by the decision maker carrying out an employment function. Rather, this matter concerns the lawfulness of the decision to exercise a statutory function. The Court is of the view that there is a clear statutory underpinning to this challenge giving rise to a sufficient element of public law which would make judicial review appropriate.
- [53] The case at bar raises a challenge which appears to be unprecedented. The Parties were unable to put before the Court any authority which is directly on point. However, the Court has considered the authority of **Patrick Manning v Feroza Ramjohn: (1) Patrick Manning (2) Public Service Commission v Ganga Persad Kissoon**<sup>21</sup> which concerned a somewhat similar power as in the case at bar. Under review was the exercise of the Prime Minister’s powers under section 121 of the Constitution of Trinidad and Tobago. Section 121 (3) – (6) provides:
- “(3) Before the Public Service Commission makes any appointment to an office to which this section applies, it shall consult the Prime Minister.
- (4) A person shall not be appointed to an office to which subsection (3) applies if the Prime Minister signifies to the Public Service Commission his objection to the appointment of that person to that office.”
- [54] The second appeal, in which Ganga Persad Kissoon was the respondent, concerns the Prime Minister’s exercise of his section 121(4) power (referred to as the power of veto). The Trinidad and Tobago Court of Appeal found that the Prime Minister had acted contrary to the rules of natural justice in vetoing Mr. Kissoon’s appointment, proposed by the PSC, as Commissioner of State Lands in the Ministry of Agriculture, Land and Marine Resources.
- [55] When the matter came up before the Board, it first considered whether the Prime Minister, in the exercise of his power of veto under section 121 (4) is a person acting in the exercise of a public duty or function in accordance with any law within the meaning of section 20 of the 2000 Judicial Review Act. The Board then considered the reason for the Prime Minister being given a power of veto in respect of the section 121 (4) offices. The Board referred to the 1974 Report of the Constitution Commission (at para 288) (following which the 1962 Constitution veto was maintained in the 1976 Constitution):

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<sup>21</sup> [2011] UKPC 20

*“These officials are so directly concerned with the formulation of the policy and the supervision of its implementation that they must be acceptable to the political chiefs with whom they must have a close working relationship. This does permit some measure of political influence in purely public service appointments but is necessary on purely practical grounds. We would mention that this recommendation of ours is in keeping with the views of the Public Service Associations as expressed to us.”*

[56] The Board had no hesitation in concluding that there was no reason to doubt that in the exercise of his power the Prime Minister is exercising a public duty or performing a public function so as to be required by section 20 of the 2000 Act to do so in accordance with the principles of natural justice or in a fair manner.

[57] While the provision under section 20 of the Act are not couched in precisely the same terms, they imply a similar power as set out in at section 121 of the Trinidad and Tobago Constitution. They imply the executive arm of the Government should have the power to approve or disapprove (veto) appointment of any applicant to the post of managing director of the Territory’s ports. Given the important and critical impact which this may have on the national economy, it is not surprising that some level of executive control would be desirous. The Court similarly has no reservations in concluding that there is a sufficient public law element here to engage the supervisory jurisdiction of the courts.

[58] In the Court’s judgment, the case at bar can be regarded in light of the approach adopted by the English courts in **Cocks v. Thanet District Council**.<sup>22</sup> The Court acknowledges that there is a public/private law dichotomy, however it is clear that there is significant room for overlap and that the same factual scenario may give rise to issues of both public and private law – so-called collateral claims. While the court in that case considered a dissimilar framework, the Court is satisfied that there are principles which may be extrapolated and applied.

[59] The Court must first consider whether there is a duty owed or a benefit conferred on an individual. Where the responsibility for making such determination lies with a public body, the supervisory jurisdiction of the court may be invoked to ensure that that public body adheres to the principles of administrative law. Disputes as to whether there is in fact a duty owed or benefit conferred, should properly be ventilated in the context of a public law or judicial review action. The second tier would

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<sup>22</sup> [1983] 2 AC 286; and see: *Cato v Minister of Agriculture, Fisheries and Food*

arise where the public body has determined that the duty is owed or a benefit should be conferred. Once the public body has made its decision, thereafter private law rights may arise which should properly be considered in a private law action.

[60] By way of illustration, in **Cocks v. Thanet District Council**, the applicant had been given temporary accommodation under the Act. He sought to enforce the obligation on the respondent to house him permanently by an action in the county court. The authority said the action should have been by judicial review. The Court held that where the action impugned the authority's performance of its statutory duties as a pre-condition to enforcing private law rights, the correct way was to do so within judicial review proceedings. The authority's decision could not be challenged by an ordinary action.

[61] In the Court's judgment, Cabinet's approval was a necessary precondition to the creation of private law rights which would have arisen from the consequential contract of employment between the BVIPA and the Claimant. This is a discrete challenge and in circumstances where the Claimant seeks to test the Defendant's discretionary decision to essentially veto the BVIPA's Resolution to reappointment him, it seems to the Court that this public law decision could only be challenged in public law proceedings.

[62] The Court will now turn to the substantive ground raised in this Claim. The Claimant first asks the Court to find that the Defendant had a duty to give adequate reasons for its decision and has failed to do so.

**Whether Cabinet has failed to provide adequate reasons for its decisions to refuse to approve the BVIPA's recommendation?**

## **THE PARTIES' ARGUMENTS**

[63] Counsel for the Claimant noted that the previously held legal principle that administrative bodies are under no general duty to give reasons is rapidly losing force. Counsel found support in the judgment in **R v Secretary of State for the Home Office ex p Doody**<sup>23</sup>, where Lord Mustill

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<sup>23</sup> [1994] 1 AC 531

observed that even where there is no statutory duty to give reasons, “nevertheless it is broadly beyond question that such a duty may in appropriate circumstances be implied.” Counsel also referred the Court to the following excerpt of the judgment of Sir Louis Blom-Cooper in **R v Lambeth London Borough Council ex parte Walters**:<sup>24</sup>

“Open government dictates that the exercise of a decision-making power or duty in a way which affects others is less likely to be, or at least appear to be, arbitrary and irrational if the decision-maker formulates and provides reasons for the decision. The continuing momentum in administrative law towards openness of decision-making was given significantly by Lord Mustill as a ground for departure from the decision of the **Court of Appeal in Payne v Lord Harris of Greenwich [1981] 1 WLR 754** where the court had declined to recognize any duty to give reasons to a prisoner seeking parole. The stage may be said not yet to have been reached where it is a general *prima facie* requirement of the common law that the administrative decision-maker is bound to furnish reasons for the exercise of the statutory decision-making power or duty. Nevertheless, the movement towards establishing such a general rule is undeniable. No one who is involved in the administrative of this jurisdiction can fail to be acutely aware that the absence of a general duty to give reasons is widely regarded as the greatest single defect of – indeed a blot on – administrative law.”

[64] Counsel for the Claimant argued that the obligation to provide reasons is generally and widely accepted as a salutary principle of fairness in cases where the decision adversely affects others and especially so where the decision is aberrant, in other words, contrary to what would be expected.

[65] This position was reiterated in **Padfield v Minister of Agriculture and Fisheries**:<sup>25</sup>

“I do not regard a Minister’s failure or refusal to give any reasons as a sufficient exclusion of the Court’s surveillance. If all the *prima facie* reasons seem to point in favour of his taking a certain course to carry out the intentions of Parliament in respect of a power which it has given him in that regard, and he gives no reason whatever for taking a contrary course, the court may infer that he has no good reason and that he is not using the power given by Parliament to carry out its intentions. In the present case, however, the Minister has given reasons which show that he was not exercising his discretion in accordance with the intentions of the Act.”

[66] Counsel for the Claimant further relied on **R v Secretary of State for Trade and Industry ex p Lonrho**<sup>26</sup> in which the Court held that where all other known facts and circumstances appear to point overwhelmingly in favour of a different decision, the decision maker, who has not provided reasons, cannot complain if the court draws the inference that he has no rational reasons for his decision.

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<sup>24</sup> (1994) 26 HLR 170 526

<sup>25</sup> [1968] AC 997 per Lord Pearce at pages 1053G – 1054A

<sup>26</sup> [1989] 1 WLR 525 at pages 539H – 540B

[67] In responding to the Claimant's contentions, Counsel for the Defendant submitted that there is no general duty on a public authority or officer to provide reasons save where fairness demands. She further submitted that the onus is on the Claimant to demonstrate that fairness requires that reasons be given for a particular decision.<sup>27</sup> In this context, she submitted that fairness is not an immutable concept but largely contingent on the relevant facts under consideration.<sup>28</sup> Counsel concluded that there would have been no requirement to provide reasons in the case at bar because as at December 2015, the Claimant was no more than a mere applicant seeking employment as Managing Director of the BVIPA. She submitted that the mere fact that he was also the current officeholder would not, without more elevate his status to more than an applicant.

[68] Counsel argued that the Claimant has not proffered any authority which supports the contention that an individual is entitled to reasons as to why his application for employment was refused. Rather, she submitted that such a contention has been completely debunked by the English Court of Appeal in **R v City of London Corporation, ex p Matson** where the Court endorsed its previous dicta<sup>29</sup>, and asserted that:

*"The principles of public law will require that those affected by decisions are given the reasons for those decisions in some cases, but not in others. A classic example of the latter category is a decision not to appoint... an employee or office holder."*

[69] The rationale for this would be obvious since it would be impractical and unjustifiable if every job applicant were to be entitled to the reasons why their application was refused or another's application was preferred. Counsel therefore concluded that fairness would not dictate that reasons be provided to the Claimant.

[70] In the event that the Court was of a contrary view, Counsel for the Defendant invited the Court to find that sufficient reasons have in fact been provided by the Defendant. Counsel relied on **South Bucks District Council and Anor. v Porter FC**<sup>30</sup> in which the House of Lords held that, in providing reasons, it is not necessary to "*rehearse every argument*" once the reasons provided "enables the appellant to understand on what grounds the appeal has been decided... and what

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<sup>27</sup> see paragraph 27 of *Peerless Limited v Gambling Regulatory Authority and Others* [2015] UKPC 29

<sup>28</sup> *R v Secretary of State for the Home Department, ex p Doody* [1994] 1 A.C. 531, 560

<sup>29</sup> *R v Civil Service Appeal Board, Ex p Cunningham* [1992] ICR 816, 824

<sup>30</sup> [2004] UKHL 33 paragraphs 24, 26, 27, 34 and 36

conclusions... [were] reached on the principal important controversial reasons". The Defendant submitted that this test has been satisfied in this case.

[71] Counsel pointed out that the reasons for the Defendant's decision are disclosed in paragraph 4 of the Cabinet Paper of 6<sup>th</sup> April 2016 which reflected that Cabinet had a desire to source an individual with "*specialized management and strategic skill sets that can assist in harmonizing the functions of the new multi-million dollar cruise pier and landside development*". It was also decided that there would ultimately be a need for "*legislative changes*" due to shortcomings in the current statutory framework. For further elucidation, Counsel pointed to the Affidavit of the Permanent Secretary, Mr. McMaster whose evidence spoke to the significance of tourism to the national economy and by corollary, the significance of the management of the cruise pier to the tourism industry. In considering the exercise of its powers under s.20 of the Act, the Defendant is concerned to ensure that the most-qualified and best-suited individual is placed in the post of Managing Director.

[72] In the past, the post of Managing Director has been filled after a transparent and accountable process, including the conduct of interviews.<sup>31</sup> Counsel submitted that there was therefore a desire to engage a recruitment procedure which would ensure that whoever is selected for the post is the most suitable candidate to perform the functions, especially given the increased responsibilities that inevitably attach to the new multi-million dollar cruise pier facility. Counsel submitted that such a rationale is entirely sound in all the circumstances. According to paragraphs 20 and 25 of Mr. McMaster's Affidavit, the Claimant would be entitled to participate in the contemplated competitive process and submit himself for consideration.

[73] Moreover, if the Defendant determined that such an approach was in the best interests of the Territory, Counsel for the Defendant submitted that the Court should be hard-pressed to determine otherwise. In that regard Counsel referred the Court to the 2016 Privy Council decision in **The United Policy Holders Group and Ors. v The Attorney General of Trinidad and Tobago**<sup>32</sup> which re-iterated that it is inappropriate for courts to intervene where macro-political and macro-economic decisions are concerned. Given the relationship between the BVIPA and management of the cruise and, by extension, the tourism industry, Counsel argued that the decision being

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<sup>31</sup> See paragraph 35 of the Claimant's Affidavit filed on 7<sup>th</sup> February 2017

<sup>32</sup> [2016] UKPC 17 at paragraphs 32, 74, 101 and 121

impugned has macro-political and macro-economic implications. Counsel therefore concluded that the reasons which have been gratuitously provided are clear, comprehensive and adequate. In the premises, Counsel submitted that there is no proper basis for disturbing Cabinet's refusal to accept the BVIPA's recommendation based on any alleged insufficiency of reasons.

## **COURT'S ANALYSIS AND CONCLUSION**

- [74] There can be no doubt that the traditional approach at common law has been that there is no general rule of law that reasons should be given for public law decisions. This view appears to have been crystallized in **R v Secretary of State of Home Department ex parte Doody**.<sup>33</sup> However, recent judicial authorities have indicated that this is only a general principle. If fairness requires it in any particular situation, courts have now begun to insist that decision makers provide reasons for their decisions.
- [75] Admittedly, this has not evolved in any structured way, but emerging from the case law is a decided inclination to more often than not infer a duty to give reasons where (1) the decision affects an individual's fundamental rights, (2) the decision is one for which the person affected needs reasons in order to know whether he should appeal or seek judicial review, (3) a formal decision is required following a hearing or inquiry and (4) it would not be administratively impracticable for the decisions maker to give reasons for a decision.
- [76] The Court is guided by Lord Mustill in **Ex parte Doody** who underscored that the vital and central question to be posed is: "Is refusal to give reasons fair?" In the Court's judgment this question must be considered in the particular context of the decision which is being challenged. In that regard, the Court has considered the Parties' submissions and the Court is satisfied that on the facts of this case that fairness dictated that reasons be provided for the Defendant's decision. The Court is not persuaded that the Claimant was a mere applicant and therefore not entitled to reasons for the refusal to extend his appointment. That argument ignores material and relevant factors which are at play in the case at bar. It ignores that fact that this Claimant would have been acting pursuant to the terms of his contract of employment which mandated that in the event that he wished to extend his contract of employment, he must at least three months prior to the

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<sup>33</sup> [1994] 1 AC 531

completion of the term, give notice of his desire to continue employment. Thereafter, the BVIPA will decide whether to offer him further employment, on terms to be mutually agreed.

[77] It is not disputed that the Claimant would have satisfactorily performed his duties under his contract and in the wake of his notice, the evidence reveals that the Claimant and the BVIPA thereafter negotiated terms which were mutually agreeable and that these terms along with the BVIPA's Resolution recommending his reappointment were submitted to the Defendant for approval. It is also clear that the Claimant continued to work even past the end of his term of employment with the obvious consent of the BVIPA and no doubt in anticipation of the Defendant's approval. Clearly, all the other known facts and circumstances appear to point overwhelmingly in favour of a different decision to the one taken by the Defendant. Where the Defendant had determined that such approval should not be forthcoming, these circumstances demanded that the Claimant be provided with reasons for such refusal.

[78] While there is some parallel between the facts in the case at bar and an applicant seeking employment, it is by no means exact. In the case at bar, the Claimant had the endorsement and recommendation of his employer set out in Board's Resolution No. 7 of 2015. In those circumstances, he was effectively the sole candidate for continued employment. He was not a man who was being considered for a post in competition with others. Further, the post in question is a very public one, and in circumstances where his employer had apparently no difficulty with reappointment and in fact had recommended it, his rejection would almost certainly have adverse consequences for him not only for his livelihood but for his reputation.

[79] The Court has considered the persuasive dictum in **R v City of London Corporation ex parte Matson**,<sup>34</sup> in which the English Court of Appeal held that the Court of Aldermen of the City of London was under a duty to give reasons when deciding whether or not to ratify the election of an alderman. The court concluded that fairness and natural justice required that this decision should not be allowed to go unexplained. Mr. Matson was standing for public office in which he wished to serve his constituents and the City of London. He was democratically elected by a substantial majority. In the absence of reasons, he could not know the basis for his rejection or whether he should stand again.

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<sup>34</sup> [1997] 1 WLR 765; R v Higher Education Funding Council, ex p Institute of Dental Surgery [1994] 1 WLR 242, per Sedley J at page 257; Flannery v Halifax Estate Agencies Ltd. [2000] 1 WLR 377

[80] In the Court's judgment, fairness dictated that the Claimant know whether there were any reasons or what the reasons were for his rejection. It would certainly be a matter of importance and interest to his potential employer, the BVIPA who wholeheartedly recommended the Claimant's reappointment. There are obvious advantages. As Sedley J. put it in **R v Higher Education Funding Council**<sup>35</sup>:

*"The giving of reasons may amongst other things concentrate the decision maker's mind on the right questions: demonstrate to the recipient that this is so; show that the issues have been conscientiously addressed and how the result has been reached; or alternatively alert the recipient to a justiciable flaw in the process."*

[81] Having determined that there was a duty to provide reasons in this case, the Court must now consider whether reasons have in fact been provided and whether these purported reasons are adequate. In that regard, the Defendant relies on the paragraph 4 of the Cabinet Paper as appropriately setting out the reasons for its decision. The Second Affidavit of the Cabinet Secretary, Sandra Ward put the position this way:

*"I wish to confirm, having been present at the deliberations and being responsible for the minutes which were recorded and finalized thereafter, that Cabinet's decision in this regard was ultimately based on the rationale provided at paragraph 4 of the Cabinet Paper, which has been annexed and marked "S.W.2" herein."*

[82] Paragraph 4 of the extract of the relevant Cabinet Paper, provides that:

*"...it is in the best interest of the Territory to utilize other arrangements for the human resource needs of the Managing Director's position. The additional qualities required of the person holding the portfolio of Managing Director should include specialized management and strategic skills sets that can assist in harmonizing the function of the Ports Authority with the operations and functions of the new multi-million dollar cruise pier and landside development and harmonizing the two (2) operations. This will no doubt require legislative changes as the present Act does not provide for large scale commercial and retail landside services operated on ports property."*

[83] Counsel for the Claimant does not accept that Defendant has given reasons for its decision not to approve his reappointment as Managing Director of the BVIPA. Counsel submitted that no reasons have been set forth in the Cabinet Paper and Extract from the Minutes. Rather, the statement in question was taken from the Cabinet Paper prepared for the Defendant's consideration. Further, as the Cabinet Paper in question has been heavily redacted, Counsel submitted that it is impossible for the Claimant to know whether the preceding paragraphs made the argument in favour of the renewal of appointment, in order to present both sides of the case to

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<sup>35</sup> [1994] 1 WLR 242 at page 256

Cabinet for discussion. She further noted that even the first sentence of the extract relied on has been redacted and she concluded that it is unacceptable that a court would be asked to accept an incomplete statement as evidence of the decision-maker's reasons.

[84] Counsel for the Claimant further submitted that the Permanent Secretary's evidence does not assist the Defendant's case. First, she questioned the propriety of the Permanent Secretary conveying Cabinet's decision when he was not present during the deliberations and there is no indication that he would have been suitably briefed. Given the confidential nature of Cabinet proceedings she argued that the basis of the Mr. McMaster's information and belief is implausible. Counsel asserted that Mr. McMaster's evidence is intended to provide an ex post facto rationalization for the decision which was taken and she submitted that this supports the Claimant's contention that the decision is irrational.

[85] The Court has considered the totality of the evidence. At paragraph 2 of Ms. Ward's affidavit, she states that she was authorized by the Defendant to make the Affidavit on its behalf. At paragraph 3, she indicated the basis for the information disclosed in her Affidavit. At paragraph 5, she describes her duties which include attending meetings of Cabinet, keeping minutes and conveying its conclusions. At paragraph 8, she confirms that she was present during the relevant deliberations and she states that as she is responsible for the minutes, she can confirm that the decision was "*based on the rationale provided at paragraph 4 of the Cabinet Paper.*"

[86] It appears that no formal reasons were ever provided by the Defendant. Instead, it is advanced that the Claimant's reappointment was not supported by the responsible Ministry in its Cabinet Paper and that the Defendant accepted the rationale advanced by the Ministry and espoused the same as its reasoning. Where the Cabinet Secretary who is authorized to speak on behalf of the Respondent and who was present during the relevant deliberations avers in sworn untraversed evidence the Defendant's reasons for its decision, the Court can find no basis to doubt the veracity of this evidence.

[87] Counsel for the Claimant has questioned the fact that the document relied on has been heavily redacted. However, the Court notes that there was no application made in respect of this before the trial of this matter. Now it is not lost on this Court that the purported reasons would have been

communicated in October 2016, well after the actual decision was taken and only after this litigation had commenced.

[88] The Court accepts that in certain circumstances it has the jurisdiction to accept late reasons.<sup>36</sup> However it is clear that some level of caution is required as was indicated in **R (Nash) v Chelsea College of Art Design**:

- (i) *“Where there is a statutory duty to give reasons as part of the notification of the decision, so that (as Law J put it in Northamptonshire County Council ex p D) “the adequacy of the reasons is itself made a condition of the legality of the decision”, only in exceptional circumstances if at all, will the Court accept subsequent evidence of the reasons.*
- (ii) ***In other cases, the Court will be cautious about accepting late reasons.*** *The relevant considerations include the following, which to a significant degree overlap:*
  - (a) Whether the new reasons are consistent with the original reasons.***
  - (b) Whether it is clear that the new reasons are indeed the original reasons of the whole committee.***
  - (c) Whether there is a real risk that the later reasons have been composed subsequently in order to support the tribunal's decision, or are a retrospective justification of the original decision. This consideration is really an aspect of (b).***
  - (d) The delay before the later reasons were put forward.***
  - (e) The circumstances in which the later reasons were put forward. In particular, reasons put forward after the commencement of proceedings must be treated especially carefully. Conversely, reasons put forward during correspondence in which the parties are seeking to elucidate the decision should be approached more tolerantly.”***

[89] Applying these propositions, it is apparent that in the case at bar there is no statutory duty to provide reasons. In the premises, paragraph (i) does not assist the Claimant. In the same vein, paragraphs (ii) (a), (b) and (c) do not assist the Claimant. Inconsistency does not arise because no earlier reasons were provided and there is no doubt that the deponent was authorised to speak on behalf of the actual sole decision maker. However, the Court is satisfied that paragraphs (ii) (d) and (e) are pertinent factors which must be considered. The Court accepts that the delay and the

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<sup>36</sup> R (Nash) v Chelsea College of Art and Design [2001] EWHC 538 (Admin)

context in which the reasons were provided demand that the evidence be weighed with some caution.

[90] The courts have frequently described the substance of the duty to provide reasons as, "[r]equir[ing] reasons that are clear and adequate and deal with the substantial issues in the case... what are good reasons in any particular case depends on the circumstances of the case".<sup>37</sup> Depending on the particular context, it is clear that brief reasons will often be sufficient provided that they are clear and ample enough to enable the person affected to judge whether a legal challenge can or should be instituted.

[91] The House of Lords in **South Bucks District Council v Porter (No. 2)**<sup>38</sup> considered the proper approach to be adopted in providing reasons under a statutory duty. The Court provided that:

*"The reasons for a decision must be intelligible and they must be adequate. They must enable the reader to understand why the matter was decided as it was and what conclusions were reached on the 'principal important controversial issues', disclosing how any issue of law or fact was resolved. Reasons can be briefly stated, the degree of particularity required depending entirely on the nature of the issues falling for decision. The reasoning must not give rise to a substantial doubt as to whether the decision-maker erred in law, for example by misunderstanding some relevant policy or some other important matter or by failing to reach a rational decision on relevant grounds. But such an adverse inference will not readily be drawn. The reasons need refer only to the main issues in the dispute, not to every material consideration..."*

[92] It is unfortunate that in this case, the relevant Cabinet decision itself does not set out the reasons for its decision in any detail. Instead, the Defendant has also advanced that the reasons for its decision have also been communicated subsequent to the decision – in the affidavit evidence filed in these proceedings by Mr. McMaster who has attempted to provide elucidation.

[93] The Court is guided by the dicta of Simon Brown J in **R v Legal Aid Area No. 8 Appeal Committee ex parte Angel**<sup>39</sup>:

*"Naturally the Courts will look circumspectly at additional reasons; these clearly cannot carry quite the same authority as reasons properly given as part of the actual decision, and of course, anything suggestive of ex post facto reasoning, let alone anything in the way of inconsistency with previous reasons, would be particularly scrutinized. Certain bodies, moreover, will clearly be held to the reasons expressed with their decision — for instance, the Secretary of State on planning appeals and tribunals of the kind in question in Machinery and ex*

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<sup>37</sup> R v Immigration Appeal Tribunal ex parte Jebunisha Kharvaleb Patel [1996] Imm AR 161, 167.

<sup>38</sup> [2004] 1 WLR 1953, HL, para 36 per Lord Brown

<sup>39</sup> (1990) 3 Admin LR 189

*parte Khan. Furthermore, whenever as here a public body files evidence, it is desirable that each member should approve the supplementary reasoning disclosed in the individual deponent's affidavit as the actual basis for the decision earlier taken. But given these sorts of qualification, there seems to me much to be said in favour of allowing affidavits to supplement reasons, and little against either in the way of legal or practical objection. Of course, the supplementary reasons go only to the question whether the decision reached was erroneous in point of law; they cannot repair the breach of duty involved in having provided inadequate reasons in the first place..." Emphasis mine*

[94] At paragraph 2 of his Affidavit, Mr. McMaster swears that he is duly authorized to depose to the Affidavit on behalf of the Defendant. At paragraph 13 of his Affidavit, he indicates that the evidence which follows is in direct response to the Claimant who described the reasons advanced as "hollow". Mr. McMaster's states:

*"I am able to shed light as to the explanation provided at paragraph 4 of the said Cabinet Paper, having been instrumental in the preparation of the said Paper and having been briefed after the decision was rendered so that Cabinet's concerns could be addressed in my capacity as PS of the line Ministry and as such as an ex officio member of the BVIPA."*

[95] The Defendant contends that Mr. McMaster is authorised to provide deeper insight because of his involvement in framing the rationale which was relied upon and exposed by the Defendant. Paragraphs 13 – 16 of Mr. McMaster's affidavit set out the underlying reasons why the Ministry came to the position which it did and it is apparent that a prospective change in the scope of responsibility precipitated a decision to engage in an open recruitment process and consequentially resulted in the refusal to approve the Claimant's further appointment. His evidence does not disclose any significant inconsistency with the Cabinet Paper.

[96] The Court has considered the reasoning in **R (Hereford Waste Watchers Ltd) v Hereford Council**<sup>40</sup> which sets out the rationale for a cautious approach. At paragraphs 44 – 46 of the judgment that Court stated:

*"I consider that in accordance with these principles there should be no absolute bar to considering supplementary reasons, even if given in the course of the judicial review itself. The report was produced by non-lawyers, and it covered significant ground. It will sometimes be the case that certain matters may not be analysed with the clarity or detail which is desirable, and it is surely proper to allow further explanation in an appropriate case.*

*However, as the principles enunciated in Nash and indeed the decision in Ermakov make plain, any supplementary reasons must elucidate or explain and not contradict the written reasons. It will*

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<sup>40</sup> [2005] EWHC 191

*be rare indeed for an inconsistent explanation, given in the course of the judicial review proceedings, to be accepted as the true reason for the decision.*

*This is in accordance with basic principles of fairness. Plainly the courts must be alive to ensure that there is no rewriting of history, even subconsciously. Self-deception runs deep in the human psyche; the truth can become refracted, even in the case of honest witnesses, through the prism of self-justification. There will be a particular reluctance to permit a defendant to rely on subsequent reasons where they appear to cut against the grain of the original reasons.”*

[97] In light of the prolonged delay and the factual circumstances of this case, the Court is satisfied that the approach to the Defendant’s evidence must be consistent with that commended by **Ex Parte Nash** and the plethora of cases which have since applied its dicta. Notwithstanding that it was filed over 16 months after the decision, the Court is not satisfied that the evidence of Ms. Ward or Mr. McMaster was grounded was an attempt to rewrite history. Given that there is no statutory duty to give reasons and in fact no previous reasons had been provided which could give rise to inconsistency, the Court will not ignore or disregard this evidence.

[98] In providing reasons, a decision maker must be careful to provide the person affected with sufficient materials which will enable them to verify whether he has made an error of law in reaching its decision.<sup>41</sup> The vires of the reasoning aside, it cannot be said that the Affidavits contain “*meaningless generalizations*” which are indecipherable or inadequate. Indeed, at paragraph 17 of her Affidavit, Ms. Ward confirms that there is no other Cabinet decision concerning the refusal of the Claimant’s reappointment. While the Court’s is satisfied that it is not consistent with the principles of good administration for persons adversely affected by decisions to be expected to extrapolate or infer from the circumstances, what are the true reasons for a decision, a combined reading of the Affidavits of Ms. Ward and Mr. McMaster discloses an intelligible and adequate explanation which would enable the Defendant to understand how the conclusions were reached.

[99] The case at bar does not disclose a statutory obligation to provide reasons for the Defendant’s decision, however the duty can be implied from the relevant circumstances. In the Court’s judgment the late reasons in this case cannot be ignored and when considered in the context of **Ex Parte Nash**, the Court is not satisfied the Defendant’s initial failure to provide timely reasons should be a basis upon which the Court should set aside the Defendant’s decision.

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<sup>41</sup> Alexander Machinery (Dudley) Ltd. v Crabtree [1974] ICR 120 at 122

**Whether Cabinet's refusal to approve the BVIPA's recommendation was irrational/unreasonable?**

**THE PARTIES' ARGUMENTS**

- [100] The Claimant takes issue with the fact that it took the Defendant fifteen (15) months to consider the BVIPA's resolution. Counsel noted that no explanation was proffered for this delay neither was any attempt made to explain why the issue of the Claimant's re-appointment was only considered after the expiration of his contract. Counsel submitted that this delay constituted a failure to act in accordance with its statutory power and an abdication of the Defendant's statutory role.
- [101] Moreover, Counsel for the Claimant referred to the Claimant's unchallenged evidence that he was told that the issue of his reappointment would be deferred until after the next general election. She submitted that the BVIPA Resolution was indeed not considered prior to that June date, although the Board had delivered its Resolution to the Ministry of Communications and Works on 28<sup>th</sup> January 2015. Further, it is the Claimant's evidence that on 31<sup>st</sup> December 2015, prior to the Cabinet meeting which was to be held three months later in April 2016, the Premier informed him that "*he didn't see how [the] contract could be renewed because of the Territory's interest.*" At that time, he states that there was no explanation offered for this cryptic statement.
- [102] Counsel submitted that these factors raise doubts as to the bona fides of the decision-making process. Counsel submitted that these doubts are intensified by the conflicting evidence which demonstrates that there were numerous public pronouncements made in the months prior to April 2016, which indicated that the Defendant would have been considering the matter. This contradicts the evidence of Ms. Sandra Ward where at paragraph 10, she noted that the matter was considered for the first time in April 2016. Further, Counsel pointed to the Claimant's unchallenged evidence that the Minister of Communications as well as several other members of Cabinet made individual assurances to him between March 2015 and February 2016 that the Defendant would give favourable consideration to his continued appointment as Managing Director.

- [103] Counsel for the Claimant submitted that the Defendant's reasons for refusing to approve the Claimant's reappointment must be looked at in the context of the pending lawsuit against it and the public utterances by the Minister of Communications and by the Governor that the Claimant's contract was at an end and therefore there was nothing to discuss because "*the ports and Government have moved on*".<sup>42</sup> Counsel submitted that the 6<sup>th</sup> April 2016 meeting, instructed by the Minister's Cabinet Paper No. 096/2016, must therefore have been convened with a view to completing formalities which the Defendant could then present to the Court as a plausible rationale.
- [104] Counsel further argued that at no time was the Claimant consulted in order to determine whether he had the necessary qualities and skill-set required. Moreover, no attempt was made to explain how a person with these specialized managerial and strategic skills-set would effectively manage the ports any better than the Claimant. This is particularly so in light of the positive feedback that he received from several members of the Cabinet concerning his performance.
- [105] In this regard, Counsel sought to rely on Section 6 of the Cabinet Handbook which deals with Boards, Committees, Working Groups and Appointments. Section 6.7 of the Handbook provides that in considering appointments, the sponsoring Minister should be prepared to provide justification for the appointment or re-appointment. Section 6.8 deals with the procedures for recommending appointments. Section 6.8(e) provides that he must ensure that persons being proposed meet the requisite qualifications and experience.
- [106] Counsel posited that the BVIPA was not notified that there were any specific qualifications required, neither was he advised that there were any gaps in his qualifications and experience. Further, it appears that the supposed qualifications were submitted without the benefit of any consultation with the Board, who is charged with management of the BVIPA. Counsel submitted that it was the sponsoring Minister's responsibility to properly lay these details before Cabinet in accordance with the Handbook's Guidelines. Thereafter, it was the Defendant's responsibility to recognize that it did not have all the relevant information before it in order to give due consideration to the matter.

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<sup>42</sup> Press Conference - Minister Vanterpool 2<sup>nd</sup> February 2016

- [107] Counsel further argued that it is not clear why the contemplated legislative changes would impact the role of Managing Director and the proper consideration of the Claimant who had actually successfully implemented the Government's plan for the cruise pier project. Further, Counsel submitted that the cruise ship pier project was put in motion in 2012 and yet what is now being suggested is that it has taken Defendant four years to come to this awareness and yet in 2017 the policy still has not been "fully hammered out".
- [108] Applying the relevant law, Counsel for the Claimant submitted that a decision is irrational if it is lacking ostensible logic or comprehensible justification. Where the evidence and the ostensible reasons for the decision simply do not add up, such decisions are rendered unlawful: **Council of Civil Service Unions v Minister for the Civil Service**.<sup>43</sup> While she agreed that the Defendant must obviously have discretion in the manner in which it approaches its functions, Counsel submitted that untrammelled discretion risks arbitrariness and is the antithesis of reasonableness. The position was helpfully set out in the judgment of Lord Mansfield CJ in **R v Askew**<sup>44</sup> in which he held that the conduct of the party even when engaged in discharging an administrative or executive function ought to be fair, candid and unprejudiced; not arbitrary, capricious, or biased; much less, warped by resentment, or personal dislike. The Claimant relied on a number of cases which demonstrate this principle including **R v Tower Hamlet London Borough Council ex p Khalique**<sup>45</sup> in which a decision on whether to award a housing settlement accommodation was deferred or withheld for some improper or illicit reason and was held to be unlawful and **R v Parliamentary Commissioner for Administration, ex p Balchin (No.1)**<sup>46</sup>, in which the Ombudsman's decision was quashed based on his disregard for a plainly relevant consideration.
- [109] In responding, Counsel for the Defendant also relied on the seminal case of **Council of Civil Service Unions v Minister of the Civil Service** in which the House of Lords defined an irrational decision as one "*which is so outrageous in its defiance of accepted moral standards that no sensible person who had applied his mind to the question to be decided would have arrived at it.*"<sup>47</sup> It is therefore not surprising that the Privy Council has described a claimant's burden of

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<sup>43</sup> [1985] AC 374, at 399 A – B, 414 G – H

<sup>44</sup> (1768) 4 Burr 2186, 2188 – 89; 98 ER 139, 141

<sup>45</sup> (1994) 26 HLR 517

<sup>46</sup> [1998] 1 PLR 1, 13 E – F

<sup>47</sup> [2015] UKPC 15

establishing a decision as irrational or unreasonable as one which is “*notoriously heavy*”: **Gookool and Others v Permanent Secretary of the Ministry of Health and Quality of Life and Anor.**<sup>48</sup>

[110] Counsel for the Defendant submitted that a court can therefore quash a decision as irrational only where it is “so unreasonable that no reasonable body could ever have come to it”: **Associated Provincial Picture Houses Limited v Wednesbury Corporation.**<sup>49</sup> In that regard, she submitted that it would be surprising, if a court were to determine that it is irrational or unreasonable for Cabinet to attempt to ascertain the qualifications of anyone willing to fill the post of Managing Director by means of a fair, open, transparent and competitive process. Counsel argued that it is for the Claimant to satisfy the Court that the rationale provided for the Defendant’s refusal to accept the BVIPA’s recommendation in the absence of such a process being utilized, is in “*defiance of accepted moral standards*”.

[111] The Defendant posited that the Claimant’s burden would not only be “*notoriously heavy*” but an insurmountable herculean task. As a result, the Defendant contends that Cabinet’s decision cannot be impugned as being irrational and this ground of judicial review must also fail.

## COURT’S ANALYSIS AND CONCLUSION

[112] The courts have generally pitched the standard of irrationality or unreasonableness at a high level<sup>50</sup> and in so doing they have also adopted a cautious approach which prescribes that a court must always be careful not to substitute its own decision for that of the decision-maker, if his decision is within the confines of reasonableness.

[113] However, recent judicial authorities have increasingly drifted away from such extreme formulations as prescribed by Lord Diplock in **Council of Civil Service Unions and Others v Minister of the Civil Service**<sup>51</sup> who defined this ground in this way:

*“By “irrationality”, I mean what can now be succinctly referred to as Wednesbury unreasonableness...It applies to a decision which is so outrageous in its defiance of logic or of*

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<sup>48</sup> [2008] UKPC 54, paragraph 18

<sup>49</sup> [1947] 2 ALL ER 680, 683

<sup>50</sup> R v Secretary of State for the Environment ex parte Nottinghamshire City Council [1986] AC 240 at 246 H; Reid v Secretary of State for Scotland [1999] 2 AC 512, at 541 G and 542

<sup>51</sup> [1984] 3 ALL ER 935 at 951

*accepted moral standards that no sensible person which had applied his mind to the question to be decided could have arrived at it...*"

- [114] The modern view is that terminology such as “perverse”, “absurd” implying that the decision maker has taken leave of his senses, may set the standard to review too high and may effectively deprive citizens of their only means of redress. Lord Cooke in **R v Secretary of State for the Home Department ex parte Daly**<sup>52</sup> put the position this way:

*“And I think that the day will come when it will be more widely recognised that Associated Provincial Picture Houses Ltd v Wednesbury Corp. [1948] 1 KB 223 was an unfortunately retrogressive decision in English administrative law, in so far as it suggested that there are degrees of unreasonableness and that only a very extreme degree can bring an administrative decision within the legitimate scope of judicial invalidation. The depth of judicial review and the deference due to administrative discretion vary with the subject matter. It may well be, however, that the law can never be satisfied in any administrative field merely by a finding that the decision under review is not capricious or absurd.”*

- [115] The case law now reflects that unreasonableness in public law should be a flexible standard capable of enhanced or relaxed scrutiny. It is now regarded as a “spectrum, not a single point”<sup>53</sup>. A decision may not be “perverse”, “absurd” or “immoral”, but it may still be open to a court to intervene where there is evidence that the decision maker took into account factors that ought not to have been taken into account, or evidence that he failed to take into account factors that ought to have been taken into account. **Associated Provincial Picture Houses Ltd v Wednesbury Corporation**<sup>54</sup> is frequently cited as the classic explanation of unreasonableness or irrationality.

*“It is true the discretion must be exercised reasonably. Now what does that mean? Lawyers familiar with the phraseology commonly used in relation to exercise of statutory discretions often use the word “unreasonable” in a rather comprehensive sense. It has frequently been used and is frequently used as a general description of the things that must not be done. **For instance, a person entrusted with a discretion must, so to speak, direct himself properly in law. He must call his own attention to the matters which he is bound to consider. He must exclude from his consideration matters which are irrelevant to what he has to consider. If he does not obey those rules, he may truly be said, and often is said, to be acting “unreasonably.” Similarly, there may be something so absurd that no sensible person could ever dream that it lay within the powers of the authority.** Warrington LJ in Short v Poole Corporation [1926] Ch. 66, 90, 91 gave the example of the red-haired teacher, dismissed because she had red hair. That is unreasonable in one sense. In another sense it is taking into consideration extraneous matters. It is so unreasonable that it might almost be described as being done in bad faith; and, in fact, all these things run into one another.”* Emphasis mine

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<sup>52</sup> [2001] 2 AC 532, cited with approval in R (Farrakhan) v Secretary of State for the Home Department [2002] EWCA Civ. 606

<sup>53</sup> R v Education Secretary, ex parte Begbie [2000] 1 WLR 1115

<sup>54</sup> [1948] 1 K.B. 223

[116] The Court endorses this approach but is mindful that it is not for this Court to supplant the Defendant's exercise of discretion. Instead, the Court must decide whether the power under which the decision maker acts (a power normally conferring a broad discretion) has been properly exercised or insufficiently justified. In that regard, the Claimant's challenge appears to be multifaceted. However, it must be regarded within the relevant context of decision making. In the case at bar, the statutory framework dictates that the appointment to the post of managing director must have the approval of the "Governor in Council". This term was amended under section 2 of the British Virgin Islands Ports Virgin Authority (Amendment) Act, 2016 which replaced all references to "Governor in Council" with the term "Cabinet."

[117] Established under Chapter 4 of the BVI Constitution Order 2007, this body has the constitutional responsibility for the formulation of policy and for directing the implementation of such policy. Membership includes the Premier, four other Ministers and one *ex officio* member, namely the Attorney General and its proceedings are presided over by the Governor. In carrying out its functions, the Cabinet operates corporately. Generally, no business may be transacted at any meeting of the Cabinet if there are less than three Ministers present, one of whom shall be the Premier or the Minister performing the functions of the Premier under section 55 of the Constitution.

[118] Subject to the Constitution, the Cabinet has the power to determine its own rules of procedure for the conduct of its business and these have been helpfully set out in the Cabinet Handbook. In her Second Affidavit, Cabinet Secretary, Ms. Sandra Ward summarises the process by which decisions are made in Cabinet. At paragraph 7 she states:

*"In the usual course of things, Cabinet papers, containing proposed Government policies, are compiled and forwarded to the Cabinet Office for presentation at a Cabinet meeting: clause 4.5 of the Cabinet Handbook. The Cabinet Steering Group meets weekly to determine the agenda (business) for the next meeting of Cabinet: clause 3.3 of the Cabinet Handbook. Among other considerations, the strategic importance or development significance of the issue or matters due for consideration would determine the priority accorded to the matters tabled for discussion. Clause 7.13 of the Cabinet Handbook states that Cabinet business agendas are not to be circulated publicly or discussed outside of Members. The subject matter of each Cabinet Paper on the agenda is then discussed during the relevant meetings of Cabinet and a decision arrived at. Minutes are recorded during or after these meetings: clause 4.23 of the Cabinet Handbook. Pursuant to clause 4.31 of the Cabinet Handbook it is only when the minutes are confirmed that Cabinet's decision are declared final and can be announced as decisions of Government. Once confirmed, the relevant Cabinet decision are declared final and can be announced as decisions of Government. Once confirmed, the relevant Cabinet decision is excised from the Minutes and reduced to a Cabinet Minutes Extract. Clause 4.29 of the Cabinet Handbook provides that the said*

*Extract should then be circulated to Ministries, departments and other agencies which are specially required to take action or on a need to know basis.”*

[119] The Court finds this summary to be instructive. It demonstrates that matters are submitted to Cabinet through a Cabinet Paper, advanced by the relevant ministry prioritized by the Steering Group and that the deliberations are confidential. Decisions are final only after deliberations by an appropriate quorum and minutes are recorded and confirmed. It follows that the decision to approve or not approve the Claimant’s appointment could not have properly been discussed prior to the corporate deliberations of the Cabinet. Certainly, it would have been entirely inappropriate, for individual members, to hold out any assurances prior to the actual deliberations and decision by the entire body.

[120] The Cabinet Handbook explains the rationale. It speaks to the constitutional convention of collective responsibility which is the basis on which this system of ministerial government rests<sup>55</sup>. Collective responsibility prescribes that members of Cabinet must publicly support all governmental decisions made in Cabinet even if they do not privately agree with them. It consists of two principle features. The first is **Cabinet solidarity** which prescribes that while minister may express their views privately, once a decision has been made by the Cabinet, it is binding on all members of Cabinet and they must publicly show a unified position. The principle rests on the notion that the executive ought to appear as a collective entity able to maintain cohesion. The second feature, **Cabinet confidentiality** has been described as the natural correlative of collective responsibility. This prescribes that so long as a minister remains a minister, he may not speak in public or in private against a decision of Cabinet or against an individual decision of another minister. Further, no minister may, in the Parliament or in public speeches, commit the Government to any course of action save in accordance with the policy of Cabinet. If any member of the Cabinet seriously dissents from the opinion and policy approved' by the majority of his colleagues, collective responsibility dictates that it is his duty to resign because it is not possible for ministers simultaneously to remain in office and to seek to disagree or disassociate themselves from the collective view of the Government.

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<sup>55</sup> Section 47 (3) of the BVI Constitution Order 2007

[121] Cabinet collective responsibility is therefore dependent on the mutual agreement and collective unity of the Cabinet and its members. It effectively prevents government policy from being determined unilaterally since it is the Cabinet as a whole which decides, and it ensures that Cabinet decisions are based on principles and not on personalities.

[122] The Cabinet Handbook makes it clear that Cabinet is the centre of the executive branch of government. It sets the broad policy directions, approves the broad strategy and takes the most important operational decisions of government. It follows from this that Cabinet would have a keen interest in the proper management of key areas of the national economy. It is not disputed that the BVIPA oversees a critical component of the national economy and so it is therefore not surprising that the Act reflects a significant degree of executive oversight of the BVIPA and the Territory's ports. It no doubt explains why section 20 of the Act makes it clear that all appointments to the post of managing director must have the approval of the executive. A similar rationale was referenced in the judgment in **Patrick Manning v Feroza Ramjohn: (1) Patrick Manning (2) Public Service Commission v Ganga Persad Kissoon**<sup>56</sup> where the Privy Council quoted from the 1974 Report of the Trinidad and Tobago Constitution Commission:

“These officials are so directly concerned with the formulation of the policy and the supervision of its implementation that they must be acceptable to the political chiefs with whom they must have a close working relationship. This does permit some measure of political influence in purely public service appointments but is necessary on purely practical grounds. We would mention that this recommendation of ours is in keeping with the views of the Public Service Associations as expressed to us.”

[123] It is within this decision-making context and from the persuasive evidence of Ms. Ward, that the relevant Cabinet Paper to determine the reappointment of the Claimant was only submitted by Ministry of Communications on 6<sup>th</sup> April 2016 and a decision taken by Cabinet recorded and finalized on 13<sup>th</sup> April 2016. It follows that the purported delay of some fifteen months cannot be said to be at the instance of the Defendant. Indeed, the evidence reveals that it would have been the line Ministry which would have been responsible for the unexplained delay in advancing the matter. It therefore cannot be a basis upon which the Court could declare the Defendant's decision to be irrational or unreasonable.

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<sup>56</sup> [2011] UKPC 20

- [124] At paragraph 17 of his First Affidavit, the Claimant asserted that at least 3 ministers assured him that the Cabinet Paper dealing with the matter of his reappointment had inexplicably been withdrawn from the Cabinet agenda in December 2015. While the individual ministers in question have chosen not to address these allegations, Ms. Ward (who is a member of the Steering Group responsible for setting the agenda) has unequivocally averred that no decision which touches and concerns these proceedings was taken on 2<sup>nd</sup> December 2015.
- [125] Moreover, the Claimant avers that during this period, he received repeated assurances from individual ministers. No doubt they would have led the Claimant to a false sense of security and created a hapless expectation that his employment would continue. This is indeed unfortunate not least because it would have been a marked departure from the rules and procedures which govern the conduct of business. However, it is clear that whatever representations may have been made to the Claimant by individual ministers would be of little to no moment in impugning the corporate decision which was taken on 13<sup>th</sup> April 2016. They would not, without more, make the final collective decision which was taken, by Cabinet, irrational or illogical because while the Act provides in many instances that the Board is to take directions from the responsible minister, in so far as it relates to the appointment of the managing director, the Act makes it clear that this is a decision which must be approved by the Cabinet and not by any one minister acting in his individual ministerial capacity.
- [126] During the leave stage of these proceedings, this Court ruled that legitimate expectation could not be maintained as a ground of review on the evidence advanced. The Court therefore finds very little utility in referencing the individual assurances, positive or negative which may have been given by ministers of Government whether on their own behalf or otherwise. The uncontested evidence is that none of these alleged assurances were given by Cabinet as a whole. The Claimant has not produced evidence of any document or statement issued by Cabinet as a whole body providing any such assurance. In fact, at paragraphs 17 to 19 of the Affidavit of Ms. Sandra Ward makes it clear that no such document or statement exists.
- [127] The Claimant also contends that decisions may be rendered unlawful if the decision maker did not have all the relevant information before it in order to give due consideration to the matter. In this case, the Claimant submitted that Cabinet did not take sufficient steps to assure itself that he had

the requisite skills and qualities required to assist in harmonizing the functions of the BVIPA with the functions of the new multi-million dollar cruise pier and landside development. The Claimant suggests that the BVIPA should have been consulted and further information solicited which may have revealed that the Claimant had the requisite qualifications.

[128] Again, the Court must consider the decision-making context of this case. It has not been advanced that this Claimant possessed security of tenure and it is clear that he would not have been entitled as of right to be reappointed. What is at issue here is the decision to refuse to approve the Claimant's reappointment as managing director of a statutory corporation. As at the date when the matter of his reappointment was tabled before the Defendant, his contract had determined by effluxion of time by several months. Indeed, it is clear that he had effectively vacated office by December, 2015.

[129] The Court is guided by the 2018 Privy Council decision in **Harding v Attorney General of Anguilla**.<sup>57</sup> In that case, the Appellant claimed that she was removed from office before the expiry of her final term in breach of the Constitution of Anguilla, and that she had a legitimate expectation of reappointment which was violated by the failure to reappoint her. Having found that her contract had expired by effluxion of time and that there was no repudiation of her contract or premature dismissal Lord Sumption at page 5 of the judgment stated:

*"In those circumstances, Mrs. Harding's only possible complaint was that she should have been reappointed. Contractually, she had no right to be reappointed. Her appointment was for a limited term and provided that six months before the expiry of that term her job would be advertised. She does not claim that the constitution gives her security of tenure. That would have been an impossible contention given the absence of any express right to tenure in the Constitution and the well established principle that the holder of a lower judicial office may properly be employed on a fixed term contract: see Hinds v The Queen [1977] AC 195, 218 (Lord Diplock).*

[130] In dealing with the appellant's contention that she had a legitimate expectation of reappointment, the Board held that:

**"In principle, it would have to be an expectation as to the procedure by which the appointment process would be conducted as the expiry of her term approached. However, the only aspect of the procedure which he could point to as conflicting with her expectation was the requirement that she should attend for interview. She refused to do that because she considered that she was entitled as of right to be reappointed. If she had been entitled to reappointment as of right, she would no doubt have been justified in refusing to be interviewed for the job. But if not, she could properly be required to submit to any**

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<sup>57</sup> [2018] UKPC 22 and see: Seth Quashie v The Tobago House of Assembly Claim CV2013-4226 HC Trinidad and Tobago at paragraphs 39 – 41

**requirement which it was reasonable to impose on candidates generally, including an interview.** It therefore follows from the Board's conclusion that she had no substantive legitimate expectation of reappointment, that she had no relevant procedural legitimate expectation either." Emphasis mine

[131] It is settled law that disregard of a material fact in and of itself may render a decision irrational or unreasonable.<sup>58</sup> However, it is also generally accepted that courts in judicial review should leave the assessment of evidence and fact to the primary decision maker who is often better positioned than a court to accurately evaluate the facts of a case and to decide on their merits. The factual context of this case commends such an approach. In 2012, this Claimant would have been selected and approved as managing director following an open recruitment process. It is apparent that he satisfactorily discharged his contractual obligations and that he had the endorsement of his employer. However, it is also apparent that these factors were outweighed by policy considerations which urged the Defendant to consider a fresh, competitive and open recruitment process. At paragraph 15 of his Affidavit, Mr. McMaster who speaks as the Permanent Secretary in the Ministry which advanced the relevant Cabinet Paper and as an ex officio member of the BVIPA states:

*"...it was thought prudent to consider the availability of potential candidates who may possess specialized management and strategic training and experience...the proposed candidate therefore would not only need to have the ability to manage the multimillion dollar facility, but would also need to have the vision and wherewithal to take the cruise pier project to the next level while still effectively managing all the other aspects of the ports' operations. In this context, the Government's aim is merely to explore all available options with a view to identifying the most suitable candidate for the post.*

[132] Under the Act, the approval of the Claimant's reappointment was clearly a matter for the exercise of the Defendant's discretion. In exercising such discretion, the Court is satisfied that the matters taken into account in this context would be relevant.

[133] The Court has considered the Claimant's submission that it is not clear why the contemplated legislative changes would impact the role of managing director. Counsel further submitted that the cruise ship pier project was put in motion in 2012 and yet even in 2017 the relevant policies have still not been "fully hammered out". She concluded that the evidence and the ostensible reasons for the decision simply do not add up in the circumstances.

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<sup>58</sup> R v Secretary of State for Health ex parte March [2010] EWHC 765

[134] On the way that this argument has been framed, this Court is not satisfied that these are matters which could properly impact the reasonableness of the decision. If there are delays in implementation, this would not without more lead to the conclusion that the decision does not add up, is capricious or is otherwise irrational. Moreover, Courts are generally reluctant to interfere with the exercise of discretion by the executive when its aim is the pursuit of policy<sup>59</sup> and in this context, the Court is not inclined to impose an obligation which would effectively elevate the Claimant's employment status to that of a tenured employee.

[135] Critically, Mr. McMaster has described the recruitment process which ultimately resulted in the Claimant's appointment in 2012. Among the applicants in this open recruitment process was the Claimant's predecessor. The course adopted by Cabinet in 2016 is therefore not without precedent and given the polycentric public interest considerations, this Court is unable to conclude that the decision to refuse approval of a direct appointment in favour of an open recruitment process was so illogical as to be irrational.

[136] During the course of the trial, Counsel for the Claimant raised two additional points of argument which must be addressed. First, she relied on sections 6.1 – 6.8 of the Cabinet Handbook which regulate how Cabinet considers appointments to boards, committees and working groups. In the Court's judgment, while these provisions could provide invaluable assistance in the context of appointments to the BVIPA, they could not provide definitive assistance to the Claimant who seeks appointment as managing director under section 20 of the Act. Secondly, Counsel submitted that it is arguable on the wording of section 20 of the Act and his contract of employment that there was no need for the BVIPA to seek approval for the Claimant's reappointment. Having obtained approval in 2012, Counsel submitted that any reappointment thereafter would be governed by clause 9 of his contract. The Court was not persuaded by this argument because such an interpretation would fly in the face of the executive oversight mandated by the legislation.

**Whether Cabinet failed to have regard to the principles of natural justice or procedural fairness when refusing to approve the BVIPA's recommendation?**

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<sup>59</sup> R v Secretary of State for Trade and Industry ex paret Lonhro Plc. [1989] 1 WLR 525; R Dworkin – Political Judges and the Rule of Law 1978 64 Proceedings of the British Academy 259 "It is not for judges to weigh utilitarian calculations of economic and political preference."

## **PARTIES' ARGUMENTS**

- [137] Counsel for the Claimant submitted that the Defendant had a duty to act fairly and in accordance with the highest public standards and she submitted that the Defendant failed to discharge that duty. First, she submitted that the Defendant failed to act fairly in that representations were made to the Claimant by the Minister and or the Ministry with statutory responsibility for the BVIPA. The Court has already dealt with these contentions earlier in this judgment but will reiterate that while the individual representations and conduct of the Ministers were unfortunate, there is no basis upon which their purported conduct and representations could be used to impugn the collective decision-making process and the resultant conclusions arrived at by Cabinet.
- [138] Counsel for the Claimant then called into question the conduct of Cabinet in holding on to the BVIPA's Resolution and abdicating their duty to give due consideration and permitting the Claimant to continue in his post beyond the purported date of his termination and then remaining silent and giving no indication that his contract had not been extended. Again, the Claimant seeks to lay blame on the wrong party because it is undisputed that the relevant Cabinet Paper was only submitted to the Defendant in April 2016 and thereafter the decision recorded shortly thereafter. In circumstances where it is not alleged that the Defendant had any control over when the proposal would be submitted, it cannot therefore be asserted that the Defendant was deliberately sluggish in addressing the matter or that it deferred consideration of the matter until after the general elections. The Court cannot ignore the clear and unequivocal evidence of Ms. Ward, the Cabinet Secretary and member of the Steering Group that beyond the decision arrived at the meeting conducted on 6<sup>th</sup> April 2016, there is no other Cabinet decision concerning the BVIPA's Resolution.
- [139] Moreover, bearing in mind that it is the BVIPA and not the Defendant who was the Claimant's employer under his contract of employment, any matters concerning his service would, by virtue of section 20(2) of the Act fall to the BVIPA. It follows that if the Claimant continued to perform after his contract had expired by effluxion of time, in contemplation of his impending reappointment, it would be the responsibility of his employer, or perhaps the responsible Ministry to ensure that this position was regularized.

[140] Finally, Counsel for the Claimant also submitted that at no time did the Defendant communicate its reservations or concerns about his reappointment to him or to the BVIPA and so they had no opportunity to make representations about any gaps in his skills, qualifications or experience. Counsel relied on the case of **R (Interbrew SA) v Competition Commission**<sup>60</sup> to support his contention that the failure to divulge full reasoning and to give a claimant an opportunity to make representation on the issues considered could render a decision void for unfairness. Moses J noted:

*"There can be no doubt but that the Commission owed a duty of fairness in conducting its investigation as to the merger. The content of the duty will vary from case to case but generally it will require the decision maker to identify in advance areas which are causing him concern in reaching the decision in question (see e.g. **R -v- The Home Secretary ex parte Fayed [1998] 1 WLR 763 at 773H to 774A**). Where Convention rights are at stake those adversely affected should be involved in the decision making process to a degree sufficient to provide them with the "requisite protection of their interests." Absent such participation the interference will not be regarded as necessary (see **McMichael -v- United Kingdom at paragraph 87 [1995] 20 EHRR 205** (a case concerning Article 8). The jurisprudence of the European Court of Justice is to like effect:-*

*"Any person who may be adversely affected by a decision should be placed in a position in which he may effectively make his views known, at least as regards the matters taken into account by the Commission as the basis for its decision."*

[141] The Defendant argued that the facts of this case disclose no procedural unfairness. While the Defendant agrees that the principle of natural justice and procedural fairness are inextricably linked with the principle of fairness, the Defendant submits that the concept of fairness is not immutable but depends on the context of the relevant decision.<sup>61</sup>

[142] Counsel for the Defendant reiterated that in the case at bar, the Claimant is no more than a mere applicant for a position and that fairness does not require that applicants for employment in the public sector be afforded an opportunity to be heard before their application is refused. Were it otherwise, there would be a need to notify every applicant even before being short-listed and notify them of the intention to discard their application at this stage and afford them an opportunity to make representations. Such an argument places an unduly onerous burden on those charged with overseeing the employment process and no doubt would protract the process and ultimately render it an exercise in futility.

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<sup>60</sup> [2001] EWHC Admin 367

<sup>61</sup> Ex parte Doody

[143] To further bolster this argument, Counsel for the Defendant relied on **Patrick Manning v Feroza Ramjohn: (1) Patrick Manning (2) Public Service Commission v Ganga Persad Kissoon**.<sup>62</sup> In that case, the Board considered section 121 of the Constitution of Trinidad and Tobago which confers on the Prime Minister certain powers with regard to appointments to particular public offices. The Board held that in the case of Ms. Ramjohn, the power to make an appointment on transfer was exercised based on certain allegations which Ms. Ramjohn was not afforded an opportunity to answer. The exercise of the power in those circumstances was deemed unfair. By contrast, in relation of Mr. Ganga Persad Kissoon, the veto power was not based on any specific allegation against him, so fairness would not have required any advance notice of the veto. However, the Board concluded that because Mr. Kissoon was cognizant of the fact that he had topped the promotion interviews, fairness required that he at least be provided with a rational explanation for being bypassed. At paragraph 45 of **Manning**, the Board asserted the principle:

*“...the power of veto is subject only to comparatively narrow limitations and...the obligation to act fairly must be viewed in that light...If, obviously, the ground of objection was some specific allegation...then fairness would require that it be put to the candidate. But if the Prime Minister was objecting on general grounds involving no particular ‘case’... fairness would not demand any advance notice of the veto”.*

[144] Counsel also pointed out that the Privy Council was at pains to point out that, in cases of appointment (even in the public service), recourse to judicial review would only very rarely succeed. At paragraph 52, the principle was adumbrated thus:

*“This judgment should certainly not be regarded as a charter for those disappointed in their applications for public service appointments routinely to challenge the process. On the contrary, only exceptionally is it likely that such challenges will succeed.”*

[145] Counsel for the Defendant submitted that the statutory power exercised by Cabinet in the case at bar could be likened to the Prime Minister’s power of veto in **Manning**. Cabinet’s decision hinges on a general reason – the desire to recruit the most qualified candidate in a transparent process – and not a specific allegation against the Claimant. The starting position therefore, is that fairness did not require advance notice of the proposed decision or any opportunity to be heard.

[146] Counsel for the Defendant did not concede that the Claimant’s position is on all fours with that of Mr. Kissoon in **Manning**. She argued that the Claimant is not a public servant and he was not the beneficiary of a recommendation for appointment which was made after the conduct of an open, transparent and competitive process. Nonetheless, even for Mr. Kissoon, the Privy Council opined

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<sup>62</sup> [2011] UKPC 20

that all fairness required was the provision of a rationale and *not* an opportunity to be heard. Counsel therefore concluded that the Claimant's case is far weaker than that of Mr. Kissoon in the **Manning** decision and therefore he cannot be said to be entitled to more than the mere provision of reasons. Counsel posited that the Claimant has in fact been furnished with sufficient reasons explaining the rationale behind Cabinet's decision. In these circumstances, Counsel argued that no more could be demanded by the Claimant under the guise of fairness.

[147] At paragraph 32 of his affidavit of 7<sup>th</sup> February 2017, the Claimant contends that he was entitled to be heard and that he was not afforded an opportunity to advance details of his experience and qualifications and the fact that he had been the successful candidate in the interview process conducted 2011 – 2012. Counsel for the Defendant submitted that these are not matters for the Court's consideration. Rather, they are matters which the Claimant would be entitled to present fully during the open recruitment process. It would then be a matter for the persons charged with considering and interviewing applicants to consider the suitability of the Claimant as against those of any other applicant. She further submitted that in arguing that there was no prior mention of any inadequacy in his performance or skills as managing director, the Claimant has misunderstood the issue entirely. It may very well be that the Claimant is selected at the end of the process once applications received and persons interviewed. On the other hand, the fact that there may be a willing individual with superior qualifications to the Claimant who seeks appointment to the post is not an indictment on the Claimant's performance or character and would not justify granting the reliefs sought.

[148] Finally, Counsel for the Defendant pointed to what she described as the irony of the Claimant's case. She pointed out that the Claimant, who was the beneficiary of an open recruitment process in 2012, which involved his predecessor is now attempting to prevent a similar open and transparent process of appointment. Counsel submitted that it would be antithetical to good governance for a Court to allow such a process to be frustrated.

#### **COURT'S ANALYSIS AND CONCLUSION**

[149] Where a person's rights are liable to be detrimentally affected by the action taken by the public body, there is a necessary implication that the principles of natural justice will be observed. These

principles dictate that the relevant public authority has a duty to ensure that procedural rules are put in place so that the person affected will not be disadvantaged. The common law imposes minimum standards of procedural fairness or due process. The elements are summarized in the following terms: [1] there must be notification of the case to be met. This will require the decision maker to identify in advance, areas which are causing him concern in reaching the decision in question, **R -v- The Home Secretary ex parte Fayed [1998] 1 WLR 763 at 773H to 774A** and; [2] there must be a fair opportunity to correct or contradict the case.

[150] As the dictum of Lord Denning in **Kanda v Government of the Federation of Malaysia** helpfully illustrates<sup>63</sup>:

*“If the right to be heard is to be a real right which is worth anything, it must carry with it a right in the accused man to know the case which is made against him. He must know what evidence is given and what statements have been made affecting him: and then he must be given a fair opportunity to correct or contradict them... it follows, of course, that the Judge or whoever has to adjudicate must not hear evidence or receive representations from one side behind the back of the other.”*

[151] However, it is also clear that the rules of fairness or natural justice were not rigid but depend on the particular context. In considering whether a particular decision was fair, a court should take into account the administrative structure of the body making the decision and the nature and purpose of the decision itself.<sup>64</sup> In this context, the Court has had regard to the peculiar context presented in this case. First, it is clear to the Court that the Defendant in this case is not the Claimant's employer but rather the body with the statutory authority to approve or disapprove his appointment. Second, at the time when the matter was considered by the Defendant, the Claimant's contract of employment had lapsed by effluxion of time and he was essentially an individual who was seeking a further appointment.

[152] The second appeal in **Manning** reveals somewhat similar circumstances. Much like that case<sup>65</sup>, the only evidence disclosed on behalf of the Defence came not from the decision maker itself but from the Cabinet Secretary who asserted that the decision to decline approval was taken having taken into account the matters set out in the Cabinet Paper.<sup>66</sup> These matters were later edified in the affidavit evidence of the Permanent Secretary Mr. McMaster, who would have been

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<sup>63</sup> [1962] AC 322

<sup>64</sup> Regina v Avon County Council, ex parte Crabtree Times 29-Nov-1995

<sup>65</sup> Paragraph 41 of Manning

<sup>66</sup> Paragraph 8 of the First Affidavit of Sandra Ward, paragraph 15 of the Second Affidavit of Sandra Ward and paragraphs 13–16 of the Affidavit of Anthony McMaster.

instrumental in the preparation of the Paper and who would have been briefed after the decision was rendered so that Cabinet's concerns could be addressed in his capacity as Permanent Secretary of the line Ministry and as an ex officio member of the BVIPA.<sup>67</sup> Having set out the critical role importance of the tourism industry and the Cruise Pier to the national economy the Permanent Secretary states:

*"The functions to be performed by anyone appointed to the post of Managing Director of the BVIPA would have significant implications to the national community. As such, it was thought prudent to consider the availability of potential candidates, who may possess specialized management and strategic training and experience. Such qualifications being even more crucial in light of the fact that the cost-to-date of the cruise pier has been calculated as the sum of \$82,155,193.67. The proposed candidate therefore, would not only need to have the ability to manage the multi-million dollar facility, but would also need to have the vision and wherewithal to take the cruise pier to the next level; while still effectively managing all the other aspects of the ports' operations. In this context, the Government's aim is merely to explore all available options with a view to identifying the most suitable candidate for the post."*

[153] It is within this context that the Court must consider the obligation of fairness in the Defendant's decision-making process. In **Manning**, the Court of Appeal held that fairness "*requires that before the veto is exercised in relation to an applicant who is proposed by the Commission for appointment he is informed of what there is against him and given an opportunity to make representations on his behalf. This is required in all cases.*"

[154] The Board however disagreed with that conclusion. At paragraph 45 of the judgment:

*45. "In the Board's view that (and the declaration that followed) goes altogether too far. Rather their Lordships are disposed to accept Mr. Knox's submission that the power of veto is subject only to comparatively narrow limitations and that the obligation to act fairly must be viewed in that light.....If, obviously, the ground of objection was some specific allegation – as in Ms. Ramjohn's case – then fairness would require that it be put to the candidate. But if the Prime Minister was objecting on general grounds involving no particular "case" against the candidate, fairness would not demand any advance notice of the veto."*

[155] On the face of it, it seems that the Defendant *without more* treated the Cabinet Paper as a sufficient basis for exercising its discretion to disapprove the Claimant's appointment and it is apparent from the *ex post facto* explanation proffered, that the increased scope of responsibility of the proposed appointment informed the decision to engage an open recruitment process rather than a direct appointment of the incumbent. It appears that this course was not without precedent. While the Claimant may well have had discussions with individual ministers of Government, there is no evidence that there was any communication between the Cabinet or the Cabinet Office and

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<sup>67</sup> Paragraph 42 of Manning

the Claimant in relation to the recommendation that he be appointed to the post and there is no evidence that there was any specific allegation which fairness would have dictated should be put to him.

[156] Indeed, it is apparent that the Defendant's concern was based on much wider policy considerations and not anything specific to the Claimant. The Defendant's case indicates that a competitive recruitment process would benefit the BVIPA as well as the Territory because it would permit the objective assessment of all applicants, their qualifications, experience and expertise so that the most suitable candidate for the post could be identified.

[157] Mr. McMaster has intimated that in the wake of the Defendant's decision, the BVIPA has directed its focus to reviewing the current job description so that candidates would be equipped with the requisite education, training and qualifications. This is a clear indication that the Defendant and the BVIPA have embarked on a process of rationalization and implementation which is still in its primary stages with the fine details still being fleshed out. Given these circumstances, any representations as to the Claimant's suitability would likely be premature.

[158] Although, the **Manning** decision originates from Trinidad and Tobago, the Court considers the reasoning of the Board to be sound and persuasive. The Court is satisfied that the challenge to the fairness of the Defendant's decision-making process here cannot be on the basis of a failure to give the Claimant the opportunity to address the policy considerations in advance. The Claimant would however, clearly be entitled to the reasons for the decision in circumstances where he was unreservedly endorsed by the BVIPA, his potential employer. The fact that these reasons were only forthcoming in *ex post facto* evidence filed in these proceedings is unfortunate. It certainly could not have assisted what would have already been significant inconvenience caused by the Ministry's delay in laying the matter before the Defendant and when this is taken together with the multiple conflicting representations made to the Claimant while he continued to await word on his reappointment, it is not surprising that he would feel substantively injured and seek some form of relief. However, when the law is applied to the factual matrix in this case, the Court is not satisfied that the Defendant's decision should be quashed. It follows that the other claims for relief will also fail.

## **COSTS**

[159] CPR 56.13(6) provides that no order for costs may be made against an applicant for an administrative order unless the Court considers that the applicant has acted unreasonably in making the application or his conduct was in some way worthy of censure in bringing it. Despite the failings of this case, the Court does not accept that this case falls within that matrix. It is clear that were it not for this litigation, the Claimant would have been left with no indication of the matters which informed Cabinet's decision. The fact that he was ultimately unsuccessful in quashing the decision, does not in the Court's view make his action unreasonable or warrant censure. There will therefore be no order as to costs.

## **CONCLUSION**

- [160] **It is therefore ordered as follows:**
- i. **The Claimant's claim is dismissed.**
  - ii. **There is no order as to costs.**

**Vicki Ann Ellis  
High Court Judge**

**By the Court**

**Registrar**

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the lessor to require, as a condition of his consent in the case of an improvement which does not add to the letting value of the holding, a reasonable requirement that the tenant should reinstate the premises into the condition in which they were before the improvement was executed. It is true there was no evidence here whether the improvement did or did not add to the letting value of the holding. If it did, the sub-section would prevent the landlord requiring the tenant to reinstate and, in any case, such a requirement would have to be reasonable. For our part we cannot see that in this case it would be a reasonable requirement. At any rate, there was no evidence to show that it was reasonable. The most that was said was that some people might prefer the old front to the new, but it is perhaps unnecessary to give a final decision on the application of s. 19, sub-s. 2 for the reasons which we have already stated. [His Lordship then dealt with other issues on which this case is not reported.]

The appeal will be allowed and the cross-appeal disallowed.

*Appeal allowed*  
*Cross-appeal dismissed*

Solicitors for the defendants : *Tudor & Rowe.*

Solicitors for the plaintiff : *Freke Palmer, Romain & Romain.*

C. G. M.

C. A.

TAMLIN *v.* HANNAFORD.

1949  
June 24, 27 ;  
July 8.

Bucknill  
Asquith and  
Denning, L.JJ.

*Landlord and tenant—Rent restriction—Dwellinghouse—Lease—Property of Great Western Ry. Co.—Nationalization of the railways—British Transport Commission—Not a servant or agent of the Crown—House subject to the Rent Restriction Acts.*

The British Transport Commission is not a servant or agent of the Crown, and it has none of the immunities and privileges of the Crown ; its servants are not civil servants and its property is not Crown property ; and it is as much bound by Acts of Parliament as any other subject of the King. It is a public authority and its purposes are public purposes, but it is not a government department, nor do its powers fall within the province of government.

The only fact which, it could be suggested, made the commission a servant or agent of the Crown was the control over it exercised by the Minister of Transport (see s. 4 of the Transport Act, 1947) ;

but there was ample authority for saying that such control was insufficient for the purpose. See *Cannon Brewery Co. Ltd. v. Central Control Board (Liquor Traffic)* [1918] 2 Ch. 101, 113; [1919] A. C. 744, 757.

Accordingly, a dwelling-house, formerly the property of a railway company, which had vested in the commission, by virtue of the Transport Act, 1947, is subject to the Rent Restriction Acts.

*Per Curiam*: In considering whether any subordinate body is entitled to Crown privilege the question is not so much whether it is an "emanation of the Crown," a phrase first used in *Gilbert v. The Corporation of Trinity House* (1886) 17 Q. B. D. at p. 801, but whether it is properly to be regarded as the servant or agent of the Crown. See *International Ry. Co. v. Niagara Parks Commission* [1941] A. C. 342-3.

When Parliament intends that a new corporation should act on behalf of the Crown, it, as a rule, so states in the statute constituting the corporation. In the absence of any such provision, the proper inference in the case, at any rate, of a commercial corporation, is that it acts on its own behalf, even though it is controlled by a government department.

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#### APPEAL from Plymouth county court.

The plaintiff was the tenant of a dwelling-house, No. 2, Buckland Street, Plymouth, as from March 25, 1946, his landlords having been the Great Western Ry. Co. He sub-let rooms therein to the defendant on a weekly tenancy. Having served notice to quit the rooms on May 11, 1948, on the defendant, who continued to occupy the rooms after that date, the plaintiff brought an action in the Plymouth county court claiming their possession. The defendant relied on the Rent Restriction Acts. His Honour, Judge Scobell Armstrong, held that by virtue of the Transport Act, 1947, the house had vested in the British Transport Commission and that the house must be regarded as "owned by the Crown and "administered by the British Transport Commission as Crown "agents." The Rent Restriction Acts, therefore, did not apply to the house and he made an order for possession of the rooms.

The sub-tenant appealed.

*Sir Valentine Holmes K.C.* and *J. P. Ashworth* for the sub-tenant. The British Transport Commission is not a servant or agent of the Crown. Their functions are of a commercial character: they are a commercial body. See the Transport Act, 1947, ss. 1 to 6, 9, 11, 14, sub-s. 3, 29, 30, 37. Section 90 of the Railway Clauses Consolidation

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Act, 1945, does not, it is plain, bind the Crown: yet by s. 74, sub-s. 1, of the Transport Act, 1947, that section is treated as binding the Commission. Part VI of the Act, dealing with finance, is inconsistent with the Commission being either a government department or an "emanation from the Crown." See ss. 88, 91, 92, 93, 94 sub-s. 6. See also ss. 100 and 123. The Crown Proceedings Act, 1947, was placed upon the statute book six days before the Transport Act, 1947. By s. 30, sub-s. 2, of the earlier Act: "Subject to the provisions of the preceding sub-section, nothing in this Act shall prejudice the right of the Crown to rely upon the law relating to the limitation of time for bringing proceedings against public authorities." But by s. 11 of the later Act: "The Public Authorities Protection Act, 1893, and s. 21 of the Limitation Act, 1839, shall not apply to any action, prosecution or proceeding against the Commission . . . ." See *In re Wood's Estate* (1) as to the position of the Commissioners of Public Works and Buildings: they do not represent the Crown. The Town and Country Planning Act, 1947, was passed on the same day as the Transport Act, 1947, and in the former Act there is an express provision that the functions under the Act of the Central Land Board and of their officers and servants shall be exercised on behalf of the Crown: see s. 3, sub-s. 3. There is no such provision in the Transport Act, 1947. The British Transport Commission, not being a servant or agent of the Crown, this dwelling-house, vested in them, was not Crown property and the Rent Restriction Acts apply to it.

The plaintiff was the tenant of this dwelling-house. He was, in any case, not a civil servant and the further point arises whether he is at liberty to avail himself of this rule relating to the Crown.

*Redmond Barry K.C.* and *Frank Cridlan* for the tenant. The British Transport Commission is an agent of the Government and of the Crown, control being exercised over it by the Minister of Transport. See s. 4 of the Act. This dwelling-house was Crown property. As Denning J. said in *Territorial Forces Association v. Philpot* (2): "It is plain that if premises are occupied for public purposes and are, therefore, deemed part of the use and service of the Crown, they are exempted from rating." Public purposes fall within the sphere of government since the sphere of government

(1) (1886) 31 Ch. D. 607.

(2) [1947] 2 All E. R. 376, 377.

is not static, but is continually growing. The real question is: What at this date is the true province and sphere of central government? In *Mersey Docks and Harbour Board v. William Cameron and Others* (1) it was held that trustees to maintain docks at one port only, that of Liverpool, were liable to be rated as occupiers. It would require a bold man to suggest that the control of docks at one particular port was a matter of central government. But today, transport is a vital requirement for the welfare of the country—being a nation-wide service—and it has been taken over by the State. The function of the British Transport Commission and of the Railway Executive is as wide in its ramifications as that of the Post Office. See also *International Ry. Co. v. Niagara Parks Commission* (2) where the Commissioners acted on behalf of and with the approval of the province of Ontario. Turning to s. 2 of the Transport Act, 1947, the powers of the British Transport Commission are no doubt of a commercial character; but that does not take them out of the sphere of the functions of central government. The Post Office is a commercial concern, but it is a government department and its officers are civil servants. The word “commission” connotes centralization more than the word “corporation.” Compare the use of the word in the cases of the Forestry Commission and the War Damage Commission acting under the auspices of the Treasury. In *Graham v. Public Works Commissioners* (3), Phillimore J., speaking of the Commissioners of Public Works and Buildings, said (4): “The Crown has with the consent of Parliament, in certain cases established certain officials who are to be treated as agents of the Crown but with a power of contracting as principals. The Secretary of State for War and the Postmaster-General are known instances of this.” See also *Sanitary Commissioners of Gibraltar v. Orfila and Others* (5). Turning again to the Transport Act, 1947, reliance is placed on the terms of s. 4 which set out the powers of the Minister in relation to the Commission. The Minister’s control is complete.

The decision of the county court judge was correct. The dwelling-house was the property of agents of the Crown, and

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(1) (1864) 11 H. L. C. 443.

(4) *Ibid.* 790.

(2) [1941] A. C. 328.

(5) (1890) 15 App. Cas. 400.

(3) [1901] 2 K. B. 781.

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so Crown property. The Rent Restriction Acts, therefore, were not applicable to it.

*J. P. Ashworth* replied.

*Cur. adv. vult.*

July 8. DENNING L.J., read the judgment of the court : The plaintiff was the lessee of a house, No. 2, Buckland Street, Plymouth, which used to belong to the Great Western Railway Co. The defendant was the sub-tenant of some rooms in the house and was protected in those days by the Rent Restriction Acts. On the nationalization of the railways, however, the house became vested in the British Transport Commission, by virtue of the Transport Act, 1947, and the county court judge has held that, on that account, the defendant has lost the protection of the Rent Restriction Acts. The judge said that the house "must be regarded as "owned by the Crown and administered by the British "Transport Commission as Crown agents," and that the house "being now Crown property, is no longer within the "scope of the Rent Restriction Acts." He accordingly made an order for possession.

It is, of course, a settled rule that the Crown is not bound by a statute unless there can be gathered from it an intention that the Crown should be bound ; and it has been held that, under this rule, the Crown and its servants and agents are not bound by the Rent Restriction Acts. (See, for instance, *Territorial and Auxiliary Forces Association of the County of London v. Nichols* (1). In considering whether any subordinate body is entitled to this Crown privilege, the question is not so much whether it is an "emanation of the "Crown," a phrase which was first used in *Gilbert v. Corporation of Trinity House* (2), but whether it is properly to be regarded as the servant or agent of the Crown. (See *International Railway Co. v. Niagara Parks Commission* (3). In the case of the British Transport Commission, this depends on the true construction of the Transport Act, 1947. We have considered the provisions of that statute and, for the sake of clarity, we propose to state their effect without referring to the various sections in detail.

The Transport Act, 1947, brings into being the British Transport Commission, which is a statutory corporation of a kind comparatively new to English law. It has many of

(1) [1949] 1 K. B. 35.

(3) [1941] A. C. 328, 342-3.

(2) (1886) 17 Q. B. D. 795, 801.

the qualities which belong to corporations of other kinds to which we have been accustomed. It has, for instance, defined powers which it cannot exceed ; and it is directed by a group of men whose duty it is to see that those powers are properly used. It may own property, carry on business, borrow and lend money, just as any other corporation may do, so long as it keeps within the bounds which Parliament has set. But the significant difference in this corporation is that there are no shareholders to subscribe the capital or to have any voice in its affairs. The money which the corporation needs is not raised by the issue of shares but by borrowing ; and its borrowing is not secured by debentures, but is guaranteed by the Treasury. If it cannot repay, the loss falls on the Consolidated Fund of the United Kingdom ; that is to say, on the taxpayer. There are no shareholders to elect the directors or to fix their remuneration. There are no profits to be made or distributed. The duty of the corporation is to make revenue and expenditure balance one another, taking, of course, one year with another, but not to make profits. If it should make losses and be unable to pay its debts, its property is liable to execution, but it is not liable to be wound up at the suit of any creditor. The taxpayer would, no doubt, be expected to come to its rescue before the creditors stepped in. Indeed, the taxpayer is the universal guarantor of the corporation. But for him it could not have acquired its business at all, nor could it now continue it for a single day. It is his guarantee that has rendered shares, debentures and such like all unnecessary. He is clearly entitled to have his interest protected against extravagance or mismanagement.

But there are other persons who have also a vital interest in its affairs. All those who use the services which it provides—and who does not?—and all whose supplies depend on it, in short everyone in the land, is concerned in seeing that it is properly run. The protection of the interests of all these—taxpayer, user and beneficiary—is entrusted by Parliament to the Minister of Transport. He is given powers over this corporation which are as great as those possessed by a man who holds all the shares in a private company, subject, however, as such a man is not, to a duty to account to Parliament for his stewardship. It is the Minister who appoints the directors—the members of the Commission—and fixes their remuneration. They must give him any information he wants ; and, lest they should not prove amenable to his suggestions as to

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the policy they should adopt, he is given power to give them directions of a general nature, in matters which appear to him to affect the national interest, as to which he is the sole judge, and they are then bound to obey. These are great powers but still we cannot regard the corporation as being his agent, any more than a company is the agent of the shareholders, or even of a sole shareholder. In the eye of the law, the corporation is its own master and is answerable as fully as any other person or corporation. It is not the Crown and has none of the immunities or privileges of the Crown. Its servants are not civil servants, and its property is not Crown property. It is as much bound by Acts of Parliament as any other subject of the King. It is, of course, a public authority and its purposes, no doubt, are public purposes, but it is not a government department nor do its powers fall within the province of government.

The correctness of these views is shown by the way in which the railways have been dealt with. Apart from the special provisions as to the constitution of the Commission, all that has happened is that there has been an amalgamation of the previous railway companies into one concern which is expressly made subject to the same rights and liabilities as were the railway companies, including statutory duties, contractual obligations, and even some customary obligations. This one amalgamated concern is run by a statutory corporation called the Railway Executive, but this corporation is nothing more nor less than the agent of the Commission. So far as third persons are concerned, the Railway Executive is treated as running the railways on its own account. For instance, the officers and servants of the former companies are treated as officers and servants of the Railway Executive and not of the Commission. But in the last resort, it is the Commission which is responsible. If a judgment against the Railway Executive is not satisfied, execution can be levied against the property of the Commission. All this seems to be quite inconsistent with the notion that the Commission is itself a government department or an agent of the Crown. Execution is not leviable against a government department, even under the Crown Proceedings Act, 1947.

We do not find it very useful to draw analogies from other bodies which are differently constituted and differently controlled and exist for different purposes. The Territorial Forces Associations, for instance, are not concerned with

commercial matters, but with the defence of the realm, which is essentially the province of government and are therefore to be considered agents of the Crown: *Territorial Forces Association v. Philpot* (1); *Territorial and Auxiliary Forces Association of the County of London v. Nichols* (2). The Post Office is the nearest analogy. It is, of course, concerned with commercial matters, but is nevertheless a government department and its servants are civil servants. That is, however, an anomaly due to its history. The carriage of mail was a Crown monopoly long before the Postmaster-General was incorporated. But the carriage of passengers and goods is a commercial concern which has never been the monopoly of anyone and we do not think that its unification under state control is any ground for conferring Crown privileges upon it.

The only fact in this case which can be said to make the British Transport Commission a servant or agent of the Crown is the control over it which is exercised by the Minister of Transport; but there is ample authority both in this Court and in the House of Lords for saying that such control as he exercises is insufficient for the purpose. (See *Cannon Brewery Co. Ltd. v. Central Control Board (Liquor Traffic)* (3).) When Parliament intends that a new corporation should act on behalf of the Crown, it as a rule says so expressly, as it did in the case of the Central Land Board by the Town and Country Planning Act, 1947, which was passed on the very same day as the Transport Act, 1947. In the absence of any such express provision, the proper inference, in the case, at any rate, of a commercial corporation, is that it acts on its own behalf, even though it is controlled by a government department.

In our opinion, therefore, the British Transport Commission is not a servant or agent of the Crown and its property is as much subject to the Rent Restriction Acts as the property of any other person. The defendant is therefore entitled to raise the Rent Restriction Acts. Sir Valentine Holmes mentioned a further point, namely, whether in any case the plaintiff, who was clearly not the servant or agent of the Crown, could avail himself of the rule relating to the Crown; but it was not argued and we express no opinion on it. The

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(1) [1947] 2 All E. R. 376.

(2) [1949] 1 K. B. 35.

(3) [1918] 2 Ch. 101, 113;  
[1919] A. C. 744, 757.

C. A. appeal is allowed and the case remitted to the county court  
for the decision of that court in the light of this judgment.

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*Appeal allowed.*

*Case remitted to the county court.*

Solicitors for the sub-tenant : *Kenneth Brown, Baker, Baker,*  
*for W. H. Sloman, Plymouth.*

Solicitors for the tenant : *Kinch and Richardson, for*  
*Broadbent and Huddart, Plymouth.*

C. G. M.

C. C. A.

REX v. THOMAS.

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Aug. 29, 30.

Humphreys,  
Hilbery and  
Croon-Johnson  
JJ.

*Criminal law—Wounding with intent to murder—Conviction—Sentence  
of penal servitude—Subsequent death of person wounded—Indictment  
for murder—Plea of autrefois convict—Plea not available to accused.*

Where a person has been convicted of wounding with intent to murder and the person wounded subsequently dies of the wounds inflicted, a plea of autrefois convict is not a good answer by the person who inflicted the wound to an indictment for murder.

APPEAL against conviction.

On May, 1949, the appellant, Leonard Jack Thomas, was convicted at the Central Criminal Court of having, on March 20, 1949, feloniously wounded his wife, Florence Ethel Lavinia Thomas, with intent to murder her, and was sentenced to seven years' penal servitude. The appellant's wife died on June 2, 1949, as the result of the wounds she had received, and on July 13, 1949, the appellant was indicted at the Central Criminal Court before Devlin J., on a charge of murdering her. In answer to the indictment the appellant set up a plea of autrefois convict. Devlin J. held as a matter of law that there was no evidence on which the jury could find that the offence of which the appellant had been previously convicted was the same as that with which he was then charged and under his direction the jury returned a verdict that the plea of autrefois convict had not been established. The appellant was then tried on his plea of not guilty to the indictment for murder and found guilty. He appealed on the ground that the plea of autrefois convict was wrongly rejected.

EASTERN CARIBBEAN SUPREME COURT  
BRITISH VIRGIN ISLANDS

IN THE HIGH COURT OF JUSTICE

CLAIM No: BVIHCV 2021/0210

BETWEEN:

HONOURABLE JULIAN WILLOCK  
SPEAKER OF THE HOUSE OF ASSEMBLY

Claimant

And

(1) THE RIGHT HONOURABLE SIR GARY HICKINBOTTOM  
AS COMMISSIONER OF THE COMMISSION OF INQUIRY  
(2) BILAL RAWAT  
(3) ANDREW KING  
(4) RHEA HARRIKISSOON  
(5) ATTORNEY GENERAL

Defendants

Determined on paper with no written submissions

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2021 August 27

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**JUDGMENT**

[1] **JACK, J [Ag.]**: On 18<sup>th</sup> January 2021 the then Governor of this Territory appointed a Commission of Inquiry under the **Commissions of Inquiry Act 1880**<sup>1</sup> to inquire into a number of matters, but primarily “to establish whether there is information that corruption, abuse of office or other serious dishonesty in relation to officials, whether statutory, elected or public may have taken place in recent years.” The Rt Hon Sir Gary Hickinbottom, a retired Lord Justice from the English Court of Appeal and the first defendant in these proceedings, was appointed as the commissioner.

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<sup>1</sup> Cap 237, Revised Laws of the Territory of the Virgin Islands.

- [2] The appointment of the commission has given rise to much political controversy and dispute. These political issues are not matters for this Court to determine in the current proceedings, which are brought by the Honourable Julian Willock, the Speaker of the House of Assembly, as claimant.
- [3] After his appointment, Sir Gary brought in a team of UK lawyers to assist him in his inquiry. These comprised: Bilal Rawat, a barrister called to the bar of England and Wales in 1995; Andrew King, a solicitor admitted in England and Wales in 2009; and Rhea Harrikissoon, a solicitor admitted in England and Wales in 2012. These are respectively the second, third and fourth defendants. None have been admitted as legal practitioners in this Territory, although an application that they be admitted is due to be heard on 26<sup>th</sup> October this year. The fifth defendant is the Attorney-General of this Territory.
- [4] The relief sought by the claimant in the current application, which is listed for hearing on 2<sup>nd</sup> September 2021, is an injunction restraining Mr. Rawat, Mr. King and Ms. Harrikissoon acting as barrister or solicitor in the Commission of Inquiry unless and until they are admitted as BVI legal practitioners.
- [5] Before considering the interlocutory relief sought, I should mention one matter of drafting. In both the amended claim form, the various applications and the three affidavits which Mr. Willock has sworn, he refers to the Commission of Inquiry as “the Inquisition”. This in my judgment is inappropriate. Mr. Willock no doubt has strong views on the legitimacy of the inquiry. The Court, however, requires parties before it to behave with civility to each other. The Court will not tolerate abusive language of any description. Describing the Commission of Inquiry as an inquisition does not meet this standard. Nor does any implied comparison of Sir Gary with the late Tomás de Torquemada. The Court will not entertain political point scoring by litigants before it.
- [6] Accordingly, I shall give permission to the claimant by 4pm on 1<sup>st</sup> September 2021 to amend his claim form and applications so as to substitute “commission” in place

of “inquisition.” In default of such amendment, I shall strike out the claim. I shall also strike out the claimant’s three affidavits but permit him by the same time to re-swear and file them on the e-Litigation Portal, but with the amendment which I have stated.

[7] Because this order is made *ex parte*, the claimant has the right to apply to the Court to vary or discharge this order.

[8] The substantive point raised by Mr. Willock is that Mr. Rawat, Mr. King and Ms. Harrikissoon are practising BVI law without being admitted to the roll of legal practitioners in the BVI. This question has been the subject of three recent decisions. The first is of the Court of Appeal in **Yao Juan v Kwok Kin Kwok**,<sup>2</sup> on appeal from me<sup>3</sup>; the second and third are decisions of mine, **Re Summer Fame Ltd (In Liquidation)**<sup>4</sup> and **Re Lenux Group Ltd; JSC Mezhdunarodniy Promyshlenniy Bank v Lenux Group Ltd**.<sup>5</sup> None directly address the point raised by Mr. Willock as to whether the work Mr. Rawat, Mr. King and Ms. Harrikissoon do in assisting the Commission of Inquiry amounts to “practising [BVI] law”.

[9] The **Legal Practitioners Act 2015**<sup>6</sup> provides:

“2(1) In this Act, unless the context otherwise requires,

...

‘costs’ includes fees for any legal business done by a legal practitioner;

‘fees’ includes charges, disbursements, expenses and remuneration;

...

‘legal practitioner’... means a person whose name is entered on the Roll in accordance with this Act;

‘practise law’ means to practise as a legal practitioner or to undertake or perform the functions of a legal practitioner, as recognised by any law whether before or after the commencement of this Act;

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<sup>2</sup> [2021] ECSCJ No 577, BVIHMAP2018/0042 (1<sup>st</sup> June 2021).

<sup>3</sup> [2020] ECSCJ No 148, BVIHC (COM) 162 of 2013 (23<sup>rd</sup> April 2020)

<sup>4</sup> [2021] ECSCJ No 585, BVIHC (COM) 2020/0055 (9<sup>th</sup> June 2021).

<sup>5</sup> [2021] ECSCJ No 605, BVIHC (COM) 2020/0188 (28<sup>th</sup> June 2021).

<sup>6</sup> No 13 of 2015, Laws of the Territory of the Virgin Islands.

...  
13(1) Every person whose name is entered on the Roll in accordance with this Act shall be known as a legal practitioner and,

(a) subject to subsection (2), is entitled to practise law and sue for and recover his or her fees for services rendered in that respect;

(b) subject to subsection (2), has the right of audience before any court;

(c) is an officer of the Supreme Court.

(2) No person may practise Virgin Islands law unless his or her name is entered on the Roll in accordance with this Act.

(3) A person who practises law in contravention of subsection (2) or section 15(1) is not entitled to institute or maintain any action for recovery of any fee on account of or in relation to any legal business done by him or her in the course of such practice

...  
18(1) Subject to this Act, where a person whose name is not registered on the Roll

(a) practises law;

(b) wilfully pretends to be a legal practitioner; or

(c) makes use of any name, title or description implying that he or she is entitled to be recognised or to act as a legal practitioner,

he or she commits an offence and is liable on summary conviction to a fine of not less than fifteen thousand dollars or to imprisonment for a term of not less than three years, or both.

(2) A person who, not being entitled to act as a legal practitioner, acts in any respect as a legal practitioner in any action or matter or in any court in the name or through the agency of a legal practitioner entitled so to act, commits an offence and is liable on summary conviction to a fine of not less than ten thousand dollars or to a term of imprisonment of not less than two years, or both.

(3) No fee in respect of anything done by a person whose name is not registered on the Roll or to whom subsection (2) relates, acting as a legal practitioner, is recoverable in any action, suit or matter by any person.”

[10] It will be seen that practising BVI law in this Territory without being admitted to practice is a criminal offence with stiff minimum sentences. Whether a criminal offence has been committed and whether it is in the public interest for the offence to be prosecuted is normally a matter for the Director of Public Prosecutions and the Attorney-General.

[11] In the current case, Mr. Willock seeks an injunction restraining the three lawyers from allegedly breaching section 18(1) and (2). This raises a question as to Mr.

Willock's standing to bring the current action. The current claim appears to raise no private law cause of action on Mr. Willock's part. Instead, he appears to be bringing the claim as part of his public duties as speaker of the House of Assembly. The papers filed to date do not, however, identify any statutory basis on which he might be acting. (In England, for example, local authorities can bring injunction proceedings of this type, but this is specifically permitted by statute.<sup>7</sup>) There is no general power of public authorities to obtain such injunctions.

[12] At common law, the only way to bring injunction proceedings to prevent a breach of the criminal law is to bring a *relator* action: **Gouriet v HM Attorney-General**.<sup>8</sup> The permission of the Attorney-General is required for a claimant to bring such proceedings. That is a discretionary matter for the Attorney-General: see Sam Silkin QC A-G's explanation of his function in **Gouriet** at pp 442-444.

[13] So far as appears from the papers, Mr. Willock has not yet requested the Attorney-General's permission to bring the current proceedings. That is a matter which will need to be addressed at the hearing of the application on 2<sup>nd</sup> September. It is arguable that unless and until the Attorney-General gives permission Mr. Willock has no standing to seek an injunction.

[14] Ellis J, who is hearing the application for admission of Mr. Rawat, Mr. King and Ms. Harrikissoon to the roll of practitioners on 26<sup>th</sup> October 2021, has considered the question of standing for opponents of their admission. The test for standing in *relator* proceedings, however, is different.

**Adrian Jack**  
Commercial Court Judge [Ag.]

**By the Court**

**Registrar**

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<sup>7</sup> Local Government Act 1972 (UK) (c. 70) section 222.

<sup>8</sup> [1978] AC 435.

**EASTERN CARIBBEAN SUPREME COURT  
BRITISH VIRGIN ISLANDS**

**IN THE HIGH COURT OF JUSTICE**

**CLAIM No: BVIHCV 2021/0210**

**BETWEEN:**

**HONOURABLE JULIAN WILLOCK  
SPEAKER OF THE HOUSE OF ASSEMBLY**

**Claimant**

**And**

**(1) THE RIGHT HONOURABLE SIR GARY HICKINBOTTOM  
AS COMMISSIONER OF THE COMMISSION OF INQUIRY  
(2) BILAL RAWAT  
(3) ANDREW KING  
(4) RHEA HARRIKISSOON  
(5) ATTORNEY GENERAL**

**Defendants**

**Appearances:**

Mr. Daniel Fligelstone Davies of Silk Legal (BVI) Inc for the Claimant  
Mr. Andrew Sutcliffe QC, with him Mr. Oliver Clifton and Ms. Yegâne Güley of Walkers (BVI) for the First to Fourth Defendants  
Mrs. Fiona Forbes-Vanterpool of the Attorney-General's Chambers for the Fifth Defendant

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2021 September 2  
September 13

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**JUDGMENT ON COSTS**

[1] **JACK, J [Ag.]**: The background to this matter I summarised in my judgment of 27<sup>th</sup> August 2021. I wrote that judgment in order that the hearing of the claimant's application for an injunction listed for 2<sup>nd</sup> September 2021 might be fully effective. Following that judgment, on 1<sup>st</sup> September 2021 at 1.33pm the claimant served a notice of discontinuance. The defendants were already finalising and filing their

skeleton arguments in opposition to the injunction application. I therefore directed that any party seeking an order for costs should serve a schedule of costs and that I would treat the hearing on 2<sup>nd</sup> September 2021 as a hearing in respect of any consequential costs orders.

[2] The first four defendants have served a costs schedule claiming \$71,388.59. The Attorney-General has served a schedule claiming \$6,084. In each case, further costs in respect of the hearing on 2<sup>nd</sup> September and work subsequent thereto will have been incurred.

[3] Before dealing with costs issues, I should mention a problem which arises from the current need to hear cases virtually. The default position is that the Court hears all matters in open court. When the Court hears matters face-to-face there is rarely any issue about whether a matter is in open court or not. Someone who wants to observe a case has merely to attend the courthouse. With a virtual hearing, an observer has to ask the Court for the Zoom details, so he or she can log in to a hearing. In the current case, a notice of the time and date hearing was due to be posted on the eccourts.org website, but that was withdrawn when the notice of discontinuance was served. When it became apparent that the costs hearing was going to go ahead, I asked that a notice of that hearing be posted on the website, but that was not done in time. It may be that the relevant Court user groups and representatives of the press should consider how this problem can be avoided in the future. In the meantime, any journalists or members of the public who wish to follow a case should leave their details with the Court so that notifications of hearings can be given to them, if problems of this type reoccur.

**Mr. Davies' submissions**

[4] On 2<sup>nd</sup> September, Mr. Davies appeared on behalf of the claimant. He submitted that the Court should make no order for costs. He made this submission on two bases. Firstly, the current action was not an ordinary private law action. Rather it was an administrative action, which Mr. Willock in his capacity as Speaker of the House of Assembly could properly bring without the Attorney-General's *fiat*, as

would have been required for a *relator* action. Mr. Willock was acting in the public interest. CPR 56.13(6) provides that there should be no order for costs against him unless he acted unreasonably. Secondly, there was no point making a costs order. The BVI Government was paying Mr. Willock's legal fees and would be responsible for liability for the legal costs of other parties. There was no point, he submitted, moving monies from one Government pocket to another Government pocket.

### **Public interest**

[5] So far as the first point is concerned, CPR 56.1, so far as material provides:

“(1) This Part deals with applications —

- (a) by way of originating motion or otherwise for relief under the Constitution of any Member State or Territory;
- (b) for a declaration in which a party is the State, a court, a tribunal or any other public body;
- (c) for judicial review; and
- (d) where the court has power by virtue of any enactment or at common law to quash any order, scheme, certificate or plan, any amendment or approval of any plan, any decision of a minister or government department or any action on the part of a minister or government department.

(2) In this Part — such applications are referred to generally as ‘applications for an administrative order’.”

[6] Mr. Davies submitted that the current action was brought as an application for an administrative order under CPR 56.1(1)(b). The Commission of Inquiry was “a tribunal” for the purpose of that rule. In addition, by CPR 56.1(4) the Court may “[i]n addition to or instead of an administrative order... without requiring the issue of any further proceedings, grant (a) an injunction...” The Speaker, he submitted, had, in that capacity, standing to apply for an administrative order under those provisions. The Speaker was now contemplating bringing fresh judicial review proceedings. When dealing with the costs of an administrative claim, the Court had a greater discretion as to costs than in ordinary private law actions. The

current action was brought in the public interest. The default provision is no order for costs: CPR 56.13(6). In any event in all the circumstances the appropriate order was no order for costs.

[7] There are a number of difficulties with this submission. Firstly, I have reread the claim form and affidavit in support. There is no hint in those documents that Mr. Willock was bringing a claim under CPR 56.1(1)(b). The application for an injunction appeared to be being brought on ordinary private law grounds.

[8] Secondly, in my judgment, the Commission of Inquiry is not a “tribunal” for the purposes of CPR 56.1(1)(b). Although in the past, the term has had a wider meaning,<sup>1</sup> now-a-days a tribunal determines legal issues. Usually a tribunal decides cases *inter partes*, but this is not essential. A tribunal like the UK Gender Recognition Panel,<sup>2</sup> which gives legal recognition to applicants living in the other gender, determines matters *contra mundum*. By contrast, the Commission is purely investigatory. There are no parties. Without applicants or respondents, it determines no rights. An essential feature of a tribunal is that it is a judicial or quasi-judicial body. The Commission in this case does not determine rights; it is therefore not acting in a judicial or quasi-judicial capacity. CPR 56.1(1)(b) does not therefore apply to the current action.

[9] Thirdly, if Mr. Davies’ submission is right, then it is the answer to the problem I raised as to whether the Attorney-General’s permission needed to be sought. However, the right course would have been to argue the point on the return date of the application for an injunction. There was no reason to serve a notice of discontinuance, if the action was, as Mr. Davies argues, perfectly well brought.

[10] Fourthly, Mr. Davies has only baldly asserted that the Speaker has standing to bring an administrative action. I will assume without deciding that the test for

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<sup>1</sup> See, for example, the Tribunals of Inquiry (Evidence) Act 1921 (11 & 12 Geo V c. 7), but of the distinction subsequently drawn between tribunals and inquiries in the Tribunals and Inquiries Act 1972 (c. 62) (both UK Acts now repealed).

<sup>2</sup> Established in the United Kingdom by Schedule 1 to the Gender Recognition Act 2004 (c. 4).

making a claim under CPR 56.1(1)(b) is the same as that for a party seeking judicial review under CPR 56.1(1)(c). There is a lot of law on what gives *locus standi* to bring a claim for judicial review. Mr. Davies has cited none of it. The learned editors of **De Smith's Judicial Review** point out:<sup>3</sup>

“Where there are strict rules as to standing there is always the risk that no one will be in a position to bring proceedings to test the lawfulness of administrative action. It is hardly desirable that a situation should exist where because all members of the public are equally affected no one is in a position to bring proceedings: such a situation would impede the rule of law.”

It may thus be properly arguable that Mr. Willock does have standing. The time for doing that, however, was on the substantive application for an injunction as part of the entitlement to seek an injunction, not as a side-wind in a costs determination without citation of any authority.

[11] Fifthly, any problems as to standing could have been addressed at the substantive application for an injunction. Mr. Willock could have asked the Attorney-General for permission to bring the claim as a *relator* action. She would then have had to decide whether to give it or not.

[12] The Attorney-General is always in a constitutionally odd position. In some matters she is a mere advisor of her client, in other situations she has to make decisions herself. As I said in **Trustees of the John Mackintosh Educational Trust v Attorney-General and Charity Commissioners** (a case where trustees of a charity in Gibraltar sought a change in the objects of the trust under the *cy-près* doctrine):<sup>4</sup>

“48. The Attorney-General has a large number of different rôles. The application of a public interest test is different in relation to each. Some of the duties are as follows. First, he is the Government's and the Governor's chief legal adviser. In that capacity, he acts as a normal

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<sup>3</sup> 8<sup>th</sup> Ed (2020) by Lord Woolf, Jeffrey Jowell and Andrew Le Sueur at para 2-006.

<sup>4</sup> [2015] Gib LR 365 TRUSTEES of the JOHN MACKINTOSH EDUCATIONAL TRUST v. ATTORNEY-GENERAL and CHARITY COMMISSIONERS ([gibraltarlaws.gov.gi](http://gibraltarlaws.gov.gi))

lawyer and is subject to his client's instructions. Issues of public interest are in these cases, in principle, for the branch of the Government which is his client to determine, not for him. Secondly, he is ultimately responsible for public prosecutions,<sup>5</sup> including bringing applications to commit for public contempt of court. He has a general power to prosecute or not, depending on his view of the public interest. As such, he is not subject to anyone's instructions, so the Government of the day cannot direct him how to act, but he is subject to judicial review. Thirdly, he can authorize the bringing of *ex relatione* proceedings, whereby a private individual is authorized to seek an injunction against a defendant committing a public wrong. When doing so, he acts 'in his absolute discretion... in the public interest' and is therefore arguably not subject to judicial review: **Gouriet v Attorney-General**.<sup>6</sup> Fourthly, historically, he sat as acting Chief Justice in the absence of the Chief Justice.<sup>7</sup> When so sitting, he would exercise a completely independent judicial function, answerable to no one save the Privy Council.<sup>8</sup> As such, he was obliged to give judgment in accordance with the law, regardless of his own view of the public interest (*fiat justitia ruat caelum*).

49. In carrying out his duties in charity cases, the Attorney-General has a different function again. Exercising the *parens patriae* prerogative, he is seeking to ensure that the charitable trusts established by the settlor or testator are carried out in accordance with the wishes expressed in the deed or will establishing the trust. The fact that a trust is charitable is of itself sufficient to show that the trust is in the public interest, so the Attorney-General does not need to, and would be wrong to, consider whether the enforcement of the terms of the charitable trust is in the public interest. The Attorney-General has no power to consent to a breach of the terms of a charitable trust on public interest grounds. Unless the conditions for the making of a *cy-près* scheme existed, he could not properly, for example, consent to moneys of the John Mackintosh Education Trust being spent for primarily non-educational purposes."

[13] It cannot be assumed that the Attorney-General would have refused her *fiat*, had it been requested. She would have had to balance (a) the view she takes as to

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<sup>5</sup> In this Territory, the Attorney-General's rôle in criminal prosecutions is affected by the existence of the Director of Public Prosecutions, a post which was only subsequently created in Gibraltar: Director of Public Prosecutions Act 2018 (Gibraltar Act No 2018-17).

<sup>6</sup> [1978] AC 435 at p 442, *per* Mr. Samuel Silkin QC, the Attorney-General, although the point was left open by the House of Lords, *ibid* at p 475, *per* Lord Wilberforce.

<sup>7</sup> See John Restano, *Justice so Requiring* (2012) at p 88.

<sup>8</sup> There was no Court of Appeal, so appeals went directly to the Privy Council. The 1969 Constitution of Gibraltar established the Court of Appeal for the first time: Gibraltar Constitution Order 1969 (unnumbered prerogative order SI 1969, II p 3602), Schedule, section 57.

whether the three English lawyers were “practising [BVI] law” (including the question as to whether it was at least arguable that they were) and (b) her view as to the public interest in preventing them so doing (assuming she took the view they were or might be practising BVI law). If she refused her *fiat*, potentially her decision might be subject to judicial review. The “absolute discretion” (and with it the immunity from judicial review) claimed by Mr. Silkin QC for his decisions as Attorney-General to grant the power to bring proceedings *ex relatione* was left open by the House of Lords in **Gouriet** and may need re-examination in any event in the light of **Miller 2**, the prorogation of Parliament case.<sup>9</sup>

[14] Whether the current proceedings should have been stayed to permit Mr Willock to bring proceedings for judicial review in the event that the Attorney-General refused her *fiat* is a matter which no longer arises in consequence of the discontinuance of the case. The possibility, however, existed. Whether this produces a difficulty in relation to the Speaker’s proposed fresh judicial review application by virtue of the rule in **Henderson v Henderson**<sup>10</sup> will be a matter for the Court hearing his application to bring such proceedings.

[15] Considering all these points, in my judgment Mr. Willock did have at least an argument when he issued these proceedings that it was in the public interest that it be determined whether the three lawyers in issue were practising BVI law illegally. However, in the exercise of my discretion, the Court should not recognise Mr. Willock’s public-spiritedness in bringing these proceedings so to make no order as to costs. Firstly, I do not accept that the current action is anything other than an ordinary private law claim, so that the issue does arise as to whether it required the Attorney-General’s *fiat*. Secondly and as a wholly separate ground for the exercise of my discretion, assuming I should have regard to the public interest which Mr. Willock was defending, the simple fact is that by serving the notice of discontinuance he was abandoning his pursuit of the public interest. If he had fought and lost, then he could make the argument that he was acting in the public

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<sup>9</sup> R (on the application of Miller) v The Prime Minister [2019] UKSC 41, [2020] AC 373.

<sup>10</sup> (1843) 3 Hare 100.

interest. Instead by folding the moment a potential difficulty was raised, he was likewise abandoning his pursuit of the public interest. Thirdly, in my judgment he acted unreasonably in abandoning the action at the first indication that there might be procedural difficulties. It caused very substantial costs to be incurred by the defendants to no public benefit whatsoever.

### **Robbing Peter to pay Paul**

- [16] The second head of argument put forward by Mr. Davies was that, since the Government of this Territory was paying Mr. Willock's legal costs and would pay any costs order made against him, it made little sense to be moving money from one Government pocket to another.
- [17] Mrs. Vanterpool disputed that there was any such agreement between Mr. Willock and the BVI Government. She said that any agreement up to \$100,000 would require the authorisation of the accounting officer for the House of Assembly, who was the clerk to the House of Assembly. Any agreement over \$100,000 required the authorisation of the Financial Secretary. The Attorney-General's investigations, she said, showed that no such authorisations had been given.
- [18] In consequence I gave a direction that Mr. Willock file an affidavit by close of business on 7<sup>th</sup> September explaining the funding arrangements for the action. In compliance with that direction, Mr. Willock swore and filed an affidavit. It is very short, a mere five paragraphs. The whole substance of the affidavit is this:

“3. I make this affidavit to state whether the funding of the action is private or governmental in relation to this matter.

4. I hereby confirm that I instructed the lawyers at Silk Legal (BVI) Inc to pursue this administrative law action on the understanding that the Government of the Virgin Islands is covering the costs/fees of the matter.

5. I have not paid for the lawyers of Silk Legal (BVI) Inc, it is not my responsibility.”

[19] I find various difficulties with these averments. Firstly, is Mr. Willock saying the “understanding” is legally binding or not? Secondly, with whom did he reach the understanding? Presumably to have any efficaciousness, it needed to be an understanding with the BVI Government. An understanding simply with Silk Legal would have been pointless. Mrs. Vanterpool was asserting at the hearing on 2<sup>nd</sup> September that there had been no such agreement, because it would have had to have been approved by (depending on its size) the clerk of the House of Assembly or the Financial Secretary. Mr. Willock says nothing about whether such approval was given. (As speaker, he is presumably in a good position to know.) If no such approval was given, how could the understanding be legally enforceable? Thirdly, who was Silk Legal’s client? Which human being agreed that the Government of this Territory would pay Silk Legal’s legal fees? Lastly, Mr. Willock says nothing about the alleged liability on the part of the BVI Government to indemnify Mr. Willock against any costs order in favour of the defendants to the current action.

[20] The evidence I have at present as to the funding arrangements is unclear. It would not be fair to Mr. Willock to determine this aspect of his defence to the costs application by the defendants without giving him an opportunity to explain the position. I am therefore minded to direct that this matter be clarified.

[21] I will hear counsel on the handing down of this judgment, but I am minded to order that by 4pm on Tuesday 14<sup>th</sup> September 2021 Mr. Willock and a person with knowledge of the facts from Silk Legal (BVI) Inc each make, swear and file an affidavit on the e-Portal as follows:

(a) Mr. Willock shall give evidence as follows, namely:

(i) whether the understanding mentioned in paragraph 4 of his affidavit of 7<sup>th</sup> September 2021 was reached orally or in writing;

(ii) if in writing, he shall (subject to any claim as to professional legal privilege) exhibit the relevant documents to his affidavit;

(iii) if he makes any claim to legal professional privilege, he shall state the date of the relevant document or documents and which

human beings signed the documents and on whose behalf the relevant document or documents were sent and received;

(iv) if the said understanding was oral, when, where and between which human beings the understanding was reached, whether the communication was face to face or by telephone or by some other (and if so, what) electronic means, and (subject to any issue as to legal professional privilege) what the gist of the conversation was; and,

(v) whether the Government of the Territory of the Virgin Islands or an emanation thereof (and if so what emanation thereof) agreed

(1) to pay the legal costs of Silk Legal (BVI) Inc, and/or

(2) any liability incurred by him to the defendants or any or some of them (and if so, which) in the current litigation; and

(b) the person from Silk Legal (BVI) Inc shall give evidence as follows, namely:

(i) who the client of Silk Legal (BVI) Inc is in the current action;

(ii) whether the Government of the Territory of the Virgin Islands (or an emanation thereof) agreed to pay the legal fees of Silk Legal (BVI) Inc and if not, which natural or legal person (if anyone) has agreed to pay the legal fees of Silk Legal (BVI) Inc;

(iii) whether the agreement to pay the legal fees of Silk Legal (BVI) Inc (if there was one) was oral or in writing;

(iv) if in writing, the deponent shall (subject to any issue of legal professional privilege) exhibit the relevant documents to his or her affidavit;

(v) if the deponent makes any claim to legal professional privilege, he or she shall state the date of the relevant document or

documents and which human beings signed the documents and on whose behalf the relevant document or documents were sent;  
(vi) if oral, when, where and between which human beings the agreement was reached, whether the communication was face to face or by telephone or by some other (and if so, what) electronic means, and (subject to any issue of legal professional privilege) what the gist of the conversation was; and,  
(vii) whether the Government of the Territory of the Virgin Islands or an emanation thereof (and if so what emanation thereof) agreed to pay

- (1) the legal costs of Silk Legal (BVI) Inc, and/or
- (2) any liability incurred by Mr. Willock to the defendants or any or some of them (and if so, which) in the current litigation.

[22] Once this further information is filed, I shall consider whether I can reach a determination of costs or whether I should invite further submissions.

**Adrian Jack**  
Commercial Court Judge [Ag.]

**By the Court**

**Registrar**

**EASTERN CARIBBEAN SUPREME COURT  
BRITISH VIRGIN ISLANDS**

**IN THE HIGH COURT OF JUSTICE**

**CLAIM No: BVIHCV 2021/0210**

**BETWEEN:**

**HONOURABLE JULIAN WILLOCK**

**Claimant**

**and**

**(1) THE RIGHT HONOURABLE SIR GARY HICKINBOTTOM  
AS COMMISSIONER OF THE COMMISSION OF INQUIRY**

**(2) BILAL RAWAT**

**(3) ANDREW KING**

**(4) RHEA HARRIKISSOON**

**(5) ATTORNEY GENERAL**

**Defendants**

**Appearances:**

Mr. Daniel Fligelstone Davies of Silk Legal (BVI) Inc for the Claimant

Mr. Andrew Sutcliffe QC, with him Mr. Oliver Clifton and Ms. Yegâne Güley of Walkers (BVI) for the First to Fourth Defendants

Mrs. Fiona Forbes-Vanterpool of the Attorney-General's Chambers for the Fifth Defendant

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2021 September 28, 30

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**FURTHER JUDGMENT ON COSTS**

[1] **JACK, J [Ag.]:** I have previously given two judgments in this matter, the first on 27<sup>th</sup> August 2021, which raised certain procedural difficulties which might face Mr. Willock in pursuing his claim, and the second on 13<sup>th</sup> September 2021 dealing with some aspects of the costs of the case following Mr. Willock's decision to discontinue the action.

[2] On costs, Mr. Davies, who appeared for Mr. Willock, raised at the earlier hearing two issues which meant, he submitted, that costs should not be ordered against Mr. Willock. The first was that the action was an administrative action and that it was in the public interest that it be brought. In my judgment of 13<sup>th</sup> September, I rejected that argument. I held that the current claim is not an administrative action, but that even if it was, Mr. Willock had acted unreasonably and would be liable for costs pursuant to CPR 56.13(6). The second was that since the BVI Government was paying Mr. Willock's legal costs and would pay any costs order made against him, the Court should not make an order moving money from one Government pocket to another.

### **The retainer of Silk Legal**

[3] The factual background to this second issue seemed unclear. I gave directions that it be clarified, so that I could determine this remaining issue. Pursuant to that order, both Mr. Rowe, the senior partner of Silk Legal (BVI) Inc, and Mr. Willock made affidavits. Mr. Rowe's affidavit said:

"3. The Client of Silk Legal (BVI) Inc is the Speaker of the House of Assembly, in his official capacity, as per a contract signed by myself on behalf of Silk Legal (BVI) Inc and the Premier/Minister of Finance Honourable Andrew Fahie on behalf of the Government of the Virgin Islands, on the 28<sup>th</sup> of May 2021. Legal privilege is asserted over this document."

[4] Mr. Willock's affidavit said:

"4. A contract was signed on May 28<sup>th</sup>, 2021 between Silk Legal (BVI) Inc... and the Premier/Minister of Finance, Honourable Andrew Fahie..., wherein I along with the other members of the House of Assembly (except the Attorney General) were to be represented by lawyers from Silk Legal (BVI) Inc, in matters relating to the Commission of Inquiry... Legal privilege is asserted over this agreement.

5. I as Speaker continue to act in my official capacity and I have had conversations with some members from both sides of the aisle. I have written to the Minister of Finance requesting supplementary funds to be placed in the House of Assembly vote, authorized for legal fees.

6. In addition, I have asked the Clerk, the accounting officer for the House of Assembly to make the formal request to the Ministry of Finance, in keeping with [the] practice and procedure of the Financial Management Act. It is crystal clear that the Government of the Virgin Islands will be undertaking any costs associated with my official duties as the Speaker. As these are matter concern [sic] the House of Assembly privilege is asserted over these documents, in keeping with Chapter 137 Legislative Council (Immunities and Powers) Act along with the practice of the House of Commons and Parliamentary Procedure set out in Erskine May.

7. In the Contract, I am authorized to instruct the lawyers of Silk Legal. In the Retainer I am also authorised to approve of fees. In said Contract the Government of the Virgin Islands is responsible for the payment of fees of Silk Legal and it has in fact been billed for same.”

[5] He went on to say that payment of Silk Legal’s fees had from time to time been authorised by the Clerk of the House of Assembly. He does not say what the total amount of fees paid has been.

[6] There seems to be no basis on which legal professional privilege could properly be claimed in respect of the contract of retainer. The point is, however, academic. On 31<sup>st</sup> May 2021 the contract was deposited with the Registrar of the High Court and is publicly available. A copy has been provided to me. Any privilege in the document has been lost.

[7] The contract begins:

“1. Silk Legal (BVI) Inc thanks you, Mr. Julian Willock, Speaker of the House of Assembly, on behalf of the Government of the Virgin Islands, for your instructions...  
2. The Client is Mr. Julian Willock, Speaker of the House of Assembly, Virgin Islands acting on behalf of the Government of the Virgin Islands.”

[8] This is very different to the picture presented by Mr. Rowe and Mr. Willock. If Mr. Willock is acting on behalf of the BVI Government, then the client is the BVI Government. Mr. Willock is an agent acting on behalf of an undisclosed principal.

The contract was never signed by Mr. Willock. The only signatories were Mr. Rowe and Mr. Fahie. This reflects what in my judgment is the true position, namely that the Government of the Virgin Islands was the client.

[9] The contract continues:

“3. ...Silk Legal (BVI) Inc will take instructions from all Members of the House of Assembly as arranged and directed by the Client save and except the Honourable Attorney General...

4. Silk Legal (BVI) Inc will keep the Client properly informed of the conduct of any instructions from the said Members of the House of Assembly and it will do so in a timely manner and in writing...

7. ...Silk Legal (BVI) Inc was solicited for and it intends to provide the following services:

i) Provide the Client with independent written opinions on correspondence sent to the COI on/concerning all Members of the House of Assembly save and except the Honourable Attorney General;

ii) Advise all Members of the House of Assembly save and except the Honourable Attorney General on any correspondence or requests originating from the COI's office in their official capacity as a House of Assembly Member;

iii) Advise on any other legal matters that the Members or the House of Assembly save and except the Honourable Attorney General may request through the Client directly relating to the COI in their official capacity); and

iv) If any aspect of the COI work reaches a court of law as it related to the aforesaid members in their official capacity, Silk Legal (BVI) Inc will assist Attorney General with legal representation in forms that the Honourable Attorney General approves and considers necessary.”

[10] There are issues about the way this contract has been drafted. In particular, at least on one reading of it, the Speaker is acting as the agent of the executive. In a Westminster system of government, the legislature has two main functions: the passing of legislation and the holding of the executive to account. In order to carry out this second function, it is essential that the Speaker is neutral. If the Speaker is party-partisan, members of the opposition are likely to be hindered in carrying out their key constitutional rôle of investigating and, if necessary, criticising the

actions of the Government. Mrs. Forbes-Vanterpool, who appeared for the Attorney-General, explained, however, that the reference to Mr. Willock acting “on behalf of the Government of the Virgin Islands” was not intended to be a reference to the executive, but rather to the Government as a whole, in other words the Territory consisting of all three branches of the State. The contract had been seen and approved by the Attorney-General when it was made.

[11] On that basis, there would be no unlawfulness of the type put by **Chitty on Contracts** into the category of “objects injurious to good government... in the field of domestic... affairs.”<sup>1</sup> See **Egerton v Brownlow**<sup>2</sup> and **Amalgamated Society of Railway Servants v Osborne**.<sup>3</sup> The Court is obliged to take points on public policy of its own motion, but here neither Mrs. Forbes-Vanterpool nor Mr. Sutcliffe QC wished to make any submissions on this, so I shall not determine the point.

[12] Another problem is that an important part of the retainer is that Silk Legal was to advise all members of the House of Assembly (apart from the Attorney-General). Indeed Mr. Willock confirms that he has “had conversations with some members from both sides of the aisle.” That potentially gives rise to a conflict of interest in Silk Legal agreeing to act on this basis. Members of the opposition are very likely to have views and interests differing from those of member supporting the Government. Again, Mrs. Forbes-Vanterpool and Mr. Sutcliffe QC did not wish to pursue this argument.

#### **Does the retainer cover the current litigation?**

[13] What the defendants’ counsel did submit was that the retainer does not cover the current litigation. The first three sub-clauses of clause 7 concern the giving of advice. Clause 7(iv) only covers litigation “[i]f any aspect of the COI work reaches a court of law as it related to the aforesaid members in their official capacity...” The current action has no connection with members of the House of Assembly at all; it is an action to prevent the three COI lawyers from continuing to act.

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<sup>1</sup> 33<sup>rd</sup> Ed (2019) at para 16-008.

<sup>2</sup> (1853) 4 HL Cas 1 at p 161 *per* Lord Lyndhurst.

<sup>3</sup> [1910] AC 87 at p 90.

[14] Moreover, Silk Legal's work was to be by assisting the Attorney-General with legal representation, but only "in forms that the Honourable Attorney General approves and considers necessary." In the current case, the Attorney-General does not approve Silk Legal's actions. Clause 7(iv) of the retainer of 28<sup>th</sup> May does not in my judgment cover Silk Legal's work in the current action.

[15] Mr. Davies sought to meet this objection by saying that the contract of retainer had been varied by the Speaker authorising the bringing of the current action. There is no evidence of this, beyond the fact that Silk Legal have in fact brought the current claim. In particular, there is no evidence that Mr. Fahie, or anyone else able to vary the contract, approved any variation on behalf of the Government. The variation is not in writing and has never been (and would never have been) approved by the Attorney-General. In my judgment the retainer of 28<sup>th</sup> May 2021 does not cover the bringing of the current action.

[16] Further, there is no express term whereby the Government of the Virgin Islands agreed to indemnify Mr. Willock against adverse costs orders. Now it is true that an agent generally has a right to indemnification from his principal. However, the agent must be acting within the scope of his authority to have standing to claim an indemnity. Here, there is nothing in the retainer which gives Mr. Willock a power to bring the current proceedings. Accordingly, any right to an indemnity falls away.

#### **Mr. Willock's liability for costs**

[17] Even if there were an indemnity, on the facts of this case that would not in my judgment affect the claimant's liability for costs. The costs of the first to fourth defendants are being met out of funds provided to the COI. There is no reason why the COI should be out of pocket for having to defend Mr. Willock's claim. As to the costs of the Attorney-General, she seeks those costs. I see nothing unreasonable in her so doing. She no doubt has a limited budget. There is no reason why her budget should be whittled down defending claims conducted unreasonably.

[18] Mr. Davies argued that it was relevant to costs that Mr. Willock was acting in his capacity as Speaker of the House of Assembly. It was part of the circumstances of the case: see CPR 64.6(5) and (6). In some cases that may be so, however, in the current case I have held that Mr. Willock acted unreasonably in issuing the proceedings and then discontinuing them at the first indication that there might be procedural problems with the case. Weighing all the factors in CPR 64.6, in my judgment there is nothing to cause me to diverge from the general rule in CPR 64.6(1) that costs follow the event.

[19] Accordingly, I shall order that Mr. Willock pay the defendants' costs.

### **The assessment of costs**

[20] Mr. Davies submitted that any costs awarded should be prescribed costs rather than assessed costs, with a notional value of \$50,000. The relevant rules are these:

“65.3 Costs of proceedings under these Rules are to be quantified as follows –

- (a) where rule 65.4 applies... [It is common ground that this rule does not apply]; and
- (b) in all other cases if, having regard to rule 64.6, the court orders a party to pay all or any part of the costs of another party – in one of the following ways –
  - (i) costs determined in accordance with rule 65.5 ('prescribed costs');
  - (ii) costs in accordance with a budget approved by the court under rule 65.8 ('budgeted costs');
  - (iii) (if neither prescribed nor budgeted costs are applicable), by assessment in accordance with rules 65.11 and 65.12.

65.5(1) The general rule is that where rule 65.4 does not apply and a party is entitled to the costs of any proceedings, those costs must be determined in accordance with Appendices B and C to this Part and paragraphs (2) to (4) of this rule.

(2) The 'value' of the claim, whether or not the claim is one for a specified or unspecified or unspecified sum, coupled with a claim for other remedies is to be decided in the case of the claimant or defendant –

(a) by the amount agreed or ordered to be paid; or if the claim is for damages and the claim form does not specify an amount that is claimed, such sum as may be agreed between the party entitled to, and the party liable to, such costs or, if not agreed, a sum stipulated by the court as the value of the claim; or  
(b) if the claim is not for a monetary sum it is to be treated as a claim for \$50,000 unless the court makes an order under Rule 65.6(1)(a).”

No order has been made under CPR 65.6(1)(a).

[21] Mr. Sutcliffe QC submitted that CPR 65.5(2) had no application. That submission is in my judgment borne out by authority. Although it was not cited to me, Ventose J in **Orin Roberts v Financial and Regulatory Commission** held:<sup>4</sup>

“[I]t is necessary to focus on the chapeau of CPR 65.5(2) which states that ‘[t]he “value” of the claim, whether or not the claim is one for a specified or unspecified sum, coupled with a claim for other remedies is to be decided in the case of the claimant or defendant.’ The important point is that CPR 65.5(2) does not apply in all cases where the value of the claim is to be determined but applies only where the claim is: (1) for a specified sum; or (2) for an unspecified sum; and in both cases where it is (3) coupled with a claim for other remedies. The words ‘coupled with a claim for other remedies’ is the deciding limitation on the scope of CPR 65.5(2). If the claim, whether for a specified or unspecified sum, is not coupled with a claim for other remedies, CPR 65.5(2) does not apply.”

[22] In the current case, there is no claim for a specified or unspecified sum, so CPR 65.5(2) does not apply. It follows that there is no value of the claim on which the prescribed costs regime can bite. Accordingly, in my judgment CPR 65.3(b)(iii) applies. The defendants are entitled to assessed costs.

[23] The Attorney-General had as long ago as 2<sup>nd</sup> September 2021 served her schedule of costs claimed in the sum of \$6,084.00. The only point taken by Mr. Davies on the assessment was that the Attorney-General was billing in units of 15 minutes. That, he submitted, was too long and did not properly reflect the actual time devoted to a particular item. A similar submission was rejected by Leon J in

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<sup>4</sup> [2019] ECSCJ No 338, Claim No SKBHCV 2016/0019 (determined 14<sup>th</sup> October 2019).

**Olive Group Capital Ltd v Gavin Mark Mayhew.**<sup>5</sup> Accordingly, I shall assess the costs of the Attorney-General at \$6,084.00.

[24] The costs schedule of the other defendants was only served on the morning of the hearing claiming \$115,348.50, which was a substantial increase over the earlier schedule served on their behalves. Mr. Davies reasonably asked for time to deal with the schedule. I therefore directed that he should serve points of dispute by close of business on 5<sup>th</sup> October with a reply by 8<sup>th</sup> October. All parties were content that I should assess costs on paper without a further hearing.

### **Recusal**

[25] I should mention one further matter. In an article published on 15<sup>th</sup> September 2021, Virgin Islands News Online (“VINO”) said it:

“has also understood there are some questions as to whether UK national Mr. Jack should have taken up the case since he is believed to be friends with Col Commissioner Gary R. Hickinbottom and Governor John J. Rankin. The case was originally assigned to Justice Gerhard Wallbank; however, it was reportedly ‘wrestled’ away from him by Justice Jack.”

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<sup>5</sup> [2016] ECSCJ No 88, BVIHC (COM) 2015/0115 (determined 29<sup>th</sup> April 2016) at paras [120] to [125].

[26] Mr. Davies made no application that I should recuse myself. Since no such application has been made, I do not need to deal with it. I should, however, put on record that I barely know either Sir Gary Hickinbottom or his Excellency the Governor. They are not friends of mine. As to the allegation of “wrestling” the case from Wallbank J, the position is that the case was indeed originally assigned to that judge. His judicial assistant is, however, Mr. Willock’s sister. The judge therefore felt it was inappropriate for him to deal with the case.

**Adrian Jack**  
Commercial Court Judge [Ag.]

**By the Court**

**Registrar**

IN THE HIGH COURT OF JUSTICE

CLAIM No: BVIHCV 2021/0210

BETWEEN:

HONOURABLE JULIAN WILLOCK  
~~SPEAKER OF THE HOUSE OF ASSEMBLY~~

Claimant

and

- (1) THE RIGHT HONOURABLE SIR GARY HICKINBOTTOM  
AS COMMISSIONER OF THE COMMISSION OF INQUIRY
- (2) BILAL RAWAT
- (3) ANDREW KING
- (4) RHEA HARRIKISSOON
- (5) ATTORNEY GENERAL

Defendants

Determined on paper

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2021 November 11

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JUDGMENT ON DETAILED ASSESSMENT OF COSTS

### Points of Dispute (as raised by the claimant; with the judge's determination)

Preface:

1. Firstly, it is important to note that over the course of the last hearing, Andrew Sutcliffe QC made mention of the fact that, the costs being sought were on a reasonable costs incurred basis rather than an indemnification basis.

**This is appropriate. There is no indemnity basis of taxation in the Eastern Caribbean.**

2. Additionally, and perhaps on a tangent, Yegâne Güley attended a number of the hearings of this matter, and her appearance was noted by the court. The issue is that Yegâne Güley is a solicitor, and thus has no right of audience before the court.

**Section 13(1)(b) of the Legal Practitioners Act 2015 gives Ms. Güley rights of audience. The point is in any event irrelevant: she did not argue the case, but instead acted in the classic rôle of a solicitor.**

3. In any case the starting point in assessment of costs is that the burden of proof lies on the receiving party to prove that the costs claimed are reasonable and fair to both parties. The authority for this principle is **Sheikh Mohamed Ali M Alhamrani v Sheikh Abdullah Ali M Alhamrani**<sup>1</sup> at para [29] which reads: "The position in the BVI is captured by the learned judge's finding set out at paragraph 21 above that in the BVI there is no bias one way or the other and the burden of proof rests throughout on the receiving party to prove that the costs claimed are reasonable and fair to both the paying party and the receiving party. If the receiving party proves on a balance of probabilities that the claim is reasonable and fair, he or she is generally entitled to that item in full or to so much of it as the court finds to be reasonable and fair. If he does not discharge this burden the claim will fail."  
**I agree.**

4. Notable is that the bill of costs has a number of administrative items. This is significant, because Jack J at para 8 of **Re Summer Fame Ltd**<sup>2</sup> states that law firms cannot typically recover for administrative costs.

**I agree as a general proposition, but each item needs to be examined. There are in fact few administrative matters.**

5. It is of particular importance that as set in the hearing of September 2nd, 2021, a foreign government, namely the UK government is paying for the costs of the First to Fourth Defendants. Therefore, in such an instance regardless of the decision of the Court, there would be no injustice to the First to Fourth Defendants. Importantly, however, the Schedule of Costs ("Walker's Bill") states: "The costs set out above do not exceed the costs which the First to Fourth Defendants are liable to pay in respect of the work which this statement covers" This statement is incorrect, as the First to Fourth Defendants are not liable to pay any costs, as per Andrew Sutcliffe QC's statement.

**The fact that a third party will in fact pay the legal costs does not debar recovery, so long as there is a legal obligation on the part of the client to pay. The classic example is where a trade union supports a member's personal injury claim. There is no reason to go behind Walkers' statement that the first to fourth defendants are liable to pay Walkers.**

6. Additionally, the practicing certificate of Andrew Sutcliffe QC., was issued on the August 30th 2021 (which in itself is quite odd given that Schedule of Costs presented by Walkers shows that on the September 2nd 2021, Learned Queen's Counsel was not in possession of same). It will be recalled that Jenely Fraser had to prepare a letter requesting same from the High Court (see line 42). This

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<sup>1</sup> [2017] ECSCJ No 270 (Pereira C.J).

<sup>2</sup> [2021] ECSCJ No 585.

has the effect of making costs incurred in respect of any work done by or with him up until that date irrecoverable. It is also forbidden by statute for any counsel to practice BVI law without a practicing certificate, (Section 15 of the Legal Professions Act 2015). The Court is also invited to find that is impermissible to allow a counsel who is not in possession of a practicing certificate to engage in the practice of law at any stage of a case and to disallow any costs claimed in that manner.

**I agree that fees incurred by Mr. Sutcliffe QC prior to 30<sup>th</sup> August 2021 are irrecoverable for these reasons.**

7. Furthermore, the Walker's Bill classifies Andrew Sutcliffe QC's work as a disbursement. This is an ingenious attempt to get around the requirement for a bill of costs to state the rate of the legal practitioner along with the time spent on a particular task. It is noted that Andrew Sutcliffe QC's spreadsheet does not identify his base rate or how long he spent on each task. In any case, since it is illegal to practise law in the BVI without a valid certificate, no attempt to circumvent the statute should be entertained.

**I disagree that seeking to recover Mr. Sutcliffe QC's work as a disbursement is in any way improper. It is the standard way of recovering counsel's fees. The Court must examine what is claimed (and only work from 30<sup>th</sup> August 2021 will be recoverable). Insofar as no hourly rate or length of time spent is identified, that may make recoverability more difficult, but it does not prevent recoverability in principle.**

8. Irrespective of the foregoing, it is submitted that the Walker's Bill is wholly unreasonable and disproportionate. The Attorney General's Chambers presented a bill which showed a total amount of \$6,084 for 18.2 hours. Against this, the Walker's bill is essentially claiming for 147 hours plus an incalculable amount of time for Andrew Sutcliffe Q.C. The Court should treat this with great suspicion. In fact, the bill produced by the lawyers working directly for Walkers far exceeds that of Andrew Sutcliffe QC's. It is clear from this fact alone, that their bill is completely unreasonable. **I shall return to this point when considering the detailed objections to specific items.**

9. It is also quite interesting to note, that the lawyers from Walkers appear to spend excessive time on reviewing draft judgments issued by the Court. This is particularly concerning, because even though Andrew Sutcliffe QC's billing is unclear, it appears that he doesn't spend half as much of the time that the lawyers from Walkers do on certain items, charging a mere GBP 150.00 plus VAT for reviewing a draft judgment that Walker's \$4,340.00 (Items 57, 58 and 60).

**I shall return to this point when considering the detailed objections to specific items.**

10. Issue is also taken with respect to the fees of Oliver Clifton. The hourly rate of Lewis Hunte Q.C., of over 50 years experience is \$950 and Oliver Clifton's hourly rate is \$950. Oliver Clifton's rate is thus quite excessive.

**I do not consider the comparison with Mr. Hunte QC's hourly rate is relevant. However, \$950 for a partner is more than is reasonable. I reduce the recoverability of Mr. Clifton's work to \$900 per hour. I have not included this reduction in the figures below. The parties will have to redo the arithmetic in due course.**

**As a general point, the team employed by Walkers in my judgment was reasonable with generally a reasonable division of labour between the partner and the associates. (Where too much work was done at partner level, this is considered below.)**

**I have considered whether the total allowed below of \$98,676.51 is a reasonable overall figure. In my judgment it is. This was litigation which was very significant to the first to the fourth defendants. Had the claimant obtained an injunction preventing the second, third and fourth defendants acting in the Commission of Inquiry, that would have seriously impacted on the**

Commission's ability to conclude its work. Mr. Willock must have been aware of this potential impact. The legal resources employed, including the instruction of leading counsel, were reasonable.

**Walkers' Fees**  
DN = disallow nothing

Point No. <sup>3</sup>	Item No. <sup>4</sup>	Date <sup>5</sup>	Fee Earner <sup>6</sup>	Narrative	Hours	Amount	Points of dispute	Proposed reduction	Response	Agreed reduction	Judge's Reduction	Judge's Decision
1.	1.	18/08/2021	Oliver Clifton	Email correspondence, review of application documents, telecom, comments on initial draft advice.	1.5	\$1,425.00	Items 1 and 2 are repetitive and represent a duplication of efforts between Colleen Farrington and Oliver Clifton. Time spent is unreasonable and should not have taken more than an hour to review. Accordingly, no more than \$950 should be allowed for this work (1 hour at Oliver Clifton's rate).	(\$2,635.00)	D1-D4 fees are reasonably claimed here. OC is the supervising partner with conduct of the case. CF is the leading legal practitioner working on the matter. The work is not repetitive or a duplication of efforts with respect to both fee earners. The fees are proportionate and represent time reasonably spent. The POD is not accepted.	\$0.00	(\$75.00)	I do not agree there is repetition: the partner needed to read into the case in order properly to supervise the associates. DN
	2.	18/08/2021	Colleen Farrington	Email from COI re new claim; reviewing papers and discussing internally considering next steps and reviewing CPR.	3.2	\$2,160.00	Items 3 and 4 are duplicative. Work items are not separated and thus it			\$0.00	0.00	DN
2.	3.	19/08/2021	Yegâne Güley	Telecon with the COI team, entering legal representations on ELP.	1.5	\$712.50		(\$2,137.50)	D1-D4 fees are reasonably claimed here. The work represents time	\$0.00	0.00	See above: DN

<sup>3</sup> "Point No." refers to the dispute number as set out in the Claimant's Points of Dispute dated 8 October 2021.

<sup>4</sup> "Item No." refers to the item number and entry as set out in the First to Fourth Defendants ("D1 - D4") Costs Schedule dated 28 September 2021.

<sup>5</sup> "Date" refers to the date of the time entry as set out in D1 - D4 Costs Schedule.

<sup>6</sup> "Fee Earner" refers to the fee earners instructed by D1 - D4.

Point No. <sup>3</sup>	Item No. <sup>4</sup>	Date <sup>5</sup>	Fee Earner <sup>6</sup>	Narrative	Hours	Amount	Points of dispute	Proposed reduction	Response	Agreed reduction	Judge's Reduction	Judge's Decision
	4.	19/08/2021	Oliver Clifton	Telecon with COI team, review of service overnight, team call re next steps.	2.5	\$2,375.00	is impossible to tell how long each task took. If anything should be awarded (1 hour at Oliver Clifton's rate) Reduce to \$950		reasonably spent with respect to the litigation. The POD is not accepted.	\$0.00	<b>(\$125.00)</b>	See above: this was the start of the case. Reasonable time spent. DN
3.	5.	19/08/2021	Colleen Farrington	Preparing draft fee estimate of new claim and admission proceedings and circulating the same to O Clifton; call with COI Team; reviewing emails from Silk Legal to COI Lawyers and Steve; Emails with DPQC and RD clerk re availability and liaising with team and considering next steps.	4.2	\$2,835.00	Item 5 includes irrelevant work such as preparing new fee estimate for admission proceedings. Reduce to \$0.	(\$2,835.00)	D1-D4 fees are reasonably claimed here. The fees represent time reasonably spent with respect to the litigation. The POD is not accepted.	\$0.00	<b>(\$1,485.00)</b>	Admission proceeding not recoverable. 2hrs.
4.	6.	20/08/2021	Colleen Farrington	Injunction Application: further research on Judicial Reviewing proceedings and emails with team; Internal discussions with O Clifton.	2.2	\$1,485.00	Item 6 there were no judicial review proceedings accordingly this should be reduced to \$0.	(\$1,485.00)	D1-D4 will accept 1 hour at the rate claimed. The time spent in relation to the remaining entry is proportionate. The POD is partially accepted.	(\$810.00)	<b>(\$810.00)</b>	Some research on Judicial Review was reasonable, even if nothing came of it. 1 hr.
5.	7.	21/08/2021	Yegane Güley	Receipt of ELP notice regarding listing notice, downloading and circulating to the team.	0.4	\$190.00	Item 7 unreasonable amount of time, as it does not take 24 minutes to download a notice and circulate it internally. Should be reduced to \$47.50.	(\$142.50)	D1-D4 fees are reasonably claimed here. The time was reasonably spent with respect to the litigation. The POD is not accepted.	\$0.00	<b>0.00</b>	24 mins is not unreasonable. DN

Point No. <sup>3</sup>	Item No. <sup>4</sup>	Date <sup>5</sup>	Fee Earner <sup>6</sup>	Narrative	Hours	Amount	Points of dispute	Proposed reduction	Response	Agreed reduction	Judge's Reduction	Judge's Decision
6.	8.	22/08/2021	Oliver Clifton	Review of notice of hearing, drafting advice to COI team, telecom, email correspondence.	2.9	\$2,755.00	Item 8 - unreasonable amount of time spent on very simple tasks. Additionally, this item does not detail who the COI team is. This is important because the COI consists of persons not party to the proceedings and if this is for advice given to them as well, then is it expected that this item should be reduced to \$95.	(\$2,660.00)	D1-D4 fees are reasonably claimed here. The fees are not unreasonable and the query with respect to the Col team is unsubstantiated. The sum represents time reasonably spent with respect to the litigation. The POD is not accepted.	\$0.00	(\$145.00)	Giving advice at this early stage was a key function of the partner. DN.
7.	9.	22/08/2021	Yegâne Güley	Email correspondences.	0.4	\$190.00	Item 9 – this should be reduced to \$50.00 as it is unclear as to why the emails were needed or with whom.	(\$140.00)	D1-D4 fees are reasonably claimed here. The fees represent time reasonably spent with respect to the litigation. The POD is not accepted.	\$0.00	0.00	The Court is not to carry out a detailed analysis of every line of claim. Ms. Güley had to read emails. DN.

Point No. <sup>3</sup>	Item No. <sup>4</sup>	Date <sup>5</sup>	Fee Earner <sup>6</sup>	Narrative	Hours	Amount	Points of dispute	Proposed reduction	Response	Agreed reduction	Judge's Reduction	Judge's Decision
8.	10.	22/08/2021	Colleen Farrington	Injunction Application: drafting letter to Silk Legal seeking directions preparing draft order and drafting letter to the Court and circulating the same; preparing draft instructions to counsel and gathering items; considering new counsel for instructions.	4.1	\$2,767.50	Item 10 is unreasonable, amount of for the work done. This should be reduced to \$500.	(\$2,267.50)	D1-D4 fees are reasonably claimed here. The work was primarily conducted by CF the leading legal practitioner on the matter. The fees are proportionate and represent time reasonably spent with respect to the litigation. The POD is not accepted.	\$0.00	0.00	This was key preparatory work by the main fee earner. DN.
9.	11.	23/08/2021	Yegâne Güley	Setting up a telecon, joining telecon and review of ELP files, noting Justice Wallbank's assignment,	1.1	\$522.50	Item 11 is unreasonable, duplicitous and repetitive. Should be reduced to \$0.	(\$522.50)	D1-D4 fees are reasonably claimed here. The fees are proportionate and represents time reasonably spent with respect to the litigation. The POD is not accepted.	\$0.00	(\$285.00)	Excessive time for the work done. 30 mins
10.	12.	23/08/2021	Yegâne Güley	Email correspondences, collating documents and sending to O Clifton.	0.6	\$285.00	Item 12 is unreasonable and unclear. Collating documents is also administrative. Circulating documents internally is administrative. Should be reduced to \$0.	(\$285.00)	D1-D4 fees are reasonably claimed here and represents work with respect to the litigation. The POD is not accepted.	\$0.00	0.00	I do not accept that collating documents is administrative. It involves making a selection of what is relevant. DN.

Point No. <sup>3</sup>	Item No. <sup>4</sup>	Date <sup>5</sup>	Fee Earner <sup>6</sup>	Narrative	Hours	Amount	Points of dispute	Proposed reduction	Response	Agreed reduction	Judge's Reduction	Judge's Decision
11.	13.	23/08/2021	Oliver Clifton	Telecon with COI team re hearing on 26 August 2021, extensive email correspondence, review of SL hearing bundle, comments on draft correspondence and skeleton argument.	3	\$2,850.00	Item 13 is unreasonable and duplicative. Unclear as to how long was spent with each work item. No need for two counsel to join once teleconference (see item 10). Should be reduced to 0.5 of an hour \$475.	(\$2,375.00)	D1-D4 fees are reasonably claimed here. The fees are proportionate and represent time reasonably spent with respect to the litigation. The POD is not accepted.	\$0.00	<b>(\$1,950.00)</b>	This does duplicate work done by CF. A reasonable figure for supervision should be allowed. 1 hr.
12.	14.	23/08/2021	Yegâne Güley	Preparing fee estimates, email correspondences. Review of ELP files.	1.1	\$522.50	Item 14 administrative and duplicated see Item 3. Reduce to \$0	(\$522.50)	D1-D4 fees are reasonably claimed here. The work is within the scope of the litigation. The fees are proportionate and represents time reasonably spent with respect to the litigation. The POD is not accepted.	\$0.00	<b>0.00</b>	No evidence of duplication. Reasonable for a junior associate to carry out this work. DN.

Point No. <sup>3</sup>	Item No. <sup>4</sup>	Date <sup>5</sup>	Fee Earner <sup>6</sup>	Narrative	Hours	Amount	Points of dispute	Proposed reduction	Response	Agreed reduction	Judge's Reduction	Judge's Decision		
	15.	23/08/2021	Colleen Farrington	Internal call re next steps; reviewing service documents; reviewing OC comments on fee estimate; considering revised fee estimate; considering instructions for new counsel and preparing the same on the scope of instructions; Liaising with admin team re administrative matters relating to the file. Updating draft order and directions letter to obtain comments same.	4.2	\$2,835.00	N/A	\$0.00	N/A	\$0.00	0.00	N/A		
13.	16.	24/08/2021	Yegâne Güley	Finalising letter and draft order to Silk Legal, email correspondences.	0.6	\$285.00	Items 16 to 20 are repetitive and time spent is unreasonable. Item 20 does not sufficiently separate between work items and thus is duplicitous. In all this should be reduced to \$750.00.	(\$1,672.50)	D1-D4 fees are reasonably claimed here. The work is within the scope of the litigation. The fees are proportionate and represent time reasonably spent with respect to the litigation. The POD is not accepted.	\$0.00	0.00	Clearly there was lot of back and forth between YG and SL. DN		
	17.	24/08/2021	Yegâne Güley	Finalising consent order and email correspondences.	0.4	\$190.00							0.00	DN
	18.	24/08/2021	Yegâne Güley	Email correspondence to SL, re-sending consent order.	0.4	\$190.00							0.00	DN
	19.	24/08/2021	Yegâne Güley	Further revision to the consent order and email parties.	0.7	\$332.50							0.00	DN

Point No. <sup>3</sup>	Item No. <sup>4</sup>	Date <sup>5</sup>	Fee Earner <sup>6</sup>	Narrative	Hours	Amount	Points of dispute	Proposed reduction	Response	Agreed reduction	Judge's Reduction	Judge's Decision
	20.	24/08/2021	Oliver Clifton	Email correspondence with COI team, comments on amended correspondence and draft order, comments on draft instructions to ASQC	1.5	\$1,425.00				\$0.00	(\$75.00)	DN
14.	21.	24/08/2021	Colleen Farrington	Injunction Application: emails. Finalising letter to Silk Legal with comments from COI Team; finalising draft order; Emails with Silk Legal re directions; Finalising instructions to counsel A Sutcliffe QC and emailing the same; following up with clerk re instructions. Emails with Silk Legal re directions and agreement re the same; Email with the Court and the parties.	3.6	\$2,430.00	Item 21 is unclear and does not set out how long the fee earner spent on each task. Accordingly this should be reduced to \$500.	(\$1,930.00)	The work was primarily conducted by CF. D1 to D4 will accept a discount of 2 hours as time reasonably spent. The POD is partially accepted.	(\$580.00)	(\$580.00)	7\$500 is too little for all the work done. Walkers' concession is reasonable. 1.6 Hrs. Disallow \$580
15.	22.	25/08/2021	Yegâne Güley	Email correspondences to SL, telecon with counsel. Internal discussion.	1	\$475.00	Item 22 is unclear and unreasonable. Should be reduced to \$100.00	(\$375.00)	D1-D4 fees are reasonably claimed here. The fees are proportionate and represents time reasonably spent with respect to the litigation. The POD is not accepted.	\$0.00	0.00	Reasonable for what was done. DN

<sup>7</sup> The Court has determined 1.6 hrs and has disallowed \$580. We proceeded on the basis of disallowing the latter.

Point No. <sup>3</sup>	Item No. <sup>4</sup>	Date <sup>5</sup>	Fee Earner <sup>6</sup>	Narrative	Hours	Amount	Points of dispute	Proposed reduction	Response	Agreed reduction	Judge's Reduction	Judge's Decision
16.	23.	25/08/2021	Oliver Clifton	Extensive email correspondence re draft order by consent and directions, telecon with COI team, telecon with Mr Sutcliffe QC.	1.1	\$1,045.00	Item 23 is repetitive and duplicitous.	(\$1,045.00)	D1-D4 fees are reasonably claimed here. The fees are proportionate and represent time reasonably spent with respect to the litigation. The POD is not accepted.	\$0.00	(\$55.00)	Reasonable time spent. DN
	24.	25/08/2021	Yegâne Güley	Preparing acknowledgment of service, email correspondences.	0.8	\$380.00	Items 24 and 25 are unreasonable and repetitive. No need for two persons to prepare an acknowledgement of service form. Additionally, item 25 is duplicitous and includes administrative items. Claimant should not have to pay for counsel regularizing themselves. Items 24 and 25 should be reduced to 18 minutes that is \$142.50.	(\$3,612.50)		\$0.00	(\$190.00)	Preparing A/S is duplicitous. 0.4 hrs.
17.	25.	25/08/2021	Colleen Farrington	New Proceedings: preparing draft acknowledgment of service and circulating the same to Y Güley; Emails with A Sutcliffe's clerk and providing document request; Discussion with clerk re practising certificate; Email with counsel in relation to listing of matter and updating the team. Emails with counsel requesting re submissions.	5	\$3,375.00				(\$2,025)	(\$675.00)	Time spent obtaining a practising certificate for counsel is not recoverable. Otherwise reasonable 4 hrs.

Point No. <sup>3</sup>	Item No. <sup>4</sup>	Date <sup>5</sup>	Fee Earner <sup>6</sup>	Narrative	Hours	Amount	Points of dispute	Proposed reduction	Response	Agreed reduction	Judge's Reduction	Judge's Decision
18.	26.	26/08/2021	Yegâne Güley	Email correspondences, including with the judicial assistant.	0.3	\$142.50	Item 26 is unreasonable in terms of time and is unclear. Reduce to \$0.	(\$142.50)	D1-D4 fees are reasonably claimed here. The fees are proportionate and the entries are adequate. The fees represent time reasonably spent with respect to the litigation. The POD is not accepted.	\$0.00	0.00	18 mins is reasonable. DN
19.	27.	26/08/2021	Colleen Farrington	Injunction Application: liaising with the Attorney General re consent order and emails with the court; finalising consent order; emails with A Sutcliffe QC clerk re admission and procedure for BVI practicing certificate liaising with Harneys for admission order; Reviewing draft submissions from Counsel and liaising with counsel re the same; Call with A Sutcliffe re instructions and general overview of the matter; Emails with counsel's clerks in anticipation of conference call on 27 August.	5.9	\$3,982.50	Item 27 is unreasonable, repetitive with item 17, duplicitious (contains multiple tasks with no time allotment per task) and contains a lot of administrative tasks, including counsel regularizing their status under the LPA. This should not essentially be a full day's work. Reduce to 1 hour - \$675.	(\$3,307.50)	D1-D4 will accept a discount of 3 hours of CF's time at the rate claimed as time reasonably spent. The POD is partially accepted.	(\$1,957.50)	(\$1,957.50)	The reduction to 1 hr is excessive. The reduction to 3 hrs is reasonable. \$1,957.50 disallowed.

Point No. <sup>3</sup>	Item No. <sup>4</sup>	Date <sup>5</sup>	Fee Earner <sup>6</sup>	Narrative	Hours	Amount	Points of dispute	Proposed reduction	Response	Agreed reduction	Judge's Reduction	Judge's Decision
20.	28.	26/08/2021	Oliver Clifton	Review of amended application and work on draft skeleton argument.	1.5	\$1,425.00	Item 28 is unreasonable and unclear. Not sufficiently itemized. Seems to be repetitive with Item 27. Reduce to \$0	(\$1,425.00)	D1-D4 fees are reasonably claimed here. The fees proportionate, adequate, and represents time reasonably spent with respect to the litigation. The POD is not accepted.	\$0.00	(\$75.00)	This is an appropriate use of partner time. DN
21.	29.	27/08/2021	Yegane Güley	Signing and filing Acknowledgement of Service. Email correspondences.	0.4	\$190.00	Item 29 is repetitive except for filing. This should be reduced to \$60.	(\$130.00)	D1-D4 fees are reasonably claimed here. Work is within the scope of the litigation. The fees are proportionate and represents time reasonably spent with respect to the litigation. The POD is not accepted.	\$0.00	0.00	DN. YG needed to be in the loop.

Point No. <sup>3</sup>	Item No. <sup>4</sup>	Date <sup>5</sup>	Fee Earner <sup>6</sup>	Narrative	Hours	Amount	Points of dispute	Proposed reduction	Response	Agreed reduction	Judge's Reduction	Judge's Decision
22.	30.	27/08/2021	Colleen Farrington	Injunction Application: reviewing draft submissions; emails with COI Team and counsel re comments on submissions; reviewing Public Authority Act; reviewing judgment from Jack J and commenting on the same; preparing draft order; attending hearing for handing down of judgment. Discussions with O Clifton re inter partes hearing and considering next steps.	5.2	\$3,510.00	Item 30 is unreasonable having claimed to have spent nearly 6 hours on submissions previously. See Item 27. Item 30 is also very duplicitious. No indication as to how long each task took. No handing down hearing on August 27th, 2021. Costs should be reduced to 1.5 hours \$1,012.	(\$2,498.00)	D1-D4 fees are reasonably claimed here and the time entry is adequate. The Claimant would be reminded that there was a handing down hearing in relation to the judgment on 27 August 2021. The fees are proportionate and represents time reasonably spent. The POD is not accepted.	\$0.00	0.00	A lot of work was properly needed and done. The time spent is reasonable. DN.
23.	31.	27/08/2021	Oliver Clifton	Telecon with counsel and COI team, receipt and review of draft judgment of Jack J, advice on contents, extensive email correspondence, appearing before Jack J on urgent handing down, follow-up with COI team.	3	\$2,850.00	Item 31 is unreasonable and duplicitious. There was no handing down, and even if there was, it would have been unnecessary for two counsel to attend. Reduce to .5 - \$475.	(\$2,375)	D1-D4 fees are reasonably claimed here. The Claimant would be reminded that there was a handing down hearing in relation to the judgment on 27 August 2021. The fees are proportionate and represents time reasonably spent. The POD is not accepted.	\$0.00	(\$150.00)	Appropriate for a partner to carry out this work. Two fee-earners at a hand-down is reasonable. DN

Point No. <sup>3</sup>	Item No. <sup>4</sup>	Date <sup>5</sup>	Fee Earner <sup>6</sup>	Narrative	Hours	Amount	Points of dispute	Proposed reduction	Response	Agreed reduction	Judge's Reduction	Judge's Decision
24.	32.	30/08/2021	Colleen Farrington	Injunction Application: preparing revised draft letter to Silk Legal; updating draft order; considering next steps; emails with clerks re the hearings; internal discussions re the same.	3.3	\$2,227.50	Item 32, time is unreasonable. Reduce to .5 of an hour - \$337.50	(\$1,890.00)	D1 – D4 will accept a discount of 2 hrs of CF's time at the rate claimed as time reasonably spent. The POD is partially accepted.	(\$877.50)	(\$877.50)	A reduction to 2 hrs is reasonable. Deduct \$877.50
25.	33.	30/08/2021	Yegane Güley	Extracting hearing links and sending to ASQC.	0.6	\$285.00	Item 33 Time is unreasonable. Reduce to .1 of an hour - \$47.50	(\$237.50)	D1 - D4 will concede the sum claimed here. The POD is accepted.	(\$237.50)	(\$237.50)	
26.	34.	31/08/2021	Colleen Farrington	Injunction Application: preparing draft letter to Silk Legal and updating the team; Emails with counsel and providing draft bundle of authorities; Emails with counsel and providing documents; Emails with D Perry QC on availability for the hearing; considering further emails from COI team. Reviewing filed hearing bundle from Silk Legal; reviewing draft bundle of authorities and commenting; internal discussions re the same.	4.9	\$3,307.50	Item 34 – Is duplicitous. David Perry QC is not a counsel in this case, this is administrative in nature. Time preparing bundle is unreasonable. Should reduce to 2.5 hours - \$1687.50	(\$1,620.00)	The POD is partially accepted. It matters not whether Mr Perry QC is counsel on the case. Discussions with Mr Perry QC were pursued shortly after the injunction was applied for and D1 - D4 were entitled, to seek professional advice on the merits of the injunction as soon as possible. Mr Sutcliffe QC was immediately instructed once his engagement was completed. D1 - D4 will accept a discount of 3 hours as time reasonably spent.	(\$1,282.50)	(\$1,282.50)	The discount to 3 hrs is reasonable. Disallow \$1,282.50

Point No. <sup>3</sup>	Item No. <sup>4</sup>	Date <sup>5</sup>	Fee Earner <sup>6</sup>	Narrative	Hours	Amount	Points of dispute	Proposed reduction	Response	Agreed reduction	Judge's Reduction	Judge's Decision
27.	35.	31/08/2021	Oliver Clifton	Extensive email correspondence, further comments on draft skeleton, further instructions to ASQC.	0.9	\$855.00	Item 35 – Unreasonable. Should reduce to \$0	(\$855.00)	D1-D4 fees are reasonably claimed here. OC is the supervising partner with conduct of the case. The work is proportionate and represents time reasonably spent. The POD is not accepted.	\$0.00	\$45.00	Reasonable time for a partner to supervise. DN
28.	36.	31/08/2021	Yegâne Güley	Revising authorities bundle. Email correspondences, preparation for filing and hearing.	1.8	\$855.00	Item 36 - Repetitive with Item 34 and unreasonable. Should reduce to \$0.	(\$855.00)	D1-D4 fees are reasonably claimed here. The work is within the scope of the litigation. The fees are proportionate and represents time reasonably spent with respect to the litigation. The POD is not accepted.	\$0.00	0.00	Work reasonably done by an appropriate grade of fee-earner. DN
29.	37.	01/09/2021	Yegâne Güley	Preparation for telecon and attending telecon.	1.9	\$902.50	Item 37 is unreasonable. Unreasonable amount of telecons. Should reduce to \$0.	(\$902.50)	D1-D4 fees are reasonably claimed here. The work is within the scope of the litigation. The fees are proportionate and represents time reasonably spent with respect to the litigation. The POD is not accepted.	\$0.00	0.00	Ditto. DN

Point No. <sup>3</sup>	Item No. <sup>4</sup>	Date <sup>5</sup>	Fee Earner <sup>6</sup>	Narrative	Hours	Amount	Points of dispute	Proposed reduction	Response	Agreed reduction	Judge's Reduction	Judge's Decision
30.	38.	01/09/2021	Yegâne Güley	Further amendments to Authorities bundle, collating correspondence clip, downloading documents filed by AG's office, creating sharefile link and circulating the documents. E-filing skeleton and AB. Email correspondences and discussion with team.	2.1	\$997.50	Item 38 – Filing took place just under 1.5 hours after Notice of Discontinuance was filed. This should be reduced to \$0.	(\$997.50)	D1-D4 fees are reasonably claimed here. The legal practitioners cannot abdicate responsibility where work was conducted prior to the discontinuance. The work is within the scope of the litigation. The POD is not accepted.	\$0.00	0.00	The notice of discontinuance was served on the eve of the hearing. It was appropriate for short time to continue filing documents etc pending consideration of the consequences of the notice of discontinuance. DN

Point No. <sup>3</sup>	Item No. <sup>4</sup>	Date <sup>5</sup>	Fee Earner <sup>6</sup>	Narrative	Hours	Amount	Points of dispute	Proposed reduction	Response	Agreed reduction	Judge's Reduction	Judge's Decision
31.	39.	01/09/2021	Colleen Farrington	Injunction Application: emails with counsel and providing documents upon request; reviewing cases mentioned in Judgment dated 27 August and circulating the same to counsel; emails with David Perry QC re revised submissions and call; all attendance with assisting counsel in anticipation of call and finalizing submissions; emails with COI team and requesting documents; liaising with the court re submissions and details regarding the hearing. Conference call with team.	5.4	\$3,645.00	Item 39 David Perry QC is not counsel in this case. Based on his CV, it doesn't seem like he is even called to the BVI Bar. Item 39 is very duplicitious. Allow for 2 hours. \$1,350.	(\$2,295.00)	The POD is partially accepted. It matters not whether Mr Perry QC is counsel on the case. Discussions with Mr Perry QC were pursued shortly after the injunction was applied for and D1 - D4 were entitled, to seek professional advice on the merits of the injunction as soon as possible. Mr Sutcliffe QC was immediately instructed once his engagement was completed. D1 - D4 will accept a discount of 3 hours as time reasonably spent.	(\$1,620)	(\$1,620.00)	I agree that it is irrelevant whether Mr. Perry QC was ultimately instructed. Walkers' offered deduction is reasonable. Disallow \$1,620.
32.	40.	01/09/2021	Colleen Farrington	Discontinuance: call with Silk Legal regarding the same; considering position on costs and any costs orders; internal discussions re the same; updating the team; email with counsel in relation to hearing and costs/	1.9	\$1,282.50	Item 40 – Unreasonable to charge for call from counsel informing of withdrawal. Should be reduced to \$0.	(\$1,282.50)	D1-D4 fees are reasonably claimed here. The legal practitioners cannot abdicate responsibility where work was conducted in relation to the discontinuance. The work is within the scope of the litigation. The POD is not accepted.	\$0.00		CF's work seems reasonable. Counsel had to be told about the notice of discontinuance. DN

Point No. <sup>3</sup>	Item No. <sup>4</sup>	Date <sup>5</sup>	Fee Earner <sup>6</sup>	Narrative	Hours	Amount	Points of dispute	Proposed reduction	Response	Agreed reduction	Judge's Reduction	Judge's Decision
33.	41.	01/09/2021	Oliver Clifton	Work on settling skeleton argument, meeting with COI team, preparation for hearing, receipt of NOD.	2.5	\$2,375.00	Item 41 – Allow for .5 hours work prior to withdrawal. \$475	(\$1,900.00)	D1-D4 fees are reasonably claimed here. The legal practitioners cannot abdicate responsibility where work was conducted in relation to the discontinuance. The work is within the scope of the litigation. The POD is not accepted.	\$0.00	(\$125.00)	The late notice of discontinuance put the defendants in a difficult position. 2.5 hrs is reasonable. DN
	34.	42.	02/09/2021	Jenely Fraser	Prepare letter to HC to request practising certificate for Andrew Sutcliffe.	0.4	\$180.00	Items 42 and 43 are unreasonable. Reduce to \$0.	(\$270.00)	D1 - D4 will concede the sums claimed. The POD is accepted.	(\$270.00)	(\$270.00)
		43.	02/09/2021	Jenely Fraser	Follow up with HC re practising certificate of Andrew Sutcliffe	0.2	\$90.00					
35.	44.	02/09/2021	Jenely Fraser	Revise authorities Bundle	0.5	\$225.00	Item 44 is unreasonable. Case was withdrawn on 1/9/2021. Reduce to \$0	(\$225.00)	D1 to D4 will concede the sum claimed. The POD is accepted.	(\$225.00)	(\$225.00)	
	36.	45.	02/09/2021	Oliver Clifton	Comments on draft costs schedule, discussion re outstanding points for hearing with ASQC.	0.7	\$665.00	Items 45 – 47 are unreasonable as case was withdrawn less than 24 hours before. Items 46 and 47 are repetitive, also no need for four counsel to attend the hearing	(\$3,515.00)	D1-D4 fees are reasonably claimed here. The work is within the scope of the litigation. The fees are proportionate and represents time reasonably spent with respect to the litigation.	\$0.00	(\$600.00)
		46.	02/09/2021	Oliver Clifton	Preparation for hearing and hearing before Jack J.	1	\$950.00				\$0.00	(\$900.00)

Point No. <sup>3</sup>	Item No. <sup>4</sup>	Date <sup>5</sup>	Fee Earner <sup>6</sup>	Narrative	Hours	Amount	Points of dispute	Proposed reduction	Response	Agreed reduction	Judge's Reduction	Judge's Decision
	47.	02/09/2021	Yegane Güley	Preparing costs schedule, email correspondences, preparing for hearing.	4	\$1,900.00	YG, OC, ASQC, RB. Reduce to \$0		The POD is not accepted.	\$0.00	(\$475.00)	4 hrs is unreasonable. 3hrs.
37.	48.	02/09/2021	Renell Benjamin	Attend COI hearing; Research authorities and circulate.	0.8	\$460.00	Item 48 – A COI hearing is irrelevant. Counsel attended as an audience member. Circulating authorities after withdrawal. Reduce to \$0.	(\$460.00)	D1 - D4 will concede the sum claimed here. The POD is accepted.	(\$460.00)	(\$460.00)	
38.	49.	02/09/2021	Yegane Güley	Email correspondences, and telecon following hearing.	0.7	\$332.50			D1-D4 fees are reasonably claimed here. The work is within the scope of the litigation. The fees are proportionate and represents time reasonably spent with respect to the litigation. The POD is not accepted.	\$0.00	0.00	
	50.	02/09/2021	Oliver Clifton	Telecon post-hearing with COI team, drafting order following hearing.	1.1	\$1,045.00	Items 49 to 50 are duplicate and unreasonable. Reduce to \$0.	(\$1,377.50)		Drafting order was associate's work. Disallow \$200.	(\$255.00)	
39.	51.	04/09/2021	Yegane Güley	Review of draft order, email correspondence to the AG and SL.	0.4	\$190.00			D1-D4 fees are reasonably claimed here. CF drafted the order and which was reviewed by OC and YG. The fees are proportionate and represents time reasonably spent with respect to the litigation.	\$0.00	0.00	DN. Points taken into account with OC's fees.
	52.	06/09/2021	Colleen Farrington	Application: amending draft order and circulating to the parties for comments/agreement; and internal correspondence.	0.5	\$337.50	Items 50 to 53 are unreasonable. Unreasonable for three lawyers to draft an order.	\$1,192.50			\$0.00	0.00

Point No. <sup>3</sup>	Item No. <sup>4</sup>	Date <sup>5</sup>	Fee Earner <sup>6</sup>	Narrative	Hours	Amount	Points of dispute	Proposed reduction	Response	Agreed reduction	Judge's Reduction	Judge's Decision
	53.	06/09/2021	Oliver Clifton	Email correspondence over weekend with AG, comments from SL and AG on draft order.	0.7	\$665.00			The POD is not accepted.	\$0.00	<b>(\$335.00)</b>	Should have been supervision only. Disallow \$300.
40.	54.	07/09/2021	Yegane Güley	Downloading affidavit and approved order from ELP. Email correspondences. Updating costs schedule.	2.2	\$1,045.00	Item 54 Time Unreasonable – Allow .5 hours - \$190	(\$855.00)	D1-D4 fees are reasonably claimed here. The work is within the scope of the litigation. The fees are proportionate and represents time reasonably spent with respect to the litigation. The POD is not accepted.	\$0.00	<b>0.00</b>	Reasonable time spent. DN
41.	55.	07/09/2021	Colleen Farrington	Circulating draft order to the court to settle; reviewing evidence from the Claimant and emails with team.	0.5	\$337.50	Item 55 Time unreasonable. No need to spend this amount of time on reviewing a short affidavit. Reduce to .2 hours - \$135	(\$202.50)	D1-D4 fees are reasonably claimed here. D1 - D4 will accept a 0.4 hour discount as time reasonably spent at the rate claimed. The POD is partially accepted.	(\$67.50)	<b>(\$67.50)</b>	0.4 hrs is reasonable. Disallow \$67.50
42.	56.	07/09/2021	Oliver Clifton	Review of affidavit from SL, advice to COI team, drafting updated order for costs assessment, updating costs schedule.	1.5	\$1,425.00	Item 56 is repetitive with Items 54 and 55. Reduce to \$0	(\$1,425.00)	D1-D4 fees are reasonably claimed here. The work is within the scope of the litigation. The fees are proportionate and represents time reasonably spent with respect to the litigation. The POD is not accepted.	\$0.00	<b>(\$525.00)</b>	OC should be supervisory. Disallow \$450.

Point No. <sup>3</sup>	Item No. <sup>4</sup>	Date <sup>5</sup>	Fee Earner <sup>6</sup>	Narrative	Hours	Amount	Points of dispute	Proposed reduction	Response	Agreed reduction	Judge's Reduction	Judge's Decision
43.	57.	08/09/2021	Oliver Clifton	Finalising draft judgment and letter, review of draft judgment from Jack J, advice to COI team, work on draft order for handing down.	1.3	\$1,235.00	Item 57 – Unreasonable to claim for finalizing judgment. Allow for .5 hours \$475.	(\$760.00)	D1-D4 fees are reasonably claimed here. The work is within the scope of the litigation. The fees are proportionate and represents time reasonably spent with respect to the litigation. The POD is not accepted.	\$0.00	<b>(\$515.00)</b>	Reasonable for a partner to do this work, but some duplication with CF. Disallow \$450
44.	58.	08/09/2021	Colleen Farrington	Reviewing judgment on costs and discussing the same with O Clifton; circulating the same to counsel and reviewing the judgment for correction/amendments . Updating clients of the gist of the judgment and next steps for hearing.	2.5	\$1,687.50	Item 58 – Repetitive with Item 57. Reduce to \$0	(\$1,687.50)	D1-D4 fees are reasonably claimed here. CF is the leading legal practitioner working on the matter. The fees are proportionate and represents time reasonably spent with respect to the litigation. The POD is not accepted.	\$0.00	<b>0.00</b>	Reasonable for an associate to do this work. DN
45.	59.	09/09/2021	Oliver Clifton	Email correspondence re draft order, finalising draft order and comments on draft schedule, instructions to Mr Sutcliffe.	0.8	\$760.00	Item 59 – 61 are repetitive. Allow for 1 hour \$950.00	(\$1,892.50)	D1-D4 fees are reasonably claimed here. OC is the partner with conduct of the matter. CF is the leading legal practitioner on the	\$0.00	<b>(\$40.00)</b>	See next item.

Point No. <sup>3</sup>	Item No. <sup>4</sup>	Date <sup>5</sup>	Fee Earner <sup>6</sup>	Narrative	Hours	Amount	Points of dispute	Proposed reduction	Response	Agreed reduction	Judge's Reduction	Judge's Decision
	60.	09/09/2021	Colleen Farrington	Minor comment from team and finalising comment son draft judgment. Comments from counsel and liaising re the same. Circulating draft judgment to the Court. Email with clerk in relation to counsels availability for handing the down and updating the clients re counsels availability and expectations of the hearing. Preparing draft order and circulating for comments.	2.1	\$1,417.50			matter. The fees are proportionate and represents time reasonably spent with respect to the litigation. The POD is not accepted.	\$0.00	<b>(\$675.00)</b>	There is some duplication over all these items. Disallow \$675.
	61.	10/09/2021	Oliver Clifton	Email correspondence with COI team and ASQC re handing down of judgment, settling draft order.	0.7	\$665.00				\$0.00	<b>(\$35.00)</b>	(Deduction Included in the above)

Point No. <sup>3</sup>	Item No. <sup>4</sup>	Date <sup>5</sup>	Fee Earner <sup>6</sup>	Narrative	Hours	Amount	Points of dispute	Proposed reduction	Response	Agreed reduction	Judge's Reduction	Judge's Decision
46.	62.	10/09/2021	Colleen Farrington	Email with clerk to confirm counsel availability and chasing the same; further updates to draft order and circulating the same to other side for comments; responding to emails from other wise regarding the order; and circulating draft order to the court in anticipation of hearing. Updating client of terms of agreed draft order in anticipation of hearing on Monday 13 September.	1.8	\$1,215.00	Item 62 is unreasonable and is partially repetitive of item 60.	(\$1,215.00)	D1-D4 fees are reasonably claimed here. The fees are proportionate and represents time reasonably spent with respect to the litigation. The fees are wholly within the scope of the litigation. The POD is not accepted.	\$0.00	0.00	Time spent is reasonable as is level of fee-earner. DN
47.	63.	12/09/2021	Oliver Clifton	Email correspondence with ASQC re handing down of judgment.	0.3	\$285.00	Item 63 is unreasonable.	(\$285.00)	D1-D4 fees are reasonably claimed here. The fees are proportionate and represents time reasonably spent with respect to the litigation. The POD is not accepted.	\$0.00	(\$285.00)	CF was already doing this. Disallow \$285.
48.	64.	12/09/2021	Oliver Clifton	Appearing to collect judgment, email correspondence.	0.6	\$570.00	Items 64 to 65 are unreasonable in terms of time. Allow	(\$837.50)	D1-D4 fees are reasonably claimed here. OC is the partner	\$0.00	(\$30.00)	Reasonable work for a partner. DN

Point No. <sup>3</sup>	Item No. <sup>4</sup>	Date <sup>5</sup>	Fee Earner <sup>6</sup>	Narrative	Hours	Amount	Points of dispute	Proposed reduction	Response	Agreed reduction	Judge's Reduction	Judge's Decision
	65.	13/09/2021	Colleen Farrington	Reviewing draft costs schedule; all attendance at hearing and preparation of the same. Updating clients of the outcome of the hearing and also updating counsel. Circulating revised draft order to correct list of appearances. Circulating final judgment on costs and reviewing the same.	1.1	\$742.50	for .5 of an hour - \$475.00		with conduct of the matter. CF is the leading legal practitioner on the matter. The fees are proportionate and represents time reasonably spent with respect to the litigation. The POD is not accepted.	\$0.00	0.00	DN
49.	66.	13/09/2021	Colleen Farrington	Reviewing Affidavit of Richard Rowe as filed in compliance with terms of Order and updating counsel.	0.4	\$270.00	Item 66 – Unreasonable time reviewing a short affidavit. Allow for .2 hours - \$135	(\$135.00)	D1-D4 fees are reasonably claimed here. The fees are within the scope of the litigation. The fees are proportionate and represents time reasonably spent with respect to the litigation. The POD is not accepted.	\$0.00	0.00	24 mins is reasonable. DN
50.	67.	14/09/2021	Oliver Clifton	Receipt and review of evidence from SL, internal discussion re contempt of court, email correspondence with COI team.	0.5	\$475.00	Item 67 is repetitive with item 66 and is partially irrelevant.	(\$475.00)	D1-D4 fees are reasonably claimed here. The fees are within the scope of the litigation. The fees are proportionate and represents time reasonably spent with respect to the litigation. The POD is not accepted.	\$0.00	(\$25.00)	Reasonable time spent by a partner. DN

Point No. <sup>3</sup>	Item No. <sup>4</sup>	Date <sup>5</sup>	Fee Earner <sup>6</sup>	Narrative	Hours	Amount	Points of dispute	Proposed reduction	Response	Agreed reduction	Judge's Reduction	Judge's Decision
51.	68.	14/09/2021	Oliver Clifton	Email correspondence with Court and SL re listing of adjourned costs hearing.	0.4	\$380.00	Item 68 is unreasonable - \$0	(\$380.00)	D1-D4 fees are reasonably claimed here. The fees are within the scope of the litigation. The fees are proportionate and represents time reasonably spent with respect to the litigation. The POD is not accepted.	\$0.00	(\$110.00)	Not partner work. Disallow \$90.
52.	69.	14/09/2021	Colleen Farrington	Reviewing affidavit of Julian Willock and updating counsel; considering legal standing on issues raised. Email from the Court directing a hearing in light of evidence and updating clerk. Updating clients of the same. Internal discussions. Considering status of contract with government and whether publicly available based on asserted privilege stance by Silk Legal and Mr Willock.	2	\$1,350.00	Item 69 Time is unreasonable and incorrectly stated. Time accepted for reviewing affidavit is .5 hours \$337.50	(\$1,012.50)	D1-D4 fees are reasonably claimed here. The fees are within the scope of the litigation. The fees are proportionate and represents time reasonably spent with respect to the litigation. The POD is not accepted.	\$0.00	0.00	Reasonable time spent by an appropriate level of fee earned. DN.

Point No. <sup>3</sup>	Item No. <sup>4</sup>	Date <sup>5</sup>	Fee Earner <sup>6</sup>	Narrative	Hours	Amount	Points of dispute	Proposed reduction	Response	Agreed reduction	Judge's Reduction	Judge's Decision
53.	70.	15/09/2021	Yegâne Güley	Email correspondence from the Court, review of ELP files, downloading HJW from ELP. Email to ASQC clerk.	0.8	\$380.00	Item 70 is repetitive of previous item. \$0.	(\$380.00)	D1-D4 fees are reasonably claimed here. The fees are within the scope of the litigation. The fees are proportionate and represents time reasonably spent with respect to the litigation. The POD is not accepted.	\$0.00	0.00	Appropriate work for an associate. Time spent is reasonable. DN
	71.	15/09/2021	Yegâne Güley	Legal research on Public Finance act and Legislative Council (Immunities and Powers) Act.	0.9	\$427.50	N/A	\$0.00	N/A	\$0.00	N/A	N/A
54.	72.	15/09/2021	Oliver Clifton	Review of evidence from SL and the Claimant, advice to clients, discussion with internal team re response to claim for privilege.	1.1	\$1,045.00	Item 72 Repetitive of item 69. \$0.	(\$1,045.00)	D1-D4 fees are reasonably claimed here. The fees are within the scope of the litigation. The fees are proportionate and represents time reasonably spent for with respect to the litigation. The POD is not accepted.	\$0.00	(\$55.00)	Reasonable for a partner to consider privilege claim. DN

Point No. <sup>3</sup>	Item No. <sup>4</sup>	Date <sup>5</sup>	Fee Earner <sup>6</sup>	Narrative	Hours	Amount	Points of dispute	Proposed reduction	Response	Agreed reduction	Judge's Reduction	Judge's Decision
55.	73.	15/09/2021	Colleen Farrington	Preparing fee estimate for clients of time spent to date up to judgment on the matter including costs.	1.3	\$877.50	Item 73 is administrative. Reduce to \$0. Alternatively, no more \$167.50 should be allowed.	(\$710.00)	D1-D4 fees are reasonably claimed here. The fees are within the scope of the litigation. The fees are proportionate and represents time reasonably spent with respect to the litigation. The POD is not accepted.	\$0.00	<b>(\$202.50)</b>	Excessive time spent. Disallow \$202.50.
56.	74.	16/09/2021	Yegâne Güley	Email correspondence sending sealed order.	0.4	\$190.00	Item 74. Time is unreasonable. Allow for 18 mins – \$285.	(\$0)	The sum proposed is unclear and relatively higher than the fee claimed. The POD is not accepted as D1-D4 fees are reasonably claimed here. The fees are within the scope of the litigation. The fees are proportionate and represents time reasonably spent with respect to the litigation.	\$0.00	<b>0.00</b>	Reasonable time spent. DN
57.	75.	16/09/2021	Oliver Clifton	Email correspondence re letter from AG and public contract, internal team meeting re next steps, email correspondence with SL re "mistaken" amendment to order re status of Claimant.	0.7	\$665.00	Item 75 repetitive of Item 74. \$0	(\$665.00)	D1-D4 fees are reasonably claimed here. The fees are within the scope of the litigation. The fees are proportionate and represents time reasonably spent with respect to the litigation. The POD is not accepted.	0.00	<b>(\$35.00)</b>	Appropriate use of partner time. DN

Point No. <sup>3</sup>	Item No. <sup>4</sup>	Date <sup>5</sup>	Fee Earner <sup>6</sup>	Narrative	Hours	Amount	Points of dispute	Proposed reduction	Response	Agreed reduction	Judge's Reduction	Judge's Decision
	76.	16/09/2021	Colleen Farrington	Correspondence from AG Chambers re status of contract and confirming date of lodging.	0.1	\$67.50	N/A	\$0.00	N/A	\$0.00	0.00	
58.	77.	17/09/2021	Oliver Clifton	Email correspondence with Court re sealed letter, email correspondence with Mr Sutcliffe QC's clerk re adjourned hearing.	0.6	\$570.00	Item 77 unreasonable time. Reduce to .3 hours - \$285	(\$285.00)	D1-D4 fees are reasonably claimed here. The fees are within the scope of the litigation. The fees are proportionate and represents time reasonably spent with respect to the litigation. The POD is not accepted.	\$0.00	(300.00)	Excessive use of partner time. Disallow \$270.
59.	78.	17/09/2021	Colleen Farrington	Requesting High Court Search for contract 2021/292. Reviewing court's email re directions for hearing on 21 September. Discussions with client re hearing and taking instructions on appearances. Email with clerk re counsel's availability and requesting updating costs.	0.6	\$405.00	Item 78 allow for High Court Search request. The balance is spurious. Reduce to \$67.50	(\$337.50)	D1-D4 fees are reasonably claimed here. The fees are proportionate and represents time reasonably spent for with respect to the litigation. The entry is also adequate. The POD is not accepted.	\$0.00	0.00	The work done and time spent are reasonable. DN

Point No. <sup>3</sup>	Item No. <sup>4</sup>	Date <sup>5</sup>	Fee Earner <sup>6</sup>	Narrative	Hours	Amount	Points of dispute	Proposed reduction	Response	Agreed reduction	Judge's Reduction	Judge's Decision
60.	79.	17/09/2021	Colleen Farrington	Email from court re envelope from Mr Willock. Updating counsel by way of information.	0.2	\$135.00	Item 79– Unreasonable and repetitive of Item 77 – Reduce to \$0	(\$135.00)	D1-D4 fees are reasonably claimed here. The fees are proportionate and represents time reasonably spent with respect to the litigation. The POD is not accepted.	\$0.00	0.00	Very reasonable amount claimed. Serving the sealed envelope was very strange behaviour. DN
61.	80.	20/09/2021	Colleen Farrington	Reviewing contract 2021/292 and circulating the same internally. Discussing the legal effect on arguments raised and whether issues raised by Silk Legal for the purpose of costs are affected.	1.3	\$877.50	Item 80 – Time unreasonable allow for .5 hours \$337.50	(\$540.00)	D1-D4 fees are reasonably claimed here. The fees are within the scope of the litigation. The fees are proportionate and represents time reasonably spent with respect to the litigation. The POD is not accepted.	\$0.00	0.00	Reasonable time spent. DN
62.	81.	20/09/2021	Colleen Farrington	Emails with counsel re contract 2021/292 and discussions on next steps.	0.5	\$337.50	Item 81 – unreasonable –\$0	(\$337.50)	D1-D4 fees are reasonably claimed here. The fees are within the scope of the litigation. The fees are proportionate and represents time reasonably spent with respect to the litigation. The POD is not accepted.	\$0.00	0.00	Time reasonably spent. DN

Point No. <sup>3</sup>	Item No. <sup>4</sup>	Date <sup>5</sup>	Fee Earner <sup>6</sup>	Narrative	Hours	Amount	Points of dispute	Proposed reduction	Response	Agreed reduction	Judge's Reduction	Judge's Decision
63.	82.	21/09/2021	Colleen Farrington	Circulating contract and discussing the same with counsel. Requesting concall with counsel to discuss. Emails with clients regarding the same and next steps.	1	\$675.00	Item 82 is repetitive of 80 and 81	(\$675.00)	D1-D4 fees are reasonably claimed here. The fees are within the scope of the litigation. The fees are proportionate and represents time reasonably spent with respect to the litigation. The POD is not accepted.	\$0.00	0.00	Reasonable time spent. DN
	83.	24/09/2021	Oliver Clifton	Review of contract, email correspondence with Mr Sutcliffe, re JW funding.	1	\$950.00	N/A	\$0.00	N/A	\$0.00	(50.00)	Reasonable involvement by partner. DN
64.	84.	24/09/2021	Colleen Farrington	Emails with counsel re concall and items for consideration. Requesting updated costs from counsel.	0.3	\$202.50	Item 84 – Unreasonable – reduce to \$0.	(\$202.50)	D1-D4 fees are reasonably claimed here. The fees are within the scope of the litigation. The fees are proportionate and represents time reasonably spent with respect to the litigation. The POD is not accepted.	\$0.00	0.00	Reasonable time spent. DN

Point No. <sup>3</sup>	Item No. <sup>4</sup>	Date <sup>5</sup>	Fee Earner <sup>6</sup>	Narrative	Hours	Amount	Points of dispute	Proposed reduction	Response	Agreed reduction	Judge's Reduction	Judge's Decision
65.	85.	27/09/2021	Yegâne Güley	Telecon, discussion with O Clifton and C Farrington, email correspondence to counsel, review of supplemental bundle index, updating costs schedule, email correspondences. Preparing supplemental bundle.	4	\$1,900.00	Item 85 – Padding – reduce to \$0	(\$1,900.00)	D1-D4 fees are reasonably claimed here. The fees are within the scope of the litigation. The fees are proportionate and represents time reasonably spent with respect to the litigation. The POD is not accepted.	\$0.00	(475.00)	Time spent is excessive. 3 hrs.
66.	86.	27/09/2021	Colleen Farrington	Concall with counsel and discussing steps in anticipation of the hearing on 28 September. Preparing draft affidavit; preparing bundle index.	2.1	\$1,417.50	Item 86 – Allow .5 for preparation of affidavit – 337.50	(\$1,080.00)	D1-D4 fees are reasonably claimed here. CF is the leading legal practitioner on the matter. The fees are proportionate and represents time reasonably spent with respect to the litigation. The POD is not accepted.	\$0.00	0.00	Reasonable for CF to attend consultation with leading counsel and draft affidavit. DN
67.	87.	27/09/2021	Oliver Clifton	Review of email correspondence sent on behalf of the Hon Justice Jack, discussion of logistics points with Ms Farrington, telecon with Mr Sutcliffe QC re terms of SL contract and approach to hearing and costs recovery. Update and advice to COI team by email.	1.6	\$1,520.00	Item 87 is repetitive of items 81, 82 and 83 reduce to \$0.	(\$1,520.00)	D1-D4 fees are reasonably claimed here. OC is the supervising partner with conduct of the case. The fees are proportionate and represents time reasonably spent with respect to the litigation. The POD is not accepted.	\$0.00	80.00	Reasonable for OC to attend consultation with leading counsel. DN

Point No. <sup>3</sup>	Item No. <sup>4</sup>	Date <sup>5</sup>	Fee Earner <sup>6</sup>	Narrative	Hours	Amount	Points of dispute	Proposed reduction	Response	Agreed reduction	Judge's Reduction	Judge's Decision
68.	88.	27/09/2021	Colleen Farrington	Emails. Reviewing Supplemental Bundle and commenting. Reviewing submissions by the Hon Attorney General, internal discussions.	2.1	\$1,417.50	Item 88 – Padding and unreasonable save for attorney general's submissions. Allow for .5 hour - \$337.50.	(\$1,080.00)	D1-D4 fees are reasonably claimed here. CF is the leading legal practitioner on the matter. The fees are proportionate and represents time reasonably spent with respect to the litigation. The POD is not accepted.	\$0.00	0.00	Reasonable time spent. DN
69.	89.	28/09/2021	Oliver Clifton	Final preparation for hearing before the Hon Justice Jack, appearing at costs claim hearing.	2.5	\$2,375.00	Item 89 -Padding - \$0	(\$2,375.00)	D1-D4 fees are reasonably claimed here. OC is the supervising partner with conduct of the case. The fees are proportionate and represents time reasonably spent with respect to the litigation. The POD is not accepted.	\$0.00	(125.00)	Reasonable time spent and reasonable for a partner to do the work. DN
70.	90.	28/09/2021	Yegâne Güley	Preparing for hearing and attending hearing.	2	\$950.00	Items 90 and 91 are padding. No need for all lawyers to be in attendance.	(\$2,300.00)	D1-D4 fees are reasonably claimed here. D1 - D4 will accept 1 hour as reasonable at the rate claimed for each fee earner as it is reasonable for at least one legal practitioner in addition to the partner to attend the hearing. The POD is partially accepted.	(\$475.00)	(475.00)	One fee-earner would have been enough to support OC. Disallow \$475.
	91.	28/09/2021	Colleen Farrington	All attendance in anticipation of hearing. Preparation and discussion with counsel.	2	\$1,350.00					(\$675.00)	(675.00)

Point No. <sup>3</sup>	Item No. <sup>4</sup>	Date <sup>5</sup>	Fee Earner <sup>6</sup>	Narrative	Hours	Amount	Points of dispute	Proposed reduction	Response	Agreed reduction	Judge's Reduction	Judge's Decision
		<b>Total</b>				<b>\$102,505</b>		<b>(\$80,760.50)</b>		<b>(\$11,562.50)</b>	<b>(\$13,495.00)</b>	<b>\$89,010</b>

### Counsel's Fees

Point No.	Item No.	Date	Fee Earner	Narrative	Hours	Amount	Points of dispute	Proposed reduction	Response	Agreed reduction	Judge's Reduction	Judge's Decision
81.	N/A	N/A	Andrew Sutcliffe QC	N/A	N/A	N/A	No indication of hourly rate or time spent or units.	N/A	D1-D4 fees are reasonably claimed here. It is not disputed that Mr Sutcliffe was retained as leading counsel for this matter. The rate sought is significantly lower than what any leading counsel of his equivalent in the City of London, or within the jurisdiction would charge.	N/A		
82.		24/08/2021	Andrew Sutcliffe QC	Advising by emails with clerks and instructing solicitors regarding instructions to appear at injunction hearing listed to take place on 26/8/21		Fees: £100.00	As a matter of law, any amount charged between 24 August 2021 and 30 August 2021 is irrecoverable as Andrew Sutcliffe QC had no practicing certificate.	(£2,300.00)	Counsel's fees are reasonable and proportionate. The POD is not accepted. Counsel has been on the roll of legal practitioners and authorized to practise in the BVI since 2007. It matters not that the certificate is dated 30 August 2021. The certificate was sought as soon as counsel was instructed which was shortly after the injunction was applied for and	£0.00	Fees: £100.00	Disallow.
		25/08/2021	Andrew Sutcliffe QC	Reviewing email with instructions; downloading and reading enclosures to instructions; listening to excerpts from COI hearing; conference call with instructing solicitors		Fees: £1,066.67						Fees: £1,066.67

Point No.	Item No.	Date	Fee Earner	Narrative	Hours	Amount	Points of dispute	Proposed reduction	Response	Agreed reduction	Judge's Reduction	Judge's Decision
		26/08/2021	Andrew Sutcliffe QC	Reviewing emails from instructing solicitors with attachments; work on draft submissions for hearing on 2/9/21		Fees: £400.00			counsel was entitled, indeed professionally obliged, to advise on the merits of the injunction as soon as he was instructed.		Fees: £400.00	Disallow
		27/08/2021	Andrew Sutcliffe QC	Reviewing emails from instructing solicitors with attachments; work on draft submissions for hearing on 2/9/21		Fees: £733.33			Given that counsel was in the roll of legal practitioners authorized to practise in the BVI, obtaining the certificate was no more than a formality.		Fees: £733.33	Disallow
	1.	31/08/2021	Andrew Sutcliffe QC	Reviewing emails from instructing solicitors; listening to further excerpts from COI hearing; reviewing judgment of Jack J as handed down; reading hearing bundle and correspondence attached to emails from instructing solicitors; further work on draft submissions and authorities; reviewing relevant provisions of ECSC CPR		Fees: £1,300.00						DN

Point No.	Item No.	Date	Fee Earner	Narrative	Hours	Amount	Points of dispute	Proposed reduction	Response	Agreed reduction	Judge's Reduction	Judge's Decision
83.							Item 2 is repetitive with all the other instances of working on submissions.	(£2,160.00)	D1-D4 fees are reasonably claimed here. The fees are proportionate and represents time spent with respect to the litigation. The POD is not accepted.	£0.00	£0.00	DN
84.	2.	01/09/2021	Andrew Sutcliffe QC	Further work on, and finalising, written submissions for hearing on 2/9/21; conference call with instructing solicitors and clients; reviewing numerous emails from instructing solicitors with attachments, including submissions of Attorney General		Fees: £1,800.00	Items 2 and 5 contains irrelevancies – Listening to "COI Hearings". Impossible to tell how long spent on these irrelevancies.	N/A	D1-D4 fees are reasonably claimed here. The work is within the scope of the litigation. The sum claimed is proportionate and represents time reasonably spent with respect to the litigation. The POD is not accepted despite the absence of a proposed sum.	£0.00		The fee for the work other than listening to COI hearings is in itself reasonable. (No amount charged for COI.) DN
	3.	02/09/2021		Reviewing and responding to emails regarding hearing on 2/9/21 and preparing for same; attending hearing		Fees: £700.00						DN
	4.	02/09/2021		Further work following hearing; reviewing and responding to emails; conference call with instructing solicitors and then with instructing solicitors and clients		Fees: £500						DN

Point No.	Item No.	Date	Fee Earner	Narrative	Hours	Amount	Points of dispute	Proposed reduction	Response	Agreed reduction	Judge's Reduction	Judge's Decision
84.	5.	08/09/2021		Reviewing and responding to emails; considering draft order regarding costs and drafting further submissions to court in relation to costs affidavit filed by claimant		Fees: £500	Items 2 and 5 contains irrelevancies – Listening to "COI Hearings". Impossible to tell how long spent on these irrelevancies.	N/A	D1-D4 fees are reasonably claimed here. The work is within the scope of the litigation. The sum claimed is proportionate and represents time reasonably spent with respect to the litigation. The POD is not accepted despite the absence of a proposed sum.	£0.00		The fee for the work other than listening to COI hearings is in itself reasonable. (No amount charged for COI.) DN
	6.	09/09/2021		Perusing draft judgment, reading and responding to emails, amending draft order		Fees: £150.00						DN
	7.	10/09/2021		Perusing and responding to emails re-court order and costs hearing		Fees: £66.67						DN
	8.	12/09/2021		Reading and responding to emails re-privilege issue		Fees: £33.33						DN
	9.	14/09/2021		Reading and responding to emails with attached affidavit		Fees: £66.67						DN
	10.	15/09/2021		Reading and responding to email with attached further affidavit		Fees: £66.67						DN

Point No.	Item No.	Date	Fee Earner	Narrative	Hours	Amount	Points of dispute	Proposed reduction	Response	Agreed reduction	Judge's Reduction	Judge's Decision
	11.	18/09/2021		Reading and responding to email with update on costs position		Fees: £50.00						DN
	12.	23/09/2021		Reading and responding to email with update on costs position		Fees: £100.00						DN
		<b>Total</b>				£8,333.34		(£4,460)		0.00	<b>(£2,300)</b>	<b>£6,033.34</b>

**TOTAL AMOUNT**

(1) Walkers' fees: \$89,010 (\$102,505 - \$13,495)

(2) Walkers' disbursements: Counsel Fees: \$9,666.51 (\$8,333.85 (£6,033.34 x \$1.3813) + \$1,332.66)

**Grand Total: \$98,676.51, which I certify as payable by the claimant to the first to fourth defendants.**

**Adrian Jack**  
Commercial Court Judge [Ag.]

**By the Court**

**Registrar**