
STATUTORY INSTRUMENTS

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The Virgin Islands Constitution Order 2007

THE CONSTITUTION OF THE VIRGIN ISLANDS

CHAPTER 7

THE PUBLIC SERVICE

Public Service - General

Public Service Commission

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

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

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

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

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

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

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

(5) If the office of a member of the Public Service Commission is vacant or a member is for any reason unable to perform the functions of his or her office, the Governor, acting in the manner prescribed by subsection (1) for the appointment of that member, may appoint a person who is

qualified for appointment as a member of the Commission to act as a member of the Commission, and any person so appointed shall, subject to subsection (4), continue so to act until he or she is notified by the Governor, acting in his or her discretion, that the circumstances giving rise to the appointment have ceased to exist; but in the case of a vacancy in the office of the Chairman or the inability of the holder of that office to perform his or her functions, the functions of the office of Chairman shall be performed by such member of the Commission or person acting as a member as the Governor, acting after consultation with the Premier, may designate.

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

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

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

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

Power to appoint, etc, to public office

92.—(1) Subject to this section and to the other provisions of this Constitution, power to make appointments to public offices and to remove and to exercise disciplinary control over persons holding or acting in such offices shall vest in the Governor, acting in accordance with the advice of the Public Service Commission; but the Governor, acting in his or her discretion, may act otherwise than in accordance with that advice if he or she determines that compliance with that advice would prejudice Her Majesty's service.

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

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

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

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

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

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

(8) The Governor, acting after consultation with the Public Service Commission, may, by regulations published in the *Gazette*, delegate to any member of the Commission or any public officer or class of public officer, to such extent and subject to such conditions as may be prescribed in the

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

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

(10) This section does not apply to—

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

Teaching Service Commission

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

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

(2) The provisions of section 91(2) to (9) shall apply in relation to the Teaching Service Commission as they apply in relation to the Public Service Commission and for that purpose shall have effect as if the references therein to the latter were references to the former; but for that purpose the reference in section 91(6) to “four members” shall have effect as if it were a reference to “two members”.

(3) The provisions of section 92(1), (2), (3) and (8) shall, in their application to any office of teacher in the Government Teaching Service, have effect in relation to any such office as if the references therein to the Public Service Commission were references to the Teaching Service Commission.

Judicial and Legal Services Commission

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

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

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

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

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

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

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

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

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

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

Power to appoint, etc, to legal offices

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

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

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

(4) This section applies to the offices of—

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

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

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

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

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

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

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

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

Police Service Commission

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

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

(2) The provisions of section 91(2) to (9) shall apply in relation to the Police Service Commission as they apply in relation to the Public Service Commission and for that purpose shall have effect as if the references therein to the latter were references to the former.

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

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

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

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

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

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

Legislation regarding Commissions

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

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

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

Pensions

Applicability of pension law

99.—(1) Subject to section 101, the law applicable to the grant and payment to any officer, or to his or her widow or widower, children, dependants or personal representatives, of any pension, gratuity or other like allowance (in this section and sections 100 and 101 referred to as an “award”) in respect of the service of that officer in the public service shall be that in force on the relevant day or any later law not less favourable to the person concerned.

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

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

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

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

Pensions, etc, charged on Consolidated Fund or Pension Fund

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

Grant and withholding of pensions, etc

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

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