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

2000 No. 1343

CARIBBEAN AND NORTH ATLANTIC TERRITORIES

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

Made - - - - - 17th May 2000

Laid before Parliament 25th May 2000

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

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

Present,

The Queen's Most Excellent Majesty in Council

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

Citation, construction and commencement

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

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

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

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

Amendment of section 2 of Constitution

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

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

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

^(a) 1962 c. 19.

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

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

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

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

Addition of new section 5A to Constitution

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

“Functions of
Deputy
Governor.

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

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

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

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

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

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

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

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

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

Replacement of section 14 of Constitution

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

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

Amendment of section 15 of Constitution

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

Amendment of section 23 of Constitution

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

Replacement of section 29 of Constitution

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

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

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

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

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

Amendment of section 32 of Constitution

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

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

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

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

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

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

Amendment of section 42 of Constitution

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

Amendment of section 46 of Constitution

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

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

Amendment of section 51 of Constitution

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

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

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

Amendment of section 52 of Constitution

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

“(2) The Governor, acting after consultation with the Public Service Commission, may, by regulations published in the *Gazette*, delegate to any member of the Commission or any public officer or class of public officer, to such extent and subject to such conditions as may be prescribed in the regulations, any of the powers vested in him to make appointments to public offices and to remove or exercise disciplinary control over persons holding or acting in such offices. Except in so far as regulations made under this section 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.”.

Replacement of section 53 of Constitution

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

“Regulations
regarding
Public Service
Commission.

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

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

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

Addition of new Part VIA to Constitution

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

“PART VIA

THE COMPLAINTS COMMISSIONER AND REGISTER OF INTERESTS

The
Complaints
Commissioner.

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

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

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

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

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

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

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

Functions of
Complaints
Commissioner.

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

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

Registration
of interests.

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

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

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

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

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

Transitional provisions

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

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

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

A. K. Galloway
Clerk of the Privy Council

EXPLANATORY NOTE

(This note is not part of the Order)

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

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