
STATUTORY INSTRUMENTS

2007 No. 1678

The Virgin Islands Constitution Order 2007

THE CONSTITUTION OF THE VIRGIN ISLANDS

CHAPTER 2

FUNDAMENTAL RIGHTS AND FREEDOMS OF THE INDIVIDUAL

Fundamental rights and freedoms of the individual

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

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

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

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

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

Interpretation of Chapter 2

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

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

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

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

“disciplined force” means—

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

- (c) the prison service of the Virgin Islands;
“member”, in relation to a disciplined force, includes any person who, under the law regulating the discipline of that force, is subject to that discipline;
“minor” means a person who has not attained the age of eighteen years or such other age as may be prescribed for this purpose by any law;
“period of public emergency” means any period during which—
 - (a) Her Majesty is at war; or
 - (b) there is in force in the Virgin Islands a proclamation of emergency under section 27(1) or under any law enacted by the Legislature to like effect.

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

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

Protection of right to life

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

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

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

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

Equality before the law

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

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

Protection from inhuman treatment

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

Protection from slavery and forced labour

14.—(1) No person shall be subjected to slavery, servitude or forced labour.

(2) For the purposes of subsection (1), “forced labour” does not include—

- (a) any labour required in consequence of the sentence or order of a court;
- (b) any labour required of a member of a disciplined force in pursuance of his or her duties as such or, in the case of a person who has conscientious objections to service in a naval, military or air force, any labour that such person is required by law to perform in place of such service;

- (c) labour required of a person while he or she is lawfully detained that is reasonably necessary in the interests of hygiene; or
- (d) any labour required for the purpose of dealing with any situation arising during a period of public emergency or at a time when any other emergency or calamity threatens the well-being of the community, to the extent that the requiring of such labour as may be prescribed in emergency regulations is reasonably justifiable for that purpose.

Protection of right to personal liberty

15.—(1) Every person has the right to liberty and security of the person.

(2) No person shall be deprived of his or her personal liberty, save as may be authorised by law in any of the following cases—

- (a) in execution of the sentence or order of a court (whether of the Virgin Islands or otherwise) in respect of a criminal offence of which that person has been convicted or in respect of any other order of the court;
- (b) for the purpose of bringing that person before a court in execution of the order of a court;
- (c) upon reasonable suspicion of that person having committed or of being about to commit a criminal offence under any law;
- (d) in the case of a minor, under the order of a court or in order to bring that person before a court or with the consent of his or her parent or legal guardian, for his or her education or welfare;
- (e) for the purpose of preventing the spread of an infectious or contagious disease;
- (f) in the case of a person who is, or reasonably suspected to be, of unsound mind, addicted to drugs or alcohol, or a vagrant, for the purpose of his or her care or treatment or the protection of the community;
- (g) for the purpose of preventing the unlawful entry of that person into the Virgin Islands, or for the purpose of effecting the expulsion, extradition or other lawful removal of that person from the Virgin Islands, or for the purpose of restricting that person while he or she is being conveyed through the Virgin Islands in the course of his or her extradition or removal as a convicted prisoner from one country to another.

(3) Any person who is arrested or detained shall be informed promptly, as prescribed by law, in a language that he or she understands, of the reason for his or her arrest or detention and of his or her right to remain silent.

(4) Any person who is arrested or detained shall have the right, at any stage and at his or her own expense, to retain and instruct without delay a legal practitioner of his or her own choice, which shall include the right to hold private communication with such legal practitioner and, in the case of a minor, to communicate with his or her parent or legal guardian.

(5) Any person who is arrested or detained—

- (a) for the purpose of bringing him or her before a court in execution of the order of a court; or
- (b) upon reasonable suspicion of his or her having committed or being about to commit a criminal offence under any law,

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

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

are reasonably necessary to ensure that he or she appears later for trial or for proceedings preliminary to trial.

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

Provisions to secure protection of law

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

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

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

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

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

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

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

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

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

- (a) to receive free of charge a copy of his or her conviction record and any sentence imposed as a consequence thereof; and

(b) to appeal to a superior court against the conviction or the sentence or both as may be prescribed by law.

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

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

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

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

(a) by law be empowered to do and may consider necessary or expedient in circumstances where publicity would prejudice the interests of justice or in interlocutory proceedings or in the interests of the welfare of minors or the protection of the private lives of persons concerned in the proceedings; or

(b) by law be empowered or required to do in the interests of defence, public safety, public order or public morality.

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

(a) subsection (2)(a), to the extent that the law in question imposes on any person charged with a criminal offence the burden of proving particular facts;

(b) subsection (2)(e), to the extent that the law in question imposes reasonable conditions that must be satisfied if witnesses called to testify on behalf of an accused person are to be paid their expenses out of public funds; or

(c) subsection (4), to the extent that the law in question authorises a court to try a member of a disciplined force for a criminal offence notwithstanding any trial and conviction or acquittal of that member under the disciplinary law of that force; but any court so trying and convicting such a member shall in imposing any sentence take into account any punishment imposed on that member under that disciplinary law.

Protection of right of prisoners to humane treatment

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

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

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

Protection of freedom of movement

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

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

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

- (a) for the imposition of restrictions on the movement or residence within the Virgin Islands or on the right to leave the Virgin Islands of persons generally or any class of persons that are reasonably justifiable in a democratic society in the interests of defence, public safety, public order, public morality or public health;
 - (b) for the imposition of restrictions, by order of a court, on the movement or residence within the Virgin Islands of any person or on any person's right to leave the Virgin Islands either in consequence of that person having been found guilty of a criminal offence or for the purpose of ensuring that he or she appears before a court later for trial for a criminal offence or for proceedings relating to his or her extradition or lawful removal from the Virgin Islands;
 - (c) for the imposition of restrictions on persons who do not belong to the Virgin Islands; but—
 - (i) no restriction may be imposed by virtue only of this paragraph on the right of any such person, so long as he or she is lawfully present in the Virgin Islands, to move freely throughout the Virgin Islands and to reside anywhere in the Virgin Islands;
 - (ii) no restriction may be imposed by virtue only of this paragraph on the right of any such person to leave the Virgin Islands; and
 - (iii) no such person shall be liable, by virtue only of this paragraph, to be expelled from the Virgin Islands unless the requirements specified in subsection (4) are satisfied;
 - (d) for the imposition of restrictions on the acquisition or use by any person of any land or other property in the Virgin Islands and the imposition of any fee in respect thereof;
 - (e) for the imposition of restrictions on the movement or residence within the Virgin Islands or on the right to leave the Virgin Islands of any public officer that are reasonably required for the proper performance of his or her functions;
 - (f) for the removal of a person from the Virgin Islands to be tried or punished in some other country for a criminal offence under the law of that other country or to undergo imprisonment in some other country in execution of the sentence of a court in respect of a criminal offence of which he or she has been convicted, or to relocate to some other country for the protection of the person with his or her consent; or
 - (g) for the imposition of restrictions on the right of any person to leave the Virgin Islands that are reasonably justifiable in a democratic society in order to secure the fulfilment of any obligations imposed on that person by law.
- (4) The requirements to be satisfied for the purposes of subsection (3)(c)(iii) are as follows—
- (a) the decision to expel that person is taken by an authority, in a manner and on grounds prescribed by law;
 - (b) that person has the right, save where the interests of defence, public safety or public order otherwise require, to submit reasons against his or her expulsion to a competent authority prescribed by law;

- (c) that person has the right, save as aforesaid, to have his or her case reviewed by a competent authority prescribed by law; and
- (d) that person has the right, save as aforesaid, to be represented for the purposes of paragraphs (b) and (c) before the competent authority or some other person or authority designated by the competent authority.

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

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

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

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

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

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

Protection of the right to marry and found a family

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

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

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

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

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

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

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

Protection of freedom of conscience

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

(2) Freedom of conscience includes freedom of thought and of religion, freedom to change one's religion or belief, and freedom, either alone or in community with others and either in public or in private, to manifest and propagate one's religion or belief in worship, teaching, practice and observance.

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

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

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

- (a) in the interests of defence, public safety, public order, public morality or public health; or
- (b) for the purpose of protecting the rights and freedoms of other persons, including the right of any person to observe and practise his or her religion or belief without the unsolicited intervention of adherents of any other religion or belief.

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

Protection of the right to education

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

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

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

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

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

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

Protection of freedom of expression

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

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

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

- (a) in the interests of defence, public safety, public order, public morality or public health;
- (b) for the purpose of protecting the reputations, rights and freedoms of other persons, or the private lives of persons concerned in legal proceedings or proceedings before statutory tribunals, preventing the disclosure of information received in confidence, maintaining the authority and independence of the courts, or regulating telecommunications, posts, broadcasting or public shows; or
- (c) that imposes restrictions on public officers that are reasonably required for the proper performance of their functions.

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

Protection of freedom of assembly and association

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

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

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

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

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

Protection from deprivation of property

25.—(1) No property of any description shall be compulsorily taken possession of, and no interest in or right to or over property of any description shall be compulsorily acquired, except in accordance with law and where—

- (a) the taking of possession or acquisition is necessary or expedient in the interests of defence, public safety, public order, public morality, public health, or the development or utilisation of any property in such manner as to promote the public benefit;
- (b) there is reasonable justification for any hardship that may result to any person having an interest in or right to or over the property;
- (c) provision is made by a law applicable to the taking of possession or acquisition—

- (i) for the prompt payment of adequate compensation; and
 - (ii) securing to any person having an interest in or right to or over the property a right of access to the High Court, whether direct or on appeal from a tribunal or other authority, for the determination of his or her interest or right, the legality of the taking of possession or acquisition and the amount of compensation to which he or she is entitled, and for the purpose of obtaining prompt payment of that compensation; and
 - (d) the same rights of appeal as are accorded generally to parties to civil proceedings in the High Court sitting as a court of original jurisdiction are given to any party to proceedings in that Court relating to such a claim.
- (2) No person who is entitled to compensation under this section shall be prevented from remitting, within a reasonable time after he or she has received any amount of that compensation, the whole of that amount to any country of his or her choice outside the Virgin Islands.
- (3) Nothing in any law or done under its authority shall be held to contravene subsection (1)—
- (a) to the extent that the law in question makes provision for the taking of possession or acquisition of any property, interest or right—
 - (i) in satisfaction of any tax, rate, statutory contribution, levy or due;
 - (ii) by way of penalty for breach of the law or forfeiture in consequence of breach of the law;
 - (iii) as an incident of a lease, tenancy, mortgage, charge, bill of sale, pledge or contract;
 - (iv) by way of the taking of a sample for the purposes of any law;
 - (v) when the property consists of an animal, upon its being found trespassing or straying;
 - (vi) in the execution of a judgment or order of a court;
 - (vii) in circumstances where it is reasonably necessary so to do because the property is in a dangerous state or likely to be injurious to the health of human beings, animals or plants;
 - (viii) in consequence of any law with respect to the limitation of actions or prescription;
 - (ix) for so long as may be necessary for the purposes of any examination, investigation, trial or enquiry or, in the case of land, for the purpose of carrying out on it work of reclamation, erection of a utility service item for the public benefit, drainage, soil conservation or the conservation of other natural resources or work relating to agricultural development or improvement (being work relating to such development or improvement that the owner or occupier of the land has been required, and has, without reasonable excuse, refused or failed, to carry out),
- provided that the provision or, as the case may be, the thing done under its authority is reasonably justifiable in a democratic society;
- (b) to the extent that the law in question makes provision for the taking of possession of, or the acquisition of any interest in or right to or over, any of the following property, that is to say—
 - (i) enemy property;
 - (ii) property vested in the Crown as *bona vacantia*;
 - (iii) property of a deceased person or a person who is unable, by reason of legal incapacity, to administer it personally, for the purpose of its administration for the benefit of the persons entitled to the beneficial interest in it;
 - (iv) property of a person adjudged bankrupt or a body corporate in liquidation, for the purpose of its administration for the benefit of the creditors of that person or body

and, subject thereto, for the benefit of other persons entitled to the beneficial interest in the property; or

- (v) property subject to a trust, for the purpose of vesting the property in persons appointed as trustees under the instrument creating the trust or by a court or by order of a court for the purpose of giving effect to the trust.

(4) Nothing in any law or done under its authority shall be held to contravene this section to the extent that the law in question makes provision for the compulsory taking of possession of any property, or the compulsory acquisition of any interest in or right to or over property, where that property, interest or right is held by a body corporate established by law for public purposes in which no moneys have been invested other than moneys provided from public funds.

Protection from discrimination

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

- (a) “discriminatory” means affording different treatment to different persons on any ground such as sex, race, colour, language, religion, political or other opinion, national, ethnic or social origin, association with a national minority, property, family relations, economic status, disability, age, birth, sexual orientation, marital or other status; and
- (b) “public authority” means any statutory body or company or association in which the Government of the Virgin Islands has an interest and which performs a public function or duty.

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

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

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

- (a) for the imposition of taxation or appropriation of revenue by the Government of the Virgin Islands or any local authority or body for local purposes;
- (b) with respect to the entry into or exclusion from, or the employment, engaging in any business or profession, movement or residence within, the Virgin Islands of persons who do not belong to the Virgin Islands, or for any other purpose with respect to such persons to the extent that the provision is reasonably justifiable in a democratic society;
- (c) for the application, in the case of persons of any such description as is mentioned in subsection (1)(a) (or of persons connected with such persons), of the law with respect to adoption, marriage, divorce, burial, devolution of property on death or other like matters that is the personal law applicable to persons of that description; or
- (d) whereby persons of any such description as is mentioned in subsection (1)(a) may be subjected to any disability or restriction or may be accorded any privilege or advantage that, having regard to its nature and to special circumstances pertaining to those persons or to persons of any other such description, is reasonably justifiable in a democratic society.

(5) Nothing in any law shall be held to contravene subsection (2) to the extent that it makes provision with respect to qualifications (not being qualifications specifically relating to any such description as is mentioned in subsection (1)(a)) for service as a public officer or as a member of a disciplined force or for the service of a local government authority or a body corporate established by law for public purposes.

(6) Subsection (3) shall not apply to anything that is expressly or by necessary implication authorised to be done by any such provision of law as is referred to in subsection (4) or (5).

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

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

(8) Nothing in subsection (3) shall affect any discretion relating to the institution, conduct or discontinuance of civil or criminal proceedings in any court that is vested in any person by or under this Constitution or any other law.

Provisions for periods of public emergency

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

- (a) the well-being or security of the Virgin Islands is threatened by war, invasion, general insurrection, public disorder, natural disaster or other public emergency; and
- (b) the declaration is considered necessary by the Governor to maintain or restore peace and order.

(2) A proclamation shall be taken to be published if it is published in the *Gazette* or in a newspaper published in the Virgin Islands, or if it is posted in prominent public places or announced on the radio.

(3) Without prejudice to the power of the Legislature to make laws under this Constitution, during a period of public emergency the Governor may make such regulations for the Virgin Islands as appear to him or her to be necessary or expedient for securing the public safety, the defence of the Virgin Islands or the maintenance of public order, or for maintaining supplies and services essential to the life of the community.

(4) Regulations made under subsection (3) shall—

- (a) have effect only prospectively;
- (b) have effect, subject to this section, notwithstanding the provisions of any other law in force in the Virgin Islands or any rule of law having effect therein;
- (c) unless previously revoked, expire at the end of the period of public emergency during which they were made unless provision for their continuance in force (without or without modification) is made by the Legislature.

(5) Nothing in any law or done under its authority shall be held to contravene any of the provisions of this Chapter other than sections 11, 13, 14(1), 16(2)(a), 16(3), 16(4), 16(5) and 16(6) to the extent that the law authorises the taking during any period of public emergency of measures that are reasonably justifiable for dealing with the situation that exists in the Virgin Islands during that period.

(6) Before exercising any function under subsection (1) or (3) or under any law enacted by the Legislature to like effect, the Governor shall consult the Cabinet or, if that is not practicable in the circumstances, the Premier; but if in the judgement of the Governor it is impracticable for him or her to consult either the Cabinet or the Premier, the function shall be exercised by the Governor acting in his or her discretion.

(7) Where the Governor has consulted the Cabinet or the Premier under subsection (6), the Governor shall, save in matters falling within the Governor's special responsibilities under section 60(1), act in accordance with any advice given to him or her by the Cabinet or the Premier, unless instructed otherwise by a Secretary of State.

(8) Where any proclamation of emergency has been made by the Governor under subsection (1), a copy of the proclamation shall as soon as practicable be laid before and debated in the House of Assembly, and if the House is not due to meet within five days of the making of that proclamation it shall meet within that period or as soon as practicable thereafter.

(9) A proclamation of emergency shall, unless it is sooner revoked by the Governor, cease to be in force at the expiration of a period of fourteen days beginning on the date on which it was made or such longer period as may be provided under subsection (10), but without prejudice to the making of another proclamation of emergency at or before the end of that period.

(10) If at any time while a proclamation of emergency is in force (including any time while it is in force by virtue of this subsection) a resolution is passed by the House of Assembly approving its continuance in force for a further period not exceeding three months, beginning on the date on which it would otherwise expire, the proclamation shall, if not sooner revoked, continue in force for that further period.

(11) Nothing contained in this section or any emergency regulations shall be construed to preclude the House of Assembly from—

- (a) meeting whenever practicable in accordance with its Standing Orders; and
- (b) directing that reports relating to the emergency, including the implementation of any emergency regulations, be prepared and presented in such manner and within such periods to the House of Assembly as the House may determine.

Protection of persons detained under emergency laws

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

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

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

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

Protection of the environment

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

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

Protection of children

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

Enforcement of protective provisions

31.—(1) If any person alleges that any of the foregoing provisions of this Chapter has been, is being or is likely to be contravened in relation to him or her (or, in the case of a person who is detained, if any other person alleges such a contravention in relation to the detained person), then, without prejudice to any other action with respect to the same matter that is lawfully available, that person (or that other person) may apply to the High Court for redress.

(2) The High Court shall have original jurisdiction—

- (a) to hear and determine any application made by any person under subsection (1); and
- (b) to determine any question arising in the case of any person that is referred to it under subsection (7),

and may make such declarations and orders, issue such writs and give such directions as it may consider appropriate for the purpose of enforcing or securing the enforcement of any of the foregoing provisions of this Chapter to the protection of which the person concerned is entitled.

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

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

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

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

(7) If in any proceedings in any court (other than the High Court, the Court of Appeal, Her Majesty in Council or a court-martial) any question arises as to the contravention of any of the foregoing provisions of this Chapter, the person presiding in that court may, and shall if any party to

the proceedings so requests, refer the question to the High Court unless, in the opinion of the court in which the question arose, the raising of the question is merely frivolous or vexatious.

(8) Where any question is referred to the High Court under subsection (7), the High Court shall give its decision on the question and the referring court shall dispose of the case in accordance with that decision or, if that decision is the subject of an appeal to the Court of Appeal or to Her Majesty in Council, in accordance with the decision of the Court of Appeal or, as the case may be, of Her Majesty in Council.

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

(10) The Legislature may by law confer on the High Court such powers in addition to those conferred by this section as may appear to be necessary or desirable for the purpose of enabling that Court more effectively to exercise the jurisdiction conferred on it by this section.

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

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

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

Proceedings which might affect freedom of conscience

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

Proceedings which might affect freedom of expression

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

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

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

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

Establishment of a Human Rights Commission

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

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

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

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

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

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