
STATUTORY INSTRUMENTS

2007 No. 1678

The Virgin Islands Constitution Order 2007

THE CONSTITUTION OF THE VIRGIN ISLANDS

CHAPTER 4

THE EXECUTIVE

Executive authority of the Virgin Islands

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

(2) Subject to this Constitution, the executive authority of the Virgin Islands may be exercised on behalf of Her Majesty by the Governor, either directly or through officers subordinate to him or her.

(3) Nothing in subsection (2) shall operate so as to prejudice any law for the time being in force in the Virgin Islands whereby functions are, or may be, conferred on persons or authorities other than the Governor.

Cabinet

47.—(1) There shall be a Cabinet in and for the Virgin Islands which shall consist of the Premier, four other Ministers and one *ex officio* member, namely the Attorney General.

(2) The number of Ministers referred to in subsection (1) may be increased by a law made in pursuance of section 63(2) which increases the number of elected members of the House of Assembly; but in no circumstances may the number of Ministers exceed two-fifths of the total number of elected members of the House.

(3) The Cabinet shall have responsibility for the formulation of policy, including directing the implementation of such policy, insofar as it relates to every aspect of government, except those matters for which the Governor has special responsibility under section 60, and the Cabinet shall be collectively responsible to the House of Assembly for such policies and their implementation.

(4) Subject to this Constitution, the Cabinet shall determine its own rules of procedure for the conduct of its business.

Meetings of the Cabinet

48. The Cabinet shall meet regularly at such times as its rules of procedure may prescribe, and shall also meet whenever the Premier, or the Governor, acting in his or her discretion, where practicable after consultation, so requests; and upon receipt of such request the Cabinet Secretary shall summon the Cabinet.

Proceedings in the Cabinet

49.—(1) The Governor shall, so far as practicable, attend and preside at meetings of the Cabinet.

(2) In the absence of the Governor there shall preside at any meeting of the Cabinet the Premier, or in his or her absence, the Deputy Premier.

(3) Subject to section 63(4), no business shall be transacted at any meeting of the Cabinet if there are less than three Ministers present, one of whom shall be the Premier or the Minister performing the functions of the Premier under section 55.

(4) The Cabinet Secretary, the Governor and the Premier shall form a Cabinet Steering Group for the purpose of setting the agenda of the Cabinet; the Governor and the Premier shall each be entitled to inscribe items on the agenda and the Cabinet Secretary shall comply accordingly.

(5) In the absence of any member of the Cabinet Steering Group the person performing the functions of that member shall act in his or her place.

(6) The Attorney General shall not be entitled to vote in the Cabinet.

(7) Subject to subsection (3), the Cabinet shall not be disqualified for the transaction of business by reason of any vacancy in its membership (including any vacancy not filled when the Cabinet is first constituted or is reconstituted at any time), and the validity of the transaction of business in the Cabinet shall not be affected by reason only of the fact that some person who was not entitled to do so took part in the proceedings.

Summoning of persons to the Cabinet

50.—(1) Whenever any business before the Cabinet renders the presence of a public officer desirable, the Premier may summon such public officer to a meeting of the Cabinet; and the Premier shall summon such an officer if the Governor, acting in his or her discretion, so requests.

(2) Where a matter before the Cabinet concerns or relates to a statutory body and the presence of an officer of the statutory body is considered desirable, the Premier may summon that officer to a meeting of the Cabinet.

Cabinet Secretary

51.—(1) There shall be—

- (a) a Cabinet Office, which shall be an office in the Government of the Virgin Islands; and
- (b) a Cabinet Secretary, whose office shall be a public office, who shall be a person who is a Virgin Islander as defined in section 65(2) and who shall be appointed in accordance with section 92(5), (6) and (7).

(2) The Cabinet Secretary shall have charge of the Cabinet Office, attend meetings of the Cabinet and be responsible for keeping the minutes of the meetings of the Cabinet and for conveying the conclusions reached at the meetings to the appropriate person or authority.

(3) The Cabinet Secretary shall—

- (a) provide such policy advice and technical support to the Cabinet as the Cabinet may require;
- (b) transmit copies of all papers submitted for consideration by the Cabinet to its members;
- (c) inform all its members of the summoning of any meeting of the Cabinet and of the matters to be discussed at any such meeting;
- (d) furnish all its members, as soon as practicable after each meeting of the Cabinet, with a copy of the confirmed minutes of the previous meeting showing the matters discussed and the conclusions reached at the meeting;
- (e) promote and facilitate adherence to the rules of procedure of the Cabinet;
- (f) monitor the implementation of Cabinet decisions and report periodically to the Cabinet in respect thereof; and
- (g) perform such other functions as are incidental to the functions of the Cabinet Secretary.

(4) The functions conferred on the Cabinet Secretary by subsection (3)(b), (c) and (d) may be exercised by the Cabinet Secretary in person or by officers subordinate to him or her acting under and in accordance with his or her general or special instructions.

Appointment of Ministers

52.—(1) The Premier shall be appointed by the Governor as follows—

- (a) if a political party gains a majority of the seats of elected members of the House of Assembly the Governor shall appoint as Premier the elected member of the House recommended by a majority of the elected members of the House who are members of that party;
- (b) if no political party gains such a majority or if no recommendation is made under paragraph (a), the Governor, acting in his or her discretion, shall appoint as Premier the elected member of the House of Assembly who, in his or her judgement, is best able to command the support of a majority of the elected members of the House.

(2) The other Ministers shall be appointed by the Governor in accordance with the advice of the Premier from among the elected members of the House of Assembly.

(3) The Governor, acting in accordance with the advice of the Premier, shall appoint one of the Ministers as Deputy Premier.

(4) The appointment of a Deputy Premier under subsection (3) may be revoked by the Governor, acting in accordance with the advice of the Premier, but such revocation shall not in itself affect the Minister's tenure of office as a Minister.

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

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

Tenure of office of Ministers

53.—(1) If a motion on the Order Paper that the House of Assembly should declare a lack of confidence in the Government of the Virgin Islands receives in the House the affirmative votes of a majority of all the elected members of the House, the Governor shall, by instrument under the public seal, revoke the appointment of the Premier; but before so revoking the Premier's appointment the Governor shall consult with the Premier and, if the Premier so requests, the Governor, acting in his or her discretion, may dissolve the House of Assembly instead of revoking the appointment.

(2) The Premier shall vacate his or her office if, after the polling in a general election and before the House of Assembly first meets thereafter, the Governor, acting in accordance with section 52(1), informs the Premier that he or she is about to appoint another person as the Premier.

(3) Any Minister shall vacate his or her office if—

- (a) he or she ceases to be a member of the House of Assembly for any reason other than a dissolution;
- (b) he or she is not an elected member of the House of Assembly when it first meets after a general election;
- (c) he or she is required under section 67(4) to cease to perform his or her functions as a member of the House of Assembly; or
- (d) he or she resigns it by writing under his or her hand addressed to the Premier or, in the case of the Premier, he or she resigns it by writing under his or her hand addressed to the Governor.

- (4) A Minister other than the Premier shall also vacate his or her office if—
- (a) the Premier vacates his or her office; or
 - (b) his or her appointment is revoked by the Governor, acting in accordance with the advice of the Premier, by instrument under the public seal.

Absence of Ministers from the Virgin Islands

54. The Premier shall give written notice to the Governor before being absent from the Virgin Islands, and any other Minister shall obtain the written permission of the Premier before being absent from the Virgin Islands; but where in either case the Premier or Minister is to be absent from the Virgin Islands for a period not exceeding forty-eight hours, prior verbal notification shall be given to the Governor or the Premier, as the case may be.

Performance of functions of Premier in certain events

55.—(1) If the Premier is expected to be absent from the Virgin Islands for more than forty-eight hours, the Governor shall authorise the Deputy Premier to perform the functions of the office of Premier; and the Governor shall revoke this authority on the return to the Virgin Islands of the Premier.

(2) If both the Premier and the Deputy Premier are expected to be absent from the Virgin Islands for more than forty-eight hours, the Governor shall authorise another Minister designated by the Premier to perform the functions of the office of Premier; and the Governor shall revoke this authority on the return to the Virgin Islands of either the Premier or the Deputy Premier.

(3) If the Cabinet advises the Governor that the Premier is unable to perform his or her functions by reason of illness, the Governor shall authorise the Deputy Premier to perform the functions of the office of Premier; and the Governor shall revoke this authority if the Cabinet advises him or her that the Premier is again able to perform his or her functions.

(4) If the Cabinet advises the Governor that both the Premier and the Deputy Premier are unable to perform their functions by reason of absence or illness, the Governor shall authorise another Minister designated by the Premier (or, if the Premier makes no such designation, appointed by the Governor on the advice of the Cabinet, and where the Cabinet fails to give such advice within twenty-four hours of the Governor seeking such advice, selected by the Governor in his or her discretion) to perform the functions of the office of Premier; and the Governor shall revoke this authority if the Cabinet advises him or her that the Premier or the Deputy Premier is again able to perform his or her functions.

- (5) Any authority given or revoked by the Governor under this section shall be in writing.

Assignment of responsibilities to Ministers

56.—(1) The Governor shall, acting in accordance with the advice of the Premier, by directions in writing, assign to any Minister responsibility for the conduct (subject to this Constitution and any other law) of any business of the Government of the Virgin Islands, including responsibility for the administration of any department of government.

(2) Without prejudice to section 60(2), (3) and (4), a Minister shall not be assigned responsibility under this section for any of the matters mentioned in section 60(1).

(3) The Governor may not confer on any Minister authority to exercise any function that is conferred or imposed by this Constitution or any other law on the Governor or any person or authority other than a Minister; but nothing in this subsection affects the power of the Legislature under section 71.

(4) For the avoidance of doubt, subject only to subsections (2) and (3), any matter may be assigned to a Minister under subsection (1).

(5) Where a Minister has been assigned responsibility under this section for the administration of any department of government, the Minister shall (subject to this Constitution and any other law) exercise direction and control over that department, including directing the implementation of government policy as it relates to that department, and, subject to such direction and control, the department shall, unless otherwise agreed between the Governor and the Premier, be under the supervision of a permanent secretary who shall be a public officer; but two or more departments of government may be placed under the supervision of one permanent secretary.

(6) A Minister assigned responsibility for any matter under this section shall exercise his or her responsibility in accordance with the policies of the Government of the Virgin Islands as determined by the Cabinet and in accordance with the collective responsibility of the members of the Cabinet for the policies and decisions of the Government.

(7) The Governor, acting in his or her discretion, may at any time request from a Minister any official papers or seek any official information or advice available to that Minister with respect to a matter for which that Minister is responsible under this section, and shall inform the Premier of any such request.

National Security Council

57.—(1) There shall be in and for the Virgin Islands a National Security Council which shall consist of—

- (a) the Governor, as Chairman;
- (b) the Premier;
- (c) one other Minister appointed in writing by the Governor, acting in accordance with the advice of the Premier;
- (d) the Attorney General, *ex officio*; and
- (e) the Commissioner of Police, *ex officio*.

(2) A Minister appointed under subsection (1)(c) shall vacate his or her seat on the National Security Council if—

- (a) his or her office becomes vacant under section 53; or
- (b) the Governor so directs in writing, acting in accordance with the advice of the Premier.

(3) The National Security Council shall advise the Governor on matters relating to internal security and the Governor shall be obliged to act in accordance with the advice of the Council, unless he or she considers that giving effect to the advice would adversely affect Her Majesty's interest (whether in respect of the United Kingdom or the Virgin Islands); and where the Governor has acted otherwise than in accordance with the advice of the Council, he or she shall report to the Council at its next meeting.

(4) The Commissioner of Police shall—

- (a) provide regular briefings to the National Security Council on matters of internal security, including the Police Force;
- (b) have responsibility for the day to day operation of the Police Force and shall report regularly on such operation to the Governor; and
- (c) inform the Premier of any significant security developments in the Virgin Islands, including the occurrence of any significant criminal activity.

(5) The National Security Council may invite any person or summon any public officer to attend and participate in, or provide briefings to, the Council on the areas of their work bearing on internal security.

(6) The Governor, acting in his or her discretion, may summon a meeting of the National Security Council whenever he or she considers it desirable to do so, and the Governor shall summon such a meeting whenever the Premier so requests.

(7) Subject to this section, the National Security Council may regulate its own procedure.

(8) The Cabinet Secretary shall be the Secretary to the National Security Council.

Attorney General

58.—(1) There shall be an Attorney General of the Virgin Islands, whose office shall be a public office and who shall be appointed in accordance with section 95.

(2) The Attorney General shall be the principal legal adviser to the Government of the Virgin Islands.

Director of Public Prosecutions

59.—(1) There shall be a Director of Public Prosecutions, whose office shall be a public office and who shall be appointed in accordance with section 95.

(2) The Director of Public Prosecutions shall have power, in any case in which he or she considers it desirable to do so—

- (a) to institute and undertake criminal proceedings against any person before any civil court in respect of any offence against any law in force in the Virgin Islands;
- (b) to take over and continue any such criminal proceedings that have been instituted by any other person or authority; and
- (c) to discontinue at any stage before judgment is delivered any such criminal proceedings instituted or undertaken by himself or herself or any other person or authority.

(3) The powers of the Director of Public Prosecutions under subsection (2) may be exercised by him or her in person or by officers subordinate to him or her acting under and in accordance with his or her general or special instructions.

(4) The powers conferred on the Director of Public Prosecutions by subsection (2)(b) and (c) shall be vested in him or her to the exclusion of any other person or authority; but where any other person or authority has instituted criminal proceedings, nothing in this subsection shall prevent the withdrawal of those proceedings by or at the instance of that person or authority at any stage before the person against whom the proceedings have been instituted has been charged before the court.

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

(6) In the exercise of the powers conferred on him or her by this section and section 88(2) the Director of Public Prosecutions shall not be subject to the direction or control of any other person or authority.

Governor's special responsibilities

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

- (a) external affairs, subject to subsection (4);
- (b) defence, including the armed forces;
- (c) internal security, including the Police Force, without prejudice to section 57;
- (d) the terms and conditions of service of persons holding or acting in public offices, without prejudice to section 92; and
- (e) the administration of the courts;

and the Governor shall keep the Premier fully informed concerning the general conduct of these matters, and the Premier may request information in respect of any particular matter.

(2) The Governor, acting after consultation with the Premier, may assign to any member of the Cabinet responsibility for the conduct, on behalf of the Governor, of any business in the House of Assembly with respect to any of the matters mentioned in subsection (1).

(3) The Governor, acting in his or her discretion, may, by directions in writing, delegate, with the prior approval of a Secretary of State, to the Premier or any other Minister designated by the Governor on the advice of the Premier such responsibility for matters of external affairs or internal security as the Governor may think fit upon such terms and conditions as he or she may impose.

(4) Notwithstanding subsection (3), the Governor shall, by directions in writing, delegate to the Premier or to any other Minister designated by the Governor on the advice of the Premier, on the terms and conditions set out in subsection (5), responsibility for the conduct of external affairs as they relate to any matters that fall under the portfolios of Ministers, including—

- (a) the Caribbean Community, the Organisation of Eastern Caribbean States, the Association of Caribbean States, the United Nations Economic Commission for Latin America and the Caribbean, or any other Caribbean regional organisation or institution;
- (b) other Caribbean regional affairs relating specifically to issues that are of interest to or affect the Virgin Islands;
- (c) the relationship between the Virgin Islands and the United States Virgin Islands in matters of mutual interest;
- (d) tourism and tourism-related matters;
- (e) taxation and the regulation of finance and financial services; and
- (f) European Union matters directly affecting the interests of the Virgin Islands.

(5) The terms and conditions referred to in subsection (4) are the following—

- (a) separate authority shall be required from or on behalf of a Secretary of State for the commencement of formal negotiation and the conclusion of any treaty or other international agreement by the Government of the Virgin Islands, provided that general authority may be granted in specified matters to commence the formal negotiation of, and where it is deemed appropriate, to conclude any such treaty or international agreement;
- (b) no political declaration, understanding or arrangement in the field of foreign policy shall be signed or supported in the name of the Government of the Virgin Islands without the prior approval of a Secretary of State;
- (c) a formal invitation to a member of government or Head of State of another country to visit the Virgin Islands shall not be issued without prior consultation with the Governor;
- (d) the costs of any activities in pursuance of subsection (4) shall be borne by the Government of the Virgin Islands;
- (e) the Premier or other Minister shall keep the Governor fully informed of any activities in pursuance of subsection (4); and

- (f) the Premier or other Minister shall provide to the Governor on request all papers and information, including the text of any instrument under negotiation, available to the Premier or other Minister with respect to any activities in pursuance of subsection (4).
- (6) Any matter that is delegated to the Premier or to any other Minister under subsection (4) shall be performed by the Premier or such other Minister in a manner that is in the best interests of the Virgin Islands and not prejudicial to the interests of Her Majesty and, for this purpose, the Governor and the Premier shall from time to time hold conference to ensure the proper safeguard of those interests.
- (7) In the event of any disagreement regarding the exercise of any delegated authority under subsection (4), the matter shall be referred to a Secretary of State whose decision on the matter shall be final and whose directions shall be complied with.
- (8) Where the Governor, acting in his or her discretion, determines that the exercise of any function conferred on any other person or authority (other than the House of Assembly) would involve or affect any matter mentioned in subsection (1), the Governor may, acting after consultation with the Premier, give directions as to the exercise of that function, and the person or authority concerned shall exercise the function in accordance with those directions.

Oaths and affirmations

61. Every member of the Cabinet and the Cabinet Secretary, and every member of the National Security Council (except the Governor), shall, before entering upon the duties of his or her office, make before the Governor an oath or affirmation of allegiance and an oath or affirmation for the due execution of that office in the forms set out in Schedule 1.