

2022 No. 627

CARIBBEAN AND NORTH ATLANTIC TERRITORIES

**The Virgin Islands Constitution (Interim Amendment) Order
2022**

Made - - - - - *8th June 2022*

Laid before Parliament *9th June 2022*

Coming into force in accordance with article 1(2)

At the Court at Windsor Castle, the 8th day of June 2022

Present,

The Queen's Most Excellent Majesty in Council

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

Citation, construction and commencement

1.—(1) This Order may be cited as the Virgin Islands Constitution (Interim Amendment) Order 2022 and shall be construed as one with the Virgin Islands Constitution Order 2007(b) (in this Order referred to as “the 2007 Order”) and the Virgin Islands Constitution (Amendment) Order 2015(c) (in this Order referred to as “the 2015 Order”).

(2) This Order shall come into force on such day as the Governor, acting in his or her discretion, may appoint by proclamation published in the *Gazette*.

Interpretation

2. In this Order “the Constitution” means the Constitution of the Virgin Islands set out in the 2007 Order, as amended by the 2015 Order.

Duration of Order

3. This Order shall continue in force for the period of two years from the date of its commencement and shall then expire unless it is continued in force or sooner revoked by Order in Council.

(a) 1962 c. 19.
(b) S.I. 2007/1678.
(c) S.I. 2015/1767.

Offices to become vacant

4. On the commencement of this Order the following offices shall become vacant—

- (a) Premier;
- (b) Deputy Premier;
- (c) all other Ministers;
- (d) Leader of the Opposition;
- (e) Speaker;
- (f) Deputy Speaker;
- (g) Cabinet Secretary.

Cabinet

5. On the commencement of this Order the Cabinet shall cease to exist.

House of Assembly

6. On the commencement of this Order the House of Assembly shall be dissolved and all members of the House shall vacate their seats in the House.

Suspension of certain provisions of the Constitution

7. While this Order is in force the provisions of the Constitution set out in Schedule 1 shall not have effect.

Interim provisions to have effect

8. While this Order is in force the provisions set out in Schedule 2 shall have effect and shall be read together with the provisions of the Constitution not affected by article 7.

Amendment of laws of the Virgin Islands

9. While this Order is in force, except as the Governor may otherwise provide in exercise of the power to make laws conferred by paragraph 7 of Schedule 2, where in any law in the Virgin Islands (other than the 2007 Order and the 2015 Order)—

- (a) there is a reference to the Cabinet, the Premier, the Deputy Premier, another Minister, the Cabinet Secretary or the Leader of the Opposition, any such reference shall be read and construed as a reference to the Governor, acting in accordance with paragraph 5 of Schedule 2;
- (b) there is a reference to any power, duty or function of the Cabinet, the Premier, the Deputy Premier, another Minister, the Cabinet Secretary or the Leader of the Opposition, any such reference shall be read and construed as a reference to a power, duty or function of the Governor and in the exercise or performance of it the Governor shall act in accordance with paragraph 5 of Schedule 2;
- (c) there is a reference to the House of Assembly or any of its committees, the Speaker or the Deputy Speaker, any such reference shall be read and construed as a reference to the Governor, acting in accordance with paragraph 5 of Schedule 2;
- (d) the Governor is required to exercise or perform any power, duty or function after consultation with, or in accordance with the advice of, the Cabinet, the Premier, the Deputy Premier or another Minister, the Governor shall exercise or perform that power, duty or function in accordance with paragraph 5 of Schedule 2.

SCHEDULE 1

Article 7

Provisions of the Constitution that are suspended and shall not have effect

1. In section 5, the words “has vacated his or her seat in the House of Assembly or”, the words “elected as a member of the House or” and the words “, as the case may be,”.
2. In section 27, subsections (6), (7), (8), (10) and (11).
3. In section 38(1)(c), the words “, at the request of the Premier,”.
4. In section 40—
 - (a) subsections (1), (2), (3) and (5);
 - (b) in subsection (4), the words “other than the Cabinet”.
5. In section 41—
 - (a) in subsection (1), the words “or the Minister when duly authorised by the Governor by writing under his or her hand” and the words “; but any such grant or disposition shall require the prior approval of the Cabinet”;
 - (b) subsections (2) and (3).
6. In section 44—
 - (a) in subsection (1), the words “after consultation with the Premier”;
 - (b) in subsection (4), the words “, acting after consultation with the Premier,”.
7. Sections 47 to 56 inclusive.
8. In section 57—
 - (a) in subsection (1), paragraphs (b) and (c);
 - (b) subsection (2);
 - (c) in subsection (3), the words “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 in accordance with the advice of the Council, he or she shall report to the Council at its next meeting”;
 - (d) in subsection (4), paragraph (c);
 - (e) in subsection (6), the words “, and the Governor shall summon such a meeting whenever the Premier so requests”;
 - (f) subsection (8).
9. In section 60—
 - (a) in subsection (1), the words “; 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”;
 - (b) subsections (2) to (7) inclusive;
 - (c) in subsection (8), the words “(other than the House of Assembly)” and the words “, acting after consultation with the Premier,”.
10. In section 61, the words “member of the Cabinet and the Cabinet Secretary, and every”.
11. Sections 62 to 88 inclusive.

12. In section 91—

- (a) in subsection (1)(b), the words “, acting in accordance with the advice of the Premier”;
- (b) in subsection (1)(c), the words “, acting in accordance with the advice of the Leader of the Opposition”;
- (c) in subsection (2), the words “, acting after consultation with the Premier,”;
- (d) in subsection (3), the words “is a member of, or a candidate for election to, the House of Assembly, or”;
- (e) in subsection (4)(c), the words “becomes a member of, or a candidate for election to, the House of Assembly, or”;
- (f) in subsection (5), the words “, acting after consultation with the Premier,”.

13. In section 92, subsections (4), (5), (6), (7) and (9).

14. In section 93(1)(b), the words “, acting in accordance with the advice of the Cabinet”.

15. In section 94—

- (a) in subsection (1)(d), the words “acting in accordance with the advice of the Premier and the Leader of the Opposition who will each nominate one member,”;
- (b) subsection (2);
- (c) in subsection (3), the words “is a member of, or a candidate for election to, the House of Assembly or”;
- (d) in subsection (4)(c), the words “becomes a member of, or a candidate for election to, the House of Assembly, or”;
- (e) in subsection (5), the words “, acting in accordance with the advice of the Premier or the Leader of the Opposition, as the case may be,”.

16. Section 95(6).

17. In section 96—

- (a) in subsection (1)(b), the words “, acting in accordance with the advice of the Premier”;
- (b) in subsection (1)(c), the words “, acting in accordance with the advice of the Leader of the Opposition”.

18. Sections 103 to 106 inclusive.

19. In section 109—

- (a) in subsection (2), the words “the House of Assembly and”;
- (b) subsection (3).

20. In section 110—

- (a) in subsection (2), the words “, acting after consultation with the Premier and the Leader of the Opposition,”;
- (b) in subsection (4)(c), the words “an elected member of the House of Assembly or”.

21. In section 112(5), the words “and, notwithstanding anything contained in Chapter 5, the sanctions which may be imposed may include the suspension of a member of the House of Assembly from sitting and voting in the House for such period as may be prescribed in such a law”.

Interim provisions that shall have effect

Interpretation

1. Section 3(1)(b) of the Constitution shall have effect as if the words “Minister, Speaker, Deputy Speaker or member of the House of Assembly, or member of” were substituted with the words “member of the Advisory Council, the Consultative Forum (where established),”.

Provisions for periods of public emergency

2. Section 27(9) of the Constitution shall have effect as if the words “fourteen days beginning on the date on which it was made or such longer period as may be provided under subsection (10)” were substituted with the words “three months beginning on the date on which it was made”.

Advisory Council

3.—(1) There shall be an Advisory Council in and for the Virgin Islands, which shall consist of—

- (a) the Governor;
- (b) the Deputy Governor;
- (c) the Attorney General;
- (d) the Permanent Secretary, Finance; and
- (e) up to seven other persons, who shall be known as “the nominated members”, appointed by the Governor, of whom at least five shall be Virgin Islanders.

(2) No person shall be appointed as a nominated member who—

- (a) has been adjudged or otherwise declared bankrupt under any law in force in the Commonwealth and has not been discharged;
- (b) is a person certified to be insane or otherwise adjudged to be of unsound mind under any law in force in the Virgin Islands;
- (c) is under sentence of death imposed on him or her by a court of law in any country, or is serving or has at any time within the preceding five years been serving any part of a sentence of imprisonment (by whatever name called) of at least twelve months imposed on him or her by such a court or substituted by competent authority for some other sentence imposed on him or her by such a court; or is under such a sentence of imprisonment the execution of which has been suspended; or
- (d) 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 and has not disclosed to the Governor in writing the nature of such contract and his or her interest, or the interest of such firm or company, in it.

(3) Each member of the Advisory Council (other than the Governor) shall, before entering upon the functions of his or her office as such member, make before the Governor an oath or affirmation of allegiance and an oath or affirmation for the due execution of his or her office in the forms set out in Schedule 1 to the Constitution.

(4) The Governor may terminate the appointment of any nominated member at any time.

(5) Any appointment and any termination of appointment under this paragraph shall be made by the Governor, acting in his or her discretion, by instrument under the public seal.

Summoning and proceedings of the Advisory Council

4.—(1) The Advisory Council shall be summoned by the Governor, acting in his or her discretion.

(2) The Governor shall, so far as practicable, attend and preside at meetings of the Advisory Council.

(3) In the absence of the Governor from any meeting of the Advisory Council, the Deputy Governor, the Attorney General or the Permanent Secretary, Finance, in that order, shall preside at the meeting.

(4) No business shall be transacted at any meeting of the Advisory Council if there are less than four members present, including the person presiding.

(5) Subject to sub-paragraph (4), the Advisory Council shall not be disqualified for the transaction of business by reason of any vacancy in its membership (including any vacancy not filled when the Council is first constituted or reconstituted at any time) and the validity of the transaction of business in the Council 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.

(6) The Governor, or any person presiding over a meeting of the Advisory Council in the Governor's absence, may summon any public officer or other person to a meeting of the Council whenever, in his or her judgement, the business before the Council renders the presence of that officer or other person desirable.

(7) The Governor, acting in his or her discretion, may make rules for the conduct of business by the Advisory Council.

Functions of the Advisory Council

5.—(1) Subject to this paragraph, the Governor shall consult with the Advisory Council on the formulation of policy and in the exercise of all functions conferred upon him or her by the Constitution or any other law for the time being in force in the Virgin Islands, except—

- (a) when acting under instructions given to him or her by Her Majesty through a Secretary of State;
- (b) when exercising any function conferred on him or her by the Constitution or any such other law which is expressed to be exercisable by the Governor in his or her discretion, or in accordance with the advice of, or after consultation with, any person or authority other than the Advisory Council; or
- (c) in any case which, in his or her opinion, involves a matter for which he or she is responsible under section 60 of the Constitution.

(2) The Governor shall not be obliged to consult with the Advisory Council if, in his or her opinion—

- (a) Her Majesty's service would sustain material prejudice;
- (b) the matter is not materially significant so as to require consultation; or
- (c) the urgency of the matter requires the Governor to act before he or she can consult the Advisory Council.

(3) The Governor shall not be obliged to act in accordance with any advice given to him or her by the Advisory Council.

(4) The question whether or not the Governor has formulated any policy or exercised any function after consultation with, or in accordance with the advice of, the Advisory Council shall not be enquired into by any court.

Appointment of additional members of the National Security Council

6.—(1) Notwithstanding section 57(1) of the Constitution, the Governor may, acting in his or her discretion, appoint one or more additional members of the National Security Council.

(2) A member appointed under sub-paragraph (1) shall vacate his or her seat on the National Security Council if the Governor, acting in his or her discretion, so directs in writing.

Power to make laws

7. The Governor, acting in his or her discretion, may make laws for the peace, order and good government of the Virgin Islands.

Consultative Forum

8.—(1) The Governor, acting in his or her discretion, may establish a Consultative Forum for the Virgin Islands.

(2) Where a Consultative Forum has been established under sub-paragraph (1) it shall consist of—

- (a) between eleven and fifteen members, who shall be known as “the appointed members”, appointed by the Governor from among persons representative of the community; and
- (b) the Attorney General and the Permanent Secretary, Finance.

(3) Where a Consultative Forum has been established under sub-paragraph (1), paragraph 3(2) shall apply in relation to the appointment of an appointed member of the Forum as it applies in relation to the appointment of a nominated member of the Advisory Council.

(4) Where a Consultative Forum has been established under sub-paragraph (1), the Governor shall appoint an appointed member to preside over its proceedings, and any other appointed member to preside in the absence of that member; and the Governor may terminate any such appointment at any time.

(5) Where a Consultative Forum has been established under sub-paragraph (1), each member of the Forum shall, before entering upon the functions of his or her office as such member, make before the Forum an oath or affirmation of allegiance in the form set out in Schedule 1 to the Constitution.

(6) The Governor may terminate the appointment of any appointed member at any time.

(7) Any appointment and any termination of appointment under this paragraph shall be made by the Governor, acting in his or her discretion, by instrument under the public seal.

Functions of the Consultative Forum

9.—(1) This paragraph applies where a Consultative Forum has been established under paragraph 8(1).

(2) The functions of the Consultative Forum shall be to make recommendations to the Governor on—

- (a) any Bill or other proposal for legislation referred to it by the Governor;
- (b) any policy or proposed policy of the Government referred to it by the Governor or on its own initiative; and
- (c) any other matter brought before the Consultative Forum by one of its members.

(3) The Governor may exercise any function conferred on him or her by the Constitution or any other law for the time being in force in the Virgin Islands, notwithstanding that a matter related to that function is before the Consultative Forum but not yet the subject of a recommendation in accordance with sub-paragraph (2).

(4) The Governor shall not be bound by any recommendations made by the Consultative Forum.

(5) The Governor, acting in his or her discretion, may assign to any member of the Advisory Council responsibility for the conduct on behalf of the Governor of any business in the Consultative Forum.

(6) The Governor, acting in his or her discretion, may, by order published in the *Gazette*, make rules for the summoning of the Consultative Forum and the discharge of its functions.

Disallowance of laws

10.—(1) Any law made by the Governor may be disallowed by Her Majesty through a Secretary of State.

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

(3) Section 16(1) of the Interpretation Act 1978(a) shall apply to the annulment of any law under this paragraph as it applies to the repeal of an Act of Parliament, save that any enactment repealed or amended by or in pursuance of that law shall have effect as from the date of the annulment as if that law had not been made.

References to the Legislature and to laws enacted by the Legislature

11.—(1) Subject to sub-paragraph (2), where in the Constitution there is a reference to the Legislature, such reference shall be read and construed as a reference to the Governor acting under paragraph 7.

(2) Where in the Constitution there is a reference to a law enacted by the Legislature, such reference shall be read and construed as including—

- (a) a reference to a law made by the Governor acting under paragraph 7; and
- (b) a reference to a law enacted by the Legislature in accordance with sections 62 to 88 inclusive of the Constitution, before these sections were suspended by paragraph 11 of Schedule 1.

Withdrawal of money from the Consolidated Fund or other public funds

12.—(1) No money shall be withdrawn from the Consolidated Fund except on the authority of a warrant under the hand of the Governor, acting in his or her discretion.

(2) A warrant under sub-paragraph (1) may be issued notwithstanding the provisions of any Appropriation Act or Supplementary Appropriation Act.

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

Submission of reports by the Auditor General

13. The Auditor General shall submit his or her reports made under section 109(2) of the Constitution to the Governor.

The Complaints Commissioner

14. In section 110(3)(a) of the Constitution, the reference to an elected member of the House of Assembly shall be read and construed in accordance with sections 62 to 88 inclusive of the Constitution, before these sections were suspended by paragraph 11 of Schedule 1.

Registration of interests

15. Section 112(4) of the Constitution shall have effect as if the words “House of Assembly (including Ministers)” were substituted with the words “Advisory Council (except the Governor) and of the Consultative Forum (where established),”.

(a) 1978 c. 30.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order suspends certain provisions of the Constitution of the Virgin Islands, in particular those relating to ministerial government and the House of Assembly. It vacates certain offices, including that of the Premier, and dissolves the House of Assembly. It makes temporary provision for the government of the Virgin Islands by the Governor, who shall consult (except in prescribed circumstances) an Advisory Council and may establish a Consultative Forum. The Order is to expire two years after commencement, unless it is continued in force or is sooner revoked by a further Order in Council.

An impact assessment has not been produced for this instrument as no, or no significant, impact on the United Kingdom private, voluntary or public sector is foreseen.

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