
STATUTORY INSTRUMENTS

2007 No. 1678

The Virgin Islands Constitution Order 2007

THE CONSTITUTION OF THE VIRGIN ISLANDS

CHAPTER 3

THE GOVERNOR

Governor

35.—(1) There shall be a Governor of the Virgin Islands who shall be appointed by Her Majesty by Commission under Her Sign Manual and Signet and shall hold office during Her Majesty's pleasure.

(2) The Governor shall have such powers and duties as are conferred or imposed on him or her by this Constitution or any other law and such other powers as Her Majesty may from time to time be pleased to assign to him or her.

(3) Subject to the provisions of this Constitution and of any other law by which powers or duties are conferred on the Governor, the Governor shall do and execute all things that belong to his or her office (including the exercise of any powers with respect to which the Governor is empowered by this Constitution to act in his or her discretion) according to such instructions, if any, as Her Majesty may from time to time see fit to give him or her; but the question whether or not the Governor has in any matter complied with any such instructions shall not be enquired into in any court.

(4) A person appointed to the office of Governor shall, before entering upon the functions of that office, make oaths or affirmations of allegiance and for the due execution of that office in the forms set out in Schedule 1.

Deputy Governor

36.—(1) There shall be a Deputy Governor who shall be such person, being a Virgin Islander as defined in section 65(2), as Her Majesty may designate as such by instructions given through a Secretary of State and who shall hold office during Her Majesty's pleasure.

(2) If the office of Deputy Governor is vacant or if the person holding that office is—

- (a) acting in the office of Governor under section 37;
- (b) absent from the Virgin Islands; or
- (c) for any other reason unable to perform the functions of the office of Deputy Governor,

such person as Her Majesty may designate by instructions given through a Secretary of State shall act in the office of Deputy Governor during Her Majesty's pleasure.

Acting Governor

37.—(1) During any period when the office of Governor is vacant or the Governor is absent from the Virgin Islands or is for any other reason unable to perform the functions of his or her office—

- (a) the Deputy Governor; or
- (b) if the office of Deputy Governor is vacant, or the Deputy Governor is absent from the Virgin Islands or is for any other reason unable to perform the functions of the office of Governor, such person as Her Majesty may designate by instructions given through a Secretary of State (in this section referred to as “the person designated”),

shall, during Her Majesty’s pleasure, act in the office of Governor and shall perform the functions of that office accordingly.

(2) Before assuming the functions of the office of Governor, the Deputy Governor or the person designated shall make the oaths or affirmations directed by section 35(4) to be made by the Governor.

(3) The Deputy Governor shall not continue to act in the office of Governor after the Governor has notified him or her that he or she is about to assume or resume the functions of that office, and the person designated shall not continue to act in that office after the Governor or Deputy Governor has so notified him or her.

(4) The Governor or the Deputy Governor shall not, for the purposes of this section or section 36, be regarded as absent from the Virgin Islands or as unable to perform the functions of his or her office—

- (a) by reason that he or she is in passage from one part of the Virgin Islands to another;
- (b) at any time when there is a subsisting appointment of a deputy under section 39; or
- (c) by reason of absence from the Virgin Islands for a period not exceeding forty-eight hours for the purpose of visiting the United States Virgin Islands.

(5) In this section “the Governor” means the person holding the office of Governor and “the Deputy Governor” means the means the person holding the office of Deputy Governor.

Functions of Deputy Governor

38.—(1) Subject to subsection (2), the Deputy Governor shall—

- (a) assist the Governor in the exercise of his or her functions relating to matters for which the Governor is responsible under section 60;
- (b) assist the Governor in the exercise of such of his or her other functions, being functions in the exercise of which the Governor is not obliged to act in accordance with the advice of any other person or authority, as the Governor, acting in his or her discretion, may direct; and
- (c) perform such other functions, not of a ministerial nature, as (subject to this Constitution and any other law) may be assigned to the Deputy Governor, at the request of the Premier, by the Governor acting in his or her discretion.

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

(3) The power and authority of the Governor shall not be affected by any authority of the Deputy Governor under subsection (2) and, subject to the provisions of this Constitution and of any other law by which any function which the Deputy Governor is authorised to exercise is conferred, the Deputy Governor shall comply with such instructions relating to the exercise of that function as the Governor, acting in his or her discretion, may from time to time address to the Deputy Governor; but the question whether or not the Deputy Governor has in any matter complied with any such instructions shall not be enquired into in any court.

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

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

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

Deputy to Governor

39.—(1) Whenever the Governor—

- (a) has occasion to be absent from the seat of Government but not from the Virgin Islands;
- (b) has occasion to be absent from the Virgin Islands for a period which he or she has reason to believe will be of short duration; or
- (c) is suffering from any illness which he or she has reason to believe will be of short duration,

the Governor may, acting in his or her discretion, by instrument under the public seal, appoint the Deputy Governor, or if the Deputy Governor is not available any other person in the Virgin Islands who is a Virgin Islander as defined in section 65(2), to be his or her deputy during such absence or illness and in that capacity to perform on his or her behalf such of the functions of the office of Governor as may be specified in that instrument.

(2) The power and authority of the Governor shall not be affected by the appointment of a deputy under this section, and a deputy shall comply with such instructions as the Governor, acting in his or her discretion, may from time to time address to the deputy; but the question whether or not a deputy has in any matter complied with any such instructions shall not be enquired into in any court.

(3) A person appointed as a deputy under this section shall hold that appointment for such period as may be specified in the instrument by which he or she is appointed, and the appointment may be revoked at any time by Her Majesty by instructions given through a Secretary of State or by the Governor, acting in his or her discretion.

Exercise of Governor's functions

40.—(1) Subject to this section, the Governor shall consult with the Cabinet in the exercise of all functions conferred on him or her by this 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 this 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 Cabinet; or
- (c) in any case which, in his or her opinion, involves a matter for which he or she is responsible under section 60;

but in exercising his or her powers in relation to matters to which paragraph (c) applies, the Governor shall consult with the Premier.

(2) The Governor shall not be obliged to consult with the Cabinet or the Premier if, in his or her judgement—

- (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 Cabinet or the Premier,

but in any case falling within paragraph (c) the Governor shall, as soon as practicable, communicate to the Cabinet the measures which he or she has adopted and the reasons for them.

(3) In any case in which the Governor is required under this section to consult the Cabinet, the Governor shall act in accordance with the advice of the Cabinet unless in his or her opinion such advice would affect a matter for which he or she is responsible under section 60.

(4) Where the Governor is directed by this Constitution to exercise any function after consultation with any person or authority other than the Cabinet, he or she shall not be obliged to exercise that function in accordance with the advice of that person or authority.

(5) Whenever the Governor, in pursuance of subsection (3), acts contrary to the advice given by the Cabinet, he or she shall, as soon as practicable, report his or her action and the reasons for it to a Secretary of State.

(6) Where the Governor is directed by this Constitution to exercise any function in accordance with the advice of, or after consultation with, any person or authority, the question whether he or she has so exercised that function shall not be enquired into in any court.

Crown lands

41.—(1) Subject to any law for the time being in force in the Virgin Islands, the Governor or the Minister when duly authorised by the Governor by writing under his or her hand, in Her Majesty's name and on Her Majesty's behalf, may, under the public seal, make grants and dispositions of lands or other immovable property in the Virgin Islands or interests in such property that are vested in Her Majesty for the purposes of the Government of the Virgin Islands; but any such grant or disposition shall require the prior approval of the Cabinet.

(2) The Minister shall have responsibility for administering all lands and other property referred to in subsection (1).

(3) In this section "the Minister" means the Minister charged with responsibility for Crown lands.

Powers to constitute offices and make appointments, etc

42. Subject to Chapter 7 and any law for the time being in force in the Virgin Islands, the Governor, in Her Majesty's name and on Her Majesty's behalf, may—

- (a) constitute offices for the Virgin Islands and make appointments to them, to be held during Her Majesty's pleasure; and
- (b) dismiss any person so appointed or take such disciplinary action in relation to him or her as the Governor may think fit.

Powers of pardon, etc

43.—(1) The Governor may, in Her Majesty's name and on Her Majesty's behalf—

- (a) grant to any person concerned in or convicted of any offence against any law in force in the Virgin Islands a pardon, either free or subject to lawful conditions;
- (b) grant to any person a respite, either indefinite or for a specified period, from the execution of any sentence passed on that person for such an offence;

(c) substitute a less severe form of punishment for that imposed by any sentence for such an offence; or

(d) remit the whole or any part of any sentence passed for such an offence or any penalty or forfeiture otherwise due to Her Majesty on account of such an offence.

(2) In the exercise of the powers conferred on the Governor by this section the Governor shall consult with the Committee established by section 44, but the Governor shall decide whether to exercise any of those powers in any case in his or her own deliberate judgement, whether the members of the Committee concur in his or her decision or otherwise.

Advisory Committee on the Prerogative of Mercy

44.—(1) There shall be in and for the Virgin Islands an Advisory Committee on the Prerogative of Mercy (in this section and section 43 referred to as “the Committee”), which shall consist of the Attorney General, the Director of Health Services and four members appointed by the Governor after consultation with the Premier.

(2) The Committee shall not be summoned except by the authority of the Governor, acting in his or her discretion; and the Governor shall preside at all meetings of the Committee.

(3) No business shall be transacted at any meeting of the Committee unless there are at least three members present, of whom one shall be the Attorney General.

(4) The office as a member of the Committee of any member appointed by the Governor under subsection (1) shall become vacant if the Governor, acting after consultation with the Premier, revokes that appointment.

(5) Subject to subsection (3), the Committee shall not be disqualified for the transaction of business by reason of any vacancy in its membership, and the validity of the transaction of any business by the Committee 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) Subject to this section the Committee may regulate its own proceedings.

The public seal

45. The Governor shall keep and use the public seal for sealing all things that require to be sealed.