

No. of 2019

VIRGIN ISLANDS

POLICE ACT, 2019

ARRANGEMENT OF SECTIONS

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No. of 2019

Police Act, 2019

Virgin
Islands

I Assent

Governor
, 2019

VIRGIN ISLANDS

No. of 2019

A Bill for

An Act to repeal and replace the Police Act (Cap. 165) and to make provision for matters connected therewith.

[Gazetted , 2019]

ENACTED by the Legislature of the Virgin Islands as follows:

**PART I
PRELIMINARY**

Short title and
commencement.

1. (1) This Act may be cited as the Police Act, 2019.

(2) This Act shall come into force on such date as the Governor may, by Proclamation published in the *Gazette*, appoint.

Interpretation.

2. (1) In this Act, unless the context otherwise requires

“appropriate consent” means in relation to a person

(a) who has attained the age of eighteen years, the consent of that person;

(b) who has not attained the age of eighteen years, but has attained the age of fourteen years, the consent of that person and his or her

parent or guardian; and

- (c) who has not attained the age of fourteen years, the consent of his or her parent or guardian;

- “arms” means firearms as defined in the Firearms and Air Guns Act; Cap. 126
- “arrestable offence” means an offence prescribed as such in the Schedule 1 to the Criminal Code, 1997; No. 1 of 1997
- “Association” means the Police Welfare Association continued by section 143;
- “Auditor General” means the Auditor General referred to in section 109 of the Constitution and appointed under section 4 of the Audit Act, 2003; U.K.S.I. 2007
No. 1678.
No. 13 of 2003
- “Auxiliary Service” means the Virgin Islands Auxiliary Police Service established by section 149;
- “branch” means a section of the Service;
- "breath test" means a test for the purpose of obtaining an indication of the proportion of alcohol in the person's breath carried out by means of a device approved for the purpose of such a test by the Commissioner, under section 175;
- “Commission” means the Police Service Commission established by section 96 of the Constitution;
- “Commissioner” means the Commissioner of Police appointed under section 10;
- "Constitution" means the Virgin Islands Constitution Order, 2007 or any Order in Council amending or replacing the same; U.K. S.I. 2007
No 1678
- “Deputy Commissioner” means any Deputy Commissioner of Police appointed under section 10 (1);
- “division” means a police division or subdivision into which the Territory may be divided by the Commissioner, for police administration and operational purposes;
- “DNA sample” means any lawfully taken sample of a person’s DNA, intimate or non-intimate, recorded for the purposes of this Act and stored either physically or electronically on an approved database;
- “fingerprint impression” means any record of fingerprint taken and stored either electronically, or using ink and paper, or both, and includes palm prints

and foot prints;

Cap. 126

“firearm offence” means an offence under the Firearms and Air Guns Act;

“Inspector” means a police officer of the rank below the rank of Chief Inspector of Police but above the rank of Sergeant;

“intimate sample” means

- (a) a sample of blood, semen or any other tissue fluid, urine or pubic hair;
- (b) a dental impression; or
- (c) a swab taken from any part of a person’s genitals (including pubic hair) or from a person’s body orifices other than the mouth;

“intimate search” means a search which consists of the physical examination of a person’s body orifices other than the mouth;

“medical board” means a board of registered medical practitioners appointed by the Governor under section 172;

“non-intimate sample” means

- (a) a sample of hair other than a pubic hair;
- (b) a sample taken from a nail or from under a nail;
- (c) a swab taken from any part of a person’s body other than a part from which a swab taken would be an intimate sample;
- (d) saliva; or
- (e) a skin impression, meaning in relation to any person, any record (other than a fingerprint) which is a record (in any form and produced by any method) of the skin pattern and other physical characteristics or features of the whole or any part of his or her foot or of any other part of his or her body;

“personal representative” means a person representing a deceased police officer’s interest in any specified respect or of exercising specified rights on the officer’s behalf;

“police officer” means any member of the Service;

“Police Service Commission” means the Police Service Commission established by section 96 of the Constitution;

“prohibited association” means an association designated as

- (a) any league or association or body of persons whether registered or not, that has for its object, or one of its objects the promotion of feelings of ill-will and hostility between different classes or races;
- (b) any other association, society or club, any of the objects of which are calculated to be subversive of good discipline on the part of a member of the Service, and which the Commissioner, with the approval of the Governor, declares to be a prohibited association;

“prescribed” means prescribed by regulations;

“premises” includes any place and, in particular, includes

- (a) any vehicle, vessel, aircraft or hovercraft; and
- (b) any tent or movable structure;

“registered dentist” means a person duly registered as a dentist pursuant to the Medical Act, 2000;

No. 4 of 2000

“registered medical doctor” means a person duly registered as a medical doctor pursuant to the Medical Act, 2000;

“registered nurse” means a person duly registered as a nurse pursuant to the Medical Act, 2000;

“relevant evidence” in relation to an offence, means anything that may be admissible in evidence at a trial for the offence;

“repealed Act” means the Police Act;

Cap. 165

“Reward Fund” means the Police Reward Fund maintained pursuant to section 119;

“senior officer”, when used in relation to any act done or thing suffered by a police officer, means a police officer senior in rank to the police officer doing the act or suffering the thing;

“Service” means the Royal Virgin Islands Police Service continued under section 3;

“special constable” means a member of the Special Constabulary referred to in

Part XI;

“standing orders” means standing orders made by the Commissioner under section 6(1)(b);

“Superintendent” means any police officer of that rank;

“traffic” includes animals in the charge or under the control of any person, pedestrians and vehicles in or on any public thoroughfare and whether in motion or not;

“vessel” means any type of boat or power-craft capable of a speed of over five knots, used or capable of being used, as a means of transportation on in or under water and propelled by any form of machinery whether or not such machinery is the principle method of propulsion and whether or not such machinery was in operation at the time of any offence;

“Welfare Fund” means the Police Welfare Fund referred to in section 101.

(2) Unless the context otherwise requires, references in this Act to the Commission in regard to powers of appointment or dismissal and to the exercise of disciplinary control over police officers include a reference to a person to whom such powers have been duly delegated under section 97 of the Constitution.

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PART II
CONSTITUTION AND ADMINISTRATION

Existing Force
continued.

3. (1) The existing Royal Virgin Islands Police Force shall continue in being, subject to this Act and, shall be called the Royal Virgin Islands Police Service.

- (2) A police officer who
- (a) at the commencement of this Act is a member of the Force shall be deemed to be a member of the Service;
 - (b) re-enters the Service after the commencement of this Act shall be deemed for pensionable purposes, to have performed his or her previous service under this Act.

Constitution.

4. The Service shall continue to consist of a Commissioner of Police and such other ranks as the Governor may prescribe including

- (a) a Deputy Commissioner of Police;
- (b) such numbers of Superintendents,

- (c) Chief Inspectors;
- (d) Inspectors;
- (e) Sergeants; and
- (f) Constables.

5. (1) The Service shall be employed in the Virgin Islands for the maintenance and enforcement of law and order, the preservation of the peace, the protection of life and property, the prevention and detection of crime and the apprehension of offenders and the defence of the Virgin Islands from external aggression or threat thereof.

Functions of the Service.

(2) In the performance of its duties under this Act, members of the Service may carry arms and to that end, the Commissioner or in his or her absence the Deputy Commissioner may issue arms and ammunition to any member of the Service, to carry and use for lawful purposes.

(3) Members of the Service shall have all the powers and duties which are conferred and imposed upon them by any law in force in Virgin Islands.

6. (1) The Commissioner is answerable directly to the Governor and, shall have the command, superintendence and direction of the Service and may

Powers and functions of Commissioner.

- (a) make standing orders for the general governing of police officers in relation to their enlistment, discharge, training, arms, clothing, equipment and such other orders as he or she may deem expedient for preventing neglect and for promoting efficiency and discipline;
- (b) make such rules of practice and procedure for the efficient operation of this Act as he or she may see fit.

(2) The Commissioner may, in writing, delegate his or her powers to any officer of the rank of Chief Inspector or above.

(3) Notwithstanding the generality of subsection (2), the Commissioner shall not delegate his or her power to hear any appeal relating to an offence against discipline or to impose upon a police officer any punishment which includes reduction in rank or discharge.

7. (1) The administration of the Service throughout the Virgin Islands is vested in the Commissioner.

Administration of the Service.

(2) Subject to subsection (1), the control of the police in any division shall be vested in such police officer as may be appointed by the Commissioner to be in

charge thereof.

8. (1) Members of the Service shall wear such uniform as the Governor may direct and any such uniform and any arms or accoutrements supplied therewith shall remain the property of the Crown.

Uniform and accoutrements.

(2) A person, not being a member of the Service, shall not have in his or her possession an article issued to a member of the Service under this section and a person found in possession of any such article and who is unable to account satisfactorily for his or her possession thereof, commits an offence and is liable on summary conviction to a fine not exceeding four hundred dollars or to a term of imprisonment not exceeding four months or both.

(3) A person, not being a member of the Service, who has in his or her possession an article issued to a member of the Service under this section, may be arrested without warrant by any member of the Service.

9. (1) A police officer ceasing to be a member of the Service shall forthwith deliver up to a person appointed by the Commissioner for that purpose or to the police officer in charge at the division at which he or she was last stationed, all arms, equipment, uniforms and other appointments which have been supplied to him or her under this Act which are the property of the Crown.

(2) An ex-police officer who, having ceased to belong to the Service, fails without good cause to comply with subsection (1), commits an offence and is liable on summary conviction to a fine not exceeding three thousand dollars or to imprisonment for a term not exceeding one year, and in addition the court convicting him or her may order him or her to pay the value of the property not delivered up, which value may be ascertained by a summary court and recovered in the same manner as a fine or deducted in whole or in part from any credit due to the ex-police officer.

(3) The obligation imposed on an ex-police officer under this section shall, where the ex-officer is deceased, extend to his or her personal representative in which case the provisions shall be read with the necessary modifications.

PART III APPOINTMENTS, QUALIFICATIONS AND DISCHARGE

10 (1) Subject to subsection (2), the Commissioner and other police officers shall be appointed into the Service by the Governor acting in accordance with section 97 of the Constitution.

(2) Where, pursuant to section 97 (5) of the Constitution, the Governor delegates any of his or her powers under subsection (1),

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Police officer ceasing to belong to the Service to hand over public property in his or her charge.

Appointments, etc.

- (a) to the Commissioner, such appointments shall be made by the Commissioner to the extent of the delegation;
- (b) to any other person or persons, such appointments shall be made by whomsoever the Governor delegates to, to the extent of the delegation..

(3) For the avoidance of doubt, it is declared that a person, not being a police officer working with the Service shall be appointed by the relevant authority and in accordance with the relevant law regulating those appointments.

(4) Subject to subsection (5), on first appointment to the Service, a person shall be appointed on probation for a period of two years and shall, on concluding such probationary period to the satisfaction of the Commissioner, be confirmed in his or her appointment by the Governor acting in accordance with the advice of the Commission.

(5) A shorter term of probation may be is specified in the letter of appointment of that person and, where an appointment is on promotion, the period of probation shall be determined by the Commissioner and specified in the letter of appointment.

11. Notwithstanding the provisions of section 10, the Governor, on the request of the Commissioner, may, acting in accordance with section 97 of the Constitution appoint such police officers from outside the Virgin Islands upon such contractual terms as may to him or her appear necessary.

Appointment on contracts.

12. On first appointment, no person shall be appointed to the Service unless that person

Qualifications for appointment to the Service.

- (a) has attained the age of eighteen years and has not reached the age of thirty five years, except that a person who has attained the age of thirty five years may, with the approval of the Governor, be appointed.
- (b) undergo a medical examination pursuant section 13;
- (c) produces satisfactory proof of his or her good character;
- (d) meets the minimum qualifications specified for that position;
- (e) any other requirements relevant to the rank that may be specified in the vacancy notice or job description.

13. (1) As a condition of employment in the Service a person applying for employment, whether he or she is within the Territory or is outside the Territory,

Medical Examination.

shall be required to undergo

- (a) a physical examination;
- (b) a mental examination;
- (c) a medical examination, which may include drug testing, for use of any substance classified as controlled drugs under the Drug (Prevention of Misuse) Act or for the misuse of alcohol or prescription drugs; or
- (d) all or any combination of the examinations referred to in paragraphs (a) to (c);

in order to establish whether he or she is physically, mentally or medically fit for employment in the Service and that person's examination report shall be taken into consideration in that regard.

(2) For purposes of subsection (1), the Commissioner shall provide to the applicant a medical form to be used for purposes of obtaining a medical certificate.

(3) A medical practitioner carrying out the examination shall attest to the fitness of that person, and any potential medical or physical limitations with respect to the job functions and responsibilities and shall classify the person as

- (a) having no limitations, meaning the person is physically and medically capable of performing the full range of duties of the vacancy; or
- (b) having limitations, meaning the persons has physical or medical limitations that may adversely affect the person's suitability for the vacancy.

(4) In considering candidates for appointment the Commission shall take into account the medical certificate and the opinion of the medical practitioner.

(5) For purposes of this section, "medical practitioner"

- (a) in the case of a candidate recruited locally, means a person registered as such under the Medical Act, 2000;
- (b) in any other case means a person registered as a medical practitioner under the laws of the country or territory of recruitment.

(6) Every police officer shall, on joining the Service or before entering on the duties of his or her office, have

Schedule 1

- (a) his or her fingerprints taken and recorded on the form prescribed in Schedule 1; and
- (b) such other sample, whether intimate or not, taken and such sample may be tested for unlawful drugs or kept on record for forensic purposes.

(7) Every police officer shall remain liable throughout his or her service to random drug-testing in accordance with any internal Policy issued by the Commissioner and the results of such testing may be offered as evidence in any criminal or disciplinary hearing if it is appropriate to do so.

14. (1) Every police officer shall, on joining the Service or before entering on the duties of his or her office, make before a Magistrate or Justice of the Peace a declaration on oath or affirmation in the form prescribed in Schedule 2.

Declaration and other requirements on appointment. Schedule 2

(2) Every police officer required to make a declaration under subsection (1) shall, on joining the Service and before making such declaration, answer truthfully any question which may be put to him or her as to his or her previous service in any police force and as to whether he or she has ever been convicted of any offence, not being a traffic offence or an offence relating to a spent conviction.

(3) A person who wilfully makes a false statement in reply to any question put to him or her under subsection (2) commits an offence and is liable on summary conviction to a fine not exceeding three thousand dollars or to imprisonment for a term not exceeding one year or both.

15. An identity certificate in the form prescribed in Schedule 3 signed by the Commissioner or a senior officer authorised by the Commissioner in that behalf, shall be issued to every police officer and shall be evidence of that police officer's appointment and rank.

Identity certificate . Schedule 3

16. Police officers when ordered so to do by a senior officer are bound to proceed to and serve at any place in the Territory or on board any vessel or aircraft in the service of the Government.

Liability to serve.

17. A police officer shall not

- (a) engage in any trade, business, employment or office whatsoever, or take part in any commercial undertaking outside the scope of his or her duties under this Act, except with the written authority of the Commissioner; or

Police officers not to engage in other employment or in political activities.

- (b) except with the written authority of the Governor, take any part in any political party or organisation or in an electoral campaign in or outside of the Territory or engage in any other activity which might tend to interfere with the impartial discharge of his or her duties.

18. (1) A police officer who wishes to resign from the Service shall give written notice of his or her intention so to do

Resignations.

- (a) to the Governor through the Commissioner where he or she was appointed by the Governor and the officer shall specify his or her proposed last working day; or
- (b) to the appointing authority where he or she was appointed under section 10 (2) and the officer shall specify his or her proposed last working day.

(2) The notice under subsection (1) shall be given as follows:

- (a) an officer who is on permanent and pensionable employment shall give not less than three months notice of his or her intention to resign;
- (b) an officer who is on probation or temporary appointment shall give not less than one month's notice of his or her intention to resign.
- (c) an officer on contract shall give notice of his or her intention to terminate his or her contract in accordance with the terms of the officer's contract.

(3) An officer who resigns contrary to this section shall pay to the Government a month's salary in lieu of notice which amount shall be a deduction from his or her final pay.

(4) The terms of an officer's contract as it relates to payment in lieu of notice shall apply, where the officer is a contract officer and fails to give the requisite notice under this section

(5) Notwithstanding the provisions of subsection (1), the Governor acting on the advice of the Commission may, in any particular case, waive or curtail the period of notice as may be appropriate in any particular case.

(6) Subject to this section, a member of the Service who has resigned from the Service may be reappointed to the Service if he or she was a member of the Service for a period of at least five years immediately preceding the date of his or her resignation and not more than five years have elapsed before the date of his or

her application for reappointment.

(7) Subsection (6) does not apply if

- (a) the resignation was due to the misconduct of the applicant for reappointment or was due to any act involving moral turpitude on his or her part; or
- (b) during the period of five years immediately preceding the application for reappointment, the applicant for reappointment has engaged in an activity that is contrary to the best interests of the Service.

(8) Where a person is reappointed to the Service under this section, any period of service in the Service or in the service of the Territory in a civil capacity prior to his or her reappointment shall, notwithstanding the break in service, be taken into account in computing any pension payable to him or her.

Discharge.

19. (1) Subject to subsection (3), the Governor acting in accordance with section 97 of the Constitution may, at any time during the probationary period discharge from the Service a person who has not been confirmed in his or her appointment, if he or she considers that the person is unlikely to become an efficient police officer.

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(2) A police officer may at any time during the currency of his or her term of engagement

- (a) be discharged
 - (i) in consequence of disciplinary proceedings under this Act;
 - (ii) when he or she has been pronounced by a medical board to be physically or mentally unfit for further service; or
 - (iii) when he or she has been found to be no longer efficient in the discharge of his or her duties; or
- (b) be discharged if, in the opinion of the Governor, the retention of his or her services would be contrary to the public interest.

(3) A police officer shall not be discharged under this section unless the Governor has given him or her one month notice of the intention to discharge him or her or, alternatively, one month's pay in lieu of such notice.

PART IV POWERS, DUTIES AND PRIVILEGES OF POLICE OFFICERS

General powers.

20. (1) Police officers shall exercise such powers and perform such duties as are by law conferred or imposed upon them, and shall obey all lawful directions in respect of the execution of their office which they may from time to time receive from police officers of a senior rank.

(2) Police officers shall, for the purposes of using police powers, be deemed to be on duty at all times.

(3) It is the duty of police officers

- (a) promptly to obey and execute all orders and warrants lawfully issued to them by any competent authority;
- (b) to collect and communicate intelligence affecting the public peace;
- (c) to prevent the commission of offences and public nuisances;
- (d) to detect and bring offenders to justice; and
- (e) to apprehend all persons whom they are legally authorised to apprehend or for whose apprehension sufficient ground exists.

(4) A police officer may arrest without warrant any person who commits or attempts to commit an arrestable offence in his or her view or whom he or she reasonably suspects to have committed an arrestable offence.

(5) Any legal process, lawfully issued, may be served on the person it concerns by a police officer at any time and on any day of the week.

(6) Notwithstanding any provision of this or any other law, the service of process may be proved by endorsement by the police officer on the original or copy thereof of the fact, place and date of such service.

(7) Any person who wilfully and corruptly endorses any false statement on an original or copy of a legal process commits an offence and is liable on summary conviction to a fine not exceeding three thousand dollars or to imprisonment for a term not exceeding one year or both.

21. Police officers may exhibit complaints or charges before Magistrates and apply for such summonses, warrants, search warrants or other process as may lawfully be issued and may conduct prosecutions in the summary court.

Power of police officer to lay and exhibit complaints, etc.

22. (1) Where in any suit instituted against a police officer his or her defence is that the act complained of was done in obedience to a warrant purporting to be issued by a Judge, Magistrate or Justice of the Peace, the court shall, upon

Police officers not liable for acts done under warrant.

production of the warrant containing the signature of the Judge, Magistrate or Justice of the Peace and upon proof that the act complained of was done in obedience to such warrant, enter judgement in favour of such police officer.

(2) The proof of the signature of the Judge, Magistrate or Justice of the Peace shall not be required unless the court has reason to doubt the genuineness thereof and, where it shall be proved that such signature is not genuine, judgement shall nevertheless be given in favour of the police officer if it is proved that, at the time when the act complained of was committed, he or she believed on reasonable grounds that such signature was genuine.

23. (1) It shall be lawful for any police officer to stop and detain any person whom he or she sees doing any act for which a licence or permit is required under any law and to require such person to produce his or her licence or permit.

Power to inspect licences or permits.

(2) Any person who fails to produce such licence or permit when called upon by a police officer so to do may be arrested without a warrant unless he or she gives his or her name and address and otherwise satisfies the police officer that he or she will duly answer any summons or other proceedings which may be taken against him or her.

Duty to keep order in public places.

24. (1) It is a duty of the Service

- (a) to regulate and control traffic;
- (b) to divert all or any particular kind of traffic, when it is in the public interest so to do;
- (c) to keep order on public roads, streets, thoroughfares and landing places, and at other places of public resort or places to which the public have access; and
- (d) to prevent obstruction on the occasions of assemblies and processions on the public roads and streets, and in any case when any public road, street, thoroughfare or landing place may be thronged or may be liable to be obstructed.

(2) A person who opposes or disobeys any lawful order given by a police officer in the performance of his or her duty under this section commits an offence and is liable on summary conviction to a fine not exceeding one thousand dollars or to imprisonment for a term not exceeding one year or both, and may be arrested without a warrant and the cause of any obstruction shall be removed or caused to be removed by the police officer to the police pound pursuant to the provisions of the Road Traffic Act.

25. (1) A person who, having been asked by a police officer in the execution of the officer's duty, to give his or her name and address, refuses so to do or gives a false name or address commits an offence and is liable on summary conviction to a fine not exceeding one thousand dollars or to imprisonment for a term of one year or both.

Power to require names and addresses.

(2) A person required under subsection (1), to give his or her name and address, refuses when called upon by a police officer so to do, may be arrested without a warrant.

(3) A police officer who

- (a) finds a person committing or reasonably suspects the person of having committed an offence or being about to commit an offence; or
- (b) is making inquiries or investigations with a view to establishing whether or not an offence has been committed or is about to be committed by a person and believes on reasonable grounds that such information will assist in the conduct of the investigations; or
- (c) arrests a person in the exercise of a power conferred under this Act;

may require the person to state such particulars of the person's name and address as required by that officer and, where that officer suspects on reasonable grounds that any particular stated is false, may require evidence as to the correctness thereof.

(4) A person required under subsection (3), to state any particulars who

- (a) refuses or otherwise fails to state any of those particulars; or
- (b) states any false particular;

commits an offence and is liable on summary conviction to a fine not exceeding two thousand dollars or imprisonment for a term not exceeding one year or both.

(5) A person required under this section to produce evidence as to the correctness of any particulars who

- (a) fails to produce that evidence;
- (b) produces false evidence with respect to those particulars;

commits an offence and is liable on summary conviction to a fine not exceeding two thousand dollars or to imprisonment for a term not exceeding one year or

both

Power to record identification.

26. (1) Subject to sections 29, 30, 31, 32 and 33, a police officer may cause to be taken, for use and record in the registry of the Service, photographs, descriptions, measurements, fingerprints, palmprints, footprints or other physical specimens of any person in lawful custody for any offence, whether such person has been convicted of such offence or not.

(2) Where a person who is in lawful custody refuses to submit to the taking of any of the means of identification authorised to be taken under subsection (1), that person commits an offence and is liable on summary conviction to a fine of five hundred dollars or to imprisonment for three months or to both and after conviction, reasonable force may be used to take such means of identification.

Elimination identification evidence.

27. (1) A police officer may take the photographs, descriptions, measurements, fingerprints, palmprints, footprints or other physical specimens of any persons who have been present at the scene of a crime for purposes of elimination only and subject to such conditions as may be prescribed.

Schedule 3

(2) Any fingerprints, palmprints or footprints taken pursuant to the provisions of this section shall be recorded on the form specified in Schedule 3.

(3) Where a person refuses to submit to the taking of any means of identification authorised to be taken under subsection (1), that person commits an offence and is liable on summary conviction to a fine not exceeding two thousand dollars or to imprisonment for a term not exceeding three months or both and upon such conviction a court may authorise a police officer to take such means of identification.

Destruction of records of identification.

28. (1) Subject to subsection (4), on the acquittal of any person whose photographs, descriptions, measurements, fingerprints, palmprints, footprints or other physical specimens have been taken pursuant to this Part, such photographs, descriptions, measurements, fingerprints, palmprints, footprints or physical specimens shall be destroyed or handed over to that person at his or her option.

(2) Where a person's photographs, descriptions, measurements, fingerprints, palmprints, footprints or other physical specimens have been taken pursuant to this Part, and that person

- (a) is not charged; or
- (b) is charged, but the prosecution does not proceed with the charge or the proceedings are discontinued,

such photographs, descriptions, measurements, fingerprints, palmprints, footprints or other physical specimens shall be destroyed or handed over to that person at his

or her option.

(3) Where a person's photographs, descriptions, measurements, fingerprints, palmprints, footprints or other physical specimens are to be destroyed the person or his or her legal representative shall

- (a) be given prior notice of the date, time and location of such destruction; and
- (b) be issued with a certificate of destruction attesting to same.

(4) Where the Commissioner is of the opinion that any photographs, descriptions, measurements, fingerprints, palmprints, footprints or other physical specimens of any person taken pursuant to this Part should not be destroyed or handed over, the Commissioner shall

- (a) upon the acquittal; or
- (b) upon an application under subsection (1) or (2),

make an application to the court before which the person was acquitted, or where they were not brought before any court, the High Court, for the retention of any such photographs, descriptions, measurements, fingerprints, palmprints, footprints or other physical specimens.

(5) An application under subsection (4) may be made where the Commissioner has reasonable grounds to suspect that the person has been involved in the commission of another offence for which he or she has not been charged.

29. (1) Except as provided by this section, a person's fingerprints may not be taken without the appropriate consent. Fingerprints.

(2) Consent to the taking of a person's fingerprints shall be in writing if it is given at a time when he or she is at a police station.

(3) The fingerprints of a person detained at a police station may be taken without the appropriate consent if

- (a) he or she is detained in consequence of his or her arrest for an arrestable offence;
- (b) he or she has been charged with an arrestable offence or informed that he or she will be reported for such an offence; and
- (c) he or she has not had his or her fingerprints taken in the course of the investigation of the offence by the police.

(4) Where a person mentioned in subsection (3) has already had his or her fingerprints taken in the course of the investigation of the offence by the police, that fact shall be disregarded for the purposes of that subsection if

- (a) the fingerprints taken on the previous occasion do not constitute a complete set of his or her fingerprints; or
- (b) some or all of the fingerprints taken on the previous occasion are not of sufficient quality to allow satisfactory analysis, comparison or matching, whether in the case in question or generally.

(5) The fingerprints of a person who has answered to bail at a court or police station may be taken without the appropriate consent at the court or station if

- (a) the court; or
- (b) as the case may be, a police officer of at least the rank of Inspector,

authorises them to be taken.

(6) A court or police officer may only give an authorisation under subsection (5) if

- (a) the person who has answered to bail has answered to it for a person whose fingerprints were taken on a previous occasion and there are reasonable grounds for believing that he or she is not the same person; or
- (b) the person who has answered to bail claims to be a different person from a person whose fingerprints were taken on a previous occasion.

(7) A police officer may give an authorisation under subsection (5), orally or in writing but, if he or she gives it orally, he or she shall confirm it in writing as soon as is practicable.

(8) A person's fingerprints may be taken without the appropriate consent if

- (a) he or she has been convicted of an arrestable offence; or
- (b) he or she has been given a caution in respect of an arrestable offence which, at the time of the caution, he or she has admitted.

(9) A police officer may take a person's fingerprints without the appropriate consent if the police officer reasonably suspects that the person is committing or

attempting to commit an offence, or has committed or attempted to commit an offence and

- (a) the name of the person is unknown to, and cannot be readily ascertained by, the police officer; or
- (b) the police officer has reasonable grounds for doubting whether a name furnished by the person as his or her name is his or her real name.

(10) The taking of fingerprints by virtue of subsection (9) does not count for any of the purposes of this Act as taking them in the course of the investigation of an offence by the police.

(11) In a case where by virtue of subsection (3), (5), (8) or (9) a person's fingerprints are taken without the appropriate consent

- (a) he or she shall be told the reason before his or her fingerprints are taken; and
- (b) the reason shall be recorded as soon as is practicable after the fingerprints are taken.

(12) If a person's fingerprints are taken at a police station, or by virtue of subsection (9) at a place other than a police station, whether with or without the appropriate consent

- (a) before the fingerprints are taken, a police officer shall inform that person that the fingerprints may be the subject of a random search; and
- (b) the fact that the person has been informed of this possibility shall be recorded by the police officer as soon as is practicable after the fingerprints have been taken.

(13) If a person is detained at a police station when his or her fingerprints are taken, the reason for taking them and, in the case falling within subsection (12), the fact referred to in paragraph (b) of that subsection shall be recorded on his or her custody record.

(14) The power to take the fingerprints of a person detained at a police station without the appropriate consent

- (a) shall be exercisable by any police officer; and
- (b) may be exercised with reasonable force if necessary.

(15) Any fingerprints taken pursuant to the provisions of this section shall be recorded on the form specified in Schedule 3.

(16) Where fingerprints are taken electronically from a person, they shall be taken only in such manner, and using such devices, approved from time to time by the Commissioner by Order in the *Gazette*.

(17) Where fingerprints have been taken contrary to the procedure prescribed in this section, the failure to follow the prescribed procedure shall not render the fingerprint evidence inadmissible in any legal proceedings.

(18) In this section and section 34, “fingerprints” includes a palm print.

(19) Nothing in this section applies to any person

- (a) arrested or detained under the Suppression of Terrorism Act, 1978 (U.K); or
- (b) arrested under an extradition arrest power.

Footprints and impressions of footwear.

30. (1) Except as provided by this section, a person's footprint or impression of his or her footwear may not be taken without the appropriate consent.

(2) Consent to the taking of a person's footprint or an impression of his or her footwear shall be in writing if it is given at a time when he or she is at a police station.

(3) Where a person is detained at a police station, his or her footprint or an impression of his or her footwear may be taken without the appropriate consent if

- (a) he or she is detained in consequence of his or her arrest for an arrestable offence, or has been charged with an arrestable offence, or informed that he or she will be reported for an arrestable offence; and
- (b) he or she has not had his or her footprint or an impression taken of his or her footwear in the course of the investigation of the offence by the police.

(4) Where a person mentioned in subsection (3)(a) has already had his or her footprint or an impression of his or her footwear taken in the course of the investigation of the offence by the police, that fact shall be disregarded for the purposes of that subsection if the footprint or impression of his or her footwear taken previously is

- (a) incomplete; or
- (b) not of sufficient quality to allow satisfactory analysis, comparison or matching, whether in the case in question or generally.

(5) If a footprint or an impression of a person's footwear is taken at a police station, whether with or without the appropriate consent

- (a) before it is taken, a police officer shall inform him or her that it may be the subject of a random search; and
- (b) the fact that the person has been informed of this possibility shall be recorded by the police officer as soon as is practicable after the impression has been taken, and if he or she is detained at a police station, the record shall be made on his or her custody record.

(6) In a case where, by virtue of subsection (3), a person's footprint or an impression of his or her footwear is taken without the appropriate consent

- (a) he or she shall be told the reason before it is taken; and
- (b) the reason shall be recorded on his or her custody record as soon as is practicable after the impression is taken.

(7) The power to take a footprint or an impression of the footwear of a person detained at a police station without the appropriate consent

- (a) shall be exercisable by any police officer; and
- (b) may be exercised with reasonable force.

(8) Any footprint taken pursuant to the provisions of this section shall be recorded on the form specified in Schedule 3.

Schedule 3

(9) Where any footprints or impression of footwear have been taken contrary to the procedure prescribed in this section, the failure to follow the prescribed procedure shall not render the footprint or impression of footwear evidence inadmissible in any legal proceedings.

(10) Nothing in this section applies to any person

- (a) arrested or detained under the Suppression of Terrorism Act, 1978 (UK); or
- (b) arrested under an extradition arrest power.

Intimate samples. **31.** (1) Subject to section 35, an intimate sample may be taken from a person in police detention only

- (a) if a police officer of at least the rank of Inspector authorises it to be taken; and
- (b) if the appropriate consent is given.

(2) An intimate sample may be taken from a person who is not in police detention but from whom, in the course of the investigation of an offence, two or more non-intimate samples suitable for the same means of analysis have been taken which have proved insufficient

- (a) if a police officer of at least the rank of Inspector authorises it to be taken; and
- (b) if the appropriate consent is given.

(3) A police officer may only give an authorisation under subsection (1) or (2) if he or she has reasonable grounds

- (a) for suspecting the involvement of the person from whom the sample is to be taken in an arrestable offence; and
- (b) for believing that the sample will tend to confirm or disprove that person's involvement.

(4) A police officer may give an authorisation under subsection (1) or (2) orally or in writing but, if he or she gives it orally, he or she shall confirm it in writing as soon as is practicable.

(5) The appropriate consent shall be given in writing.

(6) Where an authorisation has been given and, it is proposed that an intimate sample shall be taken in pursuance of that authorisation, a police officer shall inform the person from whom the sample is to be taken

- (a) of the giving of the authorisation; and
- (b) of the grounds for giving it.

(7) The duty imposed under subsection (6)(b) includes a duty to state the nature of the offence in which it is suspected that the person from whom the sample is to be taken has been involved.

(8) If an intimate sample is taken from a person

- (a) the authorisation by virtue of which it was taken;
- (b) the grounds for giving the authorisation; and
- (c) the fact that the appropriate consent was given,

shall be recorded by a police officer as soon as is practicable after the sample is taken.

(9) If an intimate sample is taken from a person at a police station

- (a) before the sample is taken, a police officer shall inform him or her that it may be the subject of a random search; and
- (b) the fact that the person has been informed of this possibility shall be recorded by a police officer as soon as practicable after the sample has been taken.

(10) If an intimate sample is taken from a person detained at a police station, the matters required to be recorded under subsection (8) or (9) shall be recorded in his custody record.

(11) In the case of an intimate sample which is a dental impression, the sample may be taken from a person only by a registered dentist.

(12) In the case of any other form of intimate sample, except in the case of a sample of urine or buccal swab, the sample may be taken from a person only by

- (a) a registered medical practitioner; or
- (b) a registered nurse.

(13) Where the appropriate consent to the taking of an intimate sample from a person was refused without good cause, in any proceedings against that person for an offence

- (a) the court, in determining whether to commit that person for trial or whether there is a case to answer;
- (b) a Judge, in deciding whether to grant an application made by the accused for dismissal of a charge; or
- (c) the court or jury, in determining whether that person is guilty of the offence charged,

may draw such inferences from the refusal as appear reasonable.

(14) Where any intimate samples have been taken contrary to the procedure prescribed in this section, the failure to follow the prescribed procedure shall not render the intimate sample evidence inadmissible in any legal proceedings.

(15) Nothing in this section applies to the taking of a specimen for the purposes of any of the provisions of the Road Traffic Act.

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(16) Nothing in this section applies to a person arrested or detained under the Suppression of Terrorism Act, 1978 (UK).

32. (1) Except as provided by this section, a non-intimate sample may not be taken from a person without the appropriate consent.

Other samples.

(2) Where a person gives consent to the taking of a non-intimate sample, that consent shall be in writing.

(3) A non-intimate sample may be taken from a person, without the appropriate consent

(a) if

(i) he or she is being held in custody by the police on the authority of a court; and

(ii) a police officer of at least the rank of Inspector authorises it to be taken without the appropriate consent; or

(b) where the following conditions are satisfied

(i) the person is in police detention in consequence of his or her arrest for an arrestable offence; and

(ii) either he or she has not had a non-intimate sample of the same type and from the same part of the body taken in the course of the investigation of the offence by the police, or he or she has had such a sample taken but it proved insufficient.

(4) A non-intimate sample may be taken from a person, whether or not he or she is in police detention or held in custody by the police on the authority of a court, without the appropriate consent if

(a) he or she has been charged with an arrestable offence or informed

that he or she will be reported for such an offence; and

- (b) either he or she has not had a non-intimate sample taken from him or her in the course of the investigation of the offence by the police or he or she has had a non-intimate sample taken from him or her but either it was not suitable for the same means of analysis or, though so suitable, the sample proved insufficient.

(5) A non-intimate sample may be taken from a person without the appropriate consent if he or she has been convicted of an arrestable offence.

(6) A non-intimate sample may also be taken from a person without the appropriate consent if he or she is a person to whom Part VII of the Criminal Code applies.

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(7) A police officer may only give an authorisation under subsection (3)(a) if he or she has reasonable grounds

- (a) for suspecting the involvement of the person from whom the sample is to be taken in an arrestable offence; and
- (b) for believing that the sample will tend to confirm or disprove that person's involvement.

(8) A police officer may give an authorisation under subsection (3)(a) orally or in writing but, if he or she gives it orally, he or she shall confirm it in writing as soon as is practicable.

(9) A police officer shall not give an authorisation under subsection (3)(a) for the taking from any person of a non-intimate sample consisting of a skin impression if

- (a) a skin impression of the same part of the body has already been taken from that person in the course of the investigation of the offence; and
- (b) the impression previously taken is not one that has proved insufficient.

(10) Where an authorisation has been given and it is proposed that a non-intimate sample shall be taken in pursuance of the authorisation, a police officer shall inform the person from whom the sample is to be taken

- (a) of the giving of the authorisation; and
- (b) of the grounds for giving it.

(11) The duty imposed under subsection (10)(b) includes a duty to state the nature of the offence in which it is suspected that the person from whom the sample is to be taken has been involved.

(12) If a non-intimate sample is taken from a person by virtue of subsection (3)

- (a) the authorisation by virtue of which it was taken; and
- (b) the grounds for giving the authorisation,

shall be recorded by a police officer as soon as is practicable after the sample is taken.

(13) In a case where by virtue of subsection (3), (4), (5) or (6) a sample is taken from a person without the appropriate consent

- (a) he or she shall be told the reason before the sample is taken; and
- (b) the reason shall be recorded by a police officer as soon as practicable after the sample is taken.

(14) If a non-intimate sample is taken from a person at a police station, whether with or without the appropriate consent

- (a) before the sample is taken, a police officer shall inform the person that it may be the subject of a random search; and
- (b) the fact that the person has been informed of this possibility shall be recorded by a police officer as soon as practicable after the sample has been taken.

(15) If a non-intimate sample is taken from a person detained at a police station, the matters required to be recorded under subsection (12), (13) or (14) shall be recorded in his or her custody record.

(16) The power to take a non-intimate sample from a person without the appropriate consent

- (a) shall be exercisable by any police officer; and
- (b) may be exercised with reasonable force where necessary.

(17) Where a non-intimate sample consisting of a skin impression is taken electronically from a person, it shall be taken only in such manner, and using such devices, approved from time to time by the Commissioner by Order in the

Gazette.

(18) Where any non-intimate samples have been taken contrary to the procedure prescribed in this section, the failure to follow the prescribed procedure shall not render the non-intimate sample evidence inadmissible in any legal proceedings.

(19) Nothing in this section applies to any person

(a) arrested or detained under the Suppression of Terrorism Act, 1978 (UK) or

(b) arrested under an extradition arrest power.

33. (1) A person who is detained at a police station may be photographed

Photographs.

(a) with the appropriate consent; or

(b) if the appropriate consent is withheld or it is not practicable to obtain it, without it.

(2) A person who has been arrested by a police officer for an offence; or taken into custody by a police officer after being arrested for an offence by a person other than a police officer, may be photographed elsewhere than at a police station

(a) with the appropriate consent; or

(b) if the appropriate consent is withheld or it is not practicable to obtain it, without it.

(3) A police officer proposing to take a photograph of any person under this section

(a) may, for the purpose of doing so, require the removal of any item or substance worn on or over the whole or any part of the head or face of the person to be photographed; and

(b) if the requirement is not complied with, may remove the item or substance himself or herself.

(4) Where a photograph may be taken under this section, the only persons entitled to take the photograph are police officers, and where the appropriate consent is not given, the police officer may use reasonable force, to do so.

(5) A photograph taken under this section

(a) may be used by, or disclosed to, any person for any purpose related

to the prevention or detection of crime, the investigation of an offence or the conduct of a prosecution or to the enforcement of a sentence; and

- (b) after being so used or disclosed, may be retained but may not be used or disclosed except for a purpose so related.

(6) In subsection (5)

- (a) the reference to crime includes a reference to any conduct which
 - (i) constitutes one or more criminal offences whether under the laws of the Virgin Islands or of a country or territory outside the Virgin Islands; or
 - (ii) is, or corresponds to, any conduct which, if it all took place in any part of the Virgin Islands would constitute one or more criminal offences;
- (b) the references to an investigation and to a prosecution include references, respectively, to any investigation outside the Virgin Islands of any crime or suspected crime and to a prosecution brought in respect of any crime in a country or territory outside the Virgin Islands; and
- (c) "sentence" includes any order made by a court in the Virgin Islands when dealing with an offender in respect of his or her offence.

(7) References in this section and sections 26 and 27 to taking a photograph include references to using any process by means of which a visual image may be produced and, references to photographing a person shall be construed accordingly.

(8) In this section and sections 26 and 27, a "photograph" includes a moving image and corresponding expressions shall be construed accordingly.

(9) Where any photograph has been taken contrary to the procedure prescribed in this section, the failure to follow the prescribed procedure shall not render the photographic evidence inadmissible in any legal proceedings.

(10) Nothing in this section applies to a person arrested under an extradition arrest power.

Use of
fingerprints and
other samples.

34. (1) Where a person has been arrested on suspicion of being involved in an arrestable offence or has been charged with such an offence or has been informed

that he or she will be reported for such an offence, any fingerprints, footprints, impressions of footwear or samples or the information derived from samples taken under any power conferred under this Part from the person may be checked against

- (a) other fingerprints, footprints, impressions of footwear or samples to which the person seeking to check has access and which are held by or on behalf of, any one or more relevant law-enforcement authorities or which are held in connection with or as a result of an investigation of an offence; or
- (b) information derived from other samples if the information is contained in records to which the person seeking to check has access and which are held as mentioned in paragraph (a).

(2) Fingerprints taken by virtue of section 29(9) may be checked against other fingerprints to which the person seeking to check has access and which are held by or on behalf of any one or more relevant law-enforcement authorities or which are held in connection with or as a result of an investigation of an offence.

(3) In subsections (1) and (2) "relevant law-enforcement authorities" means

- (a) any police service within or outside of the Islands;
- (b) any person with functions in any country or territory outside the Virgin Islands which
 - (i) correspond to those of a police force; or
 - (ii) otherwise consist of or include the investigation of conduct contrary to the law of that country or territory, or the apprehension of persons guilty of such conduct; or
- (c) any person with functions under any international agreement which consist of or include the investigation of conduct which is
 - (i) unlawful under the law of one or more places;
 - (ii) prohibited by such an agreement; or
 - (iii) contrary to international law,

and, in addition, functions which consist of or include the apprehension of persons guilty of such conduct.

(4) Where

- (a) fingerprints, footprints, impressions of footwear or samples have been taken from any person in connection with the investigation of an offence other than in circumstances to which subsection (1) applies; and
- (b) that person has given his or her consent in writing to the use in a random search of the fingerprints, footprints, impressions of footwear or any of the samples and of information derived from them,

the fingerprints, footprints, impressions of footwear or, as the case may be, those samples and that information may be checked against any of the fingerprints, footprints, impressions of footwear, samples or information mentioned in subsection (1)(a) or (b).

(5) A consent given for the purposes of subsection (4) shall not be capable of being withdrawn.

(6) Where a sample of hair other than pubic hair is to be taken, the sample may be taken either by cutting hairs or by plucking hairs with their roots so long as no more are plucked than the person taking the sample reasonably considers to be necessary for a sufficient sample.

(7) Where any power to take a sample is exercisable in relation to a person the sample may be taken in a prison or other institution to which the Prisons Act applies.

(8) Where

- (a) the power to take a non-intimate sample under section 32(5) is exercisable in relation to any person who is detained under section 20 of the Mental Health Act; or
- (b) the power to take a non-intimate sample under section 32(6) is exercisable in relation to any person,

the sample may be taken in the hospital in which he or she is detained.

(9) A police officer may, within the allowed period, require a person who is neither in police detention nor held in custody by the police on the authority of a court to attend a police station in order to have a sample taken where

- (a) the person has been charged with an arrestable offence or informed that he or she will be reported for such an offence and either he or she has not had a sample taken from him or her in the course of the

investigation of the offence by the police or he or she has had a sample so taken from him or her but either it was not suitable for the same means of analysis or, though so suitable, the sample proved insufficient; or

- (b) the person has been convicted of an arrestable offence and either he or she has not had a sample taken from him or her since the conviction or he or she has had a sample taken from him or her, before or after his or her conviction, but either it was not suitable for the same means of analysis or, though so suitable, the sample proved insufficient.

(10) The period allowed for requiring a person to attend a police station for the purpose specified in subsection (9) is

- (a) in the case of a person falling within paragraph (a), one month beginning with the date of the charge, or of his or her being informed as mentioned in that paragraph, or one month beginning with the date on which the appropriate officer is informed of the fact that the sample is not suitable for the same means of analysis or has proved insufficient, as the case may be; or
- (b) in the case of a person falling within paragraph (b), one month beginning with the date of the conviction or one month beginning with the date on which the appropriate officer is informed of the fact that the sample is not suitable for the same means of analysis or has proved insufficient, as the case may be.

(11) A requirement under subsection (9)

- (a) shall give the person at least seven days within which he or she shall so attend; and
- (b) may direct him or her to attend at a specified time of day or between specified times of day.

(12) A police officer may arrest without a warrant a person who has failed to comply with a requirement under subsection (9).

(13) Where a person has failed to comply with a requirement under subsection (9) that person commits an offence and is liable on summary conviction to a fine not exceeding one thousand dollars or to imprisonment for a term not exceeding six months or both.

(14) In this section "the appropriate officer" is

- (a) in the case of a person falling within subsection (9)(a), the police officer investigating the offence with which that person has been charged or as to which he or she was informed that he or she would be reported; or
- (b) in the case of a person falling within subsection (9)(b), the police officer in charge of the police station from which the investigation of the offence of which he or she was convicted was conducted.

Testing for presence of controlled drugs.

35 . (1) A sample of urine or a non-intimate sample may be taken from a person in police detention for the purpose of ascertaining whether he or she has any controlled drug in his or her body if

- (a) he or she has been arrested for an offence but has not been charged or been charged with an offence and a police officer of at least the rank of Inspector has reasonable grounds for suspecting that the misuse by that person of a controlled drug caused or contributed to the offence and has authorised the sample to be taken;
- (b) he or she has been charged with a firearm offence and a police officer of at least the rank of Inspector has reasonable grounds for suspecting that the misuse by that person of a controlled drug caused or contributed to the offence and has authorised the sample to be taken;
- (c) he or she has attained the age of eighteen years; and
- (d) a police officer has requested that the person concerned give the sample.

(2) Before requesting the person concerned to give a sample, a police officer shall

- (a) warn him or her that if, when so requested, he or she fails without good cause to do so he or she may be liable to prosecution; and
- (b) in a case within subsection (1)(a) or (b), inform him or her of the giving of the authorisation and of the grounds in question.

(3) In the case of a person who has not attained the age of eighteen

- (a) the making of the request;
- (b) the giving of the warning and (where applicable) the information under subsection (2); and
- (c) the taking of the sample,

may not take place except in the presence of an appropriate adult.

(4) If a sample is taken under this section from a person in respect of whom an arrest has been made but he or she has not been charged, no other sample may be taken from him or her under this section during the same continuous period of detention but if he or she is subsequently charged at any time during that period

- (a) the sample shall be treated as a sample taken by virtue of the fact that he or she has been charged; and
- (b) the fact that the sample is to be so treated shall be recorded in the person's custody record.

(5) Notwithstanding subsection (1), a sample may be taken from a person under this section if

- (a) he or she was arrested for an offence;
- (b) he or she was arrested but not charged;
- (c) before a sample is taken by virtue of subsection (1) he or she would, but for his or her arrest as mentioned in paragraph (d), be required to be released from police detention;
- (d) he or she continues to be in police detention by virtue of his or her having been arrested for an offence not being a firearm offence; and
- (e) the sample is taken before the end of the period of twenty-four hours starting with the time when his or her detention by virtue of his or her arrest for the first offence began.

(6) A sample shall not be taken from a person under this section if he or she is detained in a police station unless he or she has been brought before a police officer of at least the rank of Sergeant.

(7) Information obtained from a sample taken under this section may be disclosed

- (a) for the purpose of informing any decision about granting bail in criminal proceedings, to the person concerned;
- (b) where the person concerned is in police detention or is remanded in or committed to custody by an order of a court or has been granted such bail, for the purpose of informing any decision about his or her supervision;

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- (c) where the person concerned is convicted of an offence, for the purpose of informing any decision about the appropriate sentence to be passed by a court and any decision about his or her supervision or release;
- (d) for any purpose relating to any matter concerning the person by virtue of the Criminal Justice (Alternative Sentencing) Act, 2005;
- (e) for the purpose of proceedings against the person concerned for an offence under the Drugs (Prevention of Misuse) Act; or
- (f) for the purpose of ensuring that appropriate advice and treatment is made available to the person concerned.

(8) A person who fails without good cause to give any sample which may be taken from him or her under this section commits an offence and is liable on summary conviction to a fine not exceeding one thousand dollars or to imprisonment for a term not exceeding one year or both.

(9) A police officer may give an authorisation under this section orally or in writing but, if he or she gives it orally, he or she shall confirm it in writing as soon as is practicable.

(10) If a sample is taken under this section by virtue of an authorisation, the authorisation and the grounds for the suspicion shall be recorded as soon as is practicable after the sample is taken.

(11) If the sample is taken from a person detained at a police station, any matters required to be recorded under this Part shall be recorded in his or her custody record.

(12) Section 31 (15) and (16) apply for the purposes of this section as they do for the purposes of that section; and this section does not prejudice the generality of sections 31 and 32.

(13) In this section

"appropriate adult", in relation to a person who has not attained the age of eighteen, means

- (a) his or her parent or guardian or, if he or she is in the care of the Department of Social Development, a person representing that Department;
- (b) a social worker; or

- (c) if no person falling within paragraph (a) or (b) is available, any responsible person over the age of eighteen who is not a police officer or a person employed by the Service;

"controlled drug" has the same meanings as in the Drugs (Prevention of Misuse) Act; and

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"relevant senior officer" means in relation to a police station, the most senior police officer for that police station.

36. (1) A police officer may exercise any power conferred by this section

Power of police officer to stop and search persons, vehicles, etc.

- (a) in any place to which at the time when he or she proposes to exercise the power the public or any section of the public has access, on payment or otherwise, as of right or by virtue of express or implied permission; or
- (b) in any other place to which people have ready access at the time when he or she proposes to exercise the power but which is not a dwelling.

(2) Subject to subsections (3) to (5), a police officer

- (a) may search
 - (i) any person or vehicle; or
 - (ii) anything which is in or on a vehicle,

for stolen or prohibited articles or any article to which subsection (9) applies; and

- (b) may detain a person or vehicle for the purpose of such a search.

(3) This section does not give a police officer power to search a person or vehicle or anything in or on a vehicle unless he or she has reasonable grounds for suspecting that he or she will find stolen or prohibited articles or any article to which subsection (9) applies.

(4) If a person is in a garden or yard occupied with and used for the purposes of a dwelling or on other land so occupied and used, a police officer may not search him or her in the exercise of the power conferred by this section unless the police officer has reasonable grounds for believing

- (a) that the person does not reside in the dwelling; and

- (b) that the person is not in the place in question with the express or implied permission of a person who resides in the dwelling.

(5) If a vehicle is in a garden or yard occupied with and used for the purposes of a dwelling or on other land so occupied and used, a police officer may not search the vehicle or anything in or on it in the exercise of the power conferred by this section unless he or she has reasonable grounds for believing

- (a) that the person in charge of the vehicle does not reside in the dwelling; and
- (b) that the vehicle is not in the place in question with the express or implied permission of a person who resides in the dwelling.

(6) If in the course of a search under subsections (4) and (5), a police officer discovers an article which he or she has reasonable grounds for suspecting to be a stolen or prohibited article or an article to which subsection (9) applies, he or she may seize it.

(7) An article is prohibited for the purposes of this Part if it is

- (a) an offensive weapon, prohibited weapon or restricted weapon within the meaning of section 68 of the Criminal Code, 1997; or
- (b) an article
 - (i) made or adapted for use in the course of or in connection with an offence to which this subsection applies; or
 - (ii) intended by the person having it with him or her for such use by him or her or by some other person.

(8) The offences to which subsection (7) applies are

- (a) burglary;
- (b) theft;
- (c) offences under section 43 or 47 of the Road Traffic Act; and
- (d) offences under Parts XIV and XV of the Criminal Code, 1997.

(9) This subsection applies to any article in relation to which a person has committed, or is committing or is going to commit, an offence under section 69 or 70 of the Criminal Code, 1997.

(10) Nothing in this Act shall derogate from a police officer's powers of search under section 271 of the Criminal Code, 1997, section 30 or 31 of the Firearms and Air Guns Act or under the Drugs (Prevention of Misuse) Act.

(11) The search of a person under this section shall be carried out by a police officer of the same sex as that person.

37. (1) A police officer who detains a person or vehicle in the exercise

- (a) of the power conferred by section 36; or
- (b) of any other power to search a person without first arresting the person; or
- (c) to search a vehicle without making an arrest,

Provisions relating to search under section 36 and other powers.

is not required to conduct a search if it appears to him or her subsequently that no search is required or that a search is impracticable.

(2) If a police officer contemplates a search, other than a search of an unattended vehicle, in the exercise

- (a) of the power conferred by section 36; or
- (b) of any other power to search a person without first arresting the person; or
- (c) to search a vehicle without making an arrest,

it shall be his or her duty, subject to subsection (4), to take reasonable steps before he or she commences the search to bring to the attention of the relevant person, if the police officer is not in uniform, documentary evidence that he or she is a police officer and, whether he or she is in uniform or not, the matters specified in subsection (3) and, the police officer shall not commence the search until he or she has performed that duty.

(3) The matters referred to in subsection (2) are

- (a) the police officer's name;
- (b) the object of the proposed search;
- (c) the police officer's grounds for proposing to make it; and
- (d) the effect of section 38(7) or (8), as may be appropriate.

(4) A police officer is not required to bring the effect of section 38(7) or (8) to the attention of the relevant person if it appears to the police officer that it will not be practicable to make the record in section 38(1).

(5) In this section "the relevant person" means

- (a) if the police officer proposes to search a person, that person; and
- (b) if he or she proposes to search a vehicle, or anything in or on a vehicle, the person in charge of the vehicle.

(6) Where a police officer has reasonable suspicion to search a vehicle that is unattended, he or she may break and enter that vehicle.

(7) On completing a search of an unattended vehicle or anything in or on such a vehicle in the exercise of any such power as is mentioned in subsections (2) and (6), a police officer shall leave a notice

- (a) stating that he or she has searched it;
- (b) giving the name of the police station to which he or she is attached; and
- (c) stating the effect of section 39(8).

(8) The police officer shall leave the notice inside the vehicle unless it is not reasonably practicable to do so without damaging the vehicle.

(9) The time for which a person or vehicle may be detained for the purposes of such a search is such time as is reasonably required to permit a search to be carried out either at the place where the person or vehicle was first detained or nearby.

(10) Neither the power conferred by section 36 nor any other power to detain and search a person without first arresting him or her or to detain and search a vehicle without making an arrest is to be construed as authorising a constable to require a person to remove any of his or her clothing in public other than an outer coat, jacket or gloves.

(11) This section and section 36 apply to vessels, aircraft and hovercraft as they apply to vehicles.

Entry and search
after arrest.

38. (1) Subject to the following provisions of this section, a police officer may enter and search any premises occupied or controlled by a person who is under arrest for an offence, if he or she has reasonable grounds for suspecting that there is on the premises evidence, other than items subject to legal privilege, that

relates

- (a) to that offence; or
- (b) to some other offence which is connected with or similar to that offence.

(2) A police officer may seize and retain anything for which he or she may search under subsection (1).

(3) The power to search conferred by subsection (1) is only a power to search to the extent that is reasonably required for the purpose of discovering such evidence.

(4) Subject to subsection (5), the powers conferred by this section may not be exercised unless an officer of the rank of inspector or above has authorised them in writing.

(5) A police officer may conduct a search under subsection (1)

- (a) before the person is taken to a police station or released under section 60, and
- (b) without obtaining an authorisation under subsection (4),

if the condition in subsection (6) is satisfied.

(6) The condition is that the presence of the person at a place (other than a police station) is necessary for the effective investigation of the offence.

(7) If a police officer conducts a search by virtue of subsection (5) above, he or she shall inform an officer of the rank of inspector or above that he or she has made the search as soon as practicable after he or she has made it.

(8) An officer who

- (a) authorises a search; or
- (b) is informed of a search under subsection (6), shall make a record in writing
 - (i) of the grounds for the search; and
 - (ii) of the nature of the evidence that was sought.

(9) If the person who was in occupation or control of the premises at the time of the search is in police detention at the time the record is to be made, the officer shall make the record as part of his or her custody record.

Duty to make records concerning searches.

39. (1) Where a police officer has carried out a search in the exercise of any power as is mentioned in section 37(1), he or she shall

- (a) make a record of it in writing upon completion of the search; or
- (b) where it is not practicable to make the record on the spot, he or she shall make it as soon as practicable after the completion of the search.

(2) The record of a search of a person shall include a note of his or her name, if the police officer knows it.

(3) If a police officer does not know the name of a person whom he or she has searched, the record of the search shall include a note otherwise describing that person.

(4) The record of a search of a vehicle shall include a note describing and identifying the vehicle.

(5) The record of a search of a person or a vehicle

- (a) shall state
 - (i) the object of the search;
 - (ii) the grounds for making it;
 - (iii) the date and time when it was made;
 - (iv) the place where it was made;
 - (v) whether anything, and if so what, was found;
 - (vi) whether any, and if so what, injury to a person or damage to property appears to the police officer to have resulted from the search; and

(b) shall identify the police officer making it.

(6) If

- (a) a person who has been searched requests a copy of the record of the search; and
- (b) the police officer who conducted the search made a record of it,

the person who made the request shall be entitled to a copy.

(7) If

- (a) the owner of a vehicle which has been searched or the person who was in charge of the vehicle at the time when it was searched requests a copy of the record of the search; and
- (b) the police officer who conducted the search made a record of it,

the person who made the request shall be entitled to a copy.

(8) The requirements imposed by this section with regard to records of searches of vehicles shall apply also to records of searches of vessels, aircraft and hovercraft.

40. (1) Notwithstanding any law to the contrary, this section has effect in relation to the issue to police officers under any law, of warrants to enter and search premises and, an entry on or search of premises under a warrant is unlawful unless it complies with this section.

Search warrant safeguards.

(2) Where a police officer applies for any such warrant it shall be his or her duty

- (a) to state
 - (i) the ground on which he or she makes the application; and
 - (ii) the Act under which the warrant would be issued;
- (b) to specify the premises which it is desired to enter and search; and
- (c) to identify, so far as is practicable, the articles or persons to be sought.

(3) An application for such a warrant shall be made ex parte and supported by an information in writing.

(4) The police officer shall answer on oath any question that the Magistrate or Judge hearing the application asks him or her.

(5) A warrant shall authorise an entry on one occasion only.

(6) A warrant

- (a) shall specify
 - (i) the name of the person who applies for it;

- (ii) the date on which it was issued;
 - (iii) the Act under which it was issued; and
 - (iv) the premises to be searched; and
- (b) shall identify, so far as is practicable, the articles or persons to be sought.

(7) Two copies shall be made of a warrant.

(8) The copies shall be clearly certified as copies.

41. (1) Notwithstanding any law to the contrary, if on an application made by a police officer, a Magistrate or Judge is satisfied that there are reasonable grounds for believing

Power of Magistrate or Judge to authorise entry and search of premises.

- (a) that an arrestable offence has been committed;
- (b) that there is material on premises specified in the application which is likely to be of substantial value, whether by itself or together with other material, to the investigation of the offence;
- (c) that the material is likely to be relevant evidence;
- (d) that it does not consist of or include items subject to legal privilege, excluded material or special procedure material; and
- (e) that any of the conditions specified in subsection (3) applies,

he or she may issue a warrant authorising a police officer to enter and search the premises.

(2) A police officer may seize and retain anything for which a search has been authorised under subsection (1).

(3) The conditions mentioned in subsection (1)(e) are

- (a) that it is not practicable to communicate with any person entitled to grant entry to the premises;
- (b) that it is practicable to communicate with a person entitled to grant entry to the premises but it is not practicable to communicate with any person entitled to grant access to the evidence;
- (c) that entry to the premises will not be granted unless a warrant is

produced; or

- (d) that the purpose of a search may be frustrated or seriously prejudiced unless a police officer arriving at the premises can secure immediate entry to them.

(4) The power to issue a warrant conferred by this section is in addition to any such power otherwise conferred.

Special provisions as to access to excluded material. Schedule 4

42. (1) A police officer may obtain access to excluded material for the purposes of a criminal investigation by making an application under Schedule 4 and in accordance with that Schedule.

(2) Any law passed before this Act under which a search of premises for the purposes of a criminal investigation could be authorised by the issue of a warrant to a police officer shall cease to have effect so far as it relates to the authorisation of searches for

- (a) items subject to legal privilege; or
- (b) excluded material.

(3) Where the items are claimed to be subject to legal privilege or excluded material the police officer shall be able to obtain access to those documents in a sealed condition.

(4) An aggrieved party may apply to the court for an order to have any item obtained pursuant to subsection (3) returned.

43. (1) It shall be lawful for a police officer of the rank of Inspector or above, if he or she considers it necessary for the maintenance and preservation of law and order, the prevention or detection of crime or for the apprehension of offenders, to erect or place barriers in or across any road or street or in any other public place in such manner as he or she may think fit.

Road barriers.

(2) A police officer may take all reasonable steps as he or she considers necessary to prevent a person or vehicle from passing a barrier erected or placed by virtue of subsection (1) and that person, or the driver of that vehicle, who fails to comply with any reasonable signal made by a police officer under this subsection commits an offence and is liable on summary conviction to a fine not exceeding five thousand dollars.

(3) A police officer shall not be liable for any loss, damage or injury occasioned to a vehicle or suffered by a person as a result of any reasonable or necessary steps taken by that police officer under the authority of this section.

Road checks.

44. (1) This section shall have effect in relation to the conduct of road checks by police officers for the purpose of ascertaining whether a vehicle is carrying

- (a) a person who has committed an offence other than a road traffic offence;
- (b) a person who is a witness to such an offence;
- (c) a person intending to commit such an offence; or
- (d) a person who is unlawfully at large.

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(2) For the purposes of this section, a road check consists of the exercise in a locality of the power conferred by section 37 of the Road Traffic Act in such a way as to stop during the period for which its exercise in that way in that locality continues all vehicles or vehicles selected by criterion.

(3) Subject to subsection (5), there may only be such a road check if a police officer of the rank of Inspector or above authorises it in writing.

(4) A police officer may only authorise a road check under subsection (3)

- (a) for the purpose specified in subsection (1)(a) if he or she has reasonable grounds
 - (i) for believing that the offence is an arrestable offence; and
 - (ii) for suspecting that the person is, or is about to be, in the locality in which vehicles would be stopped if the road checks were authorised;
- (b) for the purpose specified in subsection (1)(b), if he or she has reasonable grounds for believing that the offence is an arrestable offence;
- (c) for the purpose specified in subsection (1)(c), if he or she has reasonable grounds
 - (i) for believing that the offence would be an arrestable offence; and
 - (ii) for suspecting that the person is, or is about to be, in the locality in which vehicles would be stopped if the road check were authorised; and

- (d) for the purpose specified in subsection (1)(d), if he or she has reasonable grounds for suspecting that the person is, or is about to be, in the locality.

(5) A police officer below the rank of Inspector may authorise such a road check if it appears to him or her that it is required as a matter of urgency for one of the purposes specified in subsection (1).

(6) If an authorisation is given under subsection (5), it shall be the duty of the police officer who gives it, as soon as it is practicable to do so

- (a) to make a written record of the time at which he or she gives it; and
- (b) to cause a police officer of the rank of Inspector or above to be informed that it has been given.

(7) A police officer of the rank of Inspector or above to whom a report is made under subsection (6) may, in writing, authorise the road check to continue.

(8) If such a police officer considers that the road check should not continue, he or she shall record in writing

- (a) the fact that it took place; and
- (b) the purpose for which it took place.

(9) A police officer giving an authorisation under this section shall specify the locality in which vehicles are to be stopped.

(10) A police officer giving an authorisation under this section, other than an authorisation under subsection (5)

- (a) shall specify a period, not exceeding seven days, during which the road check may continue; and
- (b) may direct that the road check
 - (i) shall be continuous; or
 - (ii) shall be conducted at specified times during that period.

(11) If it appears to a police officer of the rank of Inspector or above that a road check ought to continue beyond the period for which it has been authorised he or she may, from time to time, in writing specify a further period, not exceeding seven days, during which it may continue.

(12) Every authorisation under subsection (11), shall specify

- (a) the name of the police officer giving it;
- (b) the purpose of the road check; and
- (c) the locality in which the vehicles are to be stopped.

(13) The duties to specify the purposes of a road check imposed by subsections (8) and (12) include duties to specify any arrestable offence.

(14) Where a vehicle is stopped in a road check, the person in charge of the vehicle at the time when it is stopped shall be entitled to obtain a written statement of the purpose of the road check if he or she applies for such a statement not later than the end of the period of twelve months from the day on which the vehicle was stopped.

(15) Nothing in this section affects the exercise by police officers of any power to stop vehicles for purposes other than those specified in subsection (1).

Cordons and
curfews.

45. (1) Where it appears to the Commissioner that, having regard to the nature and extent of criminal activity, there are reasonable grounds to believe that in the interest of public safety and public order or for the purpose of preventing or detecting crime it is necessary so to do, the Commissioner may

- (a) establish a cordon around certain localities; or
- (b) with the written permission of the Governor, impose a curfew
 - (i) throughout the Virgin Islands;
 - (ii) on any of the Islands; or
 - (iii) in respect of any locality or place,

to remain within their premises during the hours so specified unless otherwise authorised in writing by a police officer who is in charge of enforcing the said cordon or curfew.

(2) Where the Commissioner has imposed a curfew pursuant to subsection (1)(b) he or she may, with the written permission of the Governor, revoke that curfew.

(3) Where a cordon is imposed, the cordon shall extend for a period not exceeding twelve hours.

(4) Where a curfew is imposed, the curfew shall, unless revoked pursuant to subsection (2), extend for a period not exceeding forty-eight hours.

(5) A person who fails to comply with a curfew or cordon imposed under this section commits an offence.

(6) Nothing in this section and section 46 shall be construed so as to affect the application of the Curfew Act, 2017.

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46. (1) A police officer may stop and search a person whom he or she reasonably suspects to be in contravention of a curfew or cordon imposed under section 45.

Power to stop, search and arrest during a cordon and curfew.

(2) The search of a person under this section shall be carried out by a police officer of the same sex as that person.

(3) Where a police officer, with reasonable cause, suspects that section 44 has been contravened he or she may arrest without a warrant anyone whom he or she, with reasonable cause, suspects to be in contravention.

47. (1) A person who contravenes section 45 is liable on summary conviction to a fine not exceeding three thousand dollars or to imprisonment for a term not exceeding one year, or to both.

Penalties for contravention of section 44.

(2) Where a person is convicted of the contravention of section 45, the court may order that any goods or money in respect of which the offence was committed and is in his or her possession, be forfeited to the Crown or otherwise disposed of.

48. (1) Subject to subsection (2), a police officer may enter and, if necessary, break into any building being or reasonably supposed to be on fire, or any building or land adjoining or near thereto, and any building threatened with damage by floodwater or other hazard without the consent of the owner or occupier, and may do all such acts and things as he or she may deem necessary for extinguishing a fire in any such building, protecting the same, or rescuing any person or property therein from fire, flood-water or other hazard.

Power of police officer to enter and break into premises in case of fire, etc.

(2) Nothing in this section shall derogate from any power exercisable by a fire officer under the provisions of the Fire and Rescue Service Act.

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49. (1) The powers conferred by subsections (2) and (3) are exercisable by a police officer who is lawfully on any premises.

General power of seizure, etc.

(2) The police officer may seize anything which is on the premises if he or she has reasonable grounds for believing

- (a) that it has been obtained in consequence of the commission of an offence; and

- (b) that it is necessary to seize it in order to prevent it being concealed, lost, damaged, altered or destroyed.

(3) The police officer may seize anything which is on the premises if he or she has reasonable grounds for believing

- (a) that it is evidence in relation to an offence whether or not it is being investigated by him or her; and
- (b) that it is necessary to seize it in order to prevent the evidence being concealed, lost or destroyed.

(4) The police officer may require any information which is contained in a computer and is accessible from the premises to be produced in a form in which it can be taken away and in which it is visible and legible if he or she has reasonable grounds for believing

- (a) that
 - (i) it is evidence in relation to an offence which he or she is investigating or any other offence; or
 - (ii) it has been obtained in consequence of the commission of an offence; and
- (b) that it is necessary to do so in order to prevent it being concealed, lost, tampered with or destroyed.

(5) The powers conferred by this section are in addition to any power otherwise conferred.

(6) No power of seizure conferred on a police officer under any Act, is to be taken to authorise the seizure of an item which the police officer exercising the power has reasonable grounds for believing to be subject to privilege.

Extension of powers of seizure to computer and electronic information.

50. (1) Every power which is conferred by a law, to which this section applies, on a police officer who has entered premises in the exercise of a power conferred by that law shall be construed as including a power to seize a computer, as well as require any information contained in the computer or any other material contained in electronic form and accessible from the premises to be produced in a form in which it can be taken away and in which it is visible and legible.

(2) This section applies

- (a) to any law passed before this Act;

(b) to section 41; and

(c) to paragraph 13 of Schedule 4.

(3) The power to seize a computer, as well as require any information contained in the computer or any other material contained in electronic form to be made accessible, does not include the power to alter or delete any material contained therein.

51. (1) A police officer who seizes anything in the exercise of a power conferred by any law, shall, if so requested by a person showing himself or herself

Access and copying.

(a) to be an occupier of premises on which it was seized; or

(b) to have had custody or control of it immediately before the seizure,

provide that person with a record of what he or she seized.

(2) The police officer shall provide the record within a reasonable time from the making of the request for it.

(3) Subject to subsection (8), if a request for permission to be granted access to anything which

(a) has been seized by a police officer; and

(b) is retained by the police for the purpose of investigating an offence,

is made to the police officer in charge of the investigation by a person who had custody or control of the thing immediately before it was so seized or by someone acting on behalf of such a person, the police officer shall allow the person who made the request access to it under the supervision of a police officer.

(4) Subject to subsection (8), if a request for a copy of any such thing is made to the police officer in charge of the investigation by a person who had custody or control of the thing immediately before it was so seized, or by someone acting on behalf of such a person, the police officer shall

(a) allow the person who made the request access to it under the supervision of a police officer for the purpose of copying it; or

(b) photograph or copy it, or cause it to be photographed or copied.

(5) A police officer may also photograph or copy, or have photographed or copied, anything which he or she has power to seize, without a request being

made under subsection (4).

(6) Where anything is photographed or copied under subsection (4)(b), the photograph or copy shall be supplied to the person who made the request.

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(7) The photograph or copy shall be so supplied within a reasonable time from the making of the request.

(8) There is no duty under this section to grant access to, or to supply a photograph or copy of, anything if the police officer in charge of the investigation for the purposes of which it was seized has reasonable grounds for believing that to do so would prejudice

- (a) that investigation;
- (b) the investigating of an offence other than the offence for the purposes of investigating which the thing was seized; or
- (c) any criminal proceedings which may be brought as a result of
 - (i) the investigation of which he or she is in charge; or
 - (ii) any such investigation as is mentioned in paragraph (b).

(9) The provisions of this section apply to any thing seized pursuant to the Proceeds of Criminal Conduct Act, 1997.

(10) For the purposes of subsection (4), “copying” includes “photographing” the thing seized.

Retention.

52. (1) Subject to subsection (4), anything which has been seized by a police officer or taken away by a police officer following a requirement made by virtue of section 49 or 50 may be retained so long as necessary in all the circumstances.

(2) Without prejudice to the generality of subsection (1)

- (a) anything seized for the purposes of a criminal investigation may be retained
 - (i) for use at a trial for an offence; or
 - (ii) for forensic examination or for investigation in connection with an offence; and
- (b) anything may be retained in order to establish its lawful owner where there are reasonable grounds for believing it has been obtained in

consequence of the commission of an offence.

(3) Nothing seized on the ground that it may be used

- (a) to damage property;
- (b) to interfere with evidence; or
- (c) to assist in escape from police detention or lawful custody,

may be retained when the person from whom it was seized is no longer in police detention or the custody of a court or is in the custody of a court but has been released on bail.

(4) Subject to subsection (5), nothing may be retained for either of the purposes mentioned in subsection (2)(a) if a photograph or copy would be sufficient for that purpose.

(5) Where a police officer of at least the rank of Inspector, upon the advice of the Director of Public Prosecutions, is satisfied that despite being photographed or copied a thing should be retained for examination by the judge or jury, that thing shall be retained.

(6) This section also applies to anything retained by the police under the Immigration and Passport Act.

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53. (1) Subject to subsection (2), in this Act, "items subject to legal privilege" means

Meaning of
"items subject to
legal privilege"

- (a) communications between a legal practitioner and his or her client or any person representing his or her client made in connection with the giving of legal advice to the client;
- (b) communications between a legal practitioner and his or her client or any person representing his or her client or between such legal practitioner or his or her client or any such representative and any other person made in connection with or in contemplation of legal proceedings and for the purposes of such proceedings; and
- (c) items enclosed with or referred to in such communications and made
 - (i) in connection with the giving of legal advice; or
 - (ii) in connection with or in contemplation of legal proceedings and for the purposes of such proceedings, when they are in the possession of a person who is entitled to be in possession of them.

(2) Items held and communications made with the intention of furthering a criminal purpose are not items subject to legal privilege.

Meaning of
“excluded
material”

54. In this Act “excluded material” means human tissue or tissue fluid which has been taken for the purposes of diagnosis or medical treatment and which the person holds in confidence.

General arrest
conditions.

55. (1) Where a police officer has reasonable grounds for suspecting that any offence which is not an arrestable offence has been committed or attempted, or is being committed or attempted, he or she may arrest the relevant person if it appears to him or her that service of a summons is impracticable or inappropriate because any of the general arrest conditions is satisfied.

(2) In this section "the relevant person" means any person whom the officer has reasonable grounds to suspect of having committed or having attempted to commit the offence or of being in the course of committing or attempting to commit it.

(3) The general arrest conditions are

- (a) that the name of the relevant person is unknown to, and cannot be readily ascertained by, the police officer;
- (b) that the police officer has reasonable grounds for doubting whether the name furnished by the relevant person as his or her name is his or her real name;
- (c) that
 - (i) the relevant person has failed to furnish a satisfactory address for service; or
 - (ii) the police officer has reasonable grounds for doubting whether an address furnished by the relevant person is a satisfactory address for service;
- (d) that the police officer has reasonable grounds for believing that arrest is necessary to prevent the relevant person
 - (i) causing physical injury to himself or herself or any other person;
 - (ii) suffering physical injury;
 - (iii) causing loss of or damage to property;

(iv) committing an offence against public decency; or

(v) causing an unlawful obstruction of the road; or

(e) that the police officer has reasonable grounds for believing that arrest is necessary to protect a child or other vulnerable person from the relevant person.

(4) For the purposes of subsection (3), an address is a satisfactory address for service if it appears to the police officer

(a) that the relevant person will be at it for a sufficiently long period for it to be possible to serve him or her with a summons; or

(b) that some other person specified by the relevant person will accept service of a summons for the relevant person at it.

(5) Nothing in subsection (3) (d) (iv) authorises the arrest of a person under except where members of the public going about their normal business cannot reasonably be expected to avoid the person to be arrested.

(6) This section shall not prejudice any power of arrest conferred apart from this section.

56. (1) A police officer may, without an order from a Magistrate and without a warrant, arrest any person

Powers of arrest without warrant.

(a) who commits in his or her presence an offence punishable either upon indictment or upon summary conviction;

(b) any person whom he or she suspects upon reasonable grounds of having committed or of being about to commit an offence punishable on indictment;

(c) any person whom another person charges with having committed an offence punishable upon indictment;

(d) any person who assaults or obstructs a police officer in the execution of his or her duty or has escaped or who attempts to escape from lawful custody;

(e) any person who commits a breach of the peace in his or her presence or whom he or she reasonably believes may commit a breach of the peace;

(f) any person

- (i) in whose possession anything that may reasonably be suspected to be stolen property is found, or
 - (ii) who may reasonably be suspected of having committed an offence with reference to that thing;
- (g) any person whom he or she finds lying or loitering in any highway, yard or other place between the hours of eight o'clock in the evening and five o'clock in the morning and not giving a satisfactory account of himself or herself;
- (h) any person whom he or she finds in any highway, yard or other place between the hours of eight o'clock in the evening and five o'clock in the morning and suspects upon reasonable grounds of having committed or being about to commit an offence punishable on indictment;
- (i) any person found between the hours of eight o'clock in the evening and five o'clock in the morning having in his or her possession without lawful excuse any article for use in the course of or in connection with any burglary, theft or cheat within the context of section 230 of the Criminal Code;
- (j) any person for whom he or she has reasonable cause to believe a warrant of arrest has been issued;
- (k) whom he or she suspects on reasonable grounds of having been concerned in any act committed in any place outside of the Virgin Islands which, if committed in the Virgin Islands, would have been punishable as an offence and for which he or she is under the Fugitive Offenders Act, 1967(UK) or the Aviation Security Act, 1982 (UK) or otherwise liable to be apprehended and detained in the Virgin Islands;
- (l) whom he or she suspects on reasonable grounds of having unlawfully in his or her possession any controlled drug or narcotic;
- (m) whom he or she suspects on reasonable grounds to be remanded or bound over to answer a criminal charge before a court and to be about to leave the Virgin Islands without the permission of that court; or
- (n) whom he or she suspects on reasonable grounds to have given security to appear before a court and to be about to leave the Virgin Islands without the permission of that court while such

security remains in force.

(2) This section does not limit the power and authority to proceed against an offender by way of complaint and summons under any applicable law.

57. (1) Subject to the following provisions of this section, and without prejudice to any other law, a police officer may, without a warrant, enter and search any premises for the purpose of

Entry for the purpose of arrest, etc.

- (a) executing
 - (i) a warrant of arrest issued in connection with or arising out of criminal proceedings; or
 - (ii) any warrant issued by a court or officer of the court;
- (b) arresting a person for an arrestable offence;
- (c) arresting a person for an offence under the Criminal Code, 1997 or the Drugs (Prevention of Misuse) Act;
- (d) recapturing a person who is unlawfully at large and whom he or she is pursuing; or
- (e) saving life or limb or preventing serious damage to property.

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(2) Except for the purpose specified in subsection (1)(e), the powers of entry and search conferred by this section

- (a) are only exercisable if the police officer has reasonable grounds for believing that the person whom he or she is seeking is on the premises; and
- (b) are limited, in relation to premises consisting of two or more separate dwellings, to powers to enter and search
 - (i) any parts of the premises which the occupiers of any dwelling comprised in the premises use in common with the occupiers of any other such dwelling; and
 - (ii) any such dwelling in which the police officer has reasonable grounds for believing that the person whom he or she is seeking may be.

(3) The powers of entry and search conferred by this section are exercisable by a police officer, whether in uniform or not.

(4) The power of search conferred by this section is only a power to search to the extent that is reasonably required for the purpose for which the power of entry is exercised.

(5) Where access to premises is denied, a police officer may break and enter those premises to gain access for the purpose of an arrest.

(6) For the avoidance of doubt, the rules of common law under which a police officer has

- (a) power to enter premises without a warrant; and
- (b) power of entry to deal with or prevent a breach of the peace,

are not affected by the provisions of this section.

Information to be given on arrest.

58. (1) Where a person is arrested, he or she is to be informed that he or she is under arrest and of the nature of the offence for which he or she is being arrested as soon as is practicable after his or her arrest.

(2) Where a person is arrested by a police officer, subsection (1) applies regardless of whether the fact of the arrest is obvious.

(3) Nothing in this section is to be taken to require a person to be informed

- (a) that he or she is under arrest; or
- (b) of the ground for the arrest,

if it was not reasonably practicable for him or her to be so informed by reason of his or her having escaped from arrest before the information could be given.

Right to have someone informed when arrested.

59. (1) Where a person has been arrested and is being held in custody in a police station or other premises, he or she shall be entitled, if he or she so requests, to have one friend or relative or other person who is known to him or her or is likely to take an interest in his or her welfare told, as soon as is practicable except to the extent that delay is permitted by this section, that he or she has been arrested and is being detained there.

(2) Delay is only permitted

- (a) in the case of a person who is in police detention for an indictable offence, a firearm offence or an offence under the Drugs (Prevention of Misuse) Act; and

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(b) if a police officer of at least the rank of Inspector authorises it.

(3) In any case, the person in custody shall be permitted to exercise the right conferred by subsection (1) within twenty-four hours from the time of his or her arrest unless a police officer of the rank of Superintendent or above, by written authorisation extends any period of delay beyond twenty-four hours if in his or her opinion, the circumstances of the case are exceptional and merit such further delay.

(4) A police officer may give an authorisation under subsection (2) (b), orally or in writing but, if he or she gives it orally, he or she shall confirm it in writing as soon as is practicable.

(5) Subject to subsection (6), a police officer may only authorise delay where he or she has reasonable grounds for believing that telling the named person of the arrest

- (a) will lead to interference with or harm to evidence connected with an indictable offence or interference with or physical injury to other persons;
- (b) will lead to the alerting of other persons suspected of having committed such an offence but not yet arrested for it; or
- (c) will hinder the recovery of any property obtained as a result of such an offence.

(6) A police officer may also authorise delay where he or she has reasonable grounds for believing that

- (a) the person detained for the indictable offence has benefited from his or her criminal conduct; and
- (b) the recovery of the value of the property constituting the benefit will be hindered by telling the named person of the arrest.

(7) For the purposes of subsection (6), the question whether a person has benefited from his or her criminal conduct is to be decided in accordance with the provisions of the Proceeds of Criminal Conduct Act, 1997 or any other relevant law.

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(8) If a delay is authorised under this section

- (a) the detained person shall be told the reason for it; and
- (b) the reason shall be noted on his or her custody record.

(9) The duties imposed by subsection (8) shall be performed as soon as is practicable.

(10) The rights conferred by this section on a person detained at a police station or other premises are exercisable whenever he or she is transferred from one place to another; and this section applies to each subsequent occasion on which they are exercisable as it applies to the first such occasion.

(11) There may be no further delay in permitting the exercise of the right conferred by subsection (1) once the reason for authorising the delay ceases to subsist.

(12) Nothing in this section applies to a person arrested or detained under the Suppression of Terrorism Act, 1978 (UK).

Access to legal advice.

60. (1) Subject to subsection (4), a person arrested and held in custody in a police station or other premises shall be entitled, if he or she so requests, to consult a legal practitioner privately at any time.

(2) Subject to subsection (3), a request under subsection (1) and the time at which it was made shall be recorded in the custody record.

(3) A request for a legal practitioner is not required to be recorded in the custody record of a person who makes it at a time while he or she is at a court after being charged with an offence.

(4) If a person makes a request for a legal practitioner, he or she shall be permitted to consult a legal practitioner as soon as is practicable except to the extent that delay is permitted by this section.

(5) In any case a person shall be permitted to consult a legal practitioner within twenty-four hours from the time of his or her arrest.

(6) Delay in compliance with a request is only permitted

- (a) in the case of a person who is in police detention for an indictable offence; and
- (b) if a police officer of at least the rank of Superintendent authorises it.

(7) A police officer may give an authorisation under subsection (6) orally or in writing but, if he or she gives it orally, he or she shall confirm it in writing as soon as is practicable.

(8) Subject to subsection (9), a police officer may only authorise delay where he

or she has reasonable grounds for believing that the exercise of the right conferred by subsection (1) at the time when the person detained desires to exercise it

- (a) will lead to interference with or harm to evidence connected with an indictable offence or interference with or physical injury to other persons;
- (b) will lead to the alerting of other persons suspected of having committed that offence but not yet arrested for it; or
- (c) will hinder the recovery of any property obtained as a result of that offence.

(9) A police officer may also authorise delay where he or she has reasonable grounds for believing that

- (a) the person detained for the indictable offence has benefited from his or her criminal conduct; and
- (b) the recovery of the value of the property constituting the benefit will be hindered by the exercise of the right conferred by subsection (1).

(10) For the purposes of subsection (9) the question whether a person has benefited from his or her criminal conduct is to be decided in accordance with the Proceeds of Criminal Conduct Act, 1997 or any other relevant law.

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(11) If delay is authorised

- (a) the detained person shall be told the reason for it; and
- (b) the reason shall be noted on his or her custody record.

(12) The duties imposed by subsection (11) shall be performed as soon as is practicable.

(13) There shall be no further delay in permitting the exercise of the right conferred by subsection (1) once the reason for authorising the delay ceases to subsist.

(14) Nothing in this section applies to a person arrested or detained under the Suppression of Terrorism Act, 1978 (UK).

61. (1) When a person has been taken into custody without a warrant for an offence, a police officer of the rank of Sergeant or above to which that person is brought shall at once enquire into the case, and if, when the enquiry is completed,

Detention of persons arrested without warrant.

there is no sufficient reason to believe that the person has committed an offence that person shall be released forthwith.

(2) If, upon the enquiry, there is reason to believe that the person arrested has committed an offence, that police officer of the rank of Sergeant or above may release the person on bail.

(3) Where the police officer arresting a person determines that he or she does not have sufficient evidence to charge but has reasonable grounds for believing that the detention of that person without being charged is necessary

- (a) to secure or preserve evidence relating to an offence for which he or she is under arrest;
- (b) to obtain that evidence by questioning him or her; or
- (c) to complete the investigation,

that police officer may place that person in police detention for a period not exceeding seventy-two hours from the time of arrest.

(4) A person may not be kept in police detention after the period referred to in subsection (3) except upon the order of a Magistrate court made on the application of a police officer.

(5) The application made under subsection (4) shall be heard in chambers, and the court shall consider whether there are reasonable grounds for believing the matters set out in subsection (3) and, if it is so satisfied, it may order further detention for a further period of seventy-two hours.

(6) Notwithstanding an application made under subsection (4) and an order granted under subsection (5), where there are exceptional circumstances, a police officer may make a further application to the court for an order of detention for a further period of twenty-four hours.

(7) If, at the end of the periods of seventy-two hours and twenty-four hours referred to in subsections (5) and (6), the person is not charged, he or she shall be released without further reference to the court, but may be re-arrested for the offence for which he or she was previously arrested if new information justifying a further arrest has come to light since his or her release.

(8) Wherever in in this section reference is made to a period of seventy-two or twenty-four hours, such reference shall be read and construed as allowing detention for a lesser period at a time so long as the total period of detention under one authority does not exceed seventy-two or twenty-four hours as the case may be.

(9) Subject to subsection (10), a release on bail of a person under this section is a release on bail granted in accordance with this Act or by a court.

(10) Nothing in this Act prevents the re-arrest without warrant of a person released on bail subject to a duty to attend at a police station if new evidence justifying a further arrest has come to light since his or her release.

(11) Subject to subsection (12), in this section references to “bail” are references to bail subject to a duty

- (a) to appear before the court at such time or place; or
- (b) to attend at such police station at such time,

as the police officer granting bail appoints.

(12) If a police officer has granted bail to a person subject to a duty to appear at a police station, that police officer may give written notice to the person that his or her attendance at the police station is no longer required.

(13) If a person arrested for an offence was released on bail subject to a duty to attend at a police station and so attends, he or she may be detained without charge in connection with that offence only if the police officer who granted bail has reasonable grounds for believing that the person’s detention is necessary

- (a) to secure or preserve evidence relating to the offence; or
- (b) to obtain such evidence by questioning him or her.

(14) The time from which the period of detention of a person is to be calculated shall be

- (a) in the case of a person arrested outside of the Virgin Islands, the time at which that person arrives at the first police station to which he or she is taken within the Virgin Islands;
- (b) in the case of a person who attends voluntarily at a police station and is arrested at the police station, the time of his or her arrest;
- (c) in the case of a person who accompanies a police officer to a police station without having been arrested and is arrested at the police station, the time of his or her arrest; or
- (d) in any other case, the time at which the person arrested arrives at the first police station to which he or she is taken after his or her

arrest.

62. (1) A private person may arrest any person who in his or her view commits an arrestable offence. Arrest by private person.

(2) A person found committing an offence involving damage to property may be arrested without a warrant by the owner of the property or his or her employees or persons authorised by him or her.

(3) Where a private person arrests any person without a warrant, that private person shall without unnecessary delay deliver over the person so arrested to a police officer or, in the absence of a police officer, shall take the person to the nearest police station.

(4) If there is reason to believe that such person comes within the provisions of section 56, a police officer shall re-arrest him or her.

(5) If there is reason to believe that such person has committed an arrestable offence and, he or she refuses on the demand of a police officer, to give his or her name and address, or he or she gives a name or address which the police officer has reason to believe to be false, he or she shall be dealt with under section 25, but if there is no reason to believe that he or she has committed an offence he or she shall at once be released.

Arrest elsewhere than at a police station.

63. (1) Where a person is, at any place other than a police station

(a) arrested by a police officer for an offence; or

(b) taken into custody by a police officer after being arrested for an offence by a person other than a police officer,

the person shall be taken by a police officer to a police station as soon as practicable after the arrest.

(2) Nothing in this section prevents a police officer delaying taking a person to a police station if the presence of the person at a place, other than a police station, is necessary in order to carry out such investigations as it is reasonable to carry out immediately.

(3) Where there is any delay the reasons for the delay shall be recorded when the person first arrives at the police station.

(4) Nothing in subsection (1) shall be taken to affect

(a) any provision of the Immigration and Passport Act; or

(b) any provision of the Suppression of Terrorism Act, 1978 (UK).

64. Where for the purpose of assisting with an investigation, a person attends voluntarily at a police station or at any other place where a police officer is present or accompanies a police officer to a police station or any other place without having been arrested

Voluntary attendance at the police station.

(a) he or she shall be entitled to leave at will unless he or she is placed under arrest; or

(b) he or she shall be informed at once that he or she is under arrest if a decision is taken by a police officer to prevent him or her from leaving at will.

65. (1) The Commissioner may designate one or more police officers as custody officers for each police station where persons are kept in custody.

Custody officers.

(2) A police officer may not be designated a custody officer unless he or she is of at least the rank of Sergeant.

(3) A police officer of any rank may perform the functions of a custody officer at a police station if a custody officer is not readily available to perform them.

(4) Subject to the following provisions of this section none of the functions of a custody officer in relation to a person shall be performed by a police officer who at the time when the function falls to be performed is involved in the investigation of an offence for which that person is in police detention at that time.

(5) Nothing in subsection (4) is to be taken to prevent a custody officer from

(a) performing any function assigned to a custody officer

(i) by this Act; or

(ii) by a rule of practice made under section 6(1)(b);

(b) doing anything in connection with the identification of a suspect; or

(c) doing anything under the Road Traffic Act.

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(6) References to a custody officer in this Act include references to a police officer other than a custody officer who is performing the functions of a custody officer by virtue of subsection (3).

(7) Where a person has been detained in custody, the custody officer shall as soon as is practicable after detention ensure that a written record is made of the grounds

for his or her detention and shall cause to be recorded any movement of that detained person outside of the place of detention.

(8) Where a person has been taken into police custody, it shall be the duty of the custody officer to inform such person whether he or she is being

(a) released; or

(b) detained,

as the case may be and the reasons therefor, including whether this is to enable the Director of Public Prosecutions to make a decision under section 78 as to whether he or she should be prosecuted for the offence for which he or she was arrested.

Responsibilities
in relation to
persons detained.

66. (1) Subject to subsections (2) and (4), it shall be the duty of the custody officer at a police station to ensure

(a) that all persons in police detention at that station are treated in accordance with this Act and any rules of practice made under this Act relating to the treatment of persons in police detention; and

(b) that all matters relating to such persons which are required by this Act or by such rules of practice to be recorded are recorded in the custody records relating to such persons.

(2) If the custody officer, in accordance with any rules of practice issued under this Act, transfers or permits the transfer of a person in police detention

(a) to the custody of a police officer investigating an offence for which that person is in police detention; or

(b) to the custody of a police officer who has charge of that person outside the police station,

the custody officer shall cease in relation to that person to be subject to the duty imposed on him or her by subsection (1)(a) and, it shall be the duty of the police officer to whom the transfer is made to ensure that the person is treated in accordance with the provisions of this Act and of any such rules of practice as are mentioned in subsection (1).

(3) If the person detained is subsequently returned to the custody of the custody officer, it shall be the duty of the police officer investigating the offence to report to the custody officer as to the manner in which this section and the rules of practice have been complied with while that person was in his or her custody.

(4) If an arrested juvenile is moved to the custody of the Department of Social

Services, the custody officer shall cease in relation to that person to be subject to the duty imposed on him or her by subsection (1).

(5) Where

(a) a police officer of higher rank than the custody officer gives directions relating to a person in police detention; and

(b) the directions are at variance

(i) with any decision made or action taken by the custody officer in the performance of a duty imposed on him or her under this Act; or

(ii) with any decision or action which would but for the directions have been made or taken by him or her in the performance of such duty,

the custody officer shall refer the matter at once to a police officer of the rank of Superintendent or above who is responsible for the police station for which the custody officer is acting as custody officer.

67. (1) The custody officer at a police station shall ascertain everything which a person has in his or her possession when he or she is

Searches of
detained persons.

(a) brought to a station after being arrested elsewhere or after being committed to custody by an order or sentence of a court; or

(b) arrested at the station or detained there.

(2) The custody officer shall record or cause to be recorded all or any of the things which he or she ascertains under subsection (1).

(3) In the case of an arrested person, any such record shall be made as part of his or her custody record.

(4) Subject to subsection (5), a custody officer may seize and retain any thing found to be in the possession of a detained person or cause any such thing to be seized and retained.

(5) Clothes may only be seized if the custody officer

(a) believes that the person from whom they are seized may use them

(i) to cause physical injury to himself or herself or any other person;

(ii) to damage property;

(iii) to interfere with evidence; or

(iv) to assist him or her to escape; or

(b) has reasonable grounds for believing that they may be evidence relating to an offence.

(6) Subject to subsection (10), a person may be searched if the custody officer considers it necessary to enable him or her to carry out his or her duty under subsection (1) and to the extent that the custody officer considers necessary for that purpose.

(7) A person who is in custody at a police station or is in police detention otherwise than at a police station may at any time be searched in order to ascertain whether he or she has with him or her anything which he or she could use for the purposes specified in subsection (5)(a).

(8) Subject to subsection (9), a police officer may seize and retain, or cause to be seized and retained anything found on such a search.

(9) A police officer may only seize clothes in the circumstances specified in subsection (5).

(10) An intimate search may not be conducted under this section.

(11) A search under this section may be carried out by a police officer other than a custody officer.

(12) A custody officer or, as the case maybe, a police officer, carrying out a search shall be of the same sex as the person searched.

Searches and examination to ascertain identity.

68. (1) If a police officer of at least the rank of Inspector authorises it, a person who is detained in a police station may be searched or examined, or both

(a) for the purpose of ascertaining whether he or she has any mark that would tend to identify him or her as a person involved in the commission of an offence; or

(b) for the purpose of facilitating the ascertainment of his or her identity.

(2) A police officer may only give an authorisation under subsection (1) for the purpose mentioned in paragraph (a) of that subsection if

(a) the appropriate consent to a search or examination that would reveal whether the mark in question exists has been withheld; or

(b) it is not practicable to obtain such consent.

(3) A police officer may only give an authorisation under subsection (1) in a case in which subsection (2) does not apply if

(a) the person in question has refused to identify himself or herself; or

(b) the police officer has reasonable grounds for suspecting that that person is not who he or she claims to be.

(4) A police officer may give an authorisation under subsection (1) orally or in writing but, if he or she gives it orally, he or she shall confirm it in writing as soon as practicable.

(5) Any identifying mark found on a search or examination under this section shall be photographed

(a) with the appropriate consent; or

(b) if the appropriate consent is withheld or it is not practicable to obtain, without it.

(6) Where a search or examination may be carried out under this section, or a photograph may be taken under this section, the only persons entitled to carry out the search or examination, or to take the photograph, are police officers or such other persons approved in writing by the Commissioner.

(7) A person may not under this section carry out a search or examination of a person of the opposite sex or take a photograph of any part of the body of a person of the opposite sex.

(8) An intimate search may not be carried out under this section.

(9) A photograph taken under this section

(a) may be used by, or disclosed to, any person for any purpose related to the prevention or detection of crime, the investigation of an offence or the conduct of a prosecution; and

(b) after being so used or disclosed, may be retained but may not be used or disclosed except for a purpose so related.

(10) In subsection (9)

(a) the reference to crime includes a reference to any conduct which

(i) constitutes one or more criminal offences, whether under the law of the Virgin Islands or of a country or territory outside of the Virgin Islands; or

(ii) is, or corresponds to, any conduct which, if it all took place in any part of the Virgin Islands, would constitute one or more criminal offences; and

(b) the references to an investigation and to a prosecution include references, respectively, to any investigation outside the Virgin Islands of any crime or suspected crime and to a prosecution brought in respect of any crime in a country or territory outside the Virgin Islands.

(11) In this section

(a) references to ascertaining a person's identity include references to showing that he or she is not a particular person; and

(b) references to taking a photograph include references to using any process by means of which a visual image may be produced, and references to photographing a person shall be construed accordingly.

(12) In this section "mark" includes features and injuries and, a mark is an identifying mark for the purposes of this section if its existence in any person's case facilitates the ascertainment of his or her identity or his or her identification as a person involved in the commission of an offence.

Intimate searches.

69. (1) Subject to the following provisions of this section, if a police officer of at least the rank of Inspector has reasonable grounds for believing

(a) that a person who has been arrested and is in police detention may have concealed on him or her anything which

(i) he or she could use to cause physical injury to himself or herself or others; and

(ii) he or she might so use while he or she is in police detention or in custody or in court; or

(b) that such a person may have a controlled drug concealed on him or her;

that police officer may authorise an intimate search of that person.

(2) A police officer may not authorise an intimate search of a person for anything unless he or she has reasonable grounds for believing that it cannot be found without that person being intimately searched.

(3) A police officer may give authorisation under subsection (1) orally or in writing but, if he or she gives it orally, he or she shall confirm it in writing as soon as is practicable.

(4) An intimate search which is only a drug offence search shall be by way of examination by a suitably qualified person.

(5) Except as provided by subsection (4), an intimate search shall be by way of examination by a suitably qualified person unless a police officer of at least the rank of Inspector considers that this is not practicable.

(6) An intimate search which is not carried out as mentioned in subsection (5) shall be carried out by a police officer.

(7) A police officer may not carry out an intimate search of a person of the opposite sex.

(8) An intimate search may not be carried out except

- (a) at a police station;
- (b) at a hospital;
- (c) at a registered medical doctor's surgery; or
- (d) at some other place used for medical purposes.

(9) An intimate search which is only a drug offence search may not be carried out at a police station.

(10) If an intimate search of a person is carried out, the custody record relating to that person shall state

- (a) which parts of his or her body were searched; and
- (b) why they were searched.

(11) The information required to be recorded under subsection (10) shall be recorded as soon as practicable after the completion of the search.

(12) The custody officer at a police station may seize and retain anything which is found on an intimate search of a person, or cause any such thing to be seized and retained

- (a) if he or she believes that the person from whom it is seized may use it

(i) to cause physical injury to himself or herself or any other person;

(ii) to damage property;

(iii) to interfere with evidence; or

(iv) to assist him or her to escape; or

(b) if he or she has reasonable grounds for believing that it may be evidence relating to an offence.

(13) Where anything is seized under this section, the person from whom it is seized shall be told the reason for the seizure unless he or she is

(a) violent or likely to become violent; or

(b) incapable of understanding what is said to him or her.

(14) In this section

“controlled drug” has the meaning assigned to it by section 2(1) of the Drugs (Prevention of Misuse) Act;

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“drug offence search” means an intimate search for a controlled drug which an officer has authorised by virtue of subsection (1)(b); and

“suitably qualified person” means

(a) a registered medical doctor; or

(b) a registered nurse.

X-rays and
ultrasound scans.

70. (1) If a police officer of at least the rank of Inspector has reasonable grounds for believing that a person who has been arrested for an offence and is in police detention may have swallowed a controlled drug, the police officer may authorise that an x-ray is taken of the person or an ultrasound scan is carried out on the person or both.

(2) An x-ray shall not be taken or an ultrasound scan shall not be carried out on a person unless the appropriate consent has been given in writing.

(3) If it is proposed that an x-ray is taken or ultrasound scan is carried out, a police officer shall inform the person who is to be subject to it

(a) of the giving of the authorisation for it; and

(b) of the grounds for giving the authorisation.

(4) An x-ray may be taken or an ultrasound scan carried out only by a suitably qualified person and only at

(a) a hospital;

(b) a registered medical doctor's surgery; or

(c) some other place used for medical purposes.

(5) The custody record of the person shall also state

(a) the authorisation by virtue of which the x-ray was taken or the ultrasound scan carried out;

(b) the grounds for giving the authorisation; and

(c) the fact that the appropriate consent was given.

(6) The information required to be recorded under subsection (5) shall be recorded as soon as practicable after the x-ray has been taken or ultrasound scan carried out, as the case may be.

(7) If the appropriate consent to an x-ray or ultrasound scan of any person is refused without good cause, in any proceedings against that person for an offence

(a) the court, in determining whether there is a case to answer; or

(b) the court or jury, in determining whether that person is guilty of the offence charged,

may draw such inferences from the refusal as appear proper.

(8) In this section "controlled drug" and "suitably qualified person" have the same meaning as in section 69 (14).

71. (1) A police officer may search an arrested person, in any case where the person to be searched has been arrested at a place other than a police station, if the police officer has reasonable grounds for believing that the arrested person may present a danger to himself or herself or others.

Search upon arrest outside of police station.

(2) Subject to subsections (3) to (5), a police officer shall also have power in that case

- (a) to search the arrested person for anything
 - (i) which he or she might use to assist him or her to escape from lawful custody; or
 - (ii) which might be evidence relating to an offence; and
- (b) to enter and search any premises without a warrant in which the arrested person was when arrested or immediately before the arrested person was arrested for evidence relating to the offence for which the arrested person was arrested.

(3) The power to search conferred under subsection (2) is only a power to search to the extent that is reasonably required for the purpose of discovering any such thing or any such evidence.

(4) The powers conferred under this section to search a person

- (a) are not to be construed as authorising a police officer to require a person to remove any more of his or her clothing in public than is reasonably necessary; and
- (b) are to be construed as authorising a search of the person's mouth.

(5) A police officer may not search a person in the exercise of the power conferred under subsection (2)(a) unless he or she has reasonable grounds for believing that the person to be searched may have concealed on him or her anything for which a search is permitted under that paragraph.

(6) A police officer may not search premises in the exercise of the powers conferred under subsection (2)(b) unless he or she has reasonable grounds for believing that there is evidence for which the search is permitted under that paragraph.

(7) A police officer searching a person in the exercise of the power conferred under subsection (1) may seize and retain anything he or she finds, if he or she has reasonable grounds for believing that the person searched might use it to cause physical injury to himself or herself or to any other person.

(8) A police officer searching a person in the exercise of the power conferred under subsection (2)(a) may seize and retain anything he or she finds, if he or she has reasonable grounds for believing

- (a) that he or she might use it to assist him or her to escape from lawful custody; or

(b) that it is evidence of an offence or has been obtained in consequence of the commission of an offence.

(9) Nothing in this section shall be taken to affect the power conferred under the Suppression of Terrorism Act, 1978 (UK).

(10) The search of a person under this section shall be carried out by a police officer of the same sex as that person.

72. (1) The Commissioner may make a rule of practice in connection with the recording of interviews of persons suspected of the commission of criminal offences which are held by police officers at police stations. Recording of interviews.

(2) A recording under this section may be in whatever medium it is recorded including for example, in hard copy, tape recording or other electronic form, or as a sound or visual recording and the recording shall be in accordance the rule of practice for the time being in force under this section.

(3) Evidence obtained in the course of an interview shall not be rendered inadmissible by reason only of the fact that it has been recorded in one form and not another.

73. Where

(a) a person

(i) has been arrested for an offence; and

(ii) is at a police station in consequence of that arrest; and

(b) it appears to a police officer that, if he or she were released from that arrest, he or she would be liable to be arrested for some other offence,

he or she shall be arrested for that other offence.

74. (1) The Commissioner may issue guidance to custody officers as to how to carry out their functions under this Act and to all police officers as to the information required to be sent to the Director of Public Prosecutions under section 75. Guidance.

(2) The Commissioner may from time to time revise guidance issued under this section.

(3) The Commissioner shall publish, in the *Gazette* and a local newspaper

(a) any guidance issued under this section, and

(b) any revisions made to such guidance.

(4) Guidance under this section may make different provision for different cases, circumstances or areas.

Information to be sent to the Director of Public Prosecutions for a determination.

75. (1) Where a person is released on bail or detained in custody, a police officer involved in the investigation of the offence shall, as soon as is practicable, send to the Director of Public Prosecutions all such information or evidence as has been obtained in the case.

(2) The Director of Public Prosecutions shall decide whether the person should be charged with an offence.

PART IV POLICE BAIL AND BREACHES THEREOF

Power of police officers in relation to bail.

76. (1) A police officer of the rank of Inspector or above may, in respect of a person accused of an offence make the following decisions, each of which is a "bail decision":

- (a) a decision to release the person without bail for the offence;
- (b) a decision to grant bail for the offence (with or without the imposition of bail conditions);
- (c) a decision to refuse bail for the offence.

(2) Bail ceases to have effect if

- (a) it is revoked, or
- (b) substantive proceedings for the offence conclude and, at the conclusion of the proceedings, no further substantive proceedings for the offence are pending before a court.

(3) If bail is granted by the police officer for a specified period, bail ceases to have effect at the end of that period, unless sooner revoked but a court before which an accused person is required to appear under as a condition of bail may continue bail if

- (a) bail would otherwise cease to have effect, and
- (b) substantive proceedings for the offence have not concluded.

(4) A police officer cannot make a bail decision if

(a) a bail decision for the offence has been made by a court; or

(b) the accused person has already made a first appearance for the offence and bail has been dispensed with.

(5) A police officer cannot grant bail or release a person without bail if the accused person has been arrested under a warrant to bring the person before a court for sentencing.

(6) In this Part, references to “police officer” shall be construed as references to a police officer of the rank of Inspector or above.

77. (1) A police officer of the rank of Inspector or above shall, before making a bail decision, consider whether there are any unacceptable risks.

Considerations
by police officer
before granting
bail.

(2) For the purposes of this Part, an "unacceptable risk" is an unacceptable risk that an accused person, if released from custody, may

(a) fail to appear at any proceedings for the offence, or

(b) commit a serious offence, or

(c) endanger the safety of victims, individuals or the community, or

(d) interfere with witnesses or evidence;

(e) where there are substantial grounds for believing that the conditions are necessary for the detained person’s own welfare or if a child or young person, their welfare or safety.

(3) A police officer is to consider the following matters, and only the following matters, in deciding whether there is an unacceptable risk:

(a) the accused person's background, including criminal history, circumstances and community ties,

(b) the nature and seriousness of the offence;

(c) the strength of the prosecution case;

(d) whether the accused person has a history of violence;

(e) whether the accused person has previously committed a serious offence while on bail;

- (f) whether the accused person has a pattern of non-compliance with bail conditions;
- (g) the length of time the accused person is likely to spend in custody if bail is refused;
- (h) the likelihood of a custodial sentence being imposed if the accused person is convicted of the offence;
- (i) if the accused person has been convicted of the offence and proceedings on an appeal against conviction or sentence are pending before a court, whether the appeal has a reasonably arguable prospect of success;
- (j) any special vulnerability or needs the accused person has including because of youth or having a cognitive or mental health impairment;
- (k) the need for the accused person to be free to prepare for their appearance in court or to obtain legal advice;
- (l) the need for the accused person to be free for any other lawful reason.

(4) The following matters, to the extent relevant, are to be considered in deciding whether an offence is a serious offence (or the seriousness of an offence), but do not limit the matters that can be considered:

- (a) whether the offence is of a sexual or violent nature or involves the possession or use of an offensive weapon or instrument within the meaning of the Criminal Code, 1997;
- (b) the likely effect of the offence on any victim and on the community generally;
- (c) the number of offences likely to be committed or for which the person has been granted bail or released on parole.

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(5) If the person is not in custody, the question of whether there are any unacceptable risks is to be decided as if the person were in custody and could be released as a result of the bail decision.

Bail decisions possible when there are no unacceptable risks.

78. The following bail decisions can be made if there are no unacceptable risks:

- (a) a decision to release the person without bail;
- (b) a decision to grant bail without the imposition of bail conditions.

79. The following bail decisions can be made if there is an unacceptable risk:

Bail decisions possible when there is an unacceptable risk.

- (a) a decision to grant bail with the imposition of bail conditions;
- (b) a decision to refuse bail, if the police officer is satisfied that there is an unacceptable risk that cannot be sufficiently mitigated by the imposition of bail conditions.

80. (1) Bail can be granted with or without conditions and conditions can be imposed when bail is granted or a bail decision is varied.

Bail conditions.

(2) A bail condition can be imposed only for the purpose of mitigating an unacceptable risk and bail conditions must be reasonable, proportionate to the offence for which bail is granted, and appropriate to the unacceptable risk in relation to which they are imposed.

(3) A bail condition is not to be more onerous than necessary to mitigate the unacceptable risk in relation to which the condition is imposed.

(4) Compliance with a bail condition must be reasonably practicable.

(5) This section does not apply to enforcement conditions.

(6) Bail conditions can impose conduct requirements on an accused person and for purposes of this Part, "conduct requirement" is a requirement that the accused person do or refrain from doing anything.

(7) A bail condition can require security to be provided for compliance with that bail condition and for that purpose, a bail condition can include the following requirements:

- (a) that the accused person, or one or more other acceptable persons, or both, enter into an agreement under which the person agrees to forfeit a specified amount of money if the person granted bail fails to appear before a court in accordance with his or her bail condition;
- (b) that a specified amount of money be deposited with the police and, agreed to be forfeited under such an agreement if the person granted bail fails to appear before a court in accordance with his or her bail condition;
- (c) that acceptable security be deposited with the police as security for the payment of the money agreed to be forfeited under such an agreement.

(8) A requirement of a kind referred to in subsection (7), is a "security requirement".

(9) A security requirement can be imposed only for the purpose of mitigating an unacceptable risk that the accused person will fail to appear at any proceedings for the offence.

(10) A police officer shall not to impose a security requirement unless of the opinion that the purpose for which the security requirement is imposed is not likely to be achieved by imposing other bail conditions.

Information to be provided about bail security agreements.

81. (1) A police officer shall take all reasonable steps to ensure that a person who enters into a bail security agreement is made aware of

(a) the obligations of the person under that agreement, and

(b) the consequences that may follow if the person granted bail fails to comply with his or her bail conditions.

(2) A police officer shall ensure that any person (other than an accused person) who enters into a bail security agreement in compliance with a bail condition is given a written notice setting out the terms of the condition.

(3) A police officer that varies a bail condition that requires entry into a bail security agreement must ensure that any person (other than the accused person) who entered into a bail security agreement in compliance with the bail condition is given a written notice setting out the terms of the condition as varied.

Reasons for decision to be recorded.

82. (1) A police officer who refuses bail shall immediately record the reasons for refusing bail, including the unacceptable risk or risks identified by the officer.

(2) A police officer who imposes bail conditions shall immediately make a record in a book to be known as the “Police Bail Book” and that record shall

(a) specify the reasons for not granting bail unconditionally;

(b) set out the unacceptable risk or risks identified by the officer;

(c) set out the reasons for imposing any security requirement.

(3) If an accused person requests that certain bail conditions be imposed, and other bail conditions are imposed, the police officer shall record reasons for imposing the other conditions.

(4) Regulations made under this Act, may make provision for the making of records under this section and the manner of retaining and otherwise dealing with those records.

83. (1) A police officer shall ensure that, as soon as reasonably practicable after a person in police custody is charged with an offence

Bail decision to be made after person is charged.

(a) a bail decision is made for the offence by the police officer or the person is brought before a court to be dealt with according to law, and

(b) the person is given the bail eligibility information.

(2) A record is to be kept, in the Police Bail Book, verifying that the person charged has been given the bail eligibility information but, it is not necessary to give the bail eligibility information to a person if the person is released without bail.

(3) A police officer may defer making a bail decision in respect of an intoxicated person while the person is an intoxicated person, but only if the deferral does not cause delay in bringing the person before a court.

(4) In this section, "bail eligibility information" means written information, of a kind prescribed by the regulations, about eligibility for bail and the entitlement to request a review of a bail decision made by a police officer.

84. (1) A police officer who grants or refuses bail shall, without unreasonable delay

Procedures after bail decision is made.

(a) ensure that the accused person is informed that the person may communicate with a legal practitioner or other person of the person's choice about bail, and

(b) subject to the regulations, ensure the accused person is provided with any facilities the person requests to enable the person to make that communication that the officer is reasonably able to provide.

(2) A police officer is not required to comply with subsection (1) if the officer believes on reasonable grounds that it is necessary to do so in order to prevent

(a) the escape of an accomplice of the accused person, or

(b) the loss, destruction or fabrication of evidence relating to any offence.

(3) Where a police officer refuses bail, he or she shall ensure any accused person charged with an offence who is refused bail or is not released on bail, is brought before a court as soon as practicable to be dealt with according to law.

85. (1) A police officer who believes, on reasonable grounds, that a person has failed to comply with, or is about to fail to comply with, a bail condition, may

Actions that may be taken to enforce bail requirements.

- (a) decide to take no action in respect of the failure or threatened failure;
or
- (b) issue a warning to the person; or
- (c) issue a notice to the person that requires the person to appear before a court; or
- (d) arrest the person, without warrant, and take the person as soon as practicable before a court; or
- (e) apply to a magistrate for a warrant to arrest the person.

(2) The following matters are to be considered by a police officer in deciding whether to take action, and what action to take (but do not limit the matters that can be considered):

- (a) the relative seriousness or triviality of the failure or threatened failure;
- (b) whether the person has a reasonable excuse for the failure or threatened failure;
- (c) the personal attributes and circumstances of the person, to the extent known to the police officer;
- (d) whether an alternative course of action to arrest is appropriate in the circumstances.

(3) A magistrate may, on application by a police officer under this section, issue a warrant to apprehend a person granted bail and bring the person before a court.

Offence of failing to appear.

86. (1) A person who, without reasonable excuse, fails to attend at the police station in accordance with a bail condition requiring him or her to appear at the time specified, commits an offence and is liable on summary conviction to a fine not exceeding one thousand dollars.

(2) A person who, without reasonable excuse, breaches any other condition attached to his or her bail during the period he or she is on bail, commits an offence and is liable on summary conviction to a fine not exceeding one thousand dollars.

(3) The onus is on the person granted bail to prove reasonable excuse.

No bail to be granted in cases of certain offences.

87. Nothing contained in this Part authorises a police officer to grant bail to a person charged with an offence the penalty of which is life imprisonment.

PART V
POLICE DOGS, PROTECTION OF
POLICE DOGS AND THEIR HANDLERS

Power of
Commissioner to
certify dog
handlers.

88. The Commissioner may, in writing, certify a police officer to be a dog handler for purposes of this Part.

Police dogs may
accompany
police dog
handlers.

89. (1) The Commissioner may acquire a police dog if he or she considers it necessary for the maintenance and preservation of law and order or for the prevention or detection of crime.

(2) A police dog under the control of a police dog handler may enter and be in any place, vehicle or vessel that the police dog handler as a police officer may lawfully enter or be upon.

(3) The Commissioner and a police dog handler in charge of a police dog shall not be liable in any way by reason only that the police dog entered or was in any place, vehicle or vessel in accordance with subsection (2).

Obstruction of
police dog
constitutes
obstruction of
police dog
handler.

90. A person who

(a) obstructs or hinders; or

(b) aids or incites another to obstruct or hinder;

a police dog working under the control of a police dog handler while the police dog handler is performing his or her duties as a member of the Force obstructs or, as the case may be, hinders that officer.

Killing or
injuring police
dogs.

91. (1) A person shall not kill, maim, wound or otherwise injure a police dog or attempt so to do unless the person has lawful excuse for so doing.

(2) A person who contravenes subsection (1) commits an offence and is liable on summary conviction to a fine not exceeding ten thousand dollars or imprisonment for a term not exceeding two years or both.

(3) A court which convicts a person of an offence under this section may, in addition to any penalty which may be imposed, order the person to pay to the Commissioner a reasonable sum for

(a) the treatment, care, rehabilitation and retraining of the police dog concerned; and

(b) where it is necessary to replace the police dog, the acquisition and training of its replacement.

(4) The provisions of the Dogs (Injury to Persons, Cattle and Poultry) Act,

2001 do not apply in respect of a police dog.

92. In any proceedings a document purporting to be signed by the Commissioner stating that at a specified period that

Evidentiary provisions.

(a) a person specified therein was a police dog handler; or

(b) a dog identified therein was a police dog, shall, upon its production in that proceedings, be evidence and, in the absence of evidence to the contrary, conclusive evidence of the matters contained in the document.

PART VI POLICE PROPERTY

Definition of police property.

93. All property coming into the hands of a police officer in his or her capacity as a police officer, with respect to which the owner has not been ascertained, shall be known as police property.

Perishable property.

94. The acquisition of police property of a perishable nature shall be reported without delay to a magistrate who shall make such order as to its disposal as he or she shall, in his or her absolute discretion, deem proper.

Court exhibits.

95. All police property, including money, exhibited in court in any criminal case shall, in the absence of any order of the court, remain police property.

Lost property to be surrendered to the police.

96. A person finding property appearing to be lost or accidentally abandoned shall surrender that property to a police officer, if practicable at a police station, and the surrender of the property shall be reported to the Commissioner who shall by advertisement in the *Gazette*, a local newspaper and by any other available means endeavour to trace the owner of the property.

Lost property to be restored

97. (1) Where a claim is made to police property and the Commissioner is satisfied that the claimant is the true owner of that property, the property shall be restored to the owner.

(2) The rejection by the Commissioner of a claim to police property shall not operate as a bar to recovery of that property by the claimant by court process.

Lost property remaining unclaimed.

98. (1) Where property has come into the possession of the Service in connection with a criminal charge or under section 30 of the Pawnbrokers Act, a Magistrate may, on application by a police officer or by a claimant of the property, make an order for the delivery of the property to the person appearing to the Magistrate to be the owner thereof, or if the owner cannot be ascertained, make such order with respect to the property as the Magistrate considers just.

(2) The making of an order by a Magistrate under this section does not affect the right of any person to take legal proceedings against any person in possession of the property in question for the recovery of the property.

(3) All property that has come into the possession of the Service under the circumstances mentioned in subsection (1) and all property that has otherwise come into possession of the Service in respect of which the owner has not been ascertained and no order of a court has been made with respect thereto shall be dealt with as follows:

- (a) if the property is of a perishable nature, or its custody involves unreasonable expense or inconvenience, it may be sold as soon as convenient after it has come into the possession of the Service;
- (b) if the property consists of money, then, after it has remained in the possession of the Service for a period of three months it shall be dealt with in all respects as is provided in this section with regard to the proceeds of sales; and
- (c) if the property comprises property not described in paragraph (a) or (b), it may be sold by public auction after it has remained in the possession of the Service for three months and has been advertised for a period of fourteen days or, if the Commissioner approves, it may be appropriated for use by the Service in the execution of its duties if the nature of the property so permits.

(4) The proceeds of all sales under this section shall, after deduction of expenses incurred as a result of custody and the sale thereof, be received by the member of the Service in charge of each sale and paid or transmitted to a member of the Service appointed by the Commissioner who shall deposit them to the credit of the Reward Fund and, where the proceeds of sale under this section exceeds five hundred thousand dollars, the amount in excess shall be deposited in the Consolidated Fund.

(5) Notwithstanding subsection (4), property found by any person other than a member of the Service the disposal of which property has not been provided for by any law and has not been claimed by its true owner, may be delivered to the finder on his or her claiming the property but delivery to the finder shall not be made until the property has remained in the possession of the Service for a period of three months.

(6) In any event of property referred to in subsection (5) being of a nature that necessitates the immediate sale thereof, the proceeds of the sale

- (a) shall be paid or transmitted to a member of the Service appointed by the Commissioner who shall deposit the proceeds to the credit of the Police Welfare Fund; and
- (b) may, on the expiration of a period of three months from the date of sale, after deduction of the expenses of sale, be transferred to the finder on his or her claiming them, if they have not been claimed by the true owner.

(7) In all cases in which property deposited with the Service, or the proceeds of the sale thereof are delivered to the finder, the finder may be required to execute a bond of indemnity to the Service in respect of delivery; but if the finder cannot be located or does not claim the property, before the expiration of a period of three months following the date on which the property came into the custody of the Service, the property may be disposed of as set forth in subsection (3).

(8) Subject to any other law for the time being in force in all cases where property that has been deposited with the Service cannot be dealt with in accordance with subsections (2) to (6), the property may be destroyed by the Service on the order of the Commissioner in each case if it is not claimed after the expiration of a period of three months.

Sale by auction of police property.

99. (1) There shall be held in the months of January and July a public auction where all property to be sold pursuant to section 98 shall be disposed of.

(2) The Commissioner with the assistance of the Procurement Unit shall

- (a) cause the property to be exposed to public view;
- (b) cause catalogues of the property to be published; and
- (c) cause an advertisement giving notice of the property and containing a statement of all plate, jewellery and other valuable property, if any, to be disposed of pursuant to section 98 to be published in the *Gazette* and a local newspaper at least one month before the day of the public auction.

(3) All the proceeds of sale of police property under this section, after deducting the expenses of sale, if any, shall be paid into the Consolidated Fund or Welfare Fund.

Sale of police property bars further claims.

100. (1) The sale of police property under section 99 operates as a bar to a claim by a person claiming to have been the owner of any interest in the property at the time of the sale.

(2) Subsection (1) does not operate as a bar to an action for damages against the Commissioner by a person claiming that the property in which he or she had an

interest has been sold in non-compliance with this Part.

101. (1) The Police Welfare Fund established under the Police Act shall be continued under this Act and the following shall be paid into it Welfare Fund continued.

- (a) contributions and payments made by police officers, which shall be deducted from the officers' salary;
- (b) all other authorised contributions.

(2) For the purposes of this section, the Police Welfare Association may with the approval of the Commissioner promote fund raising activities to raise money for payment into the Welfare Fund.

(3) The Police Welfare Executive may accept voluntary contributions to the Welfare Fund, either from police officers or members of the public.

102. (1) Subject to any regulations, the Welfare Fund shall be administered by the Commissioner and the Police Welfare Executive and withdrawals therefrom may only be made with the approval of the Chairman of the Police Welfare Association after consultation with the Police Welfare Executive. Custody and application of Welfare Fund .

(2) The Welfare Fund may be applied for the following purposes:

- (a) assistance to the spouses or families of a deceased police officer or to any police officer discharged from the Service as medically unfit for further service;
- (b) payment to a police officer or special constable as rewards for meritorious acts or service in the execution of duty, where such payments are not met from public funds;
- (c) expenditure for the benefit and advancement of authorised recreation and sport and other branches of police activity organised within the Service;
- (d) provision of assistance in any case that the Commissioner with the Police Welfare Association may consider reasonable for the welfare of police officers.
- (e) awarding of loans and grants to police officers from time to time as may be approved by the Police Welfare Executive and the Commissioner in accordance with policy guidelines governing the application process for loans and grants.
- (f) any other purpose which the Police Welfare Executive considers to be for the general welfare of police officers.

(3) For the avoidance of doubt, the Commissioner shall have an overriding authority to approve or deny a loan or grant from the Welfare Fund.

(4) The Commissioner shall cause proper books of account of the Welfare Fund to be maintained and the Police Welfare Fund shall be subject to an annual audit in such manner as the Commissioner in consultation with the Auditor General, may determine.

(5) The Commissioner may, after consultation with the Police Welfare Association Executive direct the investment of any moneys of the Welfare Fund or any portion thereof by way of a loan or public security under any enactment or by way of deposit in any locally registered bank; and the principal and interest of every such investment may be applied in like manner and for like purposes as the Welfare Fund is by this Act applicable.

PART VII DISCIPLINE

Effect of suspension or interdiction of police officers.

103. (1) A police officer suspended or interdicted under the terms of his or her contract of service or under this Part shall not by reason alone of such suspension or interdiction cease to be a police officer.

(2) Where a police officer is suspended or interdicted the powers, privileges and benefits vested in him or her as a police officer shall be in abeyance during the period of his or her suspension or interdiction but he or she shall remain subject to the same responsibilities, discipline and penalties and to the same authority as if he or she had not been suspended or interdicted.

Suspension or interdiction of police officers.

104. (1) The Governor, acting in accordance with the advice of the Police Service Commission may, suspend or interdict from duty any officer pending any investigation or inquiry into, or trial of, any offence under this or any other law and pending the determination of any appeal, arising from that investigation, inquiry or trial.

(2) A police officer suspended or interdicted from duty under this section shall be entitled to receive three-quarters of his or her pay in respect of the period of suspension or interdiction but, is entitled, on cessation of his or her interdiction, to the full amount of pay withheld from him or her, except that if he or she is

- (a) convicted of an offence, whether upon summary conviction or upon indictment; or
- (b) found guilty of an offence at the conclusion of disciplinary proceedings,

and is not dismissed from the Service, then, he or she is not entitled to receive any pay so withheld.

(3) The Governor, acting after consultation with the Police Service Commission may, by regulation published in the *Gazette*, delegate to the Commissioner the power to suspend, interdict or discipline any police officer of a rank of Chief Inspector and below.

105. (1) A police officer who

Serious offences
by police
officers.

- (a) begins, excites, causes or joins in any mutiny or sedition amongst the Service; or
- (b) does not use his or her utmost endeavours to suppress such mutiny or sedition coming to his or her knowledge; or
- (c) conspires with any other person to cause any mutiny or sedition, or being cognisant of any mutiny or sedition, or intended mutiny or sedition, does not without delay give that information to a senior officer; or
- (d) strikes or offers violence to a senior officer; or
- (e) willfully permits the escape of any person detained in lawful custody,

commits an offence and is liable on summary conviction to a fine not exceeding ten thousand dollars or to imprisonment for a term not exceeding three years or both.

(2) A police officer who is at an unlawful assembly or a riot and does not do everything within his or her power to suppress it, commits an offence and is liable on summary conviction to a fine of five hundred dollars or to imprisonment for a term of six months or both.

(3) A police officer who, absents himself or herself from duty without leave or reasonable cause for a period of 10 consecutive days, shall, unless the contrary is proved, be considered to have had the intention not to return to the Service and by such absence, commits an offence and is liable on summary conviction to a fine not exceeding three thousand dollars or to imprisonment for a term not exceeding one year or both and shall in addition, forfeit all pay and allowances for the period of such absence.

(4) A police officer who

- (a) causes or attempts to cause or does any act calculated to cause disaffection amongst other police officers;

(b) induces or attempts to induce or does any act calculated to induce a police officer to withhold his or her services or to commit breach of discipline; or

(c) aids or incites a police officer or any other person to assault or resist a member of the Service in the execution of his or her duty,

commits an offence is liable on conviction on indictment to imprisonment for a term not exceeding three years; or on summary conviction to a fine not exceeding three thousand dollars or to imprisonment for a term not exceeding six months.

(5) A police officer who loses or causes damage to any arms, equipment, uniform or other accoutrements or property supplied to him or her or committed to his or her charge, in the execution of his or her duty may, in addition to or in lieu of any other punishment, be ordered to make good either partially or wholly the amount of the loss or damage and the amount may, subject to the limitations set out in section 116 (2), be recovered by deductions from moneys due to him or her.

Offences against discipline.

106. (1) A police officer who commits an offence against discipline as may be prescribed under this Act shall be liable to such penalty or punishment as may be prescribed.

(2) Notwithstanding subsection (1)

(a) nothing in this section shall be construed to exempt a police officer from being proceeded against for an offence by any other process of law; and

(b) a police officer shall not be punished twice for the same offence.

Power to arrest police officers.

107. (1) A police officer may arrest without warrant a police officer of a rank lower than his or hers who is accused of an offence against discipline under this Act.

(2) A police officer, other than the Commissioner or Deputy Commissioner, effecting an arrest under subsection (1), shall forthwith bring the accused person before the Commissioner or Deputy Commissioner or, in the absence of either of them, before the most senior officer available.

Discipline for police officers of a rank below Chief Inspector.

108. (1) Any offence against discipline by a police officer of a rank of Chief Inspector and below, may be inquired into and dealt with by the Commissioner acting under his or her powers under section 104 (3).

(2) The Commissioner shall have the power to impose any one or more of the following punishments:

- (a) reprimand;
- (b) severe reprimand;
- (c) a fine not exceeding ten days' pay;
- (d) reduction in rank or seniority; and
- (e) discharge, that is immediate termination of service and of membership of the Service.

(3) A police officer shall not be convicted of an offence against discipline unless the charge has been read and inquired into in his or her presence and he or she has been given sufficient opportunity to make his or her defence to the charge.

(4) A police officer upon whom a punishment is inflicted which entitles him or her to appeal under section 110 shall, at the time when such punishment is imposed, be informed of his or her right of appeal.

109. (1) Any offence against discipline in which the police officer accused is of the rank of Superintendent or above may be inquired into and dealt with by the Commission.

Discipline for police officers of the rank of Chief Inspector or above.

(2) The Commission shall recommend to Governor who shall have the power to impose any one or more of the following punishments:

- (a) reprimand;
- (b) severe reprimand;
- (c) a fine not exceeding ten days' pay;
- (d) reduction in rank or seniority; and
- (e) discharge, that is immediate termination of service and of membership of the Service.

(3) A police officer of the rank of Superintendent or above shall not be convicted of an offence against discipline unless the charge has been read and inquired into in his or her presence and he or she has been given sufficient opportunity to make his or her defence to the charge.

(4) A police officer of the rank of Superintendent or above upon whom a punishment is inflicted which entitles him or her to appeal under section 110 shall, at the time when such punishment is imposed, be informed of his or her

right of appeal.

Appeals.

110. (1) A police officer of a rank of Chief Inspector and below upon whom the Commissioner has imposed any punishment which he or she may impose under section 108, not however being a reprimand, may appeal in the manner provided in regulations to the Governor against either the finding or the punishment or both.

(2) A police officer of the rank of Superintendent or above upon whom the Commission has imposed any punishment which it may impose under section 108, not however being a reprimand, may appeal in the manner provided in regulations to the Governor against either the finding or the punishment or both.

Power to
summon
witnesses.

111. (1) The

(a) Commissioner inquiring into or reviewing an offence against discipline;

(b) Commission inquiring into an offence against discipline or disposing of an appeal under section 110;

shall have power to summon and examine witnesses on oath or affirmation and to require the production of all documents relevant to the inquiry or appeal and, to adjourn the proceedings from time to time.

(2) A person who, having been summoned as a witness pursuant to subsection (1)

(a) upon proof of service, fails to attend at the time and place mentioned in the summons;

(b) fails to attend at an adjournment; or

(c) refuses to answer any question lawfully put to him or her,

commits an offence and is liable on summary conviction to a fine of five hundred dollars or to imprisonment for one month or to both.

(3) A witness summoned pursuant to subsection (1) shall not be obliged to answer any question which may tend to incriminate him or her or render him or her liable to any forfeiture or penalty.

Procedure in
cases of grave or
repeated
offences.

112. (1) In any case where a police officer of a rank below Chief Inspector has, upon inquiry, been found to have committed an offence against discipline and where it appears to the Commissioner after the inquiry that, by reason of the gravity of the offence or by reason of previous offences or for any other reason, the offender would not be adequately punished by any of the punishments he or

she is empowered to impose, the Commissioner shall record any statement which the offender wishes to make in explanation or mitigation and shall stay the proceedings and transmit them to the Commission, and the Commission may recommend to the Governor to impose such punishment as the Commission deems to be warranted.

(2) Where no statement in explanation or mitigation has been recorded, the Commission shall give the accused an opportunity of making representations to it either orally or in writing as the Commission shall direct.

113. (1) The Governor, acting in accordance with the advice of the Police Service Commission, may reduce in rank or discharge from the Service a police officer, who has been convicted by a court in respect of an offence, whether against this Act or otherwise, unless that police officer has successfully appealed that conviction,

Discharge or reduction in rank of police officers convicted by a court.

(2) A reduction in rank or a dismissal under subsection (1) may be ordered in addition to any punishment that may be imposed on conviction whether or not, in the case of a dismissal, a recommendation to that effect has been made by the court convicting.

114. (1) Notwithstanding anything to the contrary contained in this Act or elsewhere, the Commissioner may, without instituting disciplinary proceedings, admonish or reprimand a police officer for minor misconduct including inefficiency, neglect of duty or other act of indiscipline by that officer.

Admonishment and reprimand.

(2) The Commissioner shall, where he or she admonishes or reprimands a police officer under subsection (1), make a record of the admonishment or reprimand and that record shall be signed by both the Commissioner and the officer admonished or reprimanded.

115. (1) Fines imposed under this Act on a police officer for offences against discipline may be enforced by deducting them, either in whole or by monthly deductions from his or her pay but in no case shall a single deduction exceed one-third of his or her pay in any one month.

Fines recoverable from pay.

(2) Where more than one deduction is liable to be made upon the same officer, the enforcement of an order made later in date shall, if necessary, be postponed until the earlier orders for deduction have been satisfied.

116. (1) If a police officer pawns, sells, loses by neglect, makes away with or wilfully or by neglect damages any arms, equipment, clothing or other appointments supplied to him or her or any Government property committed to his or her charge he or she may, in addition to or in lieu of any other punishment, be ordered to make good, either partially or wholly, the amount of such loss or damage, and the amount may be recovered by deductions from his or her pay,

Loss or damage to arms or equipment to be made good by stoppage of pay.

subject to section 115.

(2) An order under subsection (1) shall not be enforced at a rate exceeding one-third of the officer's monthly pay unless the police officer volunteers to pay the amount in full or at a higher rate.

Pay not to accrue during absence without leave or imprisonment.

117. Where a police officer is unlawfully absent from duty without leave, or is serving any sentence of imprisonment for any offence in respect of any period exceeding twenty-four hours, pay shall not accrue to that police officer.

PART VIII PAY, ALLOWANCES AND OTHER FINANCIAL PROVISIONS

Pay and allowances.

118. A police officer shall be paid such pay and allowances as may, from time to time be approved by the Governor and voted for the purpose by the House of Assembly.

Reward Fund.

119. (1) There shall be maintained a fund to be known as the Police Reward Fund, in this Act referred to as the Reward Fund, into which shall be paid all fines imposed on police officers as a result of disciplinary proceedings.

(2) The monies comprising the Reward Fund shall be applied towards the payment of such rewards, gratuities or bounties or for such other purposes as the Commissioner may direct.

(3) Where, by any law in force in the Territory

(a) it is provided that any part or share of any seizure or forfeiture or proceeds thereof is or may be awarded to any person or prosecutor, informer or otherwise; and

(b) in pursuance thereof any such part or share is awarded to a police officer,

that officer is entitled to have it for his or her personal use and benefit.

Investment of Reward Fund.

120. (1) The Governor may direct the Commissioner to invest any monies belonging to the Reward Fund, or any portion thereof, in any loan or public security under any law in force in the Territory or in any bank and the principal and interest on every such investment may be applied in like manner and for the like purposes as the Reward Fund.

(2) The Commissioner shall keep an account of the receipts and disbursements of the Reward Fund, which shall be subject to audit by the Auditor General.

**PART IX
RETIREMENT, PENSIONS AND GRATUITIES**

Interpretation for purposes of this Part .

121. (1) Subject to subsection (2), for the purposes of this Part “pay” in relation to a police officer, includes his or her salary, good conduct pay and detective and national security allowances.

(2) For purposes of computing a police officer’s pension, good conduct pay and detective and national security allowance paid to that officer shall not be included in the computation.

122. There shall be charged on and paid out of the Consolidated Fund all such amounts as are granted by way of pension, gratuity or other allowance in accordance with the provisions of this Part to persons who have been members of the Service.

Pensions to be charged on revenue of Territory

123. (1) Subject to the provisions of this Part, the Governor may grant to every member of the Service on his or her retirement from the Service, if he or she has served in the Service for a period of ten years or more, a pension at the rate of seventeen-sixtieths of his or her pay with an addition of one-sixtieth in respect of each complete year of such service in excess of ten years.

Grant of pensions.

(2) A pension granted by virtue of subsection (1) to a person eligible to receive same shall not exceed two-thirds of the highest pay drawn by him or her at any time in the course of his or her service in the Service.

Pay to be taken for computation of pension etc.

124. (1) For the purposes of computing the amount payable as pension to a police officer the following principles shall be followed, as the case requires

- (a) in the case of a police officer who has held the same rank for a period of three years immediately preceding the date of his or her retirement, the pension payable to him or her shall be based on the full annual pay to which he or she was entitled at that date in respect of that rank;
- (b) in the case of a police officer who, at the time during the period of three years immediately preceding the date of his or her retirement, had been transferred from one rank to another but whose pay has been changed by reasons of the transfer, the pension payable to him or her shall be based on the full annual pay to which he or she was entitled in respect of the rank held by him or her at the date of his or her retirement; and
- (c) in any case not provided for in paragraph (a) or (b), the pension payable to a police officer upon his or her retirement from the Service shall be based on one-third of the aggregate pay enjoyed by him or her

in respect of his or her service during the three years of his or her service immediately preceding the date of his or her retirement.

(2) Notwithstanding subsection (1) (c)

(a) if one-third of the aggregate pay referred to in subsection (1) (c), is less than the highest annual pay to which the member of the Service was entitled at the date of any transfer within the period of three years immediately preceding his or her retirement, then his or her pension shall be based on his or her highest annual pay;

(b) if one-third of the aggregate pay referred to in subsection (1) (c), is less than the annual pay to which he or she was entitled at the date of his or her retirement had he or she

(i) continued to hold the rank from which he or she was transferred, and

(ii) received all increments that, in the opinion of the Governor, might have been granted to him or her,

then, the pension payable to him or her shall be based on the annual pay to which he or she was entitled at the date of his or her retirement.

(3) For the purposes of calculating pay for the computation of pensions under this section, a police officer shall be deemed to have been on duty on full pay throughout the period of three years immediately preceding the date of his or her retirement but if one-third of the aggregate pay referred to in subsection (1) (c), is less than the pay to which he or she was entitled at the date of his or her retirement, had he or she

(a) continued to hold the rank from which he or she was transferred; and

(b) received all increments that, in the opinion of the Governor, might have been granted to him or her,

then, the pension payable to him or her shall be based on the annual pay to which he or she was entitled at the date of his or her retirement.

Increase in pension in special circumstances.

125. A police officer who has completed more than ten of years service but less than twenty years of service and retires from the Service on the findings of a medical board as provided under section 128 (1), may be granted a pension based on twenty years of service.

126. (1) Subject to subsection (2), no pension shall be granted to a police officer who

Circumstances in which pension may not be granted.

(a) has not been in the Service for a continuous period of at least twenty-five years, or

(b) has not attained the age of fifty-five years,

(i) except in a special case where his or her retirement from the Service on or after attaining the age of fifty years is permitted by the Governor in accordance with section 140 (3); or

(ii) unless the Governor is satisfied by the findings of a medical board that the police officer is incapacitated by some infirmity of mind or body for further service in the Service and that the infirmity is likely to be permanent.

(2) Where a police officer

(a) is required to retire in accordance with the provisions of section 128; or

(b) has been discharged in accordance with the provisions of section 19,

and a pension, gratuity or other allowance cannot otherwise be granted to him or her under the provisions of this Part, the Governor may, in his or her discretion, grant that officer a pension, gratuity or other allowance not exceeding that for which he or she would have been eligible if he or she had been permitted to retire from the Service on the findings of a medical board.

Gratuity where length of service does not qualify for pension.

127. The Governor may grant to a police officer a gratuity at the rate of half a month's pay for each complete six months of service if the police officer has reached the age of retirement without having completed ten years' service.

128. Where the Governor considers on the recommendations of the Commissioner that it is desirable in the public interest that a police officer of a rank below the Deputy Commissioner, should be required to retire from the Service, he or she shall call for a full report from the Commissioner concerning that officer and if after

Compulsory retirement.

(a) considering the report; and

(b) giving the officer an opportunity of submitting a reply to the grounds upon which his or her retirement is contemplated,

he or she is satisfied, having regard to the conditions of the Service, the usefulness of the officer thereto and all the other circumstances of the case, that it is desirable

in the public interest that the officer retire from the Service, the Governor may require the officer to retire on such date as the Governor may specify.

Retirement due to injuries received or disease contracted in the discharge of duty.

129. (1) This section applies to a police officer who, while he or she is in the Service

- (a) is permanently injured in the actual discharge of his or her duty by some injury specifically attributable to the nature of his or her duty or an accident whilst on duty which is not wholly or mainly due to, or seriously aggravated by his or her own serious and culpable negligence or misconduct; or
- (b) contracts a disease to which he or she is specifically exposed by the nature of his or her duty, not being a disease wholly or mainly due to, or seriously aggravated by, his or her own serious and culpable negligence or misconduct.

(2) In this section, unless the contrary intention appears, reference to a police officer being injured and to the date on which an injury is sustained shall respectively be construed as including references to a police officer who has contracted a disease as is mentioned in subsection (1) and, references to the date on which the disease is contracted, as the case may be.

(3) Where an officer to whom this section applies is the holder of a pensionable office in which he or she is confirmed,

(a) he or she may, if

- (i) his or her retirement is necessitated or materially accelerated by his or her injury, and
- (ii) he or she has been in the Service for a period of less than ten years,

be granted, in lieu of any gratuity under section 127, a pension under section 123 except that the words “for a period of ten years or more” appearing in section 123 shall be disregarded; and

(b) he or she may be granted on his or her retirement an additional pension at the annual rate of the proportion of his or her actual pay at the date of his or her injury appropriate in his or her case if his or her capacity to contribute to his or her support is reduced, as follows:

- (i) slightly impaired, forty four-hundred-and-eightieths of a month’s pay;
- (ii) impaired, eighty four-hundred-and-eightieths of a month’s pay;

(iii) materially impaired, one hundred and twenty four-hundred-and-eightieths of a month's pay;

(iv) totally destroyed, one hundred and sixty four-hundred-and-eightieths of a month's pay,

except that the amount of the additional pension may be reduced to such an extent as the Governor considers reasonable where the injury is not a cause or the sole cause of retirement.

(4) If, at the time of assessing the amounts of any additional pension or pension to be granted under subsection (3) (b), to a police officer to whom this section applies, there is doubt as to the degree of permanent impairment or his or her capacity to contribute to his or her support, he or she may be granted a provisional award which shall be reviewed when the degree of his or her permanent impairment is ascertained.

(5) Subsection (1) applies in respect of

(a) a police officer who is proceeding by a route approved by the Governor to or from the Territory at the commencement or termination of his or her service in the Territory or at the commencement or termination of a period of leave therefrom, and

(i) is permanently injured as the result of damage to any vessel, aircraft or vehicle in which he or she is traveling, and

(ii) the Governor is satisfied that the damage is attributable to circumstances arising out of any war in which Her Majesty may be engaged; and

(b) a police officer who is

(i) permanently injured while traveling in the execution of duty, and

(ii) the injury is not wholly or mainly due to, or seriously aggravated by, his or her own serious and culpable negligence or misconduct.

(6) In a case where subsection (5) applies, the rates of pension prescribed in subsection (3) shall be sixty four-hundred-and-eightieths, one hundred and twenty four-hundred-and-eightieths, one hundred and eighty four-hundred-and-eightieths and two hundred and forty four-hundred-and-eightieths, respectively.

(7) Where the Governor is satisfied that damages have been or will be recoverable by a police officer in respect of an injury for which an additional pension or

pension may be granted under of subsection (3) (b), the Governor may take the damages into account against such additional pension or pension in such manner and to such extent as he or she considers reasonable and may withhold or reduce the additional pension accordingly.

(8) For the purpose of subsection (7), a police officer shall be deemed to recover damages whether they are paid in pursuance of a judgment or an order of the Court or by way of settlement or compromise of his or her claim and whether or not proceedings are instituted to enforce that claim.

(9) If a police officer

(a) is injured in the execution of his or her duty and the injury is not wholly or mainly due to, or seriously aggravated by his or her own serious culpable negligence or misconduct; or

(b) contracts a disease to which he or she is specifically exposed by the nature of his or her duty, not being a disease wholly or mainly due to or seriously aggravated by, his or her own serious and culpable negligence or misconduct.

and the effects of either the injury or disease do not necessitate retirement nor materially accelerate his or her retirement then, the police officer may be granted compensation by way of an ex gratia payment as recommended to the Governor by a panel of two assessors appointed by him or her at the time for the purpose of the assessment.

Reduced pension
and gratuity.

130. (1) Every police officer who becomes eligible for a pension under the provisions of this Part may, at his or her option, be paid on his or her retirement a reduced pension and gratuity in lieu of a pension for which he or she may be eligible under this Part.

(2) An option referred to in subsection (1), is exercisable not later than the day immediately preceding the date of retirement of the police officer, but the Governor may, in a reasonable case allow the officer to exercise the option at any time between the date of retirement and the date of award of pension.

(3) Where a police officer has exercised an option referred to in subsection (1), his or her decision made as a result of the exercise of the option is irrevocable after the date of his or her retirement.

(4) Where a police officer who has not exercised an option referred to in subsection (1), dies after the date of retirement but before a pension has been awarded under this Part, the Governor may grant a gratuity and a reduced pension as provided in subsection (1) as if the officer had exercised the option before his or her death.

(5) The date of the exercise of the option by a police officer is the date of the receipt by the Commissioner of a written notification thereof signed by the person exercising the option or, in the case of the Commissioner, the date of the receipt by the Governor of a written notification thereof signed by the Commissioner.

131. (1) A reduced pension is a pension equal to three-fourths of the pension that would be payable under this Part including any payments granted under section 129.

Meaning of reduced pension or gratuity.

(2) A gratuity is the amount that one-fourth of the pension payable under this Part, including the payments referred to in this section, when multiplied by twelve and one-half, represents.

Gratuity where police officer dies in the Service or after retirement.

132. (1) Subject to the provisions of section 134, where a police officer dies while in the Service, the Governor may grant to his or her legal personal representative a gratuity of an amount not exceeding either three times his or her annual pay or his or her commuted pension gratuity, if any, whichever is the greater.

(2) For the purposes of this section

(a) “annual pay” means the pay that would be taken for the purpose of computing any pension or gratuity granted to a police officer if he or she had retired from the Service at the date of his or her death, on the findings of a medical board as provided in section 126 (1); and

(b) “commuted pension gratuity” means the gratuity, if any, that might have been granted to a police officer under section 126, if

(i) his or her service had been wholly in the Territory,

(ii) he or she had retired from the Service at the date of his or her death, on the findings of a medical board as provided in section 126 (1), and

(iii) he or she had elected to receive a reduced pension and gratuity.

133. Where a police officer, while he or she is in the Service, dies

(a) in the execution of his or her duty from some injury specifically attributable to the nature of his or her duty or any accident while on duty; or

(b) as a result of contracting a disease to which he or she is specifically exposed by the nature of his or her duty,

Gratuity where death due to injuries received or disease contracted in the discharge of duty.

which injury or disease is not wholly or mainly due to, or seriously aggravated by, his or her own serious or culpable negligence or misconduct and death occurs within seven years from the date of the injury or the contracting of the disease, the Governor may grant to the legal personal representative of the police officer either a gratuity or an amount not exceeding his or her pay for ten years or a gratuity under the provisions of section 132, whichever is the greater.

Pension to dependants.

134. Where a serving police officer, dies, either in the execution of his or her duty from some injury specifically attributable to the nature of his or her duty, or any accident while on duty; or as a result of contracting a disease to which he or she is specifically exposed by the nature of his or her duty; which injury or disease is not wholly or mainly due to, or seriously aggravated by, his or her own serious or culpable negligence or misconduct and death occurs within seven years from the date of the injury or the contracting of the disease, the Governor may grant, in addition to a grant, if any, made to his or her legal personal representative under section 132 or section 133, a pension as follows:

- (a) if the police officer, leaves a surviving spouse but no issue, a pension to that spouse while that spouse remains unmarried at a rate not exceeding one-half of the officer's pay at the date of his or her death or his or her full pension entitlement before commutation, whichever is the greater;
- (b) if the police officer leaves a surviving spouse to whom a pension is granted under paragraph (a) and children, a pension of an amount not exceeding one-eighth of the pension specified in that paragraph, in respect of each child, until that child attains the age of eighteen years;
- (c) if the police officer leaves children but no surviving spouse, or if no pension is granted to the surviving spouse, a pension equal to double the amount specified in paragraph (b) in respect of each child until that child attains the age of eighteen years;
- (d) if the police officer leaves children and a surviving spouse to whom a pension is granted under paragraph (a) and the surviving spouse subsequently dies, a pension equal to double the amount specified in paragraph (b) in respect of each child as from the date of the death of the surviving spouse until the child attains the age of eighteen years;
- (e) if the police officer does not leave a surviving spouse, or if no pension is granted to the surviving spouse, and if his or her mother is wholly or mainly dependent on him or her for her support, a pension to his or her mother of an amount not exceeding the pension that might have been granted to the surviving spouse, while his or her mother is without adequate means of support;

- (f) if the police officer does not leave a surviving spouse or mother, or if no pension is granted to his or her surviving spouse or mother and if his or her father is wholly or mainly dependent on him or her for his support, a pension to the father of an amount not exceeding the pension that might have been granted to the police officer's surviving spouse, while his or her father is without adequate means of support;
- (g) if the police officer does not leave any children who may be eligible for pension under the provisions of this section, but leaves a brother or sister who is wholly or mainly dependent on him or her for support, a pension to any such brother or sister of an amount not exceeding the pension that might have been granted under paragraphs (b) and (c) until he or she attains the age of eighteen years while the brother or sister is without adequate means of support.

(2) Notwithstanding subsection (1)

- (a) if, in the opinion of the Governor, there are compassionate grounds for so doing, he or she may grant to a child of any police officer being a child who, at the date of the death in the Service of the police officer, was wholly or mainly dependent on the officer for support and had attained the age of eighteen years, a pension for such period as the Governor may determine, of an amount not exceeding the pension that may be granted under subsection (1) (b);
- (b) where any police officer dies in the Service and leaves a child who was incapacitated at the time of the officer's death the Governor may, notwithstanding any pension that may have been granted under subsection (1) (b) or (c), grant an additional pension in respect of the incapacitated child after he or she has attained the age of eighteen years and for so long as his or her incapacity continues, of an amount not exceeding one-half of the pension that may have been granted;
- (c) no pension is payable under this subsection at any time in respect of more than six children exclusive of incapacitated children.
- (d) in the case of a pension granted under subsection (1) (b), if the surviving spouse subsequently re-marries, any pension that is being paid to him or her ceases as from the date of the re-marriage and, if it appears to the Governor at any time that a spouse who is in receipt of a pension under subsection (1) is adequately provided with other means of support, the pension shall cease as from such date as the Governor may determine;
- (e) a pension granted to a child under this section ceases upon the marriage of that child.

(3) A police officer shall be deemed to have died in circumstances described in subsection (1) if

(a) he or she is proceeding by a route approved by the Governor to or from the Territory or from one island in the Territory to another, at the commencement or termination of his or her service in the Territory or of a period of leave therefrom and dies as the result of

(i) damage to any vessel, aircraft or vehicle in which he or she is traveling, or

(ii) any act of violence directed against the vessel, aircraft or vehicle,

and the Governor is satisfied that the damage or act is attributable to circumstances arising out of war in which Her Majesty may be engaged; or

(b) he or she dies as a result of an injury received while traveling by air in pursuance of official instructions and the injury is not wholly or mainly due to, or seriously aggravated by, his or her own serious and culpable negligence or misconduct;

except that in a case mentioned in paragraph (a) or (b), the rates of pension prescribed in subsection (1) (a) and (b), shall be fifteen-sixtieths and one-sixth, respectively.

(4) Where the Governor is satisfied that damages have been recovered in respect of a death in respect of which an additional pension or a pension may be granted under subsection (1), the Governor may take those damages into account against the additional pension or pension in such manner and to such extent as he or she thinks fit and may withhold or reduce the additional pension or pension accordingly.

(5) For the purposes of subsection (1), any police officer shall be deemed to recover damages whether they are paid in pursuance of a judgment or an order of a Court or by way of settlement or compromise of his or her claim and whether or not proceedings are instituted to enforce that claim.

(6) For the purposes of this section

(a) “brother and “sister” means brother and sister of the whole blood,

(b) “child” includes

(i) a posthumous child;

- (ii) a step-child;
 - (iii) a child born out of wedlock if the child was conceived before the date of the injury or contracting of the disease, as the case may be, and is wholly or mainly dependent upon the police officer for support; and
 - (iv) an adopted child adopted in a manner recognised by law, before the date of the injury or the contracting of the disease, as the case may be, and is dependent upon the Inspector, Sergeant or Constable for support;
- (c) “incapacitated”, in relation to a child, means incapable by reason of some specific bodily or mental disability of earning his or her own living; and a child who is, in any event, too young to earn his or her own living shall be treated as incapacitated for the purposes of this section if it appears that, by reason of any specific bodily or mental disability, he or she will be incapable of earning his or her own living when he or she attains the age at which he or she would otherwise be capable of so doing; and
- (d) “surviving spouse” means a person of the opposite sex who was the spouse of an individual at the time of his or her death, and who lived with the individual continuously from the date of marriage to the date of death.

Pension not of right.

135. No police officer has an absolute right to compensation for past service or to any pension, gratuity or other allowance under this Part.

136. No pension granted under this Part is assignable, transferable or liable to be attached, sequestered, or levied upon for or in respect of any debt or claim whatsoever.

Pension not to be assignable.

137. (1) If any police officer to whom a pension has been granted under this Part is convicted before a court whether in or outside the Territory, of any offence for which he or she is sentenced to death or a term of imprisonment exceeding twelve months, his or her pension ceases if he or she does not within two months from the date of the conviction receive Her Majesty’s free pardon, or the equivalent thereof.

Pension to cease on conviction.

(2) The Governor may restore the pension of a police officer who after conviction has received Her Majesty’s free pardon or its equivalent at any time, if the officer is resident in the Territory.

Pension to cease on bankruptcy. **138.** The pension of a police officer ceases upon his or her becoming a bankrupt but if the pensioner is resident in the Territory, the Governor may during the remainder of the pensioner's life or during such shorter period either continuous or discontinuous, as the Governor thinks fit, pay all or any part of the pension, to which the pensioner would have been entitled by way of pension had he or she not become bankrupt, towards the maintenance or benefit of all or any of the following persons, namely, the pensioner, his or her spouse and any children of his or hers in such proportions and manner as the Governor considers proper.

Suspension of pension on re-employment. **139.** If any police officer to whom a pension has been granted under this Part is appointed to any office in the Public Service or is re-appointed to the Service, the payment of his or her pension may, if the Governor thinks fit, be suspended during the period of his or her re-employment.

Retirement from the Service. **140.** (1) A police officer may be required by the Governor to retire from the Service after he or she has served twenty-five years or more in the Service.

(2) A police officer may be required by the Governor to retire from the Service on or after attaining the age of fifty years.

(3) The Governor may, on the recommendation by the Commissioner, permit an officer of the rank of Inspector or below to retire on or after attaining the age of fifty years.

Payment of medical expenses and insurance premium after retirement. **141.** A police officer who has retired from the Service on his or her attainment of fifty five years and whilst residing in the Territory shall during the first ten years of such retirement receive hospital treatment and medical and surgical attention at the expense of the Government and, his or her insurance premiums shall be paid for by the Government for the same period as if that retired police officer were still in the Service.

Application of Part VI. **142.** This Part applies to every police officer who is in the Service at the commencement of this Act and is subsequently appointed to or promoted in, the Service.

PART X POLICE WELFARE ASSOCIATION AND PROHIBITED ASSOCIATIONS

Continuation of Police Welfare Association. **143.** (1) The Police Welfare Association established under the repealed Act is hereby continued for the purpose of enabling a police officer to consider and bring to the notice of the Commissioner and the Governor matters affecting their general welfare and efficiency.

(2) The Police Welfare Association shall act through a Board and a Central Committee as provided by rules made under section 143.

(3) No representation shall be made by the Association in relation to any question of discipline, promotion, transfer or leave unless some question of principle is involved.

(4) The Association shall continue to be entirely independent of, and unassociated with, any body outside the Service with the exception of other of other Police Welfare Associations or similar bodies.

144. The Governor may make rules for the constitution and governance of the Association and otherwise in relation there to.

Police Welfare Association Rules.

145. A police officer shall not be, or become a member of any trade union, or any body or association registered or incorporated under the Trade Unions Act.

Members of the Service not to join prohibited association. Cap 300

(2) A police officer shall not be, or become a member of any association, which the Commissioner has deemed to be a prohibited association.

(3) A police officer who is, or becomes a member of a trade union, body or association registered or incorporated under the Trade Unions Act or any prohibited association commits an offence and is liable on summary conviction to a fine of one thousand dollars in addition to dismissal from the Service.

146. No police officer shall

- (a) receive any financial or other benefit from a prohibited association;
- (b) contribute financially or otherwise to a prohibited association; or
- (c) knowingly be a party to any matter prohibited under paragraph (a) or (b).

Prohibition of members of the Service receiving benefits from prohibited associations.

147. (1) No member of the Service, whether he or she is on duty, interdiction, or leave of absence shall

- (a) act as editor of any newspaper, magazine, or periodical or take part directly or indirectly with the management thereof; or
- (b) contribute to, whether anonymously or otherwise, or publish in any newspaper, magazine or periodical or otherwise cause to be published in any manner, including electronically, in the territory or elsewhere, anything which may be regarded as of a political or administrative nature; or

Prohibition of members of the Service in speaking to the press on political and administrative matters.

- (c) allow himself or herself to be interviewed on questions of public policy, or on any matter of a political or administrative nature or on matters affecting the administration or the security of any state or territory; or
- (d) speak in public or broadcast in any way including electronically, on matters which may reasonably be regarded as of a political or administrative nature.

(2) Subsection (1) shall not apply to an officer acting in the execution of his or her duty and with the prior permission of the Commissioner.

**PART XI
VIRGIN ISLANDS AUXILIARY POLICE SERVICE AND SPECIAL
CONTABLES**

148. (1) The Virgin Islands Auxiliary Police Force established under the repealed Act, is hereby continued as the Virgin Islands Auxiliary Police Service.

Continuation of
Auxiliary
Service.

(2) The Auxiliary Service consists of such persons who

- (a) are over eighteen and under fifty-five years of age;
- (b) are of good character, and
- (c) reside in the Territory,

as the Commissioner may, in the public interest and with the approval of the Governor, appoint.

(3) The Commissioner has the command, control and direction of the Auxiliary Service but may delegate such powers as he or she considers fit to a member of the Service appointed by him or her as Commandant thereof.

(4) An appointment made under subsection (3) shall be for such period of time as may be determined by the Commissioner with the approval of the Governor, unless the person appointed earlier resigns his or her office.

General
functions etc of
Auxiliary
Service.

149. (1) Every member of the Auxiliary Service has all the powers, authorities and immunities and shall perform all the duties and is subject to adhere to the discipline and the responsibilities that a police officer has and performs and to which a member of the Service is subject, as the case requires.

(2) Every member of the Auxiliary Service shall be bound by the disciplinary requirements of Police Regulations.

150. (1) Every member of the Auxiliary Service shall, on being appointed, make before a senior police officer the oath or affirmation set forth in paragraph 2 of Schedule 2. Oath of office etc. Schedule 2

(2) A certificate of identity signed by the Commissioner in a form set out in Schedule 2 shall be issued to every member of the Auxiliary Service upon his or her appointment and the certificate is sufficient evidence of the appointment.

151. (1) The Commissioner may, with the approval of the Governor, provide for the issue of such uniform, equipment and accoutrements for the use of members of the Auxiliary Service as he or she considers necessary for the proper discharge of their duties and, the uniform, equipment and accoutrements shall be returned to the Commissioner at such time and place as he or she may direct. Uniform and equipment.

(2) The cost of providing uniform for the members of the Auxiliary Service shall be charged on and paid out of the Consolidated Fund.

152. (1) Members of the Auxiliary Service are entitled to such remuneration for actual hours of duty at such rate as may be prescribed and, on the recommendation of the Commissioner, may be paid an annual bounty not exceeding the prescribed amount. Remuneration of Auxiliary Service.

(2) Any payment made to a member of the Auxiliary Service by way of remuneration or bounty under subsection (1), shall be charged on and paid out of the Consolidated Fund.

153. (1) Where a member of the Auxiliary Service is injured or killed or dies as a result of injuries received in the performance of his or her functions and in a manner not attributable to his or her own serious and culpable negligence or misconduct, the Governor may grant to the member of the Auxiliary Service or his or her legal personal representative, as the case may be, such gratuity as the Governor considers reasonable. Gratuities to Auxiliary Service.

(2) Any payment made by way of a gratuity under subsection (1), shall be charged on and paid out of the Consolidated Fund.

(3) A member of the Auxiliary Service is not, in respect of his or her appointment as such, a workman for the purposes of the Workmen's Compensation Act. Cap. 302

154. A member of the Auxiliary Service who, without reasonable cause, refuses or neglects to discharge any duty of his or her office when required or called upon to do so commits an offence and is liable on summary conviction to a fine not exceeding one thousand dollars. Offences by a member of the Auxiliary Service.

Termination of appointment.

155. (1) A member of the Auxiliary Service may resign his or her appointment at any time by giving notice of not less than one month in writing to the Commissioner but the requirement for a period of notice to be given may be waived at the discretion of the Commissioner.

(2) The Commissioner may with the approval of the Governor, terminate the appointment of a member of the Auxiliary Service whose service is no longer required in which event, he or she shall give not less than one month notice thereof in writing to the member of the Auxiliary Service.

(3) Every member of the Auxiliary Service shall within one week of his or her resignation or of receipt of the notice of termination of his or her appointment under subsection (2), deliver up to the Commissioner his or her certificate of identity and any items of uniform equipment and accoutrements that were supplied to him or her .

(4) A member of the Auxiliary Service to whom subsection (3) applies who fails without good cause to comply with the provisions of that subsection commits an offence and is liable on summary conviction to a fine not exceeding one thousand dollars or to imprisonment for a term not exceeding six months.

Arrest of member of Auxiliary Service.

156. A member of the Auxiliary Service who commits any offence punishable on summary conviction or on indictment may be arrested and dealt with according to law.

Continued medical attention and payment of insurance premium after retirement from the Auxiliary Service.

157. A member of the Auxiliary Service who has retired from the Auxiliary Service on the attainment of fifty-five years and whilst residing in the Territory shall, during the first five years of such retirement, receive hospital treatment and medical and surgical attention at the expense of the Government; and his or her insurance premiums shall be paid for by the Government for the same period aforesaid as if the retired Auxiliary officer were still a member of the Auxiliary Service.

Establishment of Special Constables.

158. There shall be established in the Virgin Islands, Special Constables, who shall, when required, be engaged in support of the Royal Virgin Islands Police Service.

Appointment of Special Constables.

159.(1) Appointment to the Special Constabulary shall be made by the Commissioner with the approval of the Governor.

(2) Special Constables shall be appointed on part-time basis and serve at the discretion of the Commissioner as the Governor may determine.

(3) The service of a Special Constable may be dispensed with by the Commissioner with the approval of the Governor at anytime.

(4) A Special Constable whose service is dispensed with under subsection (3), is entitled to service on him or her either of a notice of one month of termination of his or her service or payment of the retainer for one month in lieu of the notice.

160. (1) The Special Constables shall be under the overall command of the Commissioner, who, subject only to such general directions of policy with respect to the maintenance of public safety and public order as the Governor may give him or her, shall determine the use, control and the operations of the Special Constables, and shall be responsible, subject to such directions as the Governor may give him or her, for the administration of the Special Constables

Command and administration of Special Constables.

(2) The Commissioner may delegate his or her powers under subsection (1), to another senior officer of the Royal Virgin Islands Police Service of a rank of Chief Inspector or above.

161. (1) Every Special Constable unless duly excused from duty shall whilst acting in the execution of their duty or otherwise acting in aid of the Service have all the powers and immunities conferred upon police officers by any statutory provision and shall, be bound to discharge any of the duties imposed upon police officers by or under any statutory provision.

General Powers and duties of Special Constables.

(2) Special Constables shall be bound by the disciplinary requirements of Police Regulations.

Calling out of Special Constables.

162 (1) A senior police officer, may, with the prior approval of the Commissioner, or acting in his or her own discretion, where circumstances necessitates, require a Special Constable to report for duty.

(2) On making of such an order every member of the Special Constabulary affected thereby shall report for service at such place and at such time as may be specified in the order or made known to him or her by or through any of his or her senior officers, and such service shall continue until an order is made by the Commissioner or senior officer to stand down.

163. (1) Where a Special Constable is in the regular employment of another person and is called out for general duty, then his or her employer shall allow him or her to report for duty accordingly and

Duty of employer in relation to Special Constables.

(a) his or her employer shall ensure that any leave or holiday to which he or she would ordinarily be entitled or for which he or she would ordinarily be eligible shall not be prejudiced or restricted by reason of his or her being called out for general duty; and

(b) his or her employer shall ensure that any promotion, privilege or advantage in connection with his or her employment to which he or she would ordinarily be entitled or for which he or she would

ordinarily be eligible shall not be prejudiced by reason of his or her being called out for general duty.

(2) Any employer of a Special Constable who contravenes any of the provisions of subsection (1), commits an offence and is liable on summary conviction to a fine not exceeding a fine of five hundred dollars.

(3) Proceedings in respect of an offence under this section shall not, without the written consent of the Director of Public Prosecution, be instituted by any person other than the person aggrieved by the offence or the Commissioner.

Remuneration of
Special
Constables.

164. Members of the Special Constabulary are entitled to a monthly retainer to be determined by the Governor, after consultation with the National Security Council and Cabinet, and remuneration for actual hours at such rates as may be determined by the Governor.

Discipline and
interdiction.

165. (1) The Commissioner may at any time in the interests of discipline interdict from duty any member of the Special Constabulary who is charged with or is about to be charged with a criminal offence or a disciplinary offence.

(2) A member of the Special Constabulary who commits an offence against discipline as may be prescribed under this Act shall be liable to such penalty or punishment as may be prescribed.

(3) Notwithstanding subsection (2)

(a) nothing in this section shall be construed to exempt a member of the Special Constabulary from being proceeded against for an offence by any other process of law; and

(b) member of the Special Constabulary shall not be punished twice for the same offence.

(4) Any offence against discipline may be inquired into and dealt with by the Commissioner acting under his or her powers under this section.

(5) The Commissioner shall have the power to impose any one or more of the following punishments:

(a) reprimand;

(b) severe reprimand;

(c) a fine not exceeding five days' pay; and

(d) discharge, that is immediate termination of service and of membership

of the Service.

(6) A member of the Special Constabulary shall not be convicted of an offence against discipline unless the charge has been read and inquired into in his or her presence and he or she has been given sufficient opportunity to make his or her defence to the charge.

(7) A member of the Special Constabulary upon whom a punishment is inflicted may appeal to the Governor under this section and shall, at the time when such punishment is imposed, be informed of his or her right of appeal.

(8) Where a member of the Special Constabulary has committed a disciplinary offence or is otherwise guilty of misconduct the Commissioner may, after making such enquiries as he or she may, in his or her absolute discretion, think fit, discharge such member from Special Constabulary.

166. (1) The Commissioner may withhold the monthly retainer of any member of the Special Constabulary interdicted under section 165.

Pay during interdicted.

(2) If such member is not dismissed from the Service, he or she shall receive for the period of his or her interdicted

(a) in the case of acquittal or if no proceedings are brought, the full amount of monies withheld;

(b) in any other case such proportion of his or her pay as the Commissioner thinks fit.

PART XII MISCELLANEOUS

Codes of practice.

167. (1) The Governor may issue Codes of Practice in connection with the detention, treatment and questioning of persons by members of the Service.

(2) The Codes of Practice issued pursuant to this section shall be subject to a negative resolution of the House of Assembly.

Police station to be places of detention.

168. (1) Every police station and police post is a place of detention for a temporary confinement of persons charged with offences and those persons may be received and detained according to law.

(2) There shall be provided in every police station and police post cells or other accommodation for the secure confinement of persons charged with offences.

Publication of official documents or records

169. (1) No police officer may, without the written approval of the Commissioner make public or communicate to the press or to any unauthorised individuals, any documents, papers or information, including any form of electronic document, which may come into his or her possession in his or her official capacity, or make private copies of any document or papers or electronic document.

(2) Every police officer is required to exercise due care and diligence to prevent unauthorised access to or disclosures of such documents and information.

Canteens.

170. (1) There may be established, with the approval of the Commissioner, police canteens in the Territory at which the keepers thereof may sell intoxicating liquor by retail to members of the Service.

(2) The Commissioner may make rules in regard to the hours during which police canteens shall be kept open on each day for the proper management and control thereof.

Funeral and reception allowances.

171. (1) Subject to subsection (7), where a police officer or member of the Auxiliary Service dies while in the service of the Service or Auxiliary Service, the Governor may grant a funeral allowance not exceeding such amount as the Governor may, by Order, specify for the purpose of defraying expenses incurred in relation to the funeral of the deceased.

(2) A funeral allowance may be granted under subsection (1) whether or not the deceased was on duty at the time of his or her death and regardless of the circumstances of his or her death.

(3) A funeral allowance may be granted in respect of

(a) burial costs;

(b) funeral costs, including the cost of printing booklets or programmes;

(c) the cost of a post-funeral reception;

(d) where the deceased died outside the Virgin Islands, the cost of transporting the body of the deceased from the place of his or her death to

(i) the Virgin Islands; or

(ii) such other country or territory as the payee may request, being a country or territory to which the deceased was connected by virtue of birth, citizenship, marriage, family connections or other reason;

(e) where the deceased died in the Virgin Islands, the cost of transporting the body of the deceased from the Virgin Islands to such other country or territory as the payee may request, being a country or territory to which the deceased was connected by virtue of birth, citizenship, marriage, family connections or other reason;

(f) such other costs as the Governor thinks fit.

(4) A funeral allowance shall be paid to any person (in this section referred to as “the payee”) who has met, or who gives to the Governor an undertaking in writing to meet, the whole or part of any of the funeral expenses of the deceased referred to in subsection (3).

(5) Any payment of a funeral allowance shall be subject to the condition that if the payee fails to carry out the undertaking he or she shall repay to the Government any funeral allowance paid to him or her.

(6) Where a retired police officer or member of the Auxiliary Service, who had served at least ten years on the Service or Auxiliary Service, dies, a reception allowance not exceeding such amount as the Governor may, by Order, specify, may be granted by the Governor for the purpose of defraying the cost of a post-funeral reception hosted by the Service or Auxiliary Service as the case may be.

(7) This section shall not apply to a member of the Service or Auxiliary Service who is serving on contract, unless his or her contract provides otherwise.

172. The Governor may appoint a medical board consisting of one or more medical practitioners to examine a police officer who the Governor considers to be incapacitated for further performance of police duties.

Appointment of and examination by medical board.

173. The Governor may, acting in accordance with the advice of the Police Service Commission, discharge from the Service a police officer who is certified by a medical board appointed under section 172 to be incapacitated and unfit for further service by reason of any infirmity of mind or body that is likely to be permanent.

Discharge on medical grounds.

Special police services and fees chargeable.

174. (1) On application made by a person, the Commissioner may at his or her discretion, approve the allocation of any off-duty police officer to perform a special police service

(a) in, upon or about any place, premises, business or vessel;

(b) in connection with private functions or entertainments; or

(c) in connection with any sporting event in enclosed grounds or premises;

(d) by the provision of an escort service,

at a date and time specified by the applicant.

(2) The applicant shall pay to the Commissioner for a service specified in subsection (1) such fee as may be prescribed.

(3) Subject to subsection (6), fees received by the Commissioner pursuant to subsection (2) shall be disbursed by him or her to the police officer who performed the service.

(4) A special police service may be performed only by a police officer who is off duty but the officer, while performing the service, shall wear normal police uniform and accoutrements.

(5) The Commissioner may approve the allocation to escort duties of a member of the Service who is on duty on the application of any person for escort service.

(6) An applicant for escort service shall pay to the Commissioner such fee for the service as may be prescribed and the fee shall be paid by the Commissioner into the Police Welfare Fund.

(7) A person who requires

(a) the issue of

(i) a visa waiver;

(ii) a police certificate;

(iii) a police traffic report;

(b) fingerprinting,

shall apply to the Commissioner in the prescribed form.

(8) An application under subsection (7) (i) and (ii) shall be accompanied by

(a) the full name, address and occupation of the applicant, including particulars of any aliases and change of name by marriage or deed poll;

(b) the applicant's valid passport;

(c) one passport size photo;

(d) the prescribed application fee,

and any other relevant information which the Commissioner may reasonably request.

(9) An application under subsection (7) (iii) shall be accompanied by the prescribed application fee.

(10) An application under subsection (7) (b) shall be accompanied by

(a) the applicant's valid passport;

(b) the prescribed application fee.

(11) Where a person provides false information on an application under subsection (7), that person commits an offence and is liable on summary conviction to a fine not exceeding three thousand dollars or to imprisonment for a term not exceeding one year, or to both.

(12) Upon a satisfactory application being made, the relevant document shall be issued in the prescribed form.

(13) Where fingerprints have been taken pursuant to an application under this section, such fingerprints shall be destroyed or handed over to the applicant at his or her option.

(14) The fees received by the Commissioner pursuant to an application under subsection (7), shall be paid into the Consolidated Fund.

(15) The Commissioner may, by Order, prescribe additional services which may be provided by police officers and the fees payable in respect of those services.

175. (1) The Commissioner may, by Order, approve certain devices by which the quantitative measuring of the proportion of alcohol in a person's breath may be measured by police officers for any lawful purpose including

Power to approve
breath-testing
apparatus.

(a) for breath-testing of drivers or operators of mechanically propelled vehicles used on a road or public place or involved in an accident; or,

(b) for breath-testing of persons operating or reasonably suspected of having operated vessels within the territorial waters of the Virgin Islands where suspicion is held that they are unfit to operate or be in charge of a vessel through alcohol.

(2) Approved breath-testing apparatus may include hand-held devices used in the

field or devices capable of detailed analysis kept at police stations for the purposes of carrying out breath testing for any lawful purpose.

Unlawful possession of articles supplied to police officers.

176. A person who, not being a police officer or special constable, is found in possession of an article which has been supplied to a police officer or special constable for the execution of his or her duty, or any medal or decoration granted to a police officer or special constable for service or good conduct, and who fails to account satisfactorily for the possession thereof, or who without due authority purchases or receives any such article, medal or decoration from a police officer or special constable or who aids or abets a police officer or special constable to sell or dispose of any such article, medal or decoration, commits an offence and is liable on summary conviction to a fine not exceeding one thousand dollars or to imprisonment for a term not exceeding six months or to both.

177. (1) A person who

- (a) assaults any person with intent to commit an offence or to resist or prevent the lawful apprehension or detention of himself or herself or another for any offence;
- (b) assaults, obstructs or resists a police officer acting in the execution of his or her duty or a person acting in aid of that police officer;
- (c) assaults or obstructs any person engaged in the lawful execution of process or in making a lawful distress with intent to rescue any property lawfully taken under such process or distress;
- (d) assaults any person on account of any act done by that person in the execution of a duty imposed on him or her by law;
- (e) aids or incites any person to assault, obstruct or resist a police officer acting in the execution of his or her duty;
- (f) when called upon to do so, refuses to assist a police officer in the execution of his or her duty; or
- (g) wilfully misleads or attempts to mislead a police officer by giving false information with intent to defeat or delay the ends of justice;
- (h) uses any indecent or insulting language or abusive language to a member of the Service or Auxiliary Service in the execution of his or her duty; or

Penalty for assaulting, obstructing, a police officer, etc.

- (i) by the offer of any gratuity, bribe or other inducement prevents or attempts to prevent a police officer from duly exercising his or her duty,

commits an offence and is liable on summary conviction to a fine not exceeding five thousand dollars or to imprisonment for a term not exceeding two years or to both.

(2) In this section, a reference to a “police officer” shall be read to include a reference to a “member of the Auxiliary Service”.

178. A person who knowingly makes or causes to be made to a police officer or a member of the Auxiliary Service a false report of the commission of any offence commits an offence and is liable on summary conviction to a fine of three thousand dollars or to imprisonment for one year, or to both. Penalty for making false report of commission of offence, etc.

179. (1) A person who causes or attempts to cause or does an act calculated to cause disaffection amongst police officers or members of the Auxiliary Service or induces or attempts to induce or does any act calculated to induce a police officer or member of the Auxiliary Service to withhold his or her services or to commit any breach of discipline commits an offence and is liable on summary conviction to a fine not exceeding five thousand dollars or to imprisonment for a term not exceeding two years, or to both. Penalty for causing disaffection, etc.

(2) A police officer of at least the rank of Inspector may, without warrant, arrest a person who is reasonably suspected of having committed an offence under subsection (1).

180. A person who in any police station, police post or cell, or in any part of a police compound or premises commits any riotous, indecent, disorderly or insulting behaviour is liable on summary conviction to a fine not exceeding one thousand dollars or to imprisonment for a term not exceeding six months, or to both. Penalty for disorderly conduct in police station, etc.

181. (1) Nothing in this Act shall exempt any person from being proceeded against under any other law, in respect of any offence made punishable by this Act, or from being liable under any other law to any other higher penalty or punishment than is provided for such an offence by this Act. Power to prosecute under other laws unaffected.

(2) A person shall not be punished twice for the same offence.

182. If the property of a police officer or member of the Auxiliary Service is damaged during the performance of any duty or training by him or her under this Act, that property being damaged without his or her default and on account of circumstances specifically attributable to the nature of his or her duties as such, that police officer or member of the Auxiliary Service shall be compensated out Compensation for damage.

of public funds upon a scale assessed by the Commissioner.

Personation of
police officer.

183. (1) Any person not being a police officer or a member of the Auxiliary Service who puts on or assumes either in whole or in part

- (a) the dress, name, designation, description or certificate of identity of any member of the Service or Auxiliary Service.
- (b) the dress, name, designation, or certification of identity resembling or intended to resemble the dress, name, designation or certificate of identity of any member of the Service or Auxiliary; or
- (c) in any way whatsoever
 - (i) pretends to be a member of the Service or Auxiliary Service for the purposes of obtaining admission into any house or premises or place;
 - (ii) does or promises to do any act or thing that he or she would not be entitled to do of his or her own authority; or
- (d) causes any other person to do or promise to do any act or thing that that person would not be entitled to do or promise to do of his or her own authority,

commits an offence and is liable on summary conviction to a fine of five thousand dollars or to imprisonment for a term of not exceeding one year.

(2) Subsection (1) (a) does not apply to a person wearing the dress of a police officer or member of the Service or Auxiliary in the course of a stage play or other entertainment.

Right to enter
and break into
premises in case
of fire etc.

184. A police officer may, without the consent of the owner or occupier, enter and if necessary break into

- (a) any building that is, or that he or she reasonably suspects to be, on fire;
- (b) any building or land adjoining or near to such a building;
- (c) any building threatened with damage by flood water or sea water or other hazard of nature,

and may do all such acts and things as he or she may deem necessary for extinguishing a fire in any such building or for protecting it or rescuing any person or property therein from fire, flood water, sea water or other hazard of nature.

185. (1) A police officer acting under a court process is not responsible for any irregularity, or any lack of jurisdiction, in its issuing.

Immunity of member of Service acting under authority of warrant.

(2) This section applies to an action if

- (a) it is an action against a police officer in respect of acts done in obedience to a court process; and
- (b) the process is produced; and
- (c) it is proved that
 - (i) the process was issued out of a Court; or
 - (ii) the signature on the process is in the handwriting of the person whose name appears on it, and that the person is reputed to be and acts as an officer of that Court; and
- (d) it is proved that the acts were done in obedience to the process.

(3) If subsection (2) applies to an action

- (a) the Court trying it must enter a verdict for the police officer concerned; and
- (b) the officer may recover his or her costs.

186. (1) A police officer shall, prior to the interview of a person

Right to silence.

- (a) whom he or she suspects to have committed an offence; or
- (b) whom he or she has charged with the commission of an offence,

inform that person that he or she has the right to remain silent and that, if he or she exercises his or her right to remain silent, inferences may be drawn from his or her silence.

(2) The police officer shall, as soon as is practicable, record in the custody record of a person interviewed that he or she has been informed of his or her right to remain silent.

Effect of
accused's failure
or refusal to
account for
objects,
substances or
marks.

187. (1) Where

- (a) a person is arrested by a police officer, and there is
 - (i) on his or her person;
 - (ii) in or on his or her clothing or footwear;
 - (iii) otherwise in his or her possession; or
 - (iv) in any place in which he or she is at the time of his or her arrest,
any object, substance or mark, or there is any mark on any such object;
- (b) that or another police officer investigating the case reasonably believes that the presence of the object, substance or mark may be attributable to the participation of the person arrested in the commission of an offence specified by the police officer;
- (c) the police officer informs the person arrested that he or she so believes, and requests him or her to account for the presence of the object, substance or mark; and
- (d) the person fails or refuses to do so,

then if, in any proceedings against the person for the offence so specified, evidence of those matters is given, subsection (2) applies.

(2) A

- (a) court, in determining whether there is a case to answer; or
- (b) court or jury, in determining whether the accused is guilty of the offence charged,

may draw such inferences from the failure or refusal as appear proper.

(3) Subsections (1) and (2) apply to the condition of clothing or footwear as they apply to a substance or mark thereon.

(4) Subsections (1) and (2) do not apply unless the accused was told in ordinary language by the police officer when making the request mentioned in subsection (1)(c) what the effect of this section would be if he or she failed or refused to comply with the request.

(5) Where the accused was at an authorised place of detention at the time of the

failure or refusal, subsections (1) and (2) do not apply if he or she had not been allowed an opportunity to consult a legal practitioner prior to the request being made.

(6) This section applies in relation to officers of customs and excise as it applies in relation to police officers.

(7) This section does not preclude the drawing of any inference from a failure or refusal of the accused to account for the presence of an object, substance or mark or from the condition of clothing or footwear which could properly be drawn apart from this section.

(8) This section does not apply in relation to a failure or refusal which occurred before the commencement of this section.

188. (1) Where

- (a) a person arrested by a police officer was found by him or her at a place at or about the time the offence for which he or she was arrested is alleged to have been committed;
- (b) that or another police officer investigating the offence reasonably believes that the presence of the person at that place and at that time may be attributable to his or her participation in the commission of the offence;
- (c) the police officer informs the person that he or she so believes, and requests the person to account for that presence; and
- (d) the person fails or refuses to do so,

Effect of
accused's failure
or refusal to
account for
presence at a
particular place.

then if, in any proceedings against the person for the offence, evidence of those matters is given, subsection (2) applies.

(2) A

- (a) court, in determining whether there is a case to answer; and
- (b) court or jury, in determining whether the accused is guilty of the offence charged,

may draw such inferences from the failure or refusal as appear proper.

(3) Subsections (1) and (2) do not apply unless the accused was told in ordinary language by the police officer when making the request mentioned in subsection (1)(c) what the effect of this section would be if he or she failed or refused to comply with the request.

(4) Where the accused was at an authorised place of detention at the time of the failure or refusal, subsections (1) and (2) do not apply if he or she had not been allowed an opportunity to consult a legal practitioner prior to the request being made.

(5) This section applies in relation to officers of customs and excise as it applies in relation to police officers.

(6) This section does not preclude the drawing of any inference from a failure or refusal of the accused to account for his or her presence at a place which could properly be drawn apart from this section.

(7) This section does not apply in relation to a failure or refusal which occurred before the commencement of this section.

Interpretation of
certain
references.

189. (1) In this Act, references to an offence charged include references to any other offence of which the accused could lawfully be convicted on that charge.

(2) References to an authorised place of detention include a police station, prison or any other prescribed place of detention.

(3) Nothing in this Act prejudices the operation of a provision of any other law which provides, in whatever words, that any answer or evidence given by a person in specified circumstances shall not be admissible in evidence against him or her or some other person in any proceedings or class of proceedings.

(4) In subsection (3), the reference to giving evidence is a reference to giving evidence in any manner, whether by furnishing information, making discovery, producing documents or otherwise.

(5) Nothing in this Act prejudices any power of a court, in any proceedings, to exclude evidence, whether by preventing questions being put or otherwise, at its discretion.

(6) Where the court or jury is entitled to draw such inferences as appear proper pursuant to these provisions, the court or jury is entitled to take into account the failure to mention the fact or failure to testify as an additional evidential factor in support of the prosecution case.

(7) A person shall not have the proceedings against him or her transferred to the High Court for trial, have a case to answer or be convicted of an offence

(a) solely; or

(b) mainly,

on an inference drawn from such a failure or refusal as is mentioned in section 187(2) or 188(2).

190. Where any provision of this Act

Power of police officer to use reasonable force.

(a) confers a power on a police officer; and

(b) does not provide that the power may only be exercised with the consent of some person, other than a police officer,

the police officer may use reasonable force, if necessary, in the exercise of the power.

191. A person may use such force as is reasonable in the circumstances in the prevention of crime, or in effecting or in assisting in the lawful arrest of offenders or suspected offenders or of persons unlawfully at large.

Use of force in making arrest, etc.

192. The Governor may make regulations for the good order and government of the Service and for carrying into effect any of the purposes or provisions of this Act including the following:

Regulations.

(a) the numerical establishment of the Service, the conditions of service and the various grades, ranks and appointments therein;

(b) the duties to be performed by police officers and for their guidance in the discharge of such duties;

(c) pay, retirement benefits and allowances;

(d) the description and issue of arms, accoutrements, uniforms and necessaries to be supplied;

(e) discipline and disciplinary procedure;

(f) police identification including measurements, fingerprints, palm prints, photographs and the records thereof;

(g) court procedure;

(h) the interrogation of suspects and witnesses;

(i) the establishment and management of criminal investigation, traffic, drug detection and special branch duties;

(j) the establishment and maintenance of police books and records;

- (k) the care of arms, stores, furniture and equipment;
- (l) the wearing of uniform and badges of rank;
- (m) ceremonial drill and parades;
- (n) the care and sale of police property;
- (o) the role of the police in assisting the fire service;
- (p) the control of processions, riots and disorders;
- (q) the general control of the Special Constabulary;
- (r) prescribing the fees chargeable for administrative services provided to the public; and
- (s) anything required by this Act to be prescribed.

Repeal.
Cap 165
Savings.

193. The Police Act is repealed.

194. (1) All appointments and things lawfully made or done under the repealed Act shall continue in force and shall be deemed to have been made or done under this Act.

(2) Regulations made under the repealed Act, not being inconsistent with this Act, shall remain in force until replaced by Regulations made under this Act.

(3) Codes of Practice made or Guidance issued under the repealed Act, shall continue in force and shall be deemed to have been made or issued under this Act.

SCHEDULE 1

[Section 13]

ROYAL VIRGIN ISLANDS POLICE SERVICE
POLICE OFFICER'S FINGERPRINTS

SCHEDULE 2

[Sections 14 and 15]

ROYAL VIRGIN ISLANDS POLICE SERVICE

Oath or Affirmation

“I _____ do swear / solemnly declare that I will well and truly serve our Sovereign Lady the Queen in the office of _____ without favour or affection, malice or ill will, and that I will cause Her Majesty’s peace to be kept and preserved; and that I will prevent to the utmost of my power, all offences against the same; and that so long as I continue to hold the said office, or any other office in the Royal Virgin Islands Police Service, I will to the best of my skill and knowledge discharge all the duties thereof faithfully according to law - So help me God/I so affirm.”

ROYAL VIRGIN ISLANDS POLICE SERVICE

Identity Certificate

This is to certify that _____

Rank _____

No. _____ whose photograph is attached is a duly attested member of the Royal Virgin Islands Police Service.

Members of the Service and members of the general public are requested to give him or her any assistance he or she may require in the performance of his or her duties.

Commissioner of Police

_____, 20__

SCHEDULE 3

[Section 27 and 29]

IDENTIFICATION EVIDENCE FORMS

SCHEDULE 4

[Section 42 and 50]

SPECIAL PROCEDURE FOR ACCESS

Making of orders by judge

1. If on an application made by a police officer a judge is satisfied that one or other of the sets of access conditions is fulfilled, he or she may make an order under paragraph 4.

2. The first set of access conditions is fulfilled if

(a) there are reasonable grounds for believing

(i) that an indictable offence has been committed;

(ii) that there is material on premises specified in the application, or on premises occupied or controlled by a person specified in the application (including all such premises on which there are reasonable grounds for believing that there is such material as it is reasonably practicable so to specify);

(iii) that the material is likely to be of substantial value (whether by itself or together with other materials) to the investigation in connection with which the application is made; and

(iv) that the material is likely to be relevant evidence;

(b) other methods of obtaining the material

(i) have been tried without success; or

(ii) have not been tried because it appeared that they were bound to fail; and

(c) it is in the public interest, having regard

(i) to the benefit likely to accrue to the investigation if the material is obtained; and

(ii) to the circumstances under which the person in possession of the material holds it,

that the material should be produced or that access to it should be given.

3. The second set of access conditions is fulfilled if

- (a) there are reasonable grounds for believing that there is material on premises occupied or controlled by a person specified in the application (including all such premises on which there are reasonable grounds for believing that there is such material as it is reasonably practicable so to specify);
- (b) but for section 42(2) a search of such premises for that material could have been authorised by the issue of a warrant to a police officer under any law other than this Schedule; and
- (c) the issue of such a warrant would have been appropriate.

4. An order under this paragraph is an order that the person who appears to the judge to be in possession of the material to which the application relates shall

- (a) produce it to a police officer for him or her to take away; or
- (b) give a police officer access to it,

not later than the end of the period of seven days from the date of the order or the end of such longer period as the order may specify.

5. Where the material consists of information stored in any electronic form

- (a) an order under paragraph 4(a) shall have effect as an order to produce the material in a form in which it can be taken away and in which it is visible and legible, or from which it can readily be produced in a visible and legible form; and
- (b) an order under paragraph 4(b) shall have effect as an order to give a police officer access to the material in a form in which it is visible and legible.

6. For the purposes of sections 50 and 51 material produced in pursuance of an order under paragraph 4(a) shall be treated as if it were material seized by a police officer.

Notices of applications for orders

7. An application for an order under paragraph 4 shall be made inter partes.

8. Notice of an application for such an order may be served on a person either by delivering it to him or her or by leaving it at his or her proper address or by sending it by post to him or her in a registered letter or by the recorded delivery service.

9. Where a notice under paragraph 8 is to be served on a body corporate or partnership, it shall be served

- (a) on a body corporate, by serving it on the body's secretary or clerk or other similar officer; or
- (b) on a partnership, by serving it on one of the partners.

10. For the purposes of this Schedule, the proper address of a person, in the case of secretary or other similar officer of a body corporate, shall be that of the registered or principal office of that body, in the case of a partner of a firm shall be that of the principal office of the firm, and in any other case shall be the last known address of the person to be served.

11. Where notice of an application for an order under paragraph 4 has been served on a person, he or she shall not conceal, destroy, alter or dispose of the material to which the application relates except with the leave of a judge, or with the written permission of a police officer, until

- (a) the application is dismissed or abandoned; or
- (b) he or she has complied with an order under paragraph 4 made on the application.

Issue of warrants by judge

12. If on an application made by a police officer a judge

- (a) is satisfied
 - (i) that either set of access conditions is fulfilled; and
 - (ii) that any of the further conditions set out in paragraph 15 is also fulfilled in relation to each set of premises specified in the application; or
- (b) is satisfied
 - (i) that the second set of access conditions is fulfilled; and
 - (ii) that an order under paragraph 4 relating to the material has not been complied with,

he or she may issue a warrant authorising a police officer to enter and search the premises or, as the case may be, all premises occupied or controlled by the person referred to in paragraph 2(a)(ii) or 3(a), including such sets of premises as are

specified in the application (in this Schedule referred to as an "all premises warrant").

13. The judge may not issue an all premises warrant unless he or she is satisfied

(a) that there are reasonable grounds for believing that it is necessary to search premises occupied or controlled by the person in question which are not specified in the application, as well as those which are, in order to find the material in question; and

(b) that it is not reasonably practicable to specify all the premises which he or she occupies or controls which might need to be searched.

14. A police officer may seize and retain anything for which a search has been authorised under paragraph 12.

15. The further conditions mentioned in paragraph 12(a)(ii) are

(a) that it is not practicable to communicate with any person entitled to grant entry to the premises;

(b) that it is practicable to communicate with a person entitled to grant entry to the premises but it is not practicable to communicate with any person entitled to grant access to the material;

(c) that the material contains information which is unlikely to be disclosed if a warrant is not issued; and

(d) that service of notice of an application for an order under paragraph 4 may seriously prejudice the investigation.

16. (1) If a person fails to comply with an order under paragraph 4, a judge may deal with him or her as if he or she had committed a contempt of Court.

(2) The law relating to contempt of Court shall have effect in relation to such a failure as if it were such contempt.

Costs

17. The costs of an application under this Schedule and of anything done or to be done in pursuance of an order made under it shall be in the discretion of the judge provided that where the Crown acts reasonably and in good faith, no costs should be awarded.

Passed by the House of Assembly this day of , 2019.

Speaker.

Clerk of the House of Assembly.

OBJECTS AND REASONS

This Bill seeks to repeal and replace the Police Act (Cap.165).

Part I of the Bill contains clauses 1 and 2 which are preliminary provisions.

Clause 1 provides the short title and clause 2 sets out the definitions of various terms used in the legislation.

Part II of the Bill contains clauses 3 to 19 and deals with the constitution and administration of the Police Service. It also deals with appointments, enlistments, service and discharge of members of the Service.

Clause 3 provides for the continuation of the Royal Virgin Islands Police Force and changes the name of the Force to the Royal Virgin Islands Police Service.

Clause 4 sets out the constitution of the Service to consist of a Commissioner of Police and such other ranks as may be prescribed by the Governor.

Clause 5 provides that the functions of the Service shall be the maintenance and enforcement of law and order, the preservation of peace, the protection of property, the prevention and detection of crime and the apprehension of offenders.

Clause 6 provides for the general powers of the Commissioner which include, among other things, the power to make standing orders, rules of practice and procedure, appointments and promotions and generally to command, superintend and direct the Service.

Clause 7 provides for the administration of the Service which is vested in the Commissioner.

Clause 8 provides that members of the Service shall wear such uniform as the Governor may direct and any such uniform and any arms or accoutrements supplied therewith shall remain the property of the Crown and that a person, not being a member of the Service, who has in his or her possession an article issued to a member of the Service under this section, may be arrested without warrant by any member of the Service.

Clause 9 provides that a police officer ceasing to be a member of the Service shall forthwith deliver up all arms, equipment, uniforms and other appointments which have been supplied to him or her under this Act which are the property of the Crown and, failure to do so is an offence.

Clause 10 provides for the appointment of police officers whilst clause 11 provides for appointments on contract of officers recruited from outside the Territory.

Clause 12 speaks to the qualifications for appointment to the Service whilst clause 13 makes it a requirement to undergo a medical examination for appointment to the Service.

Clause 14 deals with the making of a declaration and other requirements upon enlistment. It requires every police officer on or before entering the Service to make a declaration on oath or affirmation in relation to any previous service he or she has had in any of her Majesty's Forces or any other police force. It further provides that it is an offence for a police officer to make a false statement in reply to any question asked of him or her to which the declaration refers.

Clause 15 deals with the provision of a certificate of appointment in the form of the Identity Card.

Clause 16 establishes that a police officer is bound to serve at any place to which he or she is ordered so to do by a senior officer.

Clause 17 prohibits a police officer from engaging in other employment without the express written authority of the Commissioner. Police officers are also prohibited from engaging in political activities.

Termination of service is dealt with in clauses 18 and 19. Clause 18 provides for termination by way of resignation and clause 19 by way of discharge.

Part III of the Bill contains clauses 20 to 75 and deals with the powers, duties and privileges of police officers.

Clause 20 provides for the general powers and duties of a police officer including the execution of orders and warrants, preventing the commission of offences, suppressing public nuisances and detecting and apprehending offenders.

Clause 21 empowers a police officer to lay and exhibit complaints. Clause 22 provides that police officers are not personally liable for acts done under a warrant.

Clauses 23, 24 and 25 empower a police officer to inspect licences and permits, keep order in public places including the regulating of traffic and to require the names and addresses of persons so asked to be provided. Provision is also made to create an offence where a person disobeys a lawful order given by a police officer.

Clauses 26 to 35 deal with the powers and duties of police officers in relation to identification evidence. Police officers are given the power to take for use and record in the Service's Registry any photograph, description, measurement, fingerprint, palm print, footprint or other physical specimens of any person in lawful custody. Provision is made to permit the taking of elimination

identification evidence from persons present at a crime scene. Procedures are established for the taking of identification evidence which includes the requirement of consent to be given in most cases. Provision is also made for the use of any evidence taken by a police officer and for the destruction of that evidence.

Clauses 36 to 53 deal with the powers and duties of police officers in relation to search and seizure. A police officer has the power to stop and search persons or vehicles and their contents where he or she has reasonable grounds for suspecting that an offence has been committed. There is a duty to make records concerning searches.

The Bill provides for safeguards in relation to the execution of search warrants as well as stipulates special provisions for the issue of search warrants by a Justice of the Peace in particular cases. Provision is also made for access to certain types of material. The power to erect road barriers; make road checks; impose curfews and cordons; stop, search and arrest persons during a cordon or curfew; break and enter premises in case of fire are also provided. A police officer also has the power to seize items found during a search where he or she has reasonable grounds to believe that they were used in the commission of an offence and, where an item is computerised information, he or she may seize the computer or have access to and be afforded the opportunity to copy that material. There is also provision made for the retention of any material seized.

Clauses 55 to 75 deal with the powers and duties of police officers in relation to detention and arrest. A police officer is given the power, with or without a warrant, where he or she has reasonable grounds for suspecting the commission of an arrestable offence to detain a suspect. A police officer also has the power to enter premises for the purpose of arrest. Provision is made for the giving to the person arrested of information such as he or she is under arrest and the nature of the offence for which he or she is arrested. An arrested person has the right to have someone informed upon his or hers arrest and access to legal advice. Provision is made for the detention of persons arrested without a warrant and arrests by private citizens. Arrangements are outlined for the appointment of custody officers and their responsibilities in relation to detained persons including searches and examination of detained persons and the tape or visual recording of interviews.

Part IV of the Bill contains clauses 76 to 87 and deals with the powers of the police in relation to bail and provision is made for rebailing. Provisions in relation to failure to answer bail are also included.

Part V of the Bill contains clauses 88 to 92 and deals with the use of police dogs.

Part VI of the Bill contains clauses 93 to 102 and deals with police property.

Clauses 93, 94 and 95 outline the definition of police property and stipulate the manner in which perishable property and court exhibits are to be handled.

Clauses 96, 97 and 98 deal with lost property recovered by the police; provision is made for restoration upon satisfactory proof of ownership or where it remains unclaimed for its subsequent sale by auction.

Clauses 99 and 100 make provision for sale by auction and the bar to any claim of any property sold by auction.

Clauses 101 and 102 provide for the continuation of the Police Welfare Fund, its custody and application, as well as make it permissible to accept voluntary contributions to the Fund.

Part VII contains clauses 103 to 117 and makes provision with regards to discipline of members of the Service.

Clauses 103 and 104 make provision for the suspension and interdiction of police officers. Clause 105 defines a serious offence by a police officer and specifies the penalty therefor. Clause 106 provides for offences against discipline.

Clauses 107 make provision for the arrest, of a police officer alleged to have committed an offence against discipline. Clause 108 provides for the trial and punishment of police officers other than of the rank of Commissioner, Deputy Commissioner and Assistant Commissioner for offences against discipline.

Clauses 109 provides for the disciplining of police officers of the rank of Commissioner, Deputy Commissioner and Assistant Commissioner for offences against discipline.

Clause 100 makes provisions for appeals. Clause 111 provides for the power to summon witnesses. Clause 112 sets out the procedure in cases of grave or repeated offences. Clause 113 makes provision for the discharge or reduction of rank of police officers convicted by a court. Clause 114 provides for the admonishment and reprimand of a police officer for minor misconduct.

Clause 115 provides for fines to be recoverable by stoppage of pay. Clause 116 makes provision for the cost of lost or damaged arms or equipment supplied to a police officer to be made good by stoppage of pay. Clause 117 provides that no pay is to accrue where a police officer is absent without leave or is in prison.

Part VIII of the Bill contains clauses 118 to 120 and makes provision for the establishment of the Reward Fund and investment of moneys of the Fund.

Part IX of the Bill contains clauses 121 to 142 and makes provision generally for financial matters including allowances payable to police officers, the retirement,

pensions and gratuities payable to police officers.

Part X of the Bill contains clauses 143 to 147 and provides for the continuation of the Police Welfare Association, the making of Association rules and clause 146 prohibits a police officer from becoming a member of any prohibited association.

Part XI of the Bill contains clauses 148 to 166 and deals with the continuation of the Auxiliary Service, its general functions and remuneration of that Service. This Part also deals with the composition and administration of the Special Constables. The Commissioner shall have command, superintendence and direction of the Special Constables.

Part XII of the Bill contains clauses 167 to 194 and deals with miscellaneous provisions. By clause 167, the Governor may issue Codes of Practice in connection with the detention, treatment and questioning of persons by members of the Service and, the Codes shall be subject to a negative resolution of the House of Assembly. By clause 168, every police station and police post shall be a place of detention for a temporary confinement of persons charged with offences and those persons may be received and detained according to law.

Provision is made for the appointment of a medical board, its power to examine, when appropriate, a police officer to make a determination as to whether that officer can be discharged on medical grounds.

Clause 174 makes provisions for special police services and the fees chargeable therefor. Clause 177 makes it an offence to assault a police officer whilst clause 177 makes it an offence to make a false report of commission of an offence.

Clause 185 provides immunity for police officers acting under the authority of a warrant. Clause 192 gives the Governor power to make regulations for the good order and governance of the Service whilst clauses 193 and 194 deal with the repeal of the Police Act (Cap. 165) and savings provisions, respectively.

The Bill has four Schedules as follows:

Schedule 1 contains the forms to be used in relation to the fingerprinting of police officers.

Schedule 2 contains the Oath or Affirmation required to be taken by a police officer as well as the Identity Card that he or she shall receive on appointment.

Schedule 3 contains the forms to be used in relation to identification evidence.

Schedule 4 provides for the special procedure in relation to access of excluded materials and items allegedly subject to legal privilege.

Attorney General