

VIRGIN ISLANDS
SERVICE COMMISSIONS REGULATIONS, 2014
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VIRGIN ISLANDS
STATUTORY INSTRUMENT 2014 NO. 48

SERVICE COMMISSIONS ACT, 2011
(No. 8 of 2011)

Service Commissions Regulations, 2014

[Gazetted 10th July, 2014]

The Governor, in exercise of the powers conferred by section 41 of the Service Commissions Act, 2011, (No. 8 of 2011), makes these Regulations.

PART I
PRELIMINARY

Citation and
commencement.

1. These Regulations may be cited as the Service Commissions Regulations, 2014 and shall come into force on the 15th July, 2014.

Interpretation.

2. In these Regulations unless the context otherwise requires

No. 8 of 2011.

“Act” means the Service Commissions Act, 2011;

“acting appointment” means the temporary appointment of an officer to a higher office whether or not that office is vacant;

“agency” means a statutory body or a private sector organisation;

“appointment” means the appointment of a person to a post in the Public Service;

“Authorised Officer” means a person to whom the functions of the Governor have been delegated under or pursuant to section 92(8) or 93(3) of the Constitution;

“Chairman” means the Chairman of a Commission and includes any person who temporarily acts as the Chairman of the Commission or any other member presiding at a meeting of the Commission;

“Chief Administrator” means the Chief Executive Officer of an agency;

No. 10 of 2004.

“Chief Education Officer” has the meaning assigned to it under section 2 of the Education Act;

“Commission” means the Public Service Commission, the Teaching Service Commission or the Judicial and Legal Services Commission;

“Constitution” means the Virgin Islands Constitution Order 2007;

U.K. S.I. 2007
No. 1678

“Devolution Regulations” means the Appointment to Public Office (Devolution of Human Resource Functions) Regulations, 2008;

S.I. 2008 No.
19

“Director” means the person holding or acting in the office of Director of Human Resources;

“filling a vacancy” has the meaning assigned to it under regulation 8;

“grade” means the salary grade or scale of an office;

“gross inefficiency” means habitual unsatisfactory performance;

“Head of Department” means an officer charged with the responsibility for the management of a particular Department;

“increment” means a progression in a salary grade or scale to a higher scale, which may be awarded to an officer who performs satisfactorily;

“Judicial and Legal Services Commission” means the Commission established under section 94 of the Constitution;

“line manager” means an officer charged with the responsibility for directing and controlling the work and staff of a

(a) unit or division in a Department; or

(b) department in a Ministry.

“medical practitioner” means a person registered as such under the Medical Act, 2000;

No. 4 of 2000

“member” means a person appointed to a Commission, and includes a temporary member;

“office” means a pensionable or non-pensionable post in the public service;

“officer” means a person who is appointed to an office in the public service and includes a person appointed to act in such office;

“pensions law” means the Pensions Act and any regulations made thereunder;

Cap. 161

“pensionable post” means a post that may entitle the holder of the post to a pension where eligible;

“Permanent Secretary” means a person who holds or acts in the office of Cabinet Secretary, Permanent Secretary or Financial Secretary;

“probationary period” means

- (a) a period of up to one year following the employment of a officer; or
- (b) a period of up to one year following the promotion of an officer;

for purposes of assessing the officer’s suitability for the post;

“promotion” means the advancement of an officer in rank or position;

“Public Service Commission” means the Commission established under section 91 of the Constitution;

“relevant Commission”, in relation to an office or officer, means the Commission that is responsible for the office or officer under or pursuant to section 92, 93 or 95 of the Constitution, as the case may be;

“relevant office”, in relation to a Commission, means an office in the public service for which the Commission is responsible under or pursuant to section 92, 93 or 95 of the Constitution, as the case may be;

“relevant officer”, in relation to a Commission, means a person who holds or acts in a relevant office;

“relevant service”, in relation to a Commission, means service in relevant offices;

“salary” means basic salary;

“salary conditions” means the salary conditions attached to a post;

“secondment” means the transfer of an officer from

- (a) the service, to an agency; or
- (b) an agency, to the service;

“Secretariat” means

- (a) in the case of the Public Service Commission, the Department of Human Resources;
- (b) in the case of the Teaching Service Commission, the Department of Education;

“Secretary” means

- (a) in the case of the Public Service Commission or the Teaching Service Commission, a person who holds or acts in the office of Secretary to that Commission; or
- (b) in the case of the Judicial and Legal Services Commission, the person who serves as Secretary to that Commission;

“seniority” means the ranking order of a position in relation to another or the date on which an officer entered the service;

“service” means the service of the Crown in a civil capacity in respect of the Government of the Virgin Islands;

“secondment” means the temporary transfer of an officer or employee for a specified period of time to or from one position to another position, within the public service or outside the public service;

“short-list” means a list of names candidates in a competition for a position, rated in order of suitability for that position;

“Teaching Service Commission” means the Commission established under section 93 of the Constitution.

3. (1) The object of these Regulations is to ensure that

Object and scope.

- (a) the employment, re-employment, promotions, transfers and deployment of all officers is carried out on the basis of merit;
- (b) the disciplining of officers and the disciplinary procedures are fair and transparent.

(2) These Regulations apply to all officers with the exception of those who are members of the Royal Virgin Islands Police Force and those falling within the devolved grades under the Devolution Regulations.

(3) These Regulations shall be read together with the Act and the Public Service Code.

(4) In these Regulations, a reference to a Permanent Secretary shall, with the necessary modifications be deemed, unless otherwise specified in any regulation, to include a reference to the Deputy Governor.

(5) Nothing in these Regulations shall be read so as to limit the Governor's powers under the Constitution.

PART II

SECRETARIAT TO THE RELEVANT COMMISSION

Advice to the
Governor.

4. (1) Subject to the Constitution and the Act, the relevant Commission shall advise the Governor with respect to appointments, promotions, transfers and discipline of officers and termination of appointments.

(2) The relevant Commission shall not, unless directed by the Governor, give any such advice in relation to functions, which have been delegated to Authorised Officers under the Devolution Regulations.

Secretariat or
Secretary.

5. (1) The Director shall act as a resource person and as the Secretariat of the Public Service Commission and shall ensure that efficient secretarial support is provided to that Commission by the Department of Human Resources.

(2) The Chief Education Officer shall act as a resource person and the Secretariat to the Teaching Service Commission and shall ensure that efficient secretarial support is provided to that Commission by the Department of Education.

(3) The person who serves as Secretary to the Judicial and Legal Services Commission shall act as a resource person to the Commission and shall ensure that efficient secretarial support is provided to that Commission.

(4) The Secretariat or Secretary shall

- (a) administer the Act and these Regulations;
- (b) provide the relevant Commission with information at its request and, carry out research required by that Commission to facilitate that Commission in its advisory role to the Governor;
- (c) implement the decisions and advice of the Commission;
- (d) provide direction, advice or assistance to Ministries and Departments in the application of human resources management policies, standards, regulations and procedures as relates to the functions of a Commission;

- (e) fulfil any other responsibilities that the relevant Commission or Governor may assign.

(5) A Permanent Secretary or Head of Department who wishes to report any matter to the relevant Commission shall do so

- (a) in the case of the Public Service Commission or the Teaching Service Commission, through the Secretariat which shall bring the matter to the attention of the relevant Commission; or
- (b) in the case of the Judicial and Legal Services Commission, through the Secretary who shall bring the matter to the attention of that Commission.

(6) The relevant Commission shall advise the Governor on any matter brought to its attention pursuant to these Regulations.

PART III

RECRUITMENT, APPOINTMENT, SELECTION AND TRANSFER

6. Every application for first appointment to the public service shall be addressed to the Secretariat or Secretary.

Application for appointment.

7. (1) As soon as it is known that a vacancy will occur in a Ministry or Department, a Permanent Secretary or Head of Department shall report the vacancy to the Secretariat or Secretary.

Filling of vacancies.

(2) Where a vacancy exists for more than three months and no request has been made by the Permanent Secretary or Head of Department for the filling of that vacancy, the Secretariat or Secretary shall send to that Permanent Secretary or Head of Department a statement of existing vacancies within the Ministry or Department requesting early recommendations for the filling of those vacancies.

(3) Where a Permanent Secretary or Head of Department fails, without an explanation, to make recommendations pursuant to subregulation (2), the Secretary or Secretariat shall report that failure to the Governor.

8. (1) To be appointed to any post in the service an applicant shall

Entry requirements.

- (a) submit an application and all supporting documents;
- (b) meet the minimum qualifications specified for that position;
- (c) undergo a medical examination pursuant to regulation 16;
- (d) produce any other requirements relevant to the post that may be specified in the vacancy notice or job description.

(2) The relevant Commission shall consider only those applicants who have met the minimum qualifications based upon all relevant supporting documents.

(3) An applicant, who obtains employment in the service based on false or misleading information or who omits significant information on an application or other document submitted in obtaining employment, commits misconduct and shall be subject to disciplinary action including dismissal.

(4) For purposes of this regulation “supporting document” includes but is not limited to, certified copies of certificates of degrees or academic achievements, police clearance certificate, certified copy of photo identification, photo page of passport or reference letters.

Procedure for
filling vacancies.

9. (1) For the purposes of these Regulation, “filling a vacancy” means the appointment, re-appointment, promotion or transfer of an officer to an office including the renewal of an employment agreement of a contract officer in an open and fair manner.

(2) A Permanent Secretary or Head of Department is responsible for knowing the staffing complement needed to efficiently and effectively carry out the mandate of his or her Ministry or Department and any staffing needs should be notified to the Secretariat or Secretary through the official communication channels.

(3) The Secretariat or Secretary may, whether in or outside the Territory and by any means, including by circular, give notice of a vacancy in the relevant service and, upon the closing date for application, shall transmit the applications received to the Permanent Secretary or Head of Department who notified the vacancy.

(4) Upon receipt of the applications, a Permanent Secretary or Head of Department shall prepare a shortlist of suitable candidates for interview and the list shall contain the names of at least two persons who, in the opinion of the Permanent Secretary or Head of Department, have the qualifications, skills, knowledge, and experience to be considered as suitable for the position.

(5) Where the Permanent Secretary or Head of Department is of the opinion that no candidate satisfies the requirements of the vacancy, the Permanent Secretary or Head of Department may request the Secretariat or Secretary to notify the vacancy again in accordance subregulation (3).

(6) The relevant Commission shall interview all shortlisted candidates using comparable interviewing methods and, in respect of each applicant shall consider

- (a) his or her educational qualifications or specialised training;
- (b) his or her ability to meet the specific requirements of the job;
- (c) any previous employment or experience in the public service or otherwise;
- (d) any referees presented by the applicant;
- (e) information provided by the applicant during the interview.

(7) The relevant Commission shall evaluate the results of the interview and the applicants' education, qualifications, experience and suitability for the post including reference checks and submit a recommendation to the Governor who shall make the appointment in accordance with the Constitution.

10. (1) Subject to sections 16 and 17 of the Act, the relevant Commission shall advise the Governor

Merit and ability.

- (a) on the appointment of persons to the service; and
- (b) the promotion or transfers of officers in the service,

based on merit and ability as well as experience, formal qualifications and seniority and an assessment of the relative suitability for the position of the person or officer.

(2) In making appointments, transfers or promotions, the relevant Commission shall consider candidates who are Belongers first if they are suitable to be so appointed, transferred or promoted.

11. (1) To assess the eligibility of persons for appointment, transfer or promotion within the public service, the Secretariat or Secretary may conduct such examinations as it considers necessary.

Examinations.

(2) The Secretariat or Secretary shall be responsible for the conduct of the examinations referred to under subregulation (1).

12. (1) An applicant with a criminal record may be considered for appointment to the service.

Candidates with criminal record.

(2) Where an applicant has a criminal record the relevant Commission shall consider

- (a) the nature and seriousness of the offence resulting in the conviction;
- (b) the number of convictions and whether any of them are considered as spent convictions under the relevant laws;
- (c) the relationship of any conviction to the job functions and responsibilities;
- (d) the employment record of the applicant following the conviction with respect to job responsibility and duration;
- (e) the relevance of the offence to the safety of other officers, clients, customers or property;
- (f) the length of time since the conviction occurred.

Re-appointment
of officers.

13. (1) A person who previously worked in the service may be re-appointed to the service if

- (a) that person left in good standing;
- (b) during the period of the person's absence from the service, he or she did not engage in an activity, which in the opinion of the relevant Commission, is against the best interest of the service;

(2) Subject to subregulation (1), a person who retired from the service, may be re-appointed only where

- (a) the prospects of serving officers are not jeopardised;
- (b) the vacancy cannot otherwise be filled immediately;
- (c) he or she is certified to be medically fit for re-appointment,

and the additional period of service rendered by the retired officer shall not count towards pensionable service and the payment of the retired officer's pension shall be suspended during the period of re-appointment.

14. (1) Subject to subregulation (2) a person who was dismissed from the service may only be reappointed to the service with the approval of the Governor. Dismissed officers.

(2) In considering the appointment of the person referred to under subregulation (1) the Governor shall consider

- (a) the record and reasons for dismissal;
- (b) the length of time since the dismissal occurred;
- (c) whether during the period of the person's absence from the service, the person did not engage in an activity, which in the opinion of the relevant Commission, is against the best interest of the service;
- (d) whether the prospects of serving officers are likely to be jeopardised.

15. (1) A person appointed to the service shall be offered the appointment in a letter stating the terms and conditions of the appointment and the letter shall be under the hand of the Director, Chief Education Officer or Secretary. Offer of appointment.

(2) A person offered a position in the service shall not assume duty until a written response to accept the offer on the terms and conditions specified in the offer letter sent by the applicant is received by the Director, Chief Education Officer or Secretary, as the case may be.

(3) The Director, Chief Education Officer or Secretary shall withdraw the letter of offer with the terms and conditions if the person fails to respond within ten working days of receipt of the letter.

16. (1) A person applying for employment in the service shall when submitting their application also submit a medical certificate. Medical Examination.

(2) For purposes of subregulation (1), the Director, Chief Education Officer or Secretary shall provide to the applicant a medical form to be used for purposes of obtaining a medical certificate.

(3) A medical examination shall include an assessment of the

- (a) physical systems (e.g. mobility, muscular, balance, aerobic fitness, co-ordination etc.);
- (b) sensory (e.g. vision and hearing);

(c) cognitive function; and

(d) mental wellbeing.

(4) 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.

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

(6) For purposes of this regulation, "medical practitioner"

(a) in the case of a candidate recruited locally, means a person registered as such under the Medical Act, 2000;

No. 4 of 2000

(b) in any other case means a person registered as a medical practitioner under the laws of the country or territory of recruitment.

Effective date of appointment.

17. (1) Unless the Governor otherwise directs, the effective date of the appointment of an officer is the date the officer assumes duty.

(2) If an officer is recruited from outside the territory, the effective date of appointment shall be the date of embarkation for the Virgin Islands.

Orientation of officers.

18. Persons appointed to the relevant service shall receive the appropriate orientation according to policies and procedures established by the Department of Human Resources.

Transfer of officers.

19. (1) An officer may be transferred from one Ministry or Department to another

(a) at the instance of the officer by applying through his or her line manager and the Permanent Secretary or Head of Department to the relevant Commission;

- (b) at the instance of a Permanent Secretary or Head of Department, by applying to the relevant Commission, after notifying the officer in writing and giving reasons for the transfer.

(2) The Governor may on the advice of the relevant Commission, transfer an officer from one Ministry or Department to another Ministry or Department.

(3) An officer who objects to a transfer may appeal in accordance with the grievance procedure under Part VIII.

PART IV

PROBATIONARY APPOINTMENTS AND CONFIRMATIONS

20. (1) The probationary period that an officer has to serve is as specified in section 20 of the Act.

Probationary period.

(2) Subject to subregulation (3), where an officer has served in an acting capacity for at least 6 months prior to a promotion to the same office in which the officer was acting, the period of probation may be reduced by the same period of service in the acting capacity unless the Commission otherwise directs.

(3) Where the promotion of an officer is not preceded by any acting appointment in that position, the period of probation shall be for the period as specified in section 20 of the Act.

(4) In calculating the period of service in an acting appointment for the purpose of this regulation, only continuous service of three months or more shall be considered towards shortening an officer's probationary period.

(5) A Permanent Secretary or Head of Department shall submit to the Director of Human Resources, two confidential reports on an officer on probation as follows:

- (a) a first report, four months before the period of the probation ends;
- (b) a final report, two months before the period of probation ends.

(6) The Director shall report to the relevant Commission whenever a Permanent Secretary or Head of Department fails to submit a confidential report on an officer on probation within the terms specified in this regulation.

(7) At the end of a period of probation of an officer, a Permanent Secretary or Head of Department, shall submit through the Director to the relevant Commission, a recommendation that the

- (a) officer be confirmed to the relevant service;
- (b) probationary period be extended, where applicable;
- (c) officer's service be terminated;
- (d) officer be transferred to an another post, if applicable;
- (e) officer revert to his or her former post, if available.

(8) If, after consideration of the final report of the Permanent Secretary or Head of Department, a relevant Commission is satisfied that the service of an officer on probation has been satisfactory, the relevant Commission shall advise the Governor, that the officer be confirmed to the relevant service and the effective date of confirmation shall be as specified in the letter of appointment.

(9) Before any recommendation is made for the extension of the period of probation of an officer, the Permanent Secretary or Head of Department shall inform the officer, in writing of his or her recommendation and of the specific reasons therefor and shall invite the officer to make any representation the officer may wish to make, in that regard.

(10) Before any recommendation is made for the termination of an officer the Permanent Secretary or Head of Department shall inform the officer, in writing of his or her recommendation and of the specific reasons therefor and shall invite the officer to make any representation the officer may wish to make, in that regard.

(11) Before any recommendation is made for the reversion of an officer to his or her former position the Permanent Secretary or Head of Department shall inform the officer, in writing of his or her recommendation and the specific reasons therefor and shall invite the officer to make any representation the officer may wish to make, in that regard.

(12) If, after the consideration of the final report of the Permanent Secretary or Head of Department, a relevant Commission is not satisfied that the service of an officer on probation has been satisfactory, the relevant Commission may advise the Governor to extend the period of probation for a further period or where applicable, that the officer's appointment be terminated in accordance with Section 23 of the Act.

Principles to be observed during probation.

21. (1) The following principles shall be observed for the treatment of officers during a period of probation:

- (a) an officer shall be given an opportunity to learn the work and be assessed on his or her performance;

- (b) an officer shall be afforded all possible facilities for acquiring experience in his or her duties;
- (c) an officer shall be subject to continual and sympathetic supervision;
- (d) so far as the exigencies of the service permit, an officer shall be assigned to duty only where such observation is possible;

(2) If a Permanent Secretary or Head of Department, during a period of probation of an officer, forms the opinion that the officer may not be suitable for confirmation to the position the Permanent Secretary or Head of Department shall, at once, inform the officer, in writing of that fact, and the Permanent Secretary or Head of Department shall give such assistance to enable the officer to improve his or her performance.

22. (1) The relevant Commission shall consider candidates for confirmation who

Confirmation to the service.

- (a) have performed satisfactorily as detailed and evidenced in the performance appraisal report relating to that officer;
- (b) have been medically assessed and certified by a medical practitioner to be in sound health;

and shall take into account any recommendations from the Permanent Secretary or Head of Department through the Director, Chief Education Officer or the Secretary.

(2) The Governor, after consultation with the relevant Commission, shall direct the Director, Chief Education Officer or the Secretary to notify the officer of his or her confirmation to the service with effect from the initial date of appointment.

(3) The medical assessment shall be in accordance with regulation 16.

PART V

PROMOTIONS AND ACTING APPOINTMENTS

Promotion requirements.

23. Subject to section 17 of the Act, promotions in all cases shall be based on merit or ability, taking into account the experience, formal qualifications and seniority in the service, of the candidates for the appointment.

Consideration for promotion.

24. (1) The relevant Commission shall consider matters regarding the promotion of an officer on the recommendation of the Permanent Secretary or Head of Department who shall submit to the relevant Commission through the

Secretariat or Secretary, the officer's performance appraisal report and any relevant supporting documents.

(2) The period of probation on promotion of an officer shall be in accordance with section 20 of the Act.

Consideration of seniority.

25. (1) Where two officers being considered for promotion, are equally suited on the basis of qualifications and performance, a Commission's decision may be determined on the basis of seniority.

(2) The seniority of an officer shall be determined by the date of his or her appointment to the particular grade within the scale in which he or she is serving.

Promotion and date of promotion.

26. (1) The Governor shall direct the Director, Chief Education Officer or Secretary to notify, in writing, the officer of his or her promotion.

(2) Unless the Governor otherwise directs, the effective date of promotion of an officer shall not be earlier than the date on which the vacancy occurred.

(3) Where an officer is promoted from one Ministry or Department to another, the Permanent Secretary or Head of Department shall take immediate steps to ensure the release of such officer to assume duties in his or her new office.

Acting appointments.

27. (1) A Permanent Secretary or Head of Department shall make a request to the relevant Commission through the Secretariat or Secretary for an acting appointment, at least thirty days prior to the need for the acting appointment, whether as a prelude to a promotion or not.

(2) The provisions relating to the promotions of officers in the service shall apply with the necessary modifications, to the appointment of officers in an acting appointment.

(3) In making a recommendation under subregulation (1), a Permanent Secretary or Head of Department shall consider whether it is expedient to have an officer appointed to an acting position if the period for the acting appointment will not be for more than one month.

(4) An acting appointment as a prelude to a substantive appointment may not exceed one year, unless the Governor approves otherwise.

PART VI

SECONDMENT AND LEAVING THE SERVICE

28. (1) The secondment of an officer shall be in accordance with section 21 of the Act. Secondment.

(2) During the period of secondment, the officer shall be deemed to remain on the establishment of his or her ministry or department.

(3) An officer who accepts an offer of appointment outside the service to an agency without the prior approval of the Governor shall be regarded as having resigned his or her office.

29. (1) Where an agency requires the services of an officer, the agency may apply to the relevant Commission through the Director, Chief Education Officer or Secretary stating the type of assignment and category of staff required to fill the vacancy. Secondment requests.

(2) Where the Government requires the services of a person from an agency, the Director, Chief Education Officer or Secretary shall apply to the Chief Administrator of an agency stating the assignment and category of staff required to fill the vacancy.

(3) The Secretariat or Secretary shall put the request for secondment

- (a) to the Permanent Secretary or Head of Department likely to be affected by the request and requesting them to indicate their support or otherwise on the release of the officer
- (b) before the relevant Commission with supporting documents from the Permanent Secretary or Head of Department.

(4) The relevant Commission shall advise the Governor on the secondment of the officer or person after taking into account

- (a) the interest of the service;
- (b) the availability of a replacement who can perform the required duties in a satisfactory manner and that the officer's absence will not be adversely impacted; and
- (c) the officer's length of service.

(5) A secondment agreement shall be concluded and signed by the

- (a) representative of the Government;

- (b) representative of the agency; and
- (c) officer or person concerned.

Conditions of
secondment.

30. (1) A secondment shall be for an agreed period and may be extended up to a maximum period of five years with the approval of the Governor acting on the advice of the relevant Commission.

(2) Upon secondment the salary of an officer shall be paid by the agency.

(3) On the return of an officer after the period of secondment has ended the salary range of that officer shall be the same as if that officer was not seconded.

(4) Where an officer fails or refuses to return from an agency at the end of a secondment period, the officer shall be deemed to have resigned from the service.

Termination of
appointment.

31. The appointment of an officer may be terminated in accordance with section 23 of the Act.

Last day of
service.

32. The last day of service of an officer shall be determined by the Secretariat or Secretary in a letter of termination.

Notice of
resignation.

33. (1) An officer who wishes to resign from the service shall give written notice to the Director, Chief Education Officer or Secretary through the Permanent Secretary or Head of Department, specifying his or her proposed last working day.

(2) The notice under subregulation (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.

(3) An officer who resigns contrary to subregulation (2), shall pay to the Government a month's salary in lieu of notice.

(4) 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.

(5) 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 contrary to subregulation (4).

(6) The Director, Chief Education Officer or Secretary shall report all resignations or terminations immediately to the Auditor General.

34. (1) The Government, where it intends to terminate an officer's appointment, shall give the officer notice of that intention as follows:

Notice by
Government.

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

(2) The Government shall pay one month's salary in lieu of notice, where the Government terminates an officer's appointment contrary to subregulation (1) (a) or (b).

(3) The Government shall pay salary in lieu of notice in accordance with the terms of an officer's contract as it relates to payment in lieu of notice, where the officer is a contract officer and the Government terminates the contract contrary to subregulation (1) (c).

(4) For the removal of doubt, this regulation does not include termination of employment by the Government following disciplinary proceedings.

35. An officer's resignation may not be accepted where

Resignation
could be denied.

- (a) disciplinary proceedings, related to the officer's employment in the service have been or are about to be instituted against the officer;
- (b) the officer is on interdiction; and
- (c) the officer has not discharged any outstanding legal obligation to the Government unless the officer has entered into an agreement with the Government for the discharge of the legal obligation.

Resignation while on leave prohibited.

36. (1) An officer shall not resign whilst on leave.

(2) An officer who resigns whilst on leave shall

(a) pay to Government one month's pay;

(b) forfeit the remainder of his or her leave; if any.

Effects of failure to follow resignation procedure.

37. An officer who resigns without following the procedures relating to resignation shall be considered as having

(a) vacated the post and therefore severed the employment relationship with the service on the date on which he or she ceases to report for duty;

(b) forfeited all eligible leave; and

(c) forfeited any right to retirement benefits.

Retirement procedure.

38. (1) Subject to section 24 of the Act, an officer whether holding a pensionable or non-pensionable post shall retire from the service in accordance with the pensions law.

(2) An officer who wishes to retire may give up to one year written notice before the intended date of retirement, to the Director or Chief Education Officer through the Permanent Secretary or Head of Department, stating their intent to retire.

(3) The Permanent Secretary or Head of Department may recommend the request for retirement by the officer provided that disciplinary proceedings have not been or are not about to be instituted against the officer.

(4) The Permanent Secretary or Head of Department shall forward, to the Director or Chief Education Officer in December of each year, a list of all officers who are eligible for retirement before the end of the succeeding year.

(5) Where appropriate, in cases of retirement, the Permanent Secretary or Head of Department shall indicate whether an officer intending to retire should be dealt with in accordance with section 24 (2) of the Act.

Retirement benefits.

39. Retirement benefits shall be granted in accordance with the pensions law following the retirement of an officer.

PART VII

DISCIPLINE AND DISCIPLINARY PROCEDURES

40. (1) The Governor is the final disciplinary authority for all officers.

Ultimate
disciplinary
authority.

(2) The relevant Commission shall conduct disciplinary proceedings against an officer alleged to have committed misconduct referred to it by the Director, Chief Education Officer or Secretary, consequent to a report received from a Permanent Secretary or Head of Department or otherwise.

(3) The relevant Commission shall after the completion of the disciplinary proceedings, advise the Governor for his or her decision on the appropriate penalty to be imposed.

(4) Where the relevant Commission is the Judicial and Legal Services Commission and, the relevant officer is a person holding the office of

- (a) Attorney General;
- (b) Director of Public Prosecutions;
- (c) Magistrate;

the provisions of section 3 (3) of the Act shall apply.

41. (1) An officer or a person who alleges misconduct by a Permanent Secretary or Head of Department may in writing, report the alleged misconduct to the Deputy Governor.

Reporting of
alleged
misconduct.

(2) The Deputy Governor shall on receipt of a report pursuant to subregulation (1), notify in writing the Permanent Secretary or Head of Department against whom the allegation is made, and shall

- (a) send the report together with any supporting documentation,
- (b) a recommendation as to whether or not disciplinary proceedings should be instituted

to the relevant Commission for its consideration.

(3) An officer or a person who alleges misconduct of an officer may, in writing report the alleged misconduct to the officer's Permanent Secretary or Head of Department.

(4) A Permanent Secretary or Head of Department shall on receipt of a report pursuant to subregulation (3), notify in writing, the officer against whom

the allegation is made, of the nature of the allegation, and shall, through the Director, Chief Education Officer or Secretary

- (a) send the report together with any supporting documentation,
- (b) make a recommendation as to whether or not disciplinary proceedings should be instituted

to the relevant Commission for its consideration.

(5) The Deputy Governor shall recommend the initiation of disciplinary proceedings for any misconduct by a Permanent Secretary or Head of Department as soon as it is considered necessary that such disciplinary action should be instituted by the relevant Commission.

(6) A Permanent Secretary or Head of Department through the Secretariat or Secretary shall recommend the initiation of disciplinary proceedings for any misconduct as soon as it is considered necessary that such disciplinary action should be instituted by the relevant Commission.

(7) After the completion of disciplinary proceedings taken against an officer the Secretariat or Secretary shall report to the Deputy Governor, Director or Chief Education Officer for communication to the Permanent Secretary, Head of Department or officer, as the case may be, the disciplinary penalties imposed on the officer.

Establishment of
investigative
committees.

42. (1) Where a relevant Commission receives a report on an officer pursuant to section 36 of the Act and these Regulations, the relevant Commission may establish an investigative committee comprising of a cross section of officers to investigate the alleged misconduct and to make a report to it.

(2) The relevant Commission may on receipt of a report pursuant to subregulation (1), where the report indicates that disciplinary proceedings should be instituted, notify in writing through the Secretariat or Secretary the officer to whom the allegation is made.

(3) The relevant Commission may institute disciplinary proceedings in accordance with regulation 43.

Institution of
disciplinary
proceedings.

43. (1) Where a relevant Commission receives a report on an officer pursuant to section 36 of the Act and these Regulations, considers that the report is sufficient to support the allegations being made against the officer, the relevant Commission shall commence disciplinary proceedings.

(2) Where an officer is charged, the Deputy Governor, Director, Chief Education Officer or Secretary, as the case may be, shall notify the officer in writing and provide a copy of the report, a brief statement of the allegations and

the charges and all evidence presented to the relevant Commission and the officer shall be invited by the relevant Commission to state in writing within seven working days, any grounds on which he or she wishes to exculpate himself or herself.

(3) If the statement provided by the officer does not exculpate the officer of the charges, the relevant Commission will proceed to hear the matter.

(4) Where the officer does not reply to the charges by the date specified in the notice, the relevant Commission shall assume that he or she does not wish to make a statement and shall therefore proceed to hear the matter.

(5) The officer shall be informed of the date, time and place of the hearing and may be represented, including being represented by a legal practitioner.

(6) An officer shall be present at the hearing but if the officer is absent without reasonable excuse then, at the discretion of the relevant Commission, the hearing may proceed without the officer.

(7) Before the hearing begins, the relevant Commission shall allow the officer to provide a list of persons who he or she wishes to call as witnesses on his or her behalf and the officer may during the hearing cross-examine personally or through his or her representative.

(8) The relevant Commission may summon witness and cross-examine witnesses.

(9) If the Deputy Governor, Permanent Secretary or Head of Department considers that additional charges should be brought against an officer, then the same procedure as was adopted in making the original charges shall be followed.

(10) The relevant Commission shall on completion of a hearing, submit to the Governor a written report which shall consist of

- (a) the record of the proceedings;
- (b) any documents or exhibits tendered in evidence;
- (c) its findings; and
- (d) advice on the penalty to be imposed in accordance with the Act and these Regulations.

(11) The Governor shall on receipt of the relevant Commission's report, consider any findings and advice and when satisfied that each charge is established he or she shall impose a penalty, as appropriate.

(12) An officer shall be informed of the Governor's decision in writing by the Director, Chief Education Officer or Secretary.

(13) An officer who is not satisfied with a decision of the Governor, may appeal the decision to the Governor within seven working days of receipt of the decision only if the officer has new evidence that is relevant to the case which he or she thinks may exculpate him or her.

(14) An officer summoned as a witness before a relevant Commission who fails or refuses to comply with a summons commits misconduct and may be subject to disciplinary action.

(15) Nothing in this regulation, shall limit the power of the Judicial and Legal Services Commission to regulate its own procedure.

Misconduct.

44. An act done by officer amounts to misconduct, if it is an act specified in regulation 46 or 47.

Unsatisfactory
performance.

45. (1) Subject to section 23 of the Act, the Deputy Governor shall where the work of a Permanent Secretary or Head of Department is unsatisfactory give written notice to the Permanent Secretary or Head of Department specifying

- (a) the nature of the unsatisfactory performance;
- (b) the improvements or corrective measures that are required and time frame within which such improvements or corrective measures are to be made;
- (c) any disciplinary action that may be taken if the improvements or corrective measures required, are not made.

(2) Subject to section 23 of the Act, a Permanent Secretary or Head of Department shall, where an officer's work is unsatisfactory give written notice specifying

- (a) the nature of the unsatisfactory performance;
- (b) the improvements or corrective measures that are required and time frame within which such improvements or corrective measures are to be made;
- (c) any disciplinary action that may be taken if the improvements or corrective measures required, are not made.

(3) Based on the officer's history of performance, the Deputy Governor, Permanent Secretary or Head of Department, as the case may be

- (a) where he or she is of the opinion that the officer's unsatisfactory performance is related to the lack of competencies required for the job, may in an effort to improve the officer's performance, where feasible recommend that the officer undergoes training relevant to the competencies required for the position;
- (b) where he or she is of the opinion that the officer's unsatisfactory performance is related to a personal problem affecting the officer's job performance, may refer the officer to the Employee Assistance Programme;
- (c) where he or she is of the opinion, that the officer's unsatisfactory performance is not related to the lack of competencies required for the job or related to a personal problem, may recommend to the relevant Commission through the Secretariat or Secretary any of the following:
 - (i) withholding of increment;
 - (ii) demotion; or
 - (iii) termination.

(4) Where a notice given pursuant to this regulation indicates that the Deputy Governor, Permanent Secretary or Head of Department, as the case may be, will make a recommendation that the

- (a) officer's increment be withheld;
- (b) officer be demoted;
- (c) officer's employment be terminated,

such notice shall be given within seven working days from the date on which the appraisal was completed.

(5) The Deputy Governor, Permanent Secretary or Head of Department shall at the same time inform the Director, Chief Education Officer or Secretary of any action taken pursuant to this regulation.

46. (1) An act specified in Schedule 1 constitutes minor misconduct by an officer and with respect to each act, attracts a corresponding penalty specified in that Schedule.

Minor
misconduct.
Schedule 1

(2) The Governor may in consultation with the Director amend Schedule 1.

Gross
misconduct.
Schedule 2

47. (1) An act specified in Schedule 2 constitutes gross misconduct by an officer and with respect to each act, attracts a corresponding penalty specified in that Schedule.

(2) The Governor may, in consultation with the Director amend Schedule 2.

Types of
penalties.

48. (1) Subject to section 34 of the Act, the following penalties may be imposed for minor misconduct:

- (a) reprimand in the form of a verbal warning;
- (b) severe reprimand in the form of a written warning documented in the officer's personal file;
- (c) suspension without pay for a period not exceeding thirty working days.
- (d) demotion, which is a reduction to a lower grade with a reduction in salary;
- (e) termination of appointment with or without a reduction in retirement benefits, where applicable;
- (f) dismissal.

(2) Subject to section 34 of the Act, the following penalties may be imposed for gross misconduct:

- (a) suspension from duty without pay for a period not exceeding thirty working days;
- (b) demotion, which is a reduction to a lower grade with a reduction in salary;
- (c) termination of appointment with or without a reduction in retirement benefits, where applicable;
- (d) dismissal.

(3) The following corrective measures may also be applied for either minor or gross misconduct:

- (a) mandatory training;
- (b) a referral to the Employee Assistance Programme;
- (c) probation;

- (d) a mandatory referral to the Employee Assistance Programme or rehabilitation or both.

49. Misconduct or misbehaviour not provided for under these Regulations shall be referred to the relevant Commission through the Secretariat or Secretary, so that the Commission may consider it and, if thought fit, commence appropriate disciplinary proceedings in accordance with regulation 43 with the necessary modifications to those provisions.

Misconduct not provided for.

50. (1) Where it appears from information received that an officer has committed a criminal act, a Permanent Secretary or Head of Department shall immediately report the matter to the Police and the Attorney General.

Reporting matters of a criminal nature.

(2) A report made pursuant to subregulation (1) shall also be made by the Permanent Secretary or Head of Department to the relevant Commission through the Secretariat or Secretary.

(3) Where the officer referred to in subregulation (1), is a Permanent Secretary or Head of Department, the Deputy Governor shall make the report to the Police and the Attorney General.

51. (1) An officer who is charged with a criminal offence punishable with imprisonment of three months or more shall report the charge without delay to the Secretariat or Secretary.

Director, Chief Education Officer to be informed of criminal charges and conviction.

(2) Where an officer is convicted of a criminal offence by a court, the appropriate officer of the court shall report that fact to the relevant Commission and shall send a copy of the charges and the judgement, or on request, a copy of the entire proceedings, to the Secretariat or Secretary.

(3) If an officer appeals against the conviction, the appropriate officer of the court shall report this and the outcome of the appeal to the relevant Commission, the Secretariat or Secretary.

(4) If an officer is acquitted, the appropriate officer of the court shall send a copy of the judgement to the relevant Commission and the relevant Commission may, if it considers it appropriate advise the Governor to reinstate the officer.

(5) For purposes of this regulation, “appropriate officer of the court” means the Registrar of the High Court or the Court Manager, as the case may be.

52. The interdiction of an officer pending disciplinary proceedings shall be carried out in accordance with section 30 of the Act.

Interdiction.

Suspension of
increment
pending
proceedings.

53. (1) A relevant Commission may advise the Governor, to suspend or withhold an officer's increment where disciplinary proceedings or criminal proceedings have been or are about to be instituted against an officer.

(2) The Secretariat or Secretary shall inform the officer concerned that the increment may be suspended or withheld and if a decision is not taken finally to withhold the increment, it shall be restored from the date that it was due.

PART VIII MISCELLANEOUS

Remuneration
and other terms
and conditions of
employment .
Grievance
procedure.

54. The Department of Human Resources shall recommend to the Governor the terms and conditions of employment in the service.

55. (1) An officer may file a grievance arising from an administrative act, omission, or disciplinary action and the grievance may allege

(a) a denial of a right to which he or she is justifiably entitled to;

(b) that he or she has not been treated fairly; or

(c) or any other allegation which the officer may properly make.

(2) An officer may file a grievance in accordance with the Human Resources Policy on grievance.

Workmen's
Compensation
Ordinance.
Cap. 302

56. The Workmen's Compensation Ordinance applies to an officer who sustains injury, illness or loses his or her life in the course of his or her employment.

Health and
safety.

57. A Permanent Secretary or Head of Department shall ensure compliance with existing legislation or regulations relating to health and safety in the workplace and develop procedures to be followed by officers within their particular work environment in the Ministry or Department.

Oath of office
and
confidentiality.

58. On the day of assumption of duty and prior to executing his or her duties, Permanent Secretaries and Heads of Departments shall require the officer to take and sign an Oath or Affirmation of Office and Confidentiality as specified in Schedule 3.

Schedule 3

SCHEDULE 1

[Regulation 46]

MINOR MISCONDUCT

Acts Constituting Minor Misconduct.

NB – (a) *The Table of Misconducts and Penalties, contains a suggested range of misconducts and penalties. It is a guide to discipline, not a rigid standard. Deviations are allowable for a variety of reasons.*

(b) *Public officers in supervisory positions and those performing safety or security functions are generally expected to demonstrate a higher level of conscientiousness and integrity with respect to their employment. Accordingly, these officers may be subject to more severe levels of discipline for misconduct.*

(c) *A reference in this Schedule to “days” shall be construed as a reference to “working days.”*

NATURE OF MISCONDUCT		RANGE OF PENALTIES		
		First time misconduct	Second time misconduct	Third time misconduct
ABSENCE AND LEAVE				
1.	Unexcused tardiness.	Reprimand, Severe reprimand, A formal referral to EAP*.	Severe reprimand, Up to 5 days suspension, A formal referral to EAP*.	Up to 10 days suspension to Demotion.
2.	Unauthorised absence up to, and including, nine scheduled workdays and/or failure to follow leave procedures.	Severe reprimand, Up to 5 days suspension, A formal referral to EAP*.	Up to 5-10 days suspension, A formal referral to EAP*.	Demotion.
3.	Loafing and frequent unauthorised absences from duty during working hours.	Reprimand, Severe reprimand, Up to 5 days suspension, A formal referral to EAP*.	Severe reprimand, Up to 5 days suspension, A formal referral to EAP*.	Demotion.

NATURE OF MISCONDUCT		RANGE OF PENALTIES		
		First time misconduct	Second time misconduct	Third time misconduct
ABSENCE AND LEAVE (cont)				
4.	Improper use of sick leave or other leave.	Reprimand, Severe reprimand, Up to 5 days, A formal referral to EAP*.	Severe reprimand, Up to 5 days suspension, A formal referral to EAP*.	Demotion.
CONTRACTING				
5.	Unauthorised procurement or unauthorised contract for services.	Severe reprimand, Up to 5 days suspension, Surcharge.	Up to 10 days suspension, Surcharge, Demotion.	Surcharge, Dismissal.
6.	Unauthorised disclosure of any information regarding tenders or tender processes, failure to follow contract guidelines and policies.	Severe reprimand, Up to 5 days suspension, A formal referral to EAP*.	Up to 5 days suspension, Demotion.	Dismissal.

NATURE OF MISCONDUCT		RANGE OF PENALTIES		
		First time misconduct	Second time misconduct	Third time misconduct
MISCONDUCT OF A SEXUAL NATURE				
7.	Making disparaging, references or expressing a stereotypical view that has a detrimental effect or impact -	Reprimand, Severe reprimand, Up to 5 days suspension, a Formal referral to EAP*.	Up to 5 days suspension, A formal referral to EAP*.	Demotion.
		<u>Range of penalties if committed by a line manager</u>		
		Up to 5 days suspension, A formal referral to EAP*.	Demotion, A formal referral to EAP*.	Dismissal.
8.	Sexual teasing, jokes, remarks, questions and behaviour that are inappropriate in the workplace.	Reprimand, Severe reprimand, Up to 5 days suspension, A formal referral to EAP*.	Up to 5 days suspension and Formal referral to EAP*.	Demotion.
		<u>Range of penalties if committed by a line manager</u>		
		Up to 5 days suspension, A formal referral to EAP*.	Up to 10 days, A formal referral to EAP.	Demotion.

NATURE OF MISCONDUCT		RANGE OF PENALTIES		
		First time misconduct	Second time misconduct	Third time misconduct
MISCONDUCT OF A SEXUAL NATURE (cont.)				
9.	Sending letters, cards, email, or making telephone calls of an inappropriate or sexual nature.	Severe reprimand, Up to 3 days suspension, A formal referral to EAP*.	Up to 5 days suspension and A formal referral to EAP*.	Demotion.
		<u>Range of penalties if committed by a line manager</u>		
		Severe Reprimand, Up to 5 days suspension, A formal referral to EAP*.	Up to 10 days suspension, Demotion.	Up to 30 days suspension, or Dismissal.
10.	Pressure for dates	Severe reprimand, Up to 3 days suspension, A formal referral to EAP*.	Up to 5 days suspension, A formal referral to EAP*.	Demotion.
11.	Posting, distributing, showing or viewing sexually explicit materials in the workplace.	Up to 5 days suspension, A formal referral to EAP*.	Up to 10 days suspension, demotion, A formal referral to EAP*.	Dismissal.
12.	Inappropriate touching of a non-erogenous body part of another person.	Reprimand, Severe reprimand, Up to 3 days suspension, A formal referral to EAP*.	Severe reprimand, Up to 7 days suspension, A formal referral to EAP*.	Demotion.

NATURE OF MISCONDUCT		RANGE OF PENALTIES		
		First time misconduct	Second time misconduct	Third time misconduct
DISORDERLY CONDUCT/VIOLENCE/MISBEHAVIOUR				
13.	Intimidating, harassing, abusive, disorderly, disruptive or other inappropriate behaviour; unbecoming conduct; engaging in dangerous horseplay or any other inappropriate behaviour.	Reprimand, Severe reprimand, Up to 5 days suspension, A formal referral to EAP*.	Up to 10 days suspension, A formal referral to EAP*.	Demotion.
14.	Use of language, remarks or acts that are discourteous, discriminatory, insulting, abusive or obscene.	Reprimand, Severe reprimand, Up to 5 days suspension or A formal referral to EAP*.	Severe reprimand, Up to 10 days suspension, A formal referral to EAP*.	Up to 15 days suspension, A formal referral to EAP*, Demotion.
UNAUTHORISED DISCLOSURE/UNAUTHORISED ACCESS TO CONFIDENTIAL/CLASSIFIED INFORMATION/DOCUMENTS				
15.	Mishandling confidential/classified or documents.	Severe reprimand, Up to 5 days suspension. <i>(Demotion may be warranted based on the sensitivity and content of document.)</i>	Up to 10 days suspension. <i>(Demotion may be warranted based on the sensitivity and content of document.)</i>	Demotion. <i>(Dismissal may be warranted based on the sensitivity and content of document.)</i>
16.	Unauthorised disclosure or failure to safeguard and confidential information, documents or records.	Severe reprimand, Up to 5 days suspension. <i>(Demotion may be warranted based on the sensitivity and content of document.)</i>	Up to 10 days suspension, Demotion. <i>(Dismissal may be warranted based on the sensitivity and content of document.)</i>	Dismissal.

NATURE OF MISCONDUCT		RANGE OF PENALTIES		
		First time misconduct	Second time misconduct	Third time misconduct
UNAUTHORISED DISCLOSURE/UNAUTHORISED ACCESS TO CONFIDENTIAL/CLASSIFIED INFORMATION/DOCUMENTS (cont.)				
17.	Unauthorised recording or monitoring of telephone calls, conversations or meetings.	Severe reprimand, Up to 5 days suspension. <i>(Demotion may be warranted based on the sensitivity and nature or content.)</i>	Up to 10 days suspension or demotion. <i>(Dismissal may be warranted based on the sensitivity and nature or content.)</i>	Dismissal.
SECURITY/SAFETY				
18.	Violating or ignoring security regulations.	Reprimand, Severe reprimand.	Severe reprimand, Up to 5 days suspension.	Demotion.
19.	Failure to carry, show or wear Government-issued identification card or credentials <u>where required</u> .	Reprimand, Severe reprimand.	Severe reprimand, Up to 5 days suspension.	Demotion.
20.	Misuse of official identification or investigative credentials or other Government identification card.	Severe reprimand, Up to 5 days suspension. <i>(Dismissal may be warranted based on the outcome and impact from the misuse.)</i>	Up to 10 days suspension, Demotion. <i>(Dismissal may be warranted based on the outcome and impact from the misuse.)</i>	Demotion. <i>(Dismissal may be warranted based on the outcome and impact from the misuse.)</i>

NATURE OF MISCONDUCT		RANGE OF PENALTIES		
		First time misconduct	Second time misconduct	Third time misconduct
SECURITY/SAFETY (cont.)				
21.	Failure to observe precautions for personal safety, such as failure to use safety equipment, failure to use available safety restraints when operating a motor vehicle on official Government business, or ignoring signs, posted rules, fire alarms, or written or verbal safety instructions.	Reprimand, Severe reprimand, Up to 5 days suspension, A formal referral to EAP*.	Up to 10 days suspension, A formal referral to EAP*.	Demotion.
22.	Failure to report personal injury or accident that occurred while operating Government-owned, or rented equipment.	Reprimand, Severe reprimand, Up to 5 days suspension, Surcharge.	Severe reprimand, Up to 10 days suspension, Surcharge.	Surcharge, Demotion.
FALSE INFORMATION/FAILURE TO GIVE INFORMATION				
23.	Making false, unfounded, disparaging, disrespectful, obscene, abusive or other inappropriate statements to, or about, others.	Reprimand, Severe reprimand. a formal referral to EAP*.	Severe Reprimand, Up to 5 days suspension, A formal referral to EAP*, Dismissal.	Demotion.
24.	Unauthorised recording or monitoring of telephone calls, conversations or meetings.	Severe reprimand, Up to 10 days suspension, Dismissal.	Up to 30 days suspension, Dismissal.	Dismissal.

NATURE OF MISCONDUCT		RANGE OF PENALTIES		
		First time misconduct	Second time misconduct	Third time misconduct
GENERAL CONDUCT				
25.	Misuse of Government time, property, personnel, funds or leased services (including but not limited to, computers and systems, fax machines, telephones, mail services, etc.).	Reprimand, Severe reprimand, Up to 5 days suspension, Surcharge.	Severe reprimand, Up to 10 days suspension, Surcharge, Demotion.	Surcharge, Demotion.
26.	Loss of Government property, damage to Government property, or endangering of Government property.	Reprimand, Severe reprimand, Up to 5 days suspension, Surcharge.	Severe reprimand, Up to 5 days suspension, Surcharge, Demotion.	Demotion.
27.	Failure to carry out orders, directions, assignments, etc., given by a line manager.	Reprimand, Severe reprimand, Up to 5 days suspension, A formal referral to EAP*.	Severe reprimand, Up to 10 days suspension, Demotion, A formal referral to EAP*.	Demotion.
28.	Insubordination including non-compliance or refusal to carry out proper orders, directions, assignments, etc., given by a line manager; defiance of authority	Severe reprimand, Up to 5 days suspension, A formal referral to EAP*.	Up to 10 days suspension, A formal referral to EAP*, Demotion.	Demotion. <i>(Dismissal an option depending on the result of the failure the noncompliance or refusal.)</i>
29.	Negligent or careless work performance, including exhibiting behaviour that creates an environment; or inattention to duty.	Reprimand, Severe reprimand, Up to 5 days suspension, A formal referral to EAP*.	Severe reprimand, Up to 10 days suspension, A formal referral to EAP*, Demotion.	Demotion.

NATURE OF MISCONDUCT		RANGE OF PENALTIES		
		First time misconduct	Second time misconduct	Third time misconduct
GENERAL CONDUCT (cont.)				
30.	Betting, gambling or promotion of gambling at the worksite.	Severe reprimand, Up to 5 days suspension, A formal referral to EAP*.	Up to 10 days suspension, A formal referral to EAP*.	Demotion.
31.	Borrowing money and lending money for profit from other officers at the workplace.	Severe reprimand, Up to 5 days suspension, A formal referral to EAP*.	Up to 10 days suspension, A formal referral to EAP*, Demotion.	Demotion.
		<u>Range of penalties if committed by a line manager</u>		
		Severe reprimand, Up to 5 days suspension, A formal referral to EAP*.	Up to 10 days suspension, A formal referral to EAP*, Demotion.	Dismissal.
32.	Failure to report a violation of the law or policies.	Reprimand, Severe reprimand, Up to 5 days suspension.	Severe reprimand, Up to 10 days suspension. (Demotion may be warranted based on the impact of the failure to report.)	Demotion. (Dismissal is a possibility based on the impact of the failure to report.)

NATURE OF MISCONDUCT		RANGE OF PENALTIES		
		First time misconduct	Second time misconduct	Third time misconduct
GENERAL CONDUCT (cont.)				
33.	Concealing or covering up an act that violates Government's policies, laws or procedures.	Severe reprimand, Up to 10 days suspension.	Up to 15 days, Demotion. <i>(Dismissal may be warranted based on the impact of the failure to report.)</i>	Dismissal.
34.	Refusal by the line manager or supervisor to take action when the facts are known and a corrective measure is warranted.	Severe reprimand, Up to 10 days suspension, A formal referral to the EAP*.	Up to 15 days suspension, Demotion, A formal referral to EAP.	Demotion. <i>(Dismissal may be warranted based on the impact of the failure to take action.)</i>
35.	Unauthorised acceptance of gifts.	Reprimand, Severe reprimand.	Severe reprimand, Up to 5 days suspension.	Demotion.
36.	Making unauthorised public statements	Reprimand, Severe reprimand, Up to 5 days suspension. <i>(Dismissal may be warranted if detrimental or inimical to the Service.)</i>	Severe reprimand, Up to 10 days suspension. <i>(Dismissal may be warranted if detrimental or inimical to the Service.)</i>	Demotion. <i>(Dismissal may be warranted if detrimental or inimical to the Service.)</i>

* Employee Assistance Programme. An officer may be formally referred to the Employee Assistance Programme at any time whilst considering the appropriate penalty to impose based on the officer's misconduct.

SCHEDULE 2

[Regulation 47]

GROSS MISCONDUCT

Acts Constituting Gross Misconduct.

NB (a) *The Table of Misconducts and Penalties, contains a suggested range of misconducts and penalties. It is a guide to discipline, not a rigid standard. Deviations are allowable for a variety of reasons.*

(b) *Public officers in supervisory positions and those performing safety or security functions are generally expected to demonstrate a higher level of conscientiousness and integrity with respect to their employment. Accordingly, these officers may be subject to more severe levels of discipline for misconduct.*

(c) *A reference in this Schedule to “days” shall be construed as a reference to “working days.”*

NATURE OF MISCONDUCT		RANGE OF PENALTIES	
		First time misconduct	Second time and subsequent misconduct
GROSS MISCONDUCT			
1.	Any conduct which is of a criminal nature shall be dealt with in accordance with the relevant provisions of the Act and these Regulations.		
MISCONDUCT OF A SEXUAL NATURE			
2.	Inappropriate touching of another person’s private parts (to include breasts, buttocks or pelvic area).	Up to 15 days suspension, A formal referral to EAP*.	Demotion, Dismissal.
		<u>Range of penalties if committed by a line manager</u>	
		Up to 30 days suspension, Demotion, A Formal referral to EAP.	Demotion, Dismissal.

NATURE OF MISCONDUCT		RANGE OF PENALTIES	
		First time misconduct	Second time and subsequent misconduct
MISCONDUCT OF A SEXUAL NATURE (cont.)			
3.	Promise of benefit in exchange for sexual favours or threat or act of reprisal for refusal to provide sexual favours.	Up to 15 days suspension, Demotion, A formal referral to EAP.	Demotion, Dismissal.
		<u>Range of penalties if committed by a line manager</u>	
		Up to 30 days suspension, A formal Referral to EAP*, Demotion.	Demotion, Dismissal.
DISORDERLY CONDUCT/VIOLENCE			
4.	Unauthorised possession of a firearm while on Government owned or leased property.	Up to 30 days suspension, A formal referral to EAP, Demotion.	Dismissal.
5.	Unauthorised possession of a weapon other than a firearm while on Government owned or leased property.	Up to 30 days suspension, A formal referral to EAP*, Demotion.	Dismissal.
6.	Fighting, threatening another, or attempting to inflict or inflicting injury to another person; disregarding the safety of others.	Up to 15 days suspension, A formal referral to EAP*, Demotion.	Up to 30 days suspension, Dismissal.

NATURE OF MISCONDUCT		RANGE OF PENALTIES	
		First time misconduct	Second time and subsequent misconduct
ALCOHOL/DRUG OFFENCES			
7. (a)	Use of alcohol while on Government premises or while on duty.	Up to 5 days suspension, A formal referral to EAP*, Demotion.	Up to 10 days suspension, Demotion, Dismissal.
7. (b)	Illegally possessing or using drugs while on Government premises or while on duty.	Up to 10 days suspension, A formal referral to EAP, Demotion.	Demotion, Dismissal.
8. (a)	Reporting to work or being on duty under the influence alcohol which results in unfitness to work.	Up to 10 days suspension, A formal referral to EAP*. <i>(Dismissal may be warranted if personnel or property were endangered or at risk.)</i>	Demotion, Dismissal.
8. (b)	Reporting to work or being on duty under the influence of illicit drugs. which results in unfitness to work.	Up to 10 days suspension, A formal referral to EAP, Demotion. <i>(Dismissal may be warranted if personnel or property were endangered or at risk.)</i>	Demotion, Dismissal.
9.	Positive drug or alcohol test resulting from a medical examination.	Up to 30 days suspension, Dismissal.	Dismissal.

NATURE OF MISCONDUCT		RANGE OF PENALTIES	
		First time misconduct	Second time and subsequent misconduct
FALSE INFORMATION/FAILURE TO GIVE INFORMATION			
10.	Providing/making false, misleading, untruthful statements, or concealing material facts or pertinent information in connection with an official inquiry or investigation.	Up to 30 days suspension, Demotion.	Dismissal.
11.	Refusal or failure to give oral or written statements or testimony in connection with any official inquiry or investigation.	Up to 30 days suspension, Demotion.	Dismissal.
12.	Forging, falsifying, mis-stating or misrepresenting information on Government records, documents, claims, etc., for oneself or another.	Up to 30 days suspension, Demotion .	Demotion, Dismissal.
CONTRACTING			
13.	Disclosing or misusing confidential information or classified information officially known and made available to the public, to further private interests or give undue advantage to anyone, or to prejudice the public interest.	Up to 30 days suspension, Surcharge, Demotion.	Demotion, Dismissal.
14.	Directly or indirectly having pecuniary or proprietary interest in any transaction requiring the approval of his/her office.	Up to 30 days suspension, Demotion.	Dismissal.
15.	Owning, controlling, managing or accepting employment as an officer, employee, consultant, counsel, broker, agent, trustee or nominee in any private enterprise regulated, supervised or licensed by his/her office, unless authorised.	Up to 30 days suspension, Demotion.	Dismissal.

NATURE OF MISCONDUCT		RANGE OF PENALTIES	
		NATURE OF MISCONDUCT	RANGE OF PENALTIES
CONTRACTING (cont.)			
16.	Failure to resign from his/her position in the private business enterprise and/or failure to divest him/herself of his/her shareholdings or interest in a private business when a conflict of interest arises within the specified period	Up to 30 days suspension, Demotion.	Dismissal.
GENERAL CONDUCT			
17.	Act of retaliation against a complainant, representative, witness or other person involved in an investigation, proceeding, hearing or other process.	Severe reprimand, Up to 5 days suspension, A formal referral to EAP*. <i>(Dismissal may be warranted if detrimental or inimical to the Service.)</i>	Up to 10 days suspension, A formal referral to EAP*, Demotion. <i>(Dismissal may be warranted if detrimental or inimical to the Service.)</i>
18.	Unauthorised possession of Government's property or another person's personal property.	Up to 10 days suspension, A Formal referral to EAP, Demotion.	Dismissal.
19.	Charging or receiving fees in connection with official duties; unauthorised private interest activity.	Up to 30 days suspension or Demotion. <i>(Dismissal may be warranted if detrimental or inimical to the Service.)</i>	Dismissal.

NATURE OF MISCONDUCT		RANGE OF PENALTIES	
		First time misconduct	Second time and subsequent misconduct
GENERAL CONDUCT (Cont.)			
20.	Inefficiency and incompetence in the performance of official duties.	Up to 10 days suspension, Demotion.	Dismissal.
21.	Unauthorised absence of 10 consecutive workdays.	Dismissal.	
22.	Misuse or authorising the use of Government vehicles unoffical purposes.	Up to 10 days suspension, Demotion.	Dismissal.
POLITICAL ACTIVITIES			
23.	Participating in prohibited political activities(such as canvassing, wearing or displaying political affiliated material)	Up to 10 days suspension, Demotion.	Dismissal.
24.	Subversive activities	Demotion, Dismissal.	Dismissal.
25.	Participating in or encouraging a strike, work stoppage/slowdown, sick out against the Government contrary to the relevant laws. (Labour Code, Trade Unions Act (CAP.300))	Up to 10 days suspension, Dismissal.	Dismissal.

*** Employee Assistance Programme. An officer may be formally referred to the Employee Assistance Programme at any time whilst considering the appropriate penalty to impose based on the officer's misconduct.**

SCHEDULE 3

[Regulation 58]

OATH/AFFIRMATION OF OFFICE AND CONFIDENTIALITY

Oath/Affirmation of Office and Confidentiality for Members of a Commission

I, _____ do hereby sincerely swear (or solemnly affirm) that I will faithfully and honestly execute the duties that devolve upon me by reason of my employment in the Public Service without fear or favour, affection or ill-will and that in execution of that office I will know, uphold and preserved the Constitution of the Virgin Islands.

I further sincerely swear (or solemnly affirm) that I will faithfully and honestly serve the public with integrity, impartiality, and with transparency and uphold the standards of the Public Services' Code of Conduct.

I, _____ do swear (or solemnly affirm) that I will not directly reveal to any unauthorised person, disclose or make known any matters connected with my employment with the Government of the Virgin Islands or matters that come to my knowledge by reason of such employment, and that in all things, I will be a true and faithful Public Service.

So help me God (To be omitted in affirmation).

Sworn/Affirmed before me this ____ day of _____ 20__ .

Made by the Governor this 3rd day of July, 2014.

(Sgd.) Boyd McCleary, CMG, CVO,
Governor.